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## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Parts 831, 837, 842, 846, 870, and 890

**RIN 3206–AI02**

### Retirement, Health, and Life Insurance Coverage for Certain Employees of the District of Columbia Under the National Capital Revitalization and Self-Government Improvement Act of 1997

**AGENCY:** Office of Personnel Management.

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

**SUMMARY:** The Office of Personnel Management (OPM) is issuing interim regulations to implement the provisions of sections 11202, 11232, and 11246 of the National Capital Revitalization and Self-Government Improvement Act of 1997. These provisions of the Act require that nonjudicial employees of the District of Columbia Courts, and, under certain conditions, the District of Columbia Corrections Trustee and the District of Columbia Pretrial Services, Defense Services, Parole, Adult Probation and Offender Supervision Trustee (Trustees) and their respective employees (Trustee Employees) be considered Federal employees for purposes of Federal retirement, health, and life insurance coverage. The Act requires that judicial employees (judges) of the District of Columbia Courts be considered Federal employees for the purposes of Federal health, and life insurance coverage. These regulations are necessary to put the new coverage into effect.

**DATES:** Interim rules effective October 1, 1997; comments must be received on or before December 1, 1997.

**ADDRESSES:** Send comments to John E. Landers, Chief, Retirement Policy Division; Retirement and Insurance Service; Office of Personnel Management; P.O. Box 57; Washington, DC 20044; or deliver to OPM, Room 4351, 1900 E Street, NW., Washington, DC. Comments may also be submitted by electronic mail to combox@opm.gov.

**FOR FURTHER INFORMATION CONTACT:** Patrick Jennings, (202) 606–0299 concerning retirement coverage, or Karen Leibach (202) 606–0004 concerning health and life insurance coverage.

**SUPPLEMENTARY INFORMATION:** The National Capital Revitalization and Self-Government Improvement Act of 1997 (the Act), title XI of Public Law 105–33, 111 Stat. 251, was enacted on August 5, 1997. Section 11202 of the Act establishes a District of Columbia Department of Corrections Trustee, and section 11232 of the Act establishes a District of Columbia Pretrial Services, Defense Services, Parole, Adult Probation and Offender Supervision Trustee. These sections of the Act require a former Federal employee appointed with a break in service of 3 days of less to be treated as a Federal employee for the purpose of chapter 83 (the Civil Service Retirement System—CSRS) or chapter 84 (the Federal Employees Retirement System—FERS); chapter 87 (the Federal Employees' Group Life Insurance Program—FEGLI); and chapter 89 (the Federal Employees Health Benefits Program—FEHB) of title 5, United States Code, during service as a Trustee or Trustee employee.

Section 11246 of the Act requires nonjudicial employees of the District of Columbia Courts to be treated as Federal employees for the purposes of chapters 81 (relating to compensation for work injuries), 83, 84, 87, and 89. This section also requires judges of the District of Columbia Courts to be treated as Federal employees for the purposes of chapters 81 (relating to compensation for work injuries), 87, and 89.

As employees of the District of Columbia Government, employees of the District of Columbia Courts have not been eligible for coverage under FERS and, therefore, were not allowed to elect to be covered by FERS. When the regulations take effect, nonjudicial employees of the District of Columbia Courts will be deemed to be Federal employees for this purpose and, because they will not have had an opportunity to elect FERS coverage, these regulations will allow them to elect FERS if now subject to CSRS, in the same way as new Federal hires who are eligible for CSRS may elect FERS.

Federal employees may be detailed to the District of Columbia Department of Corrections Trustee or the District of Columbia Pretrial Services, Defense Services, Parole, Adult Probation and Offender Supervision Trustee under the provisions of part 334 of title 5, Code of Federal Regulations, which addresses assignments of Federal employees to State governments, and the District of Columbia. The Act authorizes such details to a Trustee at the request of a Trustee with the approval of the head of the employee's Federal department or agency. Employees detailed under part 334 retain their status as Federal employees and, therefore, retain Federal benefits coverage.

With respect to employees of the District of Columbia Courts, section 11246(b)(3) of the Act requires that the amendments shall apply with respect to all months beginning after the date on which OPM issues regulations to implement the new coverage provisions. Accordingly, the amendments made by section 11246 of the Act are effective October 1, 1997.

With respect to the District of Columbia Department of Corrections Trustee and the District of Columbia Pretrial Services, Defense Services, Parole, Adult Probation and Offender Supervision Trustee, and the Trustees' employees, sections 11202 and 11232 of the Act do not establish a specific effective date for the beginning of Federal employee status. Accordingly, the regulations to implement the new coverage provisions for a Trustee and a Trustee's employees become effective on the date of a Trustee's appointment.

In addition, these regulations make technical amendments to retirement coverage provisions governing employees of the District of Columbia Financial Responsibility and Management Assistance Authority, conforming amendments to provisions governing reemployed annuitants, and non-substantive clarifying amendment to retirement coverage provisions governing certain employees of St. Elizabeths Hospital.

### Waiver of General Notice of Proposed Rulemaking

Under section 553(b) (3)(B) and (d)(3) of title 5, United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking

and for making these rules effective in less than 30 days. These regulations will affect the retirement and insurance coverage of certain employees of the District of Columbia Courts on and after October 1, 1997, and the retirement and insurance coverage of a Trustee and the Trustee's employees on and after the appointment of the Trustee. Publication of a general notice on proposed rulemaking would be contrary to the public interest because it would delay the commencement of Federal employee benefits of employees of the District of Columbia Courts and eligible individuals employed during the initial staffing of the District of Columbia Department of Corrections Trustee, and the District of Columbia Pretrial Services, Defense Services, Parole, Adult Probation and Offender Supervision Trustee.

**Regulatory Flexibility Act**

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect a small number of former Federal employees of the Trustee of the District of Columbia Department of Corrections and the Trustee of District of Columbia Pretrial Services, Defense Service, Parole, Adult Probation and Offender Supervision, and employees of the District of Columbia Courts.

**Executive Order 12866, Regulatory Review**

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

**List of Subjects**

*5 CFR Parts 831, 837, 842 and 846*

Administrative practice and procedure, Air traffic controllers, Alimony, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Reporting and recordkeeping requirements, Retirement.

*5 CFR Part 870*

Administrative practice and procedure, Government employees, Hostages, Iraq, Kuwait, Lebanon, Life insurance Retirement.

*5 CFR Part 890*

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professions, Hostages, Iraq, Kuwait, Lebanon, Reporting and recordkeeping requirements, Retirement.

Office of Personnel Management.

**Janice R. Lachance,**

*Acting Director.*

Accordingly, OPM is amending 5 CFR parts 831, 837, 842, 846, 870 and 890 as follows:

## PART 831—RETIREMENT

1. The authority citation for part 831 is revised to read as follows:

**Authority:** 5 U.S.C. 8347; § 831.102 also issued under 5 U.S.C. 8334; § 831.106 also issued under 5 U.S.C. 552a; § 831.108 also issued under 5 U.S.C. 8336(d)(2); § 831.201(b)(6) also issued under 5 U.S.C. 7701(b)(2); § 831.201(g) also issued under sections 11202(f), 11232(e), and 11246(b) of the National Capital Revitalization and Self-Government Improvement Act of 1997, title XI of Pub. L. 105–33, 111 Stat. 251; § 831.204 also issued under section 102(e) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995, Pub. L. 104–8, 109 Stat. 102, as amended by section 153 of Pub. L. 104–134, 110 Stat. 1321; § 831.303 also issued under 5 U.S.C. 8334(d)(2); § 831.502 also issued under 5 U.S.C. 8337; § 831.502 also issued under section 1(3), E.O. 11228, 3 CFR 1964–1965 Comp.; § 831.663 also issued under 5 U.S.C. 8339(j) and (k)(2); §§ 831.663 and 831.664 also issued under section 11004(c)(2) of the Omnibus Budget Reconciliation Act of 1993, Pub. L. 103–66; § 831.682 also issued under section 201(d) of the Federal Employees Benefits Improvement Act of 1986, Pub. L. 99–251, 100 Stat. 23; subpart S also issued under 5 U.S.C. 8345(k); subpart V also issued under 5 U.S.C. 8343a and section 6001 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, 101 Stat. 1330–275; § 831.2203 also issued under section 7001 (a)(4) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508, 104 Stat. 1388–328.

2. Section 831.201 is amended by revising paragraph (g) to read as follows:

### § 831.201 Exclusions from retirement coverage.

* * * * *

(g) Individuals first employed by the government of the District of Columbia on or after October 1, 1987, in a position subject to subchapter III of chapter 83 of title 5, United States Code, are excluded from such subchapter, except:

(1) Employees of St. Elizabeths Hospital who were covered under subchapter III of chapter 83 of title 5, United States Code, before October 1, 1987, appointed by the District of Columbia government on October 1, 1987, as provided in section 6 of Pub. L. 98–621, and deemed employed by the District of Columbia government before October 1, 1987, under section 109 of Pub. L. 100–238;

(2) Effective on and after October 1, 1997, the effective date of section 11246 of Pub. L. 105–33, 111 stat. 251, nonjudicial employees of the District of Columbia Courts employed in a position which is not excluded from CSRS under the provisions of this section;

(3) The District of Columbia Department of Corrections Trustee, authorized by section 11202 of Pub. L. 105–33, 111 Stat. 251, and an employee of the Trustee if the Trustee or employee is a former Federal employee appointed with a break in service of 3 days or less, and in the case of an employee of the Trustee is employed in a position which is not excluded from CSRS under the provisions of this section;

(4) The District of Columbia Pretrial Services, Defense Services, Parole, Adult Probation and Offender Supervision Trustee, authorized by section 11232 of Pub. L. 105–33, 111 Stat. 251, and an employee of the Trustee if the Trustee or employee is a former Federal employee appointed with a break in service of 3 days or less, and in the case of an employee of the Trustee is employed in a position which is not excluded from CSRS under the provisions of this section, and;

(5) Subject to an election under § 831.204, employees of the District of Columbia Financial Responsibility and Management Assistance Authority.

* * * * *

## PART 837—REEMPLOYMENT OF ANNUITANTS

3. The authority citation for part 837 continues to read as follows:

**Authority:** 5 U.S.C. 8337, 8344, 8347, 8455, 8456, 8461, and 8468; and section 302 of Pub. L. 99–335, June 6, 1986, as amended.

4. Section 837.101 is amended by revising paragraph (a)(2) to read as follows:

### § 837.101 Applicability.

(a) * * *

(2) Reemployment of an annuitant by the government of the District of Columbia when the annuitant had been employed subject to CSRS by the District of Columbia prior to October 1, 1987, or is an employee of the government of the District of Columbia not excluded from CSRS under § 831.201(g) or is an employee of the government of the District of Columbia who is deemed to be a Federal employee for FERS purposes under § 842.107; and

* * * * *

5. Section 837.102 is amended by revising the definition for *Reemployed* to read as follows:

### § 837.102 Definitions.

* * * * *

*Reemployed* means reemployed in an appointive or elective position with the

Federal Government, or reemployed in an appointive or elective position with the District of Columbia (when the annuitant was first employed subject to CSRS by the District of Columbia before October 1, 1987, or is an employee of the government of the District of Columbia not excluded from CSRS under § 831.201(g) or is an employee of the government of the District of Columbia who is deemed to be a Federal employee for FERS purposes under § 842.107 of this chapter), whether the position is subject to CSRS, FERS, or another retirement system, but does not include appointment as a Governor of the Board of Governors of the United States Postal Service, or reemployment under the provisions of law that exclude offset of pay by annuity, that is, sections 8344 (i), (j), or (k), or 8468 (f), (g), or (h) of title 5, United States Code.

* * * * *

## PART 842—FEDERAL EMPLOYEES RETIREMENT SYSTEM—BASIC ANNUITY

6. The authority citation for part 842 is revised to read as follows:

**Authority:** 5 U.S.C. 8461(g); §§ 842.104 and 842.106 also issued under 5 U.S.C. 8461(n); § 842.105 also issued under 5 U.S.C. 8402(c)(1) and 7701(b)(2); § 842.106 also issued under section 102(e) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995, Pub. L. 104–8, 109 Stat. 102, as amended by section 153 of Pub. L. 104–134, 110 Stat. 1321; § 842.107 also issued under sections 11202(f), 11232(e), and 11246(b) of the National Capital Revitalization and Self-Government Improvement Act of 1997, title XI of Pub. L. 105–33; 111 Stat. 251; §§ 842.604 and 842.611 also issued under 5 U.S.C. 8417; § 842.607 also issued under 5 U.S.C. 8416 and 8417; § 842.614 also issued under 5 U.S.C. 8419; § 842.615 also issued under 5 U.S.C. 8418; § 842.703 also issued under section 7001(a)(4) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508; § 842.707 also issued under section 6001 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203; § 842.708 also issued under section 4005 of the Omnibus Budget Reconciliation Act of 1989, Pub. L. 101–239 and section 7001 of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508; subpart H also issued under 5 U.S.C. 1104.

7. Section 842.107 is added to read as follows:

### § 842.107 Employees covered under the National Capital Revitalization and Self-Government Improvement Act of 1997.

The following categories of employees of the District of Columbia Government are deemed to be Federal employees for FERS purposes on and after October 1, 1997:

(a) Nonjudicial employees of the District of Columbia Courts;

(b) The District of Columbia Department of Corrections Trustee, authorized by section 11202 of Pub. L. 105–33, 111 Stat. 251, and an employee of the Trustee if the Trustee or employee is a former Federal employee appointed with a break in service of 3 days or less;

(c) The District of Columbia Pretrial Services, Defense Services, Parole, Adult Probation and Offender Supervision Trustee, authorized by section 11232 of Pub. L. 105–33, 111 Stat. 251, and an employee of the Trustee if the Trustee or employee is a former Federal employee appointed with a break in service of 3 days or less.

## PART 846—FEDERAL EMPLOYEES RETIREMENT SYSTEM—ELECTING COVERAGE

8. The authority citation for part 846 is revised to read as follows:

**Authority:** 5 U.S.C. 8461(g); § 846.201(b) also issued under 5 U.S.C. 7701(b)(2); § 846.201(d) also issued under section 11246(b) of the National Capital Revitalization and Self-Government Improvement Act of 1997, title XI of Pub. L. 105–33, 111 Stat. 251; § 846.202 also issued under section 301(d)(3) of Pub. L. 99–335; § 846.201(b)(ii) also issued under section 153 of Pub. L. 104–134, 110 Stat. 1321.

9. Section 846.201 is amended by revising paragraph (d)(1) to read as follows:

### § 846.201 Elections to become subject to FERS.

* * * * *

(d) *Exceptions.* (1) An individual who is an employee of the government of the District of Columbia may not elect to become subject to FERS except an individual so employed who is covered by CSRS and eligible for FERS coverage by operation of section 11246, of Pub. L. 105–33, 111 Stat. 251.

* * * * *

## PART 870—BASIC LIFE INSURANCE

10. The authority citation for part 870 is revised to read as follows:

**Authority:** 5 U.S.C. 8716; § 870.202(c) also issued under 5 U.S.C. 7701(b)(2); subpart J also issued under sec. 599C of Pub. L. 101–513, 104 Stat. 2064, as amended; § 870.202 also issued under sections 11202(f), 11232(e), and 11246 (b) and (c) of Pub. L. 105–33, 111 Stat. 251.

11. Section 870. 202 is amended by revising paragraph (a)(8) to read as follows:

### § 870.202 Exclusions.

(a) * * *

(8) An individual first employed by the government of the District of Columbia on or after October 1, 1987. However, this exclusion does not apply to:

(i) Employees of St. Elizabeths Hospital who accept offers of employment with the District of Columbia government without a break in service, as provided in section 6 of Pub. L. 98–621 (98 Stat. 3379);

(ii) The Corrections Trustee and the Pretrial Services, Defense Services, Parole, Adult Probation and Offender Supervision Trustee and employees of these Trustees who accept employment with the District of Columbia government within 3 days after separating from the Federal Government; and

(iii) Effective October 1, 1997, judges and nonjudicial employees of the District of Columbia Courts, as provided by Pub. L. 105–33 (111 Stat. 251).

* * * * *

## PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

12. The authority citation for part 890 is revised to read as follows:

**Authority:** 5 U.S.C. 8913; § 890.803 also issued under 50 U.S.C. 403p, 22 U.S.C. 4069c and 4069c–1; subpart L also issued under sec. 599C of Pub. L. 101–513, 104 Stat. 2064, as amended; § 890.102 also issued under sections 11202(f), 11232(e), and 11246 (b) and (c) of Pub. L. 105–33, 111 Stat. 251.

13. Section 890.102 is amended by revising paragraph (c)(8) to read as follows:

### § 890.102 Coverage.

* * * * *

(c) * * *

(8) An individual first employed by the government of the District of Columbia on or after October 1, 1987. However, this exclusion does not apply to:

(i) Employees of St. Elizabeths Hospital who accept offers of employment with the District of Columbia government without a break in service, as provided in section 6 of Pub. L. 98–621 (98 Stat. 3379);

(ii) The Corrections Trustee and the Pretrial Services, Defense Services, Parole, Adult Probation and Offender Supervision Trustee and employees of these Trustees who accept employment with the District of Columbia government within 3 days after separating from the Federal Government; and

(iii) Effective October 1, 1997, judges and nonjudicial employees of the District of Columbia Courts, as provided by Pub. L. 105–33 (111 Stat. 251).

[FR Doc. 97–25889 Filed 9–29–97; 8:45 am]

BILLING CODE 6325–01–M

**DEPARTMENT OF JUSTICE**

**Immigration and Naturalization Service**

**8 CFR Part 217**

**[INS No. 1786–96]**

**RIN 115–AB93**

## Adding Slovenia to the List of Countries Authorized To Participate in the Visa Waiver Pilot Program and Designating Ireland as a Permanent Participating Country (Formerly With Probationary Status)

**AGENCY:** Immigration and Naturalization Service, Justice.

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

**SUMMARY:** This rule amends the Immigration and Naturalization Service (''Service'') regulations by adding Slovenia to the list of countries designated to participate in the Visa Waiver Pilot Program (VWPP), thereby permitting nationals of Slovenia to apply for admission to the United States for ninety (90) days or less as nonimmigrant visitors for business or pleasure without first obtaining a nonimmigrant visa. This interim rule also eliminates probationary entry status in the VWPP and designates Ireland (the only country formerly designated as a participating country with probationary status) as a permanent participating country. This action will facilitate travel to the United States and benefit United States business.

**DATES:** *Effective Date.* This interim rule is effective September 30, 1997.

*Comment Date:* Written comments must be submitted on or before December 1, 1997.

**ADDRESSES:** Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 5307, Washington, DC 20536. To ensure proper handling please reference INS number 1786–96 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

**FOR FURTHER INFORMATION CONTACT:**

Dominica Gutierrez, Assistant Chief Inspector, Inspections Division, Immigration and Naturalization Service, 425 I Street NW., Room 4064, Washington, DC 20536, Telephone number: (202) 305–2969.

**SUPPLEMENTARY INFORMATION:**

### Public Law 99–603

Section 313 of the Immigration Reform and Control Act of 1986 (IRCA), Pub. L. 99–603, added section 217 to the Immigration and Nationality Act (Act), 8 U.S.C. 1187, which established the VWPP. The VWPP waives the nonimmigrant visa requirement for the admission of certain aliens to the United States for a period not to exceed ninety (90) days. That original provision authorized the participation of eight countries in the Pilot Program. Accordingly, the Service designated by regulations published in the **Federal Register,** the following eight (8) countries to participate in the VWPP:

| Country | Effective date | Federal Register citation |
|---|---|---|
| (1) United Kingdom. | July 1, 1988 | 53 FR 24901, June 30, 1988. |
| (2) Japan ..... | Dec. 15, 1988. | 53 FR 50161, Dec. 13, 1988. |
| (3) France ..... | July 1, 1989 | 54 FR 27120, June 27, 1989. |
| (4) Switzerland. | July 1, 1989 | 54 FR 27120, June 27, 1989. |
| (5) Germany | July 15, 1989 | 54 FR 27120, June 27, 1989. |
| (6) Sweden ... | July 15, 1989 | 54 FR 27120, June 27, 1989. |
| (7) Italy ..... | July 29, 1989 | 54 FR 27120, June 27, 1989. |
| (8) Netherlands. | July 29, 1989 | 54 FR 27120, June 27, 1989. |

### Public Law 101–649

Section 201 of the Immigration Act of 1990 (IMMACT 90), Pub. L. 101–649, dated November 29, 1990, further amended the VWPP removing the eight-country cap and extending the provisions to all countries that met the qualifying provisions contained in section 217 of the Act. In addition, section 201 of IMMACT 90 also extended the period for the VWPP until September 30, 1994. Subsequently, the Service designated by regulations published in the **Federal Register**, the following sixteen (16) additional countries to participate in the VWPP:

| Country | Effective date | Federal Register citation |
|---|---|---|
| (1) Andorra ... | Oct. 1, 1991 | 56 FR 46716, Sept. 13, 1991. |
| (2) Austria ..... | Oct. 1, 1991 | 56 FR 46716, Sept. 13, 1991. |
| (3) Belgium ... | Oct. 1, 1991 | 56 FR 46716, Sept. 13, 1991. |
| (4) Denmark | Oct. 1, 1991 | 56 FR 46716, Sept. 13, 1991. |
| (5) Finland .... | Oct. 1, 1991 | 56 FR 46716, Sept. 13, 1991. |
| (6) Iceland .... | Oct. 1, 1991 | 56 FR 46716, Sept. 13, 1991. |
| (7) Liechtenstein. | Oct. 1, 1991 | 56 FR 46716, Sept. 13, 1991. |
| (8) Luxembourg. | Oct. 1, 1991 | 56 FR 46716, Sept. 13, 1991. |
| (9) Monaco ... | Oct. 1, 1991 | 56 FR 46716, Sept. 13, 1991. |
| (10) New Zealand. | Oct. 1, 1991 | 56 FR 46716, Sept. 13, 1991. |
| (11) Norway .. | Oct. 1, 1991 | 56 FR 46716, Sept. 13, 1991. |
| (12) San Marino. | Oct. 1, 1991 | 56 FR 46716, Sept. 13, 1991. |
| (13) Spain ..... | Oct. 1, 1991 | 56 FR 46716, Sept. 13, 1991. |
| (14) Brunei ... | July 29, 1993 | 58 FR 40581, July 29, 1993. |
| (15) Argentina | July 8, 1996 | 61 FR 35598, July 8, 1996. |
| (16) Australia | July 29, 1996 | 61 FR 39271, July 29, 1996. |

### Public Law 103–416

Section 210 of the Immigration and Nationality Technical Corrections Act of 1994, Pub. L. 103–416, dated October 25, 1994, extended the expiration date of the VWPP until September 30, 1996.

### Public Law 104–208

On September 30, 1996, the President signed Pub. L. 104–208, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). Section 635 of this law again amended section 217 of the Act by extending the Program until September 30, 1997. This law also named the Attorney General as the principal designator of VWPP countries, eliminated probationary VWPP qualification status and made countries then in such status (Ireland being the only country) permanent participating VWPP countries subject to the same disqualification criteria established for other VWPP countries.

**Requirements for VWPP Participation (Addition of Slovenia)**

For a country to qualify as participant in the VWPP, the country must agree to waive the visa requirement for nationals of the United States entering for business or pleasure for ninety (90) days or less, must meet statutorily prescribed limits on rates of exclusion at Ports-of-Entry and on overstay rates, and must have a machine readable passport program. The Attorney General, in consultation with the Secretary of State, has determined that Slovenia has met these requirements, and Slovenia, therefore, is added, effective September 30, 1997 as a participating country in the Visa Waiver Pilot Program. (See the Department of State rule published elsewhere in this issue of the **Federal Register**.)

**Good Cause Exemption**

The Service's implementation of this rule as an interim rule, with a 60-day provision for post-promulgation public comments, is based upon the ''good cause'' exceptions found at 5 U.S.C. 553 (b)(B) and (d)(3). The reasons and the necessity for immediate implementation of this interim rule without prior notice and comment are as follows: This interim rule relieves a restriction and will facilitate business and tourist travel to the United States and Slovenia.

**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 this rule will not have a significant economic impact on a substantial number of small entities. This rule merely removes a restriction for both the traveling public and United States businesses.

**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).

**Executive Order 12612**

The regulation 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 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 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 the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

**Executive Order 12988 Civil Justice Reform**

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

**List of Subjects in 8 CFR Part 217**

Administrative practices and procedures, Aliens, Nonimmigrants, Passports and visas.

Accordingly, part 217 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

## PART 217—VISA WAIVER PILOT PROGRAM

1. The authority citation for part 217 continues to read as follows:

**Authority:** 8 U.S.C. 1103, 1187; 8 CFR part 2.

2. In § 217.2 paragraph (a) is amended by revising the definition for *''Designated country''* to read as follows:

**§ 217.2 Eligibility.**

(a) * * *

* * * * *

*Designated country* refers to Andorra, Argentina, Australia, Austria, Belgium, Brunei, Denmark, Finland, France, Germany, Iceland, Ireland, Italy, Japan, Liechtenstein, Luxembourg, Monaco, the Netherlands, New Zealand, Norway, San Marino, Slovenia, Spain, Sweden, Switzerland, and the United Kingdom. The United Kingdom refers only to British citizens who have the unrestricted right of permanent abode in the United Kingdom (England, Scotland, Wales, Northern Ireland, the Channel Islands and the Isle of Man); it does not refer to British overseas citizens, British dependent territories' citizens, or citizens of British Commonwealth countries.

* * * * *

Dated: September 25, 1997.

**Doris Meissner,**

*Commissioner, Immigration and Naturalization Service.*

[FR Doc. 97–25982 Filed 9–29–97; 8:45 am]

BILLING CODE 4410–10–M

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## DEPARTMENT OF JUSTICE

## Executive Office for Immigration Review

## 8 CFR Part 245

**[EOIR No. 119I; A.G. ORDER No. 2117–97]**

**RIN 1125–AA20**

## Adjustment of Status to That of Person Admitted for Permanent Residence

**AGENCY:** Executive Office for Immigration Review, Justice.

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

**SUMMARY:** This interim rule enables the Executive Office for Immigration Review to complete adjudication of timely filed section 245(i) adjustment applications after September 30, 1997.

**DATES:** *Effective Date:* This rule is effective September 30, 1997. *Comment Date:* Written comments must be received on or before December 1, 1997.

**ADDRESSES:** Please submit written comments to Margaret M. Philbin, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2400, Falls Church, Virginia, 22041.

**FOR FURTHER INFORMATION CONTACT:** Margaret M. Philbin, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2400, Falls Church, Virginia, 22041, telephone (703) 305–0470.

**SUPPLEMENTARY INFORMATION:** On August 26, 1994, Congress enacted the Department of Commerce, Justice, State, and the Judiciary and Related Agencies Appropriations Act of 1995, Pub. L. 103–317. Section 506(b) of this law added a new section 245(i) to the Immigration and Nationality Act (the Act) which allows certain persons already in the United States to adjust

status, despite the provisions of section 245 (a) and (c) of the Act, upon payment of a fee in addition to the base filing fee for an adjustment of status application.

On July 23, 1997, the Immigration and Naturalization Service (Service) published an interim rule with request for comments (62 FR 39417) concerning adjustment of status applications filed pursuant to section 245(i) of the Act. The supplementary information to the interim rule reiterates that the provisions of section 245(i) apply only to applications filed on or after October 1, 1994, and before October 1, 1997. *See* section 506(c) of Pub. L. 103–317. By law, benefits may not be granted pursuant to section 245(i) of the Act to aliens who attempt to file anew application for adjustment of status under that subsection after September 30, 1997. All applications for adjustment of status filed pursuant to section 245 of the Act which are submitted after September 30, 1997, must be adjudicated pursuant to section 245(a) of the Act.

This interim rule is published in order that all applications for adjustment of status filed pursuant to section 245(i) be adjudicated in a consistent manner. Since applications for adjustment of status may be adjudicated by either the Service or the Executive Office for Immigration Review (EOIR) (which includes the Immigration Courts and the Board of Immigration Appeals), this interim rule enables the Executive Office for Immigration Review to complete adjudication of timely filed section 245(i) adjustment applications after September 30, 1997, and makes it clear that neither the Service nor EOIR may approve an application for adjustment of status pursuant to section 245(i) of the Act if such application was filed either before October 1, 1994, or after September 30, 1997. However, both the Service and EOIR may complete adjudication of timely filed section 245(i) adjustment applications after September 30, 1997.

The implementation of this rule as an interim rule, with provisions for post-promulgation public comment, is based upon the ''good cause'' exceptions found at 5 U.S.C. 553 (b)(B) and (d)(3). The reasons and the necessity for immediate implementation of this interim rule without prior notice and comment are as follows: Immediate implementation of this rule will ensure that all applications for adjustment of status filed pursuant to section 245(i) are adjudicated in the same manner and will avoid any delay in the processing of these applications.

**Regulatory Flexibility Act**

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule affects only those aliens who are applying to adjust their status under section 245(i) of the Immigration and Nationality Act. Therefore, this rule does not have a significant economic impact on a substantial number of small entities.

**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 $110 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 12866**

The Attorney General has determined that this rule is not a significant regulatory action under Executive Order No. 12866, and accordingly this rule has not been reviewed by the Office of Management and Budget.

**Executive Order 12612**

This rule has no federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order No. 12612.

**Executive Order 12988**

This rule meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order No. 12988.

**List of Subjects in 8 CFR Part 245**

Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

## PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

1. The authority citation for part 245 continues to read as follows:

**Authority:** 8 U.S.C. 1103, 1103, 1182, 1255; 8 CFR part 2.

**§ 245.10 [Amended]**

2. In § 245.10 paragraphs (c) and (f) are revised to read as follows:

* * * * *

(c) *Application period.* Neither the Service nor the Executive Office for Immigration Review may approve an application for adjustment of status pursuant to section 245(i) of the Act if such application was filed either before October 1, 1994, or after September 30, 1997. If an alien attempts to file an adjustment of status application under the provisions of section 245(i) after September 30, 1997, the Service will accept the application and base filing fee, as set forth in § 103.7(b)(1) of this chapter, return the additional sum of $1,000 to the alien, and either the Service or the Executive Office for Immigration Review will adjudicate the application pursuant to section 245(a) of the Act. If the alien, in such a case, is not eligible for adjustment of status, either the Service will issue a written notice advising the alien of the denial of the application for adjustment of status, or the Executive Office for Immigration Review will deny the application for adjustment of status.

* * * * *

(f) *Completion of processing of pending applications.* (1) An application for adjustment of status filed subsequent to September 30, 1994, and prior to October 1, 1997, shall be adjudicated to completion by an officer of the Service or by the Executive Office for Immigration Review, regardless of whether the final decision is made after September 30, 1997. The provisions of paragraph (d) of this section regarding amended applications shall apply to all such applications. The Service or the Executive Office for Immigration Review may consider a motion to reopen or reconsider an application for adjustment of status on the basis of section 245(i) of the Act only if:

(i) The application for adjustment of status was filed on or after October 1, 1994, and before October 1, 1997, and

(ii) Prior to October 1, 1997, the applicant submitted Supplement A to Form I-485, any additional sum required by section 245(i), and any other required documentation.

(2) Any application for adjustment of status submitted pursuant to section 245(i) and considered in deportation or

removal proceedings must be filed between October 1, 1994, and October 1, 1997.

* * * * *

Dated: September 24, 1997.

**Janet Reno,**

*Attorney General.*

[FR Doc. 97–25931 Filed 9–29–97; 8:45 am]

BILLING CODE 4410–30–M

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

### 8 CFR Part 274a

**[INS NO. 1818–96]**

**RIN 1115–AE94**

### Interim Designation of Acceptable Documents for Employment Verification

**AGENCY:** Immigration and Naturalization Service, Justice.

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

**SUMMARY:** The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) amended existing law by removing certain documents from the list of acceptable documents for use in the employment eligibility verification process. By law, those changes take effect no later than September 30, 1997, and this rule implements those changes. Although the Immigration and Naturalization Service (Service) is in the process of developing proposed rules to revise and streamline the employment verification process, together with revised forms and guidance, those rules are not yet ready to be promulgated. Thus, in promulgating this interim rule to implement the changes striking certain documents from the statutory list, the Service is also exercising available regulatory authority to restore many of the existing documents, insofar as possible, by designating them to be retained on the list of acceptable documents until further notice. This notice is intended to retain the status quo as much as possible at this time, pending the completion of action on the document reduction program, which will be accomplished in a separate rulemaking action.

**DATES:** This interim rule is effective September 30, 1997.

*Comment date:* Written comments must be submitted on or before December 1, 1997.

**ADDRESSES:** Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 5307, Washington, DC 20536. To ensure proper handling, please reference INS No. 1818–96 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

**FOR FURTHER INFORMATION CONTACT:** Marion Metcalf, Special Assistant, HQIRT, 425 I Street NW., Washington, DC, 20536; (202) 307–6596; or email at metcalfm@justice.usdoj.gov. Please note that the email address is for further information only and may not be used for the submission of comments.

**SUPPLEMENTARY INFORMATION:** The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. 104–208, enacted on September 30, 1996, amended the employer sanctions provisions of section 274A of the Immigration and Nationality Act (Act) to require a reduction in the number of documents acceptable for completion of the Employment Eligibility Verification form (Form I–9). These amendments must be in effect no later than September 30, 1997. This interim rule is necessary to implement the changes required by IIRIRA.

The Service is currently developing a document reduction initiative which will result in a number of changes in this area, including eliminating various documents from the existing lists, revising the Form I–9, and developing new guidance for employers and employees regarding the employment verification process. Those changes, when finalized, will implement the changes enacted by IIRIRA as well as respond to other concerns about the present process. However, that initiative, which the Service intends to publish as a proposed rule in a separate rulemaking action within the next 6 months, is not yet ready for promulgation.

At this time, the Service must amend its rules to take account of the statutory changes that take effect September 30, 1997. However, although IIRIRA deleted certain documents from the statutory list of acceptable documents, the Act also retained (in amended form) the authority of the Attorney General to designate specific documents as acceptable in addition to the statutory list. Accordingly, in amending existing regulations to take account of these statutory changes, the Service at the same time is also acting to restore the use of some of those documents by exercising available authority (as amended by IIRIRA) to continue to designate certain documents as acceptable for employment verification until completion of the separate document reduction initiative.

By this means, as discussed in more detail below, the Service is acting to designate foreign passports with specified Service work authorization stamps in two instances as ''List A'' documents—that is, as documents evidencing both identity and work authorization. This rule also expands the existing receipt rule to ensure that certain refugees and lawful permanent residents will still be able to meet the employment verification requirements even though they do not yet have a required document. Finally, even though IIRIRA eliminates birth certificates as a specific statutory ''List C'' document—this is, as a document evidencing employment authorization—this rule reflects a determination (as a matter of discretionary regulatory authority) to designate birth certificates as an acceptable document for this purpose. (This designation of birth certificates will continue only until completion of the separate rulemaking proceeding. The Service intends to propose elimination of the use of birth certificates, as well as certain other existing documents, in that proposed rule.)

The result of the statutory changes and the new designations embodied in this interim rule is that all of the existing ''List A'' documents will be retained, except for the following three kinds of documents: a Certificate of U.S. Citizenship; a Certificate of Naturalization; and a foreign passport not meeting the standards set forth in this interim rule, as discussed below. As to those three documents, there is no statutory authority to retain them on ''List A.'' In addition, there will be no change at all at this time with respect to either ''List B'' documents (evidencing identity) or ''List C'' documents (evidencing employment authorization).

The purpose of this interim rule is to maintain the status quo as much as possible during this transitional period so as to avoid confusion and disruption in the employment verification process at this time. Although some changes are required by law, the Service recognizes that these changes are necessarily being implemented with little advance public notice, and without any revisions to the existing Form I–9 and the published Handbook for Employers (Form M–274). Accordingly, as explained below, in order to minimize confusion and disruption, the Service will exercise its discretion to forgo enforcement actions against employers who continue to act in reliance upon and in compliance with existing employment verification

forms, guidance, and procedures. This policy will remain in effect until the new document reduction program, together with a revised Form I–9 and guidance to employers, can be implemented in the separate rulemaking proceeding.

The following discussion explains in more detail the background of this regulatory action; the specific changes being made in this interim rule; and the basis for the interim designations of certain documents as implemented in this rule.

**Background on Document Reduction**

The Act, as amended, currently requires persons or entities to verify the employment eligibility and identity of all new hires. The Employment Eligibility Verification form (Form I–9) was designated for that purpose. Newly hired individuals must attest to the status that makes them eligible to work and present documents that establish their identity and eligibility to work. Employers and recruiters and referrers for a fee (as defined in section 274(a)(1)(B)(ii) of the Act and 9 CFR 274a.2(a)) must examine and documents and attest that they appear to be genuine and to relate to the individual. They may not specify a document or combination of documents that the individual must present. To do so may violate section 274B of the Act.

The statutory framework, implemented by regulation at 8 CFR 274a.2, provides for three lists of documents: documents that establish both identity and employment eligibility (List A documents); documents that establish identity only (List B documents); and documents that establish employment eligibility only (List C documents).

**Scope of the Interim Rule**

To implement IIRIRA, this interim rule amends the regulations to:

(1) Remove the certificate of United States citizenship and the certification of naturalization as documents acceptable under List A;

(2) Retain the designation of a foreign passport with temporary evidence of permanent resident status as a document acceptable under List A, and limit the use of a foreign passport with a Form I–94 to those nonimmigrants who are authorized to work for a specific employer; and

(3) Clarify and expand the receipt rule under which work-eligible individuals who are unable to present a required document may present a receipt under certain circumstances.

This interim rule also exercises regulatory authority to continue the designation of birth certificates as documents acceptable under List C. Accordingly, no change to List C is necessary at this time.

**Enforcement Postponed for Employers and Recruiters or Referrers for a Fee With Respect to Changes Made to the List of Acceptable Documents in This Interim Rule**

To minimize confusion among the employment community and the potential for discriminatory hiring practices, this rule makes at this time only those changes to the current regulations needed to ensure that the current regulations conform with the statutory amendments made by IIRIRA. Consequently, this rule reduces the list of documents acceptable for employment verification under List A, and retains birth certificates (which are currently on List C) as acceptable for employment verification purposes. This means that List C remains in effect without change.

This rule does not include a revised Form I–9. Employers and recruiters and referrers for a fee are to continue to use the current version of the Form I–9 (edition 11/21/91) to complete the employment verification process until the Form I–9 is revised. As a result, the Service has determined in its prosecutorial discretion not to seek a civil money penalty, until further notice, for any violations based upon the changes made by this rule to the list of acceptable documents.

The Service intends to propose more comprehensive changes to the employment verification process, a further reduction in the number of acceptable documents, and a revision to the Form I–9 in a forthcoming rulemaking. The public will be provided an opportunity to comment on any proposed changes at that time. Thus, the Service will withhold enforcement of civil money penalties for violations associated with these changes and committed before the effective date of a final rule containing the revised Form I–9, so that employers or recruiters or referrers for a fee will not be penalized if they accept documents that were previously acceptable but were removed from the list by this interim rule.

**Section 412(a) of IIRIRA—Amending the Documents Acceptable Under List A and List C**

Section 412(a) of IIRIRA amends the Act with respect to List A and List C documents. To implement this provision in a way that would cause the least confusion to the public and to minimize the potential for discriminatory hiring practices, this rule amends the regulations to reduce the current number of List A documents but to designate certain foreign passports in two instances. This rule does not reduce the current number of List C documents. Instead, this rule retains the documents currently listed as List C documents in the regulations as acceptable List C documents under IIRIRA.

*A. Documents Evidencing Both Identity and Employment Eligibility (List A)*

Section 412(a) of IIRIRA amends section 274A(b)(1)(B) of the Act which governs the documents that individuals may present to establish both identity and employment eligibility. Section 412(a) of IIRIRA eliminates three documents from the statutory list: (1) Certificate of United States citizenship; (2) certificate of naturalization; and (3) an unexpired foreign passport with an endorsement that indicates eligibility for employment. The documents remaining on the list by statute are: a United States passport; a resident alien card; an alien registration card; or other document designated by the Attorney General. Each document designated by the Attorney General must meet three conditions: The document must not only contain a photograph and personal identifying information, and constitute evidence of employment authorization, but it now must also contain ''security features to make it resistant to tampering, counterfeiting, and fraudulent use.''

To implement section 412(a) of IIRIRA, this rule amends the current regulations to limit the documents that evidence both identity and employment authorization to:

(1) A United States passport;

(2) An Alien Registration Receipt Card or Permanent Resident Card (Form I–551);

(3) A foreign passport with a Temporary I–551 stamp;

(4) An Employment Authorization Document (EAD) issued by the Service which contains a photograph (Form I–766), Form I–688, Form I–688A, or Form I–688B); and,

(5) In the case of a nonimmigrant alien authorized to work for a specific employer incident to status, a foreign passport with an Arrival-Departure Record (Form I–94) bearing the same name as the passport and containing an endorsement of the alien's nonimmigrant status, so long as the period of endorsement has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified on the Form I–94.

1. Service-Issued Employment Authorization Document

This rule retains the Employment Authorization Document (Forms I–766, I–688, I–688A, and I–688B) as an acceptable List A document. These forms meet the three statutory conditions that limit the Attorney General's authority to designate additional List A documents. First, these Service-issued forms all contain a photograph and additional identifying information of the bearer, including a fingerprint of the bearer and the bearer's date of birth. Second, the forms are evidence that the Service has granted employment authorization to the bearer. Third, the Service has designed each of the forms to contain security features that make them resistant to tampering, counterfeiting, and fraudulent use.

2. Foreign Passports With an I–551 Stamp

This rule designates foreign passports as acceptable evidence of identity and employment authorization, but limited to two instances. The first relates to aliens lawfully admitted for permanent residence under section 101(a)(20) of the Act. Persons newly admitted for or adjusted to lawful permanent residence may receive evidence of that status through a stamp in their passports. The stamp serves as temporary evidence of permanent resident status until the individual receives Form I–551 from the Service. If the stamped endorsement includes an expiration date, the document must be reverified by the employer on the Form I–9. The newest versions of the Form I–551 also bear an expiration date but the actual Form I–551 need to be reverified when the card expires; only the stamp must be reverified when expired.

3. Foreign Passports With Form I–94

The second instance in which a foreign passport is designated as a List A document is when it is presented with Form I–94 indicating a nonimmigrant classification that enables the alien to work with a specific employer incident to his or her nonimmigrant status until the expiration date specified on the form.

Aliens in classes identified in § 274a.12(b) are authorized employment with a specific employer incident to status. The Service does not currently require aliens in these classes to obtain an employment authorization document—i.e., a Form I–688B or Form I–766—and does not plan to implement such a requirement at this time. The documentation that a nonimmigrant alien is issued to demonstrate that he or she is authorized to work incident to status with a specific employer is the Form I–94 with an endorsement that specifies the alien's nonimmigrant status. In addition to the regulations at § 274a.12(b), the current version of the Handbook for Employers (M–274) enumerates for employers and recruiters or referrers for a fee the applicable nonimmigrant classifications. These classifications include: foreign government officials and their employees (A–1, A–2, A–3); foreign government officials in transit (C–2, C–3); nonimmigrant treaty traders or investors (E–1, E–2); nonimmigrant students engaged in on-campus employment or curricular practical training (F–1); representatives of international organizations and their employees (G–1, G–2, G–3, G–4, G–5); temporary workers or trainees (H–1, H–2A, H–2B, H–3); information media representatives (I); exchange visitors (J–1); intra-company transferees (L–1); aliens having extraordinary ability in the sciences, arts, education, business, or athletics and accompanying aliens (O–1, O–2); athletes, artists or entertainers (P–1, P–2, P–3); international cultural exchange visitors (Q); aliens having a religious occupation (R); officers and personnel of the armed services of nations of the North Atlantic Treaty Organization and representatives, officials, and staff employees of NATO (NATO–1, NATO–2, NATO–3, NATO–4, NATO–5, NATO–6); and citizens of Canada or Mexico pursuant to the provisions of the North American Free Trade Agreement (TN).

The IIRIRA provides that the Attorney General ''may prohibit or place conditions on ''specific document if the Attorney General finds that the document ''does not reliably establish [employment] authorization or identity or is being used fraudulently to an unacceptable degree.'' The Service finds that documentation issued to or used by nonimmigrants does not reliably establish employment eligibility except for documentation indicating a nonimmigrant classification that authorizes employment with a specific employer incident to status. The interim rule, therefore, places the following condition on the foreign passport with a Form I–94: that the foreign passport with the Form I–94 is only acceptable where the individual is authorized to work incident to status with a particular employer, and the Form I-94 indicates an employer-specific nonimmigrant classification. Such documentation may be used only for purposes of establishing eligibility to work for the approved employer. This restriction does not relieve employers of the requirement to abide by any terms or conditions specified on any documentation issued by the Service. Similarly, the restriction does not permit employers to require individuals to present a specific document. The restriction does mean that a Form I–94 endorsed to permit employment incident to status with a specific employer may not be accepted as evidence of eligibility to work for other employers.

4. Conditions Qualifying Foreign Passports With the I–551 Stamp or Form I–94 as a Proper Designation

The Service finds that, in the above instances, foreign passports meet the three conditions that authorize the Attorney General to add documents to List A. First, foreign passports bear a photograph and identifying information (such as the birth date and physical characteristics of the bearer). Second, they are evidence of employment authorization when they bear a temporary I–551 stamp or are presented together with Form I–94 endorsed with a nonimmigrant classification that authorizes employment with a specific employer incident to status. Finally, foreign passports contain security features to make them resistant to tampering, counterfeiting, and fraudulent use. Temporary I–551 stamps are made with secure ink and meet internal Service standards. Form I–94 is only acceptable with a foreign passport in employer-specific situations in which the employer examining the Form I–94 for employment verification purposes is the same employer who petitioned for the alien to receive his or her nonimmigrant status or is otherwise approved to accept the alien for employment. Note that employers are required to reverify the individual's eligibility to work when the stamped authorization expires.

*B. Documents Evidencing Employment Authorization (List C)*

Section 412(a) of IIRIRA amends section 274A(b)(l)(C) of the Act by removing the certificate of birth in the United States (or other certificate found acceptable by the Attorney General as establishing United States nationality at birth) from the statutory list of acceptable documents that may be used to establish employment authorization for compliance with the employment verification requirements.

The inclusion of the unrestricted social security account number card on List C remains undisturbed by section 412(a) of IIRIRA. Thus, this rule does not amend the current regulations with

respect to the social security account numbered card; it remains on the list of acceptable documents as before.

Under section 274A(b)(1)(C)(ii), as amended, it is within the Attorney General's authority to designate ''other documentation evidencing authorization of employment in the United States which the Attorney General finds, by regulation, to be acceptable for purposes of this section.'' Exercising that authority, the Attorney General finds that the remaining documents listed in the current regulations are acceptable List C documents. These documents are:

(1) A Certification of Birth Abroad issued by the Department of State, Form FS–545;

(2) A Certification of Birth Abroad issued by the Department of State, Form DS–1350;

(3) An original or certified copy of a birth certificate issued by a State, county, municipal authority, or outlying possession of the United States bearing an official seal;

(4) A Native American tribal document;

(5) A United States Citizen Identification Card, INS Form I–197;

(6) An identification card for use of a resident citizen in the United States, INS Form I–179; and

(7) An unexpired employment authorization document issued by the Service.

The finding to retain all the List C documents currently listed in the regulations for this rule is necessary to minimize confusion and the potential for discriminatory hiring practices that otherwise might result if this rule removed documents from the current list without first providing an opportunity for public comment or an education period. This rule enables employers and recruiters or referrers for a fee to continue to rely upon the List C documents that are stated on the current version of the Form I–9.

The Service is aware of the congressional intent expressed by section 412(a) of IIRIRA to remove the birth certificate from the statutory list of acceptable documents. The designation of birth certificates for purposes of this interim rule is an exercise of the Attorney General's regulatory authority only during this transitional period until the document reduction initiative is complete. The Service will propose removal of the birth certificate as well as certain other List C documents in a future proposed rule that will follow this interim rule. The Service will consider public comments before implementing such a change. The Service, therefore, retains the birth certificate in this interim rule because its abrupt removal potentially would cause much confusion to the public.

**Receipts**

As a result of this rule's amendments to the regulations governing List A documents, this rule must concurrently amend the regulations governing the use of receipts, § 274a.2(b)(1)(vi). This amendment is necessary to ensure that certain refugees and lawful permanent residents will be equipped to meet the employment verification requirements if they are unable to present a required document as a result of the reduction to the list of acceptable List A documents required by IIRIRA. In so doing, this amendment restructures the current rule relating to receipts.

1. Current Regulations

Current regulations permit individuals to present a receipt showing that they have applied for a replacement document if the individual is unable to provide a required document or documents at the time of hire. The individual must then present the required document or documents within 90 days of the hire. This provision provides flexibility in situations where, for example, an individual has lost a document.

2. Interim Rule

The interim rule provides that an employer or recruiter or referrer for a fee must accept a receipt that appears to be genuine on its face and appears to relate to the individual presenting it in lieu of the required document, unless the individual indicates or the employer or recruiter or referrer for a fee has actual or constructive knowledge that the individual is not authorized to work. It reinforces that a receipt for an application for initial work authorization or an extension of expiring work authorization is not acceptable. It also extends that receipt rule to reverification.

(1) *Three instances in which receipts are acceptable.*

(a) *Application for a replacement document.* The rule permits the use of receipts in three instances. The first instance is when the individual presents a receipt for the application for a replacement document. An application for initial work authorization or an extension of expiring work authorization, however, its not acceptable.

(b) *Form I–94 indicating temporary evidence of permanent resident status.* The second instance is when the individual presents the arrival portion of the Form I–94 that the Service has marked with a temporary I–551 stamp and has affixed with the alien's picture. The Service may issue this document if an alien is not in possession of his or her passport and requires evidence of lawful permanent resident status. Although this document provides temporary evidence of permanent resident status, it does not contain sufficient security features. Consequently, it does not meet the statutory requirements provided by IIRIRA for inclusion on List A. This rule, therefore, extends the receipt rule to include the Form I-94 with a temporary I–551 stamp and the alien's picture. This document serves as a receipt for Form I–551 for 180 days.

(c) *Form I–94 indicating refugee status.* The third instance is when the individual presents the departure portion of Form I–94 containing a refugee admission stamp. The Service recognizes the importance of newly admitted refugees being able to seek employment promptly upon arrival in the United States. The Service has been working with the Social Security Administration (SSA) to ensure prompt issuance of social security cards which carry no employment restrictions to refugees. In most instances, the Service believes that refugees will receive social security cards timely and will be able to present them to employers. The Service also intends to give refugees the option of obtaining a Form I–766 EAD, but recognizes that in most instances refugees will be able to obtain a social security card faster. Refugees may wish to obtain the Form I–766 EAD so that they will have a Service-issued document with a photograph. In order to ensure that refugees are still able to work if they encounter delays in obtaining cards from either the SSA or the Service, the Service introduces a special receipt rule. Under this rule, a Form I–94 with a refugee admission stamp constitutes a receipt evidencing eligibility to work. It is not, however, a receipt for a specific document. The refugee is permitted to present either an unrestricted social security card or a Form I–766 EAD at the end of the 90-day receipt period. If the refugee presents a social security card, the refugee will also need to present a List B document. If the refugee presents a Form I–766 EAD, he or she does not need to present another document.

(2) *Receipts are not acceptable where the individual is hired for less than three business days.*

To correspond to this interim rule's expansion in the use of receipts, this rule amends 8 CFR 274a.2(b)(1)(iii) in which a reference to receipts is made. This paragraph of the regulations

governs the employment verification requirements in the case of an individual whose employment is less than three business days. Currently, the regulations preclude an individual hired for less than three business days from presenting a receipt for the application of a replacement document in lieu of a required document. This rule extends this prohibition to any type of receipt.

**Good Cause Exception**

This interim rule is effective on September 30, 1997, although the Service invites post-promulgation comments and will address any such comments in a final rule. For the following reasons, the Service finds that good cause exists for adopting this rule without the prior notice and comment period ordinarily required by 5 U.S.C. 553.

Pursuant to section 412(e)(1) of IIRIRA, the document reduction provisions of section 412(a) of IIRIRA are effective on September 30, 1997, unless the Attorney General designates an earlier date. If the Attorney General does not designate a date through this interim rule, the provisions will go into effect without regulations, and a gap will be left wherein certain individuals who are authorized to work will not be in possession of an acceptable document under the Act as amended by IIRIRA for employment verification purposes. In addition, the Form I–9 will not be revised at this time. The Service is concerned that mass confusion among the employment community would result over which documents currently listed in the regulations and on the Form I–9 would remain acceptable to meet the employment verification requirements. This confusion would heighten the potential for discriminatory hiring practices.

To prevent the potential for confusion of the public and discriminatory hiring practices, and to ensure that documents acceptable for employment verification are designated to correspond to all classes of individuals authorized to work in the United States, the Service is issuing this rule. In order to respond to these concerns, this rule designates additional documents as acceptable, beyond those documents specifically enumerated in the Act as revised. In the absence of this action by the Service, the changes made by IIRIRA would result in an immediate further narrowing of the list of acceptable documents. Because of the imminent effective date of the statutory changes made by IIRIRA, this rule is being made effective as of September 30, 1997, without prior comments from the public. For these reasons, the Service finds that it would be unnecessary and contrary to the public interest to delay the effective date of this rule.

**Regulatory Flexibility Act**

The Commissioner of the Immigration and Naturalization Service, in accordance with 5 U.S.C. 605(b), has reviewed this interim rule and, by approving it, certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule is a short-term measure and very limited in scope, only modifying a small portion of the entire employment verification process. It also does not introduce new forms. As a result, this rule would not require small entities to significantly change established practices. In addition, until further notice, the Service will not penalize persons or entities that commit violations based upon the changes to the list of acceptable documents made by this rule.

**Executive Order 12866**

This rule is 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. Accordingly, it has been submitted and approved by the Office of Management and Budget.

**Executive Order 12612**

The regulation 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 rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**Executive order 12988 Civil Justice Reform**

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

**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.

**Paperwork Reduction Act**

This interim rule does not impose any new reporting or recordkeeping requirements. The information collection requirements pertaining to the employment verification process have been approved for use by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The OMB control number for this collection is contained in 8 CFR 299.5, Display of control numbers.

**List of Subjects in 8 CFR Part 274a**

Administrative practice and procedure, aliens, employment, penalties, reporting and recordkeeping requirements.

Accordingly, part 274a of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

## PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

1. The authority citation for part 274a continues to read as follows:

**Authority:** 8 U.S.C 1101, 1103, 1324a; 8 CFR part 2.

2. Section 274a.2 is amended by:

a. Revising paragraph (b)(1)(iii);

b. Revising paragraph (b)(1)(v)(A); and by

c. Revising paragraph (b)(11)(vi), to read as follows:

**§ 274a.2 Verification of employment eligibility.**

* * * * *

(b) * * *

(1) * * *

(iii) An employer who hires an individual for employment for a duration of less than three business days must comply with paragraphs (b)(1)(ii)(A) and (b)(1)(ii)(B) of this section at the time of the hire. An employer may not accept a receipt, as described in paragraph (b)(1)(vi) of this section, in lieu of the required

document if the employment is for less than three business days.

* * * * *

(v) * * *

(A) The following documents, so long as they appear to relate to the individual presenting the document, are acceptable to evidence both identity and employment eligibility:

(*1*) United States passport (unexpired or expired);

(*2*) Alien Registration Receipt Card or Permanent Resident Card, Form I–551;

(*3*) An unexpired foreign passport that contains a temporary I–551 stamp;

(*4*) An unexpired Employment Authorization Document issued by the Immigration And Naturalization Service which contains a photograph, Form I–766; Form I–688, Form I–688A, or Form I–688B;

(*5*) In the case of a nonimmigrant alien authorized to work for a specific employer incident to status, an unexpired foreign passport with an Arrival-Departure Record, Form I–94, bearing the same name as the passport and containing an endorsement of the alien's nonimmigrant status, so long as the period of endorsement has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified on the Form I–94.

* * * * *

(vi) *Special rules for receipts.* Except as provided in paragraph (b)(1)(iii) of this section, unless the individual indicates or the employer or recruiter or referrer for a fee has actual or constructive knowledge that the individual is not authorized to work, an employer or recruiter or referrer for a fee must accept a receipt for the application for a replacement document or a document described in paragraphs (b)(1)(vi)(B)((*1*) and (b)(1)(vi)(C)((*1*) of this section in lieu of the required document in order to comply with any requirement to examine documentation imposed by this section, in the following circumstances:

(A) *Application for a replacement document.* The individual:

(*1*) Is unable to provide the required document within the time specified in this section because the document was lost, stolen, or damaged;

(*2*) Presents a receipt for the application for the replacement document within the time specified in this section; and

(*3*) Presents the replacement document within 90 days of the hire or, in the case of reverification, the date employment authorization expires; or

(B) *Form I–94 indicating temporary evidence of permanent resident status.* The individual indicates in section 1 of the Form I–9 that he or she is a lawful permanent resident and the individual:

(*1*) Presents the arrival portion of Form I–94 containing an unexpired ''Temporary I–551'' stamp and photograph of the individual, which is designated for purposes of this section as a receipt for Form I–551; and

(*2*) Presents the Form I–551 within 180 days of the hire or, in the case of reverification, the date employment authorization expires; or

(C) *Form I–94 indicating refugee status.* The individual indicates in section 1 of the Form I–9 that he or she is an alien authorized to work and the individual:

(*1*) Presents the departure portion of Form I–94 containing an unexpired refugee admission stamp, which is designated for purposes of this section as a receipt for either the Form I–766 or a social security account number card that contains no employment restrictions; and

(*2*) Presents, within 90 days of the hire or, in the case of reverification, the date employment authorization expires, either an unexpired Form I–766; or a social security account number card that contains no employment restrictions together with a document described under paragraph (b)(1)(v)(B) of this section.

* * * * *

Dated: September 25, 1997.

**Doris Meissner,**

*Commissioner, Immigration and Naturalization Service.*

[FR Doc. 97–25920 Filed 9–29–97; 8:45 am]

BILLING CODE 4410–10–M

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## FEDERAL RESERVE SYSTEM

## 12 CFR Part 213

**[Regulation M; Docket No. R–0892]**

## Consumer Leading; Delay of Compliance Date

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Final rule; delay of compliance date.

**SUMMARY:** Following a review under the Board's Regulatory Planning and Review Program, the Board published a revised Regulation M, which implements the Consumer Leasing Act on October 7, 1996. The final rule contains a significant number of substantive revisions to the regulation. It essentially establishes a new disclosure scheme that should substantially improve consumer understanding of automobile transactions. The new disclosure scheme required the preparation of new forms and the reprogramming of computer software. Mandatory compliance with the revised rule was to begin on October 1, 1997. The Board is delaying that compliance date until January 1, 1998, to facilitate compliance with the regulation and to ensure that consumers receive accurate and meaningful disclosures.

**DATES:** The mandatory compliance date for the final rule published at 61 FR 52246 (Oct. 7, 1996) is delayed until January 1, 1998.

**FOR FURTHER INFORMATION CONTACT:** Kyung H. Cho-Miller or Obrea O. Poindexter, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–2412 or 452–3667. For users of Telecommunications Device for the Deaf (TDD), please contact Dorothea Thompson at (202) 452–3544.

**SUPPLEMENTARY INFORMATION:** The Consumer Leasing Act (CLA), 15 U.S.C. 1667–1667e, was enacted into law in 1976 as an amendment to the Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq.* The Board was given rulewriting authority, and its Regulation M (12 CFR part 213) implements the CLA.

The CLA generally governs consumer leases of personal property involving $25,000 or less and a term of more than four months. An automobile lease is the most common type of consumer lease covered by the CLA. Like the credit provisions of the TILA, the CLA requires lessors to provide uniform cost and other disclosures in consumer lease transactions and in lease advertising. Prior to entering into a lease agreement, lessors must give consumers fifteen to twenty disclosures, including the amount of initial charges to be paid, an identification of leased property, a payment schedule, the responsibilities for maintaining the leased property, and the liability for terminating a lease early.

Following a review under the Board's Regulatory Planning and Review Program, the Board published a revised Regulation M on October 7, 1996 (61 FR 52246), and a new staff commentary on April 4, 1997 (62 FR 16053). The final rule, which contains a significant number of substantive revisions to the regulation, essentially establishes a new disclosure scheme that should substantially improve consumer understanding of automobile lease transactions. The new disclosure scheme required the preparation of new forms and the reprogramming of computer software.

The Board has been asked by representatives of the automobile leasing industry—including leasing companies, automobile dealerships, and vendor support services—to delay the mandatory compliance date of the new Regulation M rules beyond October 1, 1997. The request is based on the current state of implementation of the new leasing software at the 22,500 new-car dealerships that arrange for automobile leases provided through approximately 9,000 independent lessors. Based on the information that they have shared, less than half of the dealerships have the necessary software programs in place that would enable them to produce computer-generated disclosure statements by October 1, 1997. In some cases, they would have in place only one of the five or six lessor programs that they typically make available to consumers. The alternative is to complete the leasing forms manually, with resultant delays and a great potential for errors that would subsequently have to be corrected.

The Board believes that consumers will not be well served by proceeding on the October 1 schedule. Accordingly, to better ensure that consumers receive accurate and meaningful lease disclosures, the Board has delayed the mandatory compliance date to January 1, 1998.

By order of the Board of Governors of the Federal Reserve System, September 25, 1997.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 97–25921 Filed 9–29–97; 8:45 am]

BILLING CODE 6210–01–M

## FARM CREDIT ADMINISTRATION

## 12 CFR Parts 614 and 619

**RIN 3052–AB64**

## Loan Policies and Operations; Definitions; Loan Underwriting

**AGENCY:** Farm Credit Administration.

**ACTION:** Final rule.

**SUMMARY:** The Farm Credit Administration (FCA), through the FCA Board (Board), issues a final rule amending its regulations relating to loan underwriting in response to comments received from the Board's initiative to reduce regulatory burden and in an effort to streamline the regulations and set clear minimum regulatory standards where appropriate. The Board's action eliminates unnecessary regulations, requires each Farm Credit System (System or FCS) institution to adopt loan underwriting policies and standards, and makes other changes to the regulations governing prudent credit administration.

**EFFECTIVE DATE:** These regulations shall be effective upon the expiration of 30 days during which either or both Houses of Congress are in session. Notice of the effective date will be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:**

John J. Hays, Policy Analyst, Regulation Development Division, Office of Policy Development and Risk Control, 703) 883–4498, TDD (703) 883–4444;

or

Joy E. Strickland, Senior Attorney, Regulatory Enforcement Division, Office of General Counsel, (703) 883–4020, TDD (703) 883–4444.

**SUPPLEMENTARY INFORMATION:** On April 15, 1996, the Board published proposed amendments to the regulations relating to loan underwriting, loan sale and purchase transactions, and the lending authority of production credit associations (PCAs). The amendments were proposed largely in furtherance of comments received on the Board's request for public comment on the appropriateness of requirements that the FCA regulations impose on the System. *See* 58 FR 34003 (June 23, 1993). The FCA has addressed many of those comments in previous rulemakings. The proposed amendments addressed the remaining regulatory burden issues that relate to loan underwriting and the independent credit judgment rule for loan sale and purchase transactions through agents. In addition to responding to the regulatory burden comments, the FCA also proposed other amendments to refocus regulatory requirements for loan underwriting, make the regulations more understandable and useful to the reader, set minimum regulatory standards, and make conforming amendments.

The FCA received a total of 20 comments on the proposed amendments. Seventeen (17) Farm Credit institutions and the Farm Credit Council (FCC) submitted comments. The FCA also received comments from the Appraisal Subcommittee of the Federal Financial Institutions Examination Council, and the American Society of Farm Managers and Rural Appraisers, Inc. (collectively, appraisal groups). In general, all of the System commenters expressed support for the proposed regulation and its goal of reducing regulatory burden. Most of the System commenters also supported FCA's proposals to streamline the regulations governing the bank/association relationship and place more decision-making authority and accountability with direct lender associations. One association commented favorably on the entire proposal and suggested no changes. Other System commenters stated that although the proposal is a large step toward reducing regulatory burden, it did not reduce enough burden in certain areas. Also, some banks and associations requested clarification of the proposed new responsibilities of associations and the remaining areas of bank direction and supervision of associations. The appraisal groups commented that although they understood the FCA's reasons for the proposed changes to §§ 614.4245 and 614.4250, the changes were inconsistent with the Uniform Standards of Professional Appraisal Practice (USPAP). The appraisal groups suggested alternatives for the FCA to achieve its objectives and ensure that appraisals remain in compliance with USPAP.

Specific comments and changes to the proposed amendments will be addressed in the section-by-section analysis of the comments that follows. Except for changes noted in the section-by-section analysis, the FCA adopts the proposed amendments as final. Specific comments relating to proposed § 614.4200(b), which contained requirements for obtaining borrower financial statements, will be addressed in the discussion of Subparts C and D—Bank/Association Lending Relationship and General Loan Policies for Banks and Associations. In order to provide readers with a guideline for the amended regulations, the following is a list of changes this final rule will make to parts 614 and 619:

*Subpart A—Lending Authorities*

§§ 614.4000 through 614.4050—Revised.

*Subpart C—Bank/Association Lending Relationship*

§§ 614.4100, 614.4110, and 614.4130—No changes made.
§ 614.4120—Revised.
§§ 614.4135 through 614.4145—Deleted.

*Subpart D—General Loan Policies for Banks and Associations*

§ 614.4150—Revised.
§ 614.4160—Deleted.
§ 614.4165—Revised.

*Subpart E—Loan Terms and Conditions*

§ 614.4200—Revised.

**§§ 614.4210 through 614.4230—Deleted.**

§ 614.4231—Revised.
§§ 614.4232 and 614.4233—No changes made.

*Subpart F—Collateral Evaluation Requirements*

§ 614.4245—Revised.

*Subpart H—Loan Purchases and Sales*

§ 614.4325—Revised.

*Subpart J—Lending Limits*

§ § 614.4355 and 614.4358—Revised.

*Subpart O—Banks for Cooperatives Financing International Trade*

§ 614.4810—Revised.

*Part 619—Definitions*

§§ 619.9165 and 619.9290—Removed.

I. Subpart A—Lending Authorities

The FCA received 12 comments on proposed § 614.4040, which codifies guidance that the FCA has provided to institutions regarding loans made by PCAs that have amortization schedules longer than 7 years. The commenters were evenly split, with 6 commenters expressing support for the proposal and 6 commenters objecting to the proposal. The comments received in support of the proposal generally stated that the provisions are appropriate for PCA lending and should not be broadened or modified. Two PCA commenters noted that the proposal was more than adequate to offer direction to direct lenders.

All except one of the commenters requesting modification of the proposal generally believe that it is too restrictive. They object to the proposed 15-year limitation on amortization periods for PCA loans because they assert that the statutory 15-year limit applies only to the term of the loan, not the loan amortization. Those commenters also stated that the prohibition against a PCA making loans solely to acquire real estate is without statutory basis and inconsistent with a PCA's ability to take ''owned'' real estate as collateral. They asserted their belief that the loan purpose restriction was implemented only to minimize competition between System institutions. These commenters suggested the following changes: (1) Apply the 15-year amortization restriction only to loans with 7 to 10-year terms; (2) delete any loan purpose restriction; and (3) clarify that the authorizing policy is the bank's not the association's. One PCA expressed agreement with the comments regarding the 15-year and loan purpose restrictions, but differed from the foregoing comments by urging that the authority for amortizing these loans should be through association policy rather than bank policy and control. One jointly managed PCA/Federal land bank association (FLBA) agreed with this PCA commenter and suggested that bank approval should not be required for association policies to exercise these authorities and that association board policies on this issue need only comply with general policies and standards of the funding bank.

A bank and a FLBA requested clarification of four issues regarding the loan purpose restriction under § 614.4040(a)(2): (1) Is the purpose of the loan limited only to financing of facilities; (2) if real estate is purchased along with a facility, must the real estate be integral to the operation or can the real estate be separate, unimproved land, such as two parcels that the seller will only sell together; (3) if the real estate can be separate, is there a limit on the value of the real estate versus the value of the facility; and (4) can a PCA make a loan solely for the purchase of real estate if the PCA has another production loan to the borrower?

With regard to the comment that Congress intended the 15-year limitation to apply only to loan term, rather than loan amortization, the FCA agrees, in part, with the commenters' interpretation of the Farm Credit Act of 1971, as amended (Act), and its legislative history. Under the Act, Federal land credit associations (FLCAs) have the authority to make loans with terms of greater than 15 years, while PCAs are limited to loan terms of less than 15 years. Although the 15-year limitation technically applies only to a loan's term, rather than a loan's amortization, 15 years is the outward limit of PCA loan-making authority approved by Congress. The FCA concludes that the 15-year limitation is consistent with the differing lending authorities of PCAs and FLCAs and recognizes the importance of the Act's distinction between long-term real estate lenders and short-and intermediate-term lenders. Based on the outward limits placed on loan term and the differences between PCA and FLCA lending authorities, the FCA continues to believe that the 15-year limitation is appropriate and adopts the limitation and the loan purpose restrictions as proposed. The FCA clarifies that the loan purpose restriction only applies to loans amortized for longer than the maximum loan term otherwise authorized for PCAs in § 614.4040(a)(1).

Since there is a possibility of competition between short- and long-term lenders in some areas if PCAs amortize loans over periods longer than their maximum authorized loan terms, the FCA believes that System borrowers would be best served if the institutions affected by this issue develop the policies to address it. Because both long- and short-term lenders are represented at the bank level, the bank, through its association directors and stockholders, is in the best position to develop a policy that appropriately considers the needs of the borrowers and the relationships and conditions existing in each district. Therefore, the FCA adopts as final the requirement that association authority to amortize loans under § 614.4040(a)(2) is pursuant to funding bank approval. The FCA also notes that, pursuant to section 1.10 of the Act, bank approval continues to be required for PCA authority to make loans with terms of more than 7, but not more than 10 years.

In response to the questions raised regarding the loan purpose restriction in § 614.4040(a)(2), the FCA concludes that the amortization authority in § 614.4040(a)(2) can be used for any authorized purpose for PCA lending, with the exception that it may not be used solely to finance the acquisition of unimproved real estate. Although the restriction excludes loans for the purpose of purchasing unimproved real estate (the real estate will be considered unimproved even though it may include minimal improvements, such as fencing), the authority in § 614.4040(a)(2) clearly provides for the acquisition of production facilities and the land upon which the facilities are located. There are many types of loans that fall between these two boundaries, including those addressed in the bank's questions. The FCA believes that the institutions involved should establish reasonable standards for judging compliance with the loan purpose restrictions for the same reasons that it believes that authority for the amortization period should be addressed in bank policy, i.e., it allows the amortization authority to be best tailored to the needs of the borrowers and the relationships between the institutions in each district. Therefore each PCA's policy, subject to bank approval, for implementing the authority in § 614.4040(a)(2) should clearly state under what circumstances such financing will occur. In response to the bank's fourth question, however, PCAs are not authorized to finance the acquisition of unimproved real estate under this authority solely because they also have outstanding production or equipment loans to the borrower.

Commenters also suggested two technical changes to § 614.4040(a)(2): (1) Change the point at which the underwriting criteria must be met for refinancing from ''maturity'' to the time of ''refinancing'' because a loan may be refinanced prior to its maturity date; and (2) change the term ''real estate'' to ''land'' to more clearly authorize the financing of buildings. The FCA agrees that the term ''refinance'' is more appropriate than ''maturity'' and has

amended the regulation accordingly. A borrower may wish to refinance a loan prior to the maturity date, and any refinancing cannot extend the ultimate repayment of the loan more than 15 years from the date of the original loan. The FCA believes that the clarifications provided in the previous paragraph should clear up any doubt that this authority may be used to finance buildings and other facilities. Therefore, the FCA adopts in final the term ''real estate'' as proposed.

The FCA also received 2 comments stating that the amended PCA amortization authority could result in agricultural credit associations (ACAs) having less authority to make short-and intermediate-term loans than PCAs. Although the FCA agrees with the commenters that ACAs should have at least the same authorities as PCAs, applying the provisions of § 614.4040(a)(2) to ACAs would have the unintended result of unnecessarily restricting ACAs' authority. Since there are no limitations in the Act on the length of amortizations for loans and the existing requirement in § 614.4220(c) that short-and intermediate-term loans with maturities in excess of 7 years must be amortized over the term of the loan will be deleted by this rule, there will be no restrictions on amortizations of loans made by an ACA. As stated above, the restriction on a PCA's amortization authority derives from the Act's distinction between long-and short-term lenders. Because an ACA may make short-, intermediate-, and long-term loans, there is no need to restrict amortizations for ACA loans. Therefore, the FCA believes that applying § 614.4040(a)(2) would unnecessarily restrict ACA lending and is not making the change requested.

II. Subparts C and D—Bank/Association Lending Relationship and General Loan Policies for Banks and Associations

The FCA proposed to clarify the role of Farm Credit Banks (FCBs) and agricultural credit banks (ACBs) in the supervision of associations' credit operations. The FCA believes that autonomy in association operations promotes accountability in many areas, including prudent lending operations. Also, the FCA believes that each direct lender, through its board of directors, should adopt and follow its own policies and procedures for operations. As noted previously, most of the commenters were in support of this change and philosophy. The final rule deletes existing §§ 614.4135, 614.4140, and 614.4145 as proposed. However, in taking this action, the FCA recognizes the continuing importance of general bank oversight of association credit activities that may have a material impact on the bank and on the association's ability to perform on its direct loan(s) from the bank.

The FCA proposed a new regulation, § 614.4150, to address credit supervision by each institution's board of directors and to require that loan policies and underwriting standards must be adopted by each direct lending institution. The FCA received six comment letters on proposed § 614.4150. The commenters sought clarification of the term ''measurable standards'' in § 614.4150(g) and stated that loan underwriting standards should not include specific ratios, such as debt coverage and liquidity, on which to base each loan decision. The commenters also felt that while there is support for measurable standards, documenting each loan not in compliance with each standard (§ 614.4150(i)) is unduly burdensome. They contend that standards should be applicable only to the primary portion of the loan portfolio or a majority of the industry or market that the lender finances and that the focus should be on documenting those loans in significant noncompliance with the standards as a whole. The FCC also suggested alternative language for § 614.4150(i) to encompass this philosophy.

The commenters are concerned that § 614.4150(i) requires that a single set of standards be applicable to all loans. In response, the FCA does not intend to require institutions to establish specific ratios that necessarily apply to all loans. It may be prudent to apply distinct ratios to differing loans. In developing standards, each direct lender is expected to identify the similar types of loans in their portfolios, based on such items as similar operations, sources of repayment, collateral, and economic or geographic characteristics, and to establish loan underwriting standards tailored to address the strengths and weaknesses of each type of loan and the institution's ability to absorb the risk posed by such loans. Such standards should include ratios, measures, scoring, and other specific credit evaluation tools appropriate to the portion of the portfolio being addressed and the institution's risk-bearing capacity. In addition to specific standards, general lending guidelines that have applicability to different types of loans can be useful in identifying risk and may be necessary for unusual loans that do not fit within any of the lenders' primary lending areas. A number of things will affect the level of detail in standards, such as the importance of loan type to the institution's portfolio and the level of risk in the type of loan, and the regulations do not prescribe a set formula.

Regarding documentation of noncompliance with the loan underwriting standards, the regulation requires that whenever a loan does not meet any of the standards established for that type of loan, the reason for making an exception to the standards and accepting the loan must be documented. The FCA believes that this documentation is critical on an individual loan basis and any burden that arises from this documentation is outweighed by the importance of the documentation to sound credit administration. The amount of loans that may require documentation of noncompliance and the detail of such documentation will vary according to the standards developed by each institution, and any burden of such documentation can be reduced by well-tailored, specific standards. Therefore, the FCA believes the requirements of § 614.4150 (g) and (i) are appropriate and adopts them as proposed with minor syntactical changes to paragraph (g).

The commenters also noted that proposed § 614.4150(h) does not entirely serve the purpose of existing § 614.4160(e) because a loan's structure should be determined not only by the loan's purpose, as required by § 614.4150(h), but also by the terms, conditions, and collateral, which are referenced in existing § 614.4160(e). The FCA has revised paragraph (h) to state that loan terms and conditions must be appropriate for the loan. Use of the term ''loan'' includes the requirement that the terms and conditions must be appropriate for the purpose of the loan and any other relevant criteria of the loan, such as collateral. The commenters also requested clarification that underwriting standards do not have to be included in the policies adopted by the institutions' boards of directors pursuant to § 614.4150. The FCA clarifies that loan underwriting standards must be adopted pursuant to board policies but are not required to be contained in board policies.

An FCB commenter asserted that the regulations should not be interpreted to prohibit banks from establishing ''bright line'' credit standards for associations in general financing agreements (GFAs). Further, the bank asserts that as long as the FCA approves GFAs, it can review any ''bright line'' standards for appropriateness through that avenue. If, on the other hand, the FCA removes the banks' ''regulatory authority'' to establish credit standards for direct lenders, the FCA should eliminate its

approval of GFAs and make clear that the GFAs can include bank approval of association credit standards and/or compliance with bank collateral requirements. The FCC requested clarification about the apparent conflict between the proposal and section 2.4(a) of the Act, which appears to say that PCAs are required to make loans under standards approved by the bank. Association commenters requested clarification that banks do not have to approve association lending policies.

In response to the comments regarding what should be included in GFAs, it is the FCA's general belief that banks can establish credit criteria for associations as appropriate to reflect the risks in the direct loans. This issue will be addressed in revisions to the regulations governing GFAs [1]. The provisions of this regulation reflect the FCA's views that detailed underwriting standards for direct lender loans are the responsibility of that lender.

Some commenters questioned whether § 614.4150 conflicts with the provisions of section 1.5(17) of the Act. Section 1.5(17) of the Act authorizes banks to adopt standards for lending. Nothing in the revised regulation prohibits the banks from continuing to adopt standards for making direct loans to direct lender associations and for FLBA lending. Some comments also questioned whether § 614.4150 is consistent with section 2.4(a) of the Act. In response, the banks will continue to develop standards appropriate to ensure repayment of the direct loan, which in turn helps ensure the safety and soundness of all of the institutions in the district. The FCA believes that section 2.4(a) neither requires that banks prescribe detailed association lending standards nor prohibits associations from adopting standards to govern their own lending operations. Therefore, the FCA believes that § 614.4150 is consistent with the Act.

The FCA received comments from the FCC and nine institutions regarding the proposed requirements for obtaining borrower financial statements in § 614.4200(b). Most of the commenters urged deleting all of proposed paragraph (b) except the first sentence. The commenters strongly believe that even though the financial statement provision was a significant reduction over existing requirements, the proposal did not go far enough. They asserted that the proposal was inconsistent with the FCA regulatory philosophy statement, the FCA Board Chairman's remarks in the FCA's 1995 annual report, Congressional intent in the Act, proposed § 614.4150, and the FCA's role as an arms-length regulator. They also asserted that the proposal was not necessary for safety and soundness. According to the commenters, this provision of the regulation micro-manages this one aspect of lending operations, which is in stark contrast with the overall objective of the proposed regulation to put loan underwriting in the hands of direct lenders. Commenters asserted that the thresholds for obtaining financial statements should not be set by regulation. Instead the standards should be set by each direct lender institution according to the institution's financial position, capital strength, risk-bearing ability, credit quality, portfolio, and operations of the individual institutions and borrowers (as applicable). The commenters contend that in this way safety and soundness will be better measured because standards will be developed on an institution-specific basis.

In addition, the commenters noted that a regulation requiring institutions to request financial statements at loan origination for all loans above a set threshold limits the institutions' ability to use credit scoring with creditworthy customers. They urged that a borrower's total lending relationship, if quite large, should not prevent the use of credit scoring on small transactions. Also, obtaining financial statements at each material servicing action is vague and could be costly to the System, especially where actions such as release of collateral pose no risk to the lender. The commenters also asserted that requesting financial statements can cause problems in enforcement. They stated that in their experience, very few borrowers respond to requests, requiring considerable time and money on the institution's part to obtain the statements, and that it has been especially difficult to enforce a financial statement submission requirement if a borrower meets all other loan obligations. Finally, the commenters stated that the requirement can needlessly drive away good borrowers and create a competitive disadvantage.

One commenter suggested that if the FCA maintains a requirement regarding financial statements, the requirement should only apply to adversely classified loans above $100,000. Another stated that if the requirement is maintained, ''material servicing action'' should be changed to ''any servicing action that materially increases the borrower's access to credit, reduces the institution's collateral protection, or otherwise materially increases the institution's risk position.'' Also, the threshold should be changed to $250,000. This commenter also urged changing ''less than acceptable'' to ''Substandard, Doubtful, and Loss.'' Finally, one PCA commenter supported the proposal and believes that the requirements for financial statements are appropriate.

After careful consideration of the issues surrounding borrower financial statements and the comments received on the proposed regulation, the FCA concludes that requiring each direct lender to develop standards for obtaining financial statements and other financial information is appropriate. The FCA does not adopt proposed § 614.4200(b) and, instead, incorporates the substance of the first sentence of this paragraph into the loan underwriting standards required by § 614.4150. This relocation reflects the decision to treat this issue as a loan underwriting standard rather than as loan terms and conditions. Section 614.4150(a) now requires that an institution's policies and procedures must prescribe the minimum supporting credit and financial information necessary and the frequency for collection of such information.

The final regulation requires that each institution include in its policies and procedures how and when to obtain and use financial information, including financial statements, to determine creditworthiness for repayment of loans. The policies must be specific as to when collection of items such as balance sheets, income statements, and statements of cashflows will be required and must address the times for their collection, such as at loan inception, when taking servicing actions, and periodically during the term of the loan. The requirements for setting parameters of when to obtain and use financial information must take into consideration basic criteria including, but not limited to, loan size, loan type, loan classification, frequency of payment, source of repayment, applicant's operation, and capital position and risk bearing capacity of the institution. The FCA will evaluate and determine the appropriateness of each institution's policies and procedures on lending practices, including collection of financial information, during the examination process.

As noted in the preamble to the proposed regulations, there are no industrywide standards for the size or complexity of loans warranting current and complete financial information. However, prudent credit practices dictate that risk be assessed in each

[1] The FCA published proposed amendments to the regulations governing GFAs on March 24, 1997 (62 FR 13842).

loan. The FCA continues to believe that the best method for assessing risk in certain loans is through analysis of items such as a balance sheet and income statement and considers the absence of information necessary to document loan performance expectations to be an unsafe and unsound lending practice. The FCA also notes that the approach for addressing the collection and use of financial statements in credit analysis in this final rule is consistent with the approach taken by other Federal financial institution regulatory agencies.

Finally, the FCA notes the commenters' concerns regarding potential reluctance of some borrowers to submit financial statements and requiring them to do so. However, the FCA believes that for loans where prudent lending dictates obtaining and evaluating financial statements, the safety and soundness benefits to the institution outweigh the potential negative reactions of borrowers. Thus, adequate controls for enforcing institution policies regarding obtaining financial statements are expected with implementation of this regulation.

Other than the changes previously noted to paragraphs (a), (h), and (i), the FCA adopts § 614.4150 as proposed. The FCA also notes that in instances where direct lending authority has not been transferred to the FLBAs, the banks must develop lending policies and standards that all FLBAs within their respective districts must follow in making credit decisions for the bank. Additionally, in certain circumstances where loss exposure accrues to individual FLBAs through loss-sharing agreements with the FCB, loan policies and standards may be needed by FLBAs to augment and supplement those established by their supervisory banks.

The FCA received three comments on proposed § 614.4165, which requires that bank lending policies give special consideration to the credit needs of young, beginning, and small farmers, ranchers, and producers or harvesters of aquatic products. The commenters recommended revising existing paragraph (e) to place the responsibilities for grouping specialized enterprises according to risk with the direct lender, whether bank or association. The FCA agrees with the comment and has revised existing paragraph (e) (now redesignated as paragraph (c)) to place the responsibility for grouping specialized enterprises with direct lenders, rather than with the banks, consistent with other changes in this final rule. Commenters were also concerned that the proposed changes in the regulation will result in additional regulatory burden by increasing reporting requirements. They requested clarification of narrative reporting requirements, asked whether definitions will be in call reports, and asked how the changes will reflect the requirements for special enterprises. In response to the commenters, the FCA clarifies that the reporting requirements, which are statutory, will not change as a result of the final amendments to § 614.4165. The amendments merely eliminate the duplication and inconsistencies that exist between the call reports and regulations. Also, necessary definitions will continue to be included in the call reports as they are now and may be modified as the young, beginning, and small farmer lending environment changes. Therefore, other than the changes noted to redesignated paragraph (c), the amendments to § 614.4165 are adopted as proposed.

III. Subpart E—Loan Terms and Conditions

The FCA received two comments on proposed § 614.4200(a)(1). The commenters suggested that the FCA change the language to refer solely to a ''written document or documents,'' because loan terms and conditions may be set forth in more than one document. The FCA recognizes that terms and conditions may be included in more than one document and to alleviate any confusion, amends § 614.4200(a)(1) to refer to a ''written document or documents.'' However, the FCA continues to list sample documents in the regulation and reiterates that the list is illustrative only, and does not require that terms and conditions be set forth in any particular written document.

The FCA also received three comments on § 614.4200(c)(1) regarding the security requirements for long-term real estate loans. An ACA commented that the proposed requirement that collateral taken to secure long-term real estate mortgages must consist primarily of agricultural real estate limits a System institution's ability to serve diversified agriculture and creditworthy customers. It asserted that properties in metropolitan areas, such as nurseries and properties purchased for the purpose of farming in the future, have high non-agricultural or commercial values, often over the agricultural value of the property. An FCB commenter supported the concept of the proposed amendment but stated that rather than focusing on the value of the collateral, the amount of agricultural collateral required should be based on the amount of the loan. The bank suggests that a better approach to preserve the rural focus of System lending is to require that the amount of money that may be loaned on the non-agricultural collateral cannot exceed the amount that could be loaned on the agricultural collateral. Finally, the commenter suggested that the FCA add ''buildings or improvements thereto'' after ''agricultural land'' because such improvements add value to the land.

The FCA believes that the requirement that the primary collateral must be more than 50 percent agricultural or rural land is consistent with the mandate in section 1.7(a)(1) of the Act that FCS institutions make real estate mortgage loans in rural areas. The FCA also recognizes and supports the position that lenders should take the maximum collateral possible and appropriate to ensure safe and sound lending. In order to clarify § 614.4200(b)(1), the FCA is specifying in the regulation that the collateral taken to meet the loan-to-value limitation in § 614.4200(b)(1) must be primarily agricultural or rural property. If collateral is available in addition to the collateral taken to meet the loan-to-value requirement, the lender can, and is strongly encouraged to, take any additional collateral that appropriately secures the loan. There is no requirement that this additional collateral be agricultural or rural property. In response to the commenters' questions, if the value of the non-agricultural or non-rural property taken as additional collateral is greater than the value of the collateral taken to meet the loan-to-value limitation, the excess value of such additional collateral will not result in a violation of this section.

Regarding the suggestion to add the words ''buildings and improvements'' after ''agricultural land,'' the FCA interprets the term ''agricultural land'' to include any buildings and improvements that have been made to the land and modifies proposed § 614.4200(c)(1) (now paragraph (b)(1)) to reference ''agricultural land and improvements made thereto.'' Such improvements are normally considered in establishing the value of the land for collateral purposes.

The FCA received a comment that institutions should have the authority to take a second lien on property serving as primary collateral to meet the loan-to-value ratio for agricultural loans, as long as the lender also holds the first lien on the property. Similar authority was proposed in § 614.4200(c)(4) for rural home loans, and the commenter stated that it should apply to agricultural loans as well. According to the commenter, having a second lien on property while already holding a first

lien to collateralize another loan results in the same level of security for the lender as having only a first lien position in another piece of property. Also, the commenter stated that the security requirements in the Act are the same for both rural home loans and agricultural loans. The FCA agrees with the commenters that the first lien loan security requirements in the Act are the same for all real estate mortgage loans. Therefore, the FCA amends § 614.4200(b)(1) to authorize lenders to take a second lien interest in real property if the lender already holds a first lien interest in the property, because the effective result of both liens is a first lien on the property. Except for this change, the clarification of agricultural land, and the changes previously discussed regarding relocating requirements for collection of financial information to § 614.4150 (and the redesignation of paragraphs as a result), § 614.4200 is adopted as proposed.

IV. Subpart F—Collateral Evaluation Requirements

The FCA received comments from two appraisal groups and four System institution commenters regarding proposed modifications to §§ 614.4245 and 614.4250. The appraisal groups concurred that there is a need to simplify the appraisal process in low-risk, small loan programs, but thought that the amendments proposed were not the best way to accomplish the simplification. The appraisal groups suggested that the USPAP contains sufficient flexibility to meet the collateral evaluation needs of small loan programs. They further suggested that if the use of limited appraisals under USPAP rule 1 and summary and restricted reports under rule 2 are not sufficient, the FCA could specify appropriate additional departures in regulations, which would allow appraisers to use the USPAP jurisdictional exception.

Since the publication of the collateral evaluation regulations in 1995, the FCA has received several requests to review those regulations, because institutions have asserted that certain provisions are potentially burdensome. The FCA proposed amendments to §§ 614.4245 and 614.4250 in an attempt to address those concerns. After reviewing the comments on the proposed amendments and reconsidering the requirements of the regulations and comments received on the collateral evaluation regulation subsequent to publication, the FCA has decided to withdraw the majority of the proposed amendments to §§ 614.4245 and 614.4250 and modify others.

The FCA believes that the departure provisions of USPAP are sufficient to meet the needs of System institutions in their small loan programs and encourages institutions to follow those provisions in developing small loan programs. Once those provisions are implemented, the FCA will consider whether modifications to the regulations are necessary to create a jurisdictional exception.[2] The FCA also welcomes institutions to contact the FCA for guidance in using the USPAP departure provisions in small loan programs.

The FCA received comments from System institutions to withdraw the $100,000 loan size limitation on small loan programs referenced in the proposed amendment to § 614.4245 and provide more flexibility for small real estate loans and loans for the purchase of new equipment and vehicles. The FCA agrees with the commenters that a $100,000 blanket limitation for all small loan programs is not appropriate. Regarding added flexibility, the FCA believes that the institutions can make use of the USPAP provisions mentioned above for both small real estate loans and loans for the purchase of new equipment and vehicles and that changes are not necessary. Therefore, the FCA withdraws the proposed amendments to § 614.4250. The FCA adopts as final the proposed amendments to § 614.4245(d), except that the word ''modified,'' the reference to § 614.4250(b), and the limitation that small loan programs consist of loans of $100,000 or less are removed and the term ''minimum information program'' is added in place of small loan program. With regard to these changes, the FCA notes that institutions with minimum information programs must set the parameters of those programs in their policies and loan underwriting standards. Such parameters should include, but are not necessarily limited to, portfolio limitations, maximum loan size, collateral requirements, and information required for documentation of repayment capacity.

V. Subpart H—Loan Purchases and Sales

The FCA received three comments, two from associations and one from the FCC, regarding the proposed restrictions in § 614.4325 on the funding bank serving as an agent for an association in purchasing loans. The commenters stated that restricting the funding bank from acting as an association's agent limits the System's potential for cooperating on a regional or national basis to serve rural America. They offered trade credit projects and other situations in which the FCA has said that the use of credit scoring is appropriate as examples of projects that would be impeded if the funding bank were prohibited from serving as an association's agent. The commenters also noted that the restriction is inconsistent with the FCA's recognition of direct lender associations' autonomy and responsibility for their own lending operations. Further, it is the commenters' belief that there are different relationships between banks and associations in different districts, and the FCA should not impinge on those relationships by regulation. Finally, the commenters suggested that if the FCA is unwilling to remove the restriction entirely, the FCA should adopt the position that the funding bank can be an association's agent, but the association has the authority to terminate the agency relationship with a 90-day notice to the bank.

In response to the commenters, the FCA notes that the restriction on a funding bank serving as an association's agent may appear inconsistent with the philosophy the FCA has adopted in these loan underwriting regulations that associations adopt their own lending standards and oversee their lending operations. However, the relationship between a funding bank and its associations can result in unequal bargaining positions between banks and associations and create conflicts with an association's ability to hold its agent, the funding bank, responsible for acting in the association's best interest. Thus, notwithstanding potential inconsistencies with association autonomy, the FCA believes it is necessary to take steps to minimize any damages caused by these conflicts. As suggested by the commenters, one way to minimize problems is to require institutions to include in the agency agreement a provision authorizing an association to terminate the agreement with notice to the funding bank. The FCA agrees with the commenters, but believes that termination alone would not be sufficient to remedy the damages caused by a bank's failure to act appropriately if an association has purchased loans prior to terminating the agency agreement. As a result, the FCA withdraws the proposed prohibition in § 614.4325 against a funding bank serving as an association's agent. The final regulation contains a provision for termination of the agency agreement

[2] A jurisdictional exception is intended to provide a saving or severability clause intended to preserve the balance of USPAP if one or more of the parts of USPAP are determined to be contrary to the law or public policy of a jurisdiction. FCA would have to establish a jurisdictional exception by regulation.

with no more than a 60-day notice to the bank, and in addition, requires a provision in the agreement that the bank would be required to purchase from the association any loans that the association, in its sole discretion, determines do not comply with the terms of the agency agreement or the association's loan underwriting standards. The added provision will provide a remedy to an association injured by a bank's breach of the agency agreement and minimize any possible effect of an unequal bargaining position between a bank and an association. In addition, although the commenters suggested 90 days, the FCA believes that a shorter time period for the notice provides greater flexibility for an association to act in situations in which the association believes that the bank may not be acting in its interest. Further, 60 days should give banks sufficient notice to make any arrangements necessary as result of termination of the agency agreement. In addition, the parties may, by mutual agreement, specify a notice period of less than 60 days. Other than withdrawing the funding bank restriction and adding the termination and damages provisions, the FCA adopts the amendments to subpart H as proposed.

Finally, except where previously noted in this supplementary information, the proposed amendments, including the many conforming amendments within subparts A, C, H, J, and Q of part 614 and in part 619, are adopted as final without change.

**List of Subjects**

*12 CFR Part 614*

Agriculture, Banks, banking, Flood insurance, Foreign trade, Reporting and recordkeeping requirements, Rural areas.

*12 CFR Part 619*

Agriculture, Banks, Banking, Rural areas.

For the reasons stated in the preamble, parts 614 and 619 of chapter VI, title 12 of the Code of Federal Regulations are amended to read as follows:

## PART 614—LOAN POLICIES AND OPERATIONS

1. The authority citation for part 614 continues to read as follows:

**Authority:** 42 U.S.C. 4012a, 4104a, 4101b, 4106, and 4128; Secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.12, 4.12A, 4.13, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E. 4.18, 4.18A, 4.19, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.7, 7.8, 7.12, 7.13, 8.0, 8.5 of the Farm Credit Act (12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2019, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2096, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2199, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2206a, 2207, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a–2, 2279b, 2279b–1, 2279b–2, 2279f, 2279f–1, 2279aa, 2279aa–5); sec. 413 of Pub. L. 100–233, 101 Stat. 1568, 1639.

### Subpart A—Lending Authorities

2. Section 614.4000 is amended by removing the words ''agricultural credit association of a Federal land credit association'' and adding in its place, the words ''agricultural credit association or a Federal land credit association'' in the introductory text of paragraph (f), and revising paragraph (a) to read as follows:

**§ 614.4000 Farm Credit Banks.**

(a) *Long-term real estate lending.* Except to the extent such authorities are transferred pursuant to section 7.6 of the Act, Farm Credit Banks are authorized, subject to the requirements in § 614.4200 of this part, to make real estate mortgage loans with maturities of not less than 5 years nor more than 40 years and continuing commitments to make such loans.

* * * * *

3. Section 614.4010 is amended by removing the reference ''§ 614.4230'' and adding in its place, the reference ''§ 614.4200'' in paragraphs (d)(1) and (d)(2); and revising paragraph (a) to read as follows:

**§ 614.4010 Agricultural credit banks.**

(a) *Long-term real estate lending.* Except to the extent such authorities are transferred pursuant to section 7.6 of the Act, agricultural credit banks are authorized, subject to the requirements of § 614.4200, to make real estate mortgage loans with maturities of not less than 5 years nor more than 40 years and continuing commitments to make such loans.

* * * * *

**§ 614.4020 [Amended]**

4. Section 614.4020 is amended by removing the reference ''614.4230'' and adding in its place, the reference ''614.4200'' in paragraphs (a)(1) and (a)(2).

5. Section 614.4030 is amended by revising paragraph (a) to read as follows:

**§ 614.4030 Federal land credit associations.**

(a) *Long-term real estate lending.* Federal land credit associations are authorized, subject to the requirements of § 614.4200, to make real estate mortgage loans with maturities of not less than 5 years nor more than 40 years and continuing commitments to make such loans.

* * * * *

6. Section 614.4040 is amended by removing paragraph (b); redesignating paragraphs (c) and (d) as new paragraphs (b) and (c), respectively; removing the reference ''paragraph (c)(2)'' and adding in its place, the reference ''paragraph (b)(2)'' in newly designated paragraph (b)(1); and by revising paragraph (a) to read as follows:

**§ 614.4040 Production credit associations.**

(a) *Loan terms.* (1) Production credit associations are authorized to make or guarantee loans and other similar financial assistance for the following terms:

(i) Not more than 7 years

(ii) More than 7 years, but not more than 10 years, subject to authorization in policies approved by the funding bank

(iii) Not more than 15 years to producers or harvesters of aquatic products for major capital expenditures, including but not limited to the purchase of vessels, construction or purchase of shore facilities, and similar purposes directly related to the producing or harvesting operation

(2) Subject to policies approved by the funding bank, production credit associations may amortize loans over a period greater than the loan terms authorized under paragraph (a)(1) of this section, provided that:

(i) The loan is amortized over a period not to exceed 15 years

(ii) The loan may be refinanced only if the lender determines, at the time of refinancing, that the loan meets its loan policy and underwriting criteria;

(iii) Any refinancing may not extend repayment beyond 15 years from the date of the original loan; and

(iv) The loan is not being made solely for the purpose of acquiring unimproved real estate; and

(3) Short-and intermediate-term loans shall be made with maturities that are appropriate for the purpose and underlying collateral of the loan and that comply with an institution's loan underwriting standards adopted pursuant to § 614.4150 and the general requirements of § 614.4200 of this part.

* * * * *

7. Section 614.4050 is amended by adding introductory text and by revising paragraphs (a) and (b) to read as follows:

**§ 614.4050 Agricultural credit associations.**

Agricultural credit associations are authorized to make or guarantee, subject

to the requirements of § 614.4200 of this part:

(a) *Long-term real estate mortgage loans* with maturities of not less than 5 nor more than 40 years, and continuing commitments to make such loans; and

(b) *Short-and intermediate-term loans* and provide other similar financial assistance for a term of not more than 10 years (15 years for aquatic producers and harvesters).

* * * * *

## Subpart C—Bank/Association Lending Relationship

### § 614.4120 [Amended]

8. Section 614.4120 is amended by removing the words ''the factors set forth in §§ 614.4150 and 614.4160'' and adding in their place, the words ''the loan underwriting policies and standards adopted pursuant to § 614.4150'' in the last sentence of paragraph (a).

### §§ 614.4135, 614.4140, and 614.4145 [Removed]

9. Sections 613.4135, 613.4140, and 614.4145 are removed.

## Subpart D—General Loan Policies for Banks and Associations

### §§ 614.4150, 614.4160, 614.4170 [Removed]

10. Sections 614.4150, 614.4160, and 614.4170 are removed.

11. New section 614.4150 is added to read as follows:

### § 614.4150 Lending policies and loan underwriting standards.

Under the policies of its board, each institution shall adopt written standards for prudent lending and shall issue written policies, operating procedures, and control mechanisms that reflect prudent credit practices and comply with all applicable laws and regulations. Written policies and procedures shall, at a minimum, prescribe:

(a) The minimum supporting credit and financial information, frequency for collection of information, and verification of information required in relation to loan size, complexity and risk exposure

(b) The procedures to be followed in credit analysis

(c) The minimum standards for loan disbursement, servicing and collections

(d) Requirements for collateral and methods for its administration

(e) Loan approval delegations and requirements for reporting to the board

(f) Loan pricing practices

(g) Loan underwriting standards that include measurable standards:

(1) For determining that an applicant has the operational, financial, and management resources necessary to repay the debt from cashflow

(2) That are appropriate for each loan program and the institution's risk-bearing ability; and

(3) That consider the nature and type of credit risk, amount of the loan, and enterprise being financed

(h) Requirements that loan terms and conditions are appropriate for the loan; and

(i) Such other requirements as are necessary for the professional conduct of a lending organization, including documentation for each loan transaction of compliance with the loan underwriting standards or the compensating factors or extenuating circumstances that establish repayment of the loan notwithstanding the failure to meet any one or more loan underwriting standard.

12. Section 614.4165 is amended by removing paragraphs (b) and (c); redesignating paragraphs (d) and (e) as new paragraphs (b) and (c) respectively; and revising paragraph (a) and the last sentence of newly designated paragraph (c) to read as follows:

### § 614.4165 Special credit needs.

(a) The board of each direct lender institution shall adopt policies to establish programs to provide credit and related services to young, beginning, and small farmers, ranchers, and producers or harvesters of aquatic products.

* * * * *

(c) * * * Where such programs are authorized, the direct lender institution board shall adopt appropriate policies that define criteria for the selection of specialized high-risk enterprises.

## Subpart E—Loan Terms and Conditions

13. Section 614.4200 is revised to read as follows:

### § 614.4200 General requirements.

(a) *Terms and conditions.* (1) The terms and conditions of each loan made by a Farm Credit bank or association shall be set forth in a written document or documents, such as a loan agreement, promissory note, or other instrument(s) appropriate to the type and amount of the credit extension, in order to establish loan conditions and performance requirements. Copies of all documents executed by the borrower in connection with the closing of a loan made under titles I or II of the Act shall be provided to the borrower at the time of execution and at any time thereafter that the borrower requests additional copies.

(2) The terms and conditions of all loans shall be adequately disclosed in writing to the borrower not later than loan closing. For loans made under titles I and II of the Act, the institution shall provide prompt written notice of the approval of the loan.

(3) Applicants shall be provided notification of the action taken on each credit application in compliance with the requirements of 12 CFR 202.9.

(b) *Security.* (1) Long-term real estate mortgage loans must be secured by a first lien interest in real estate, except that the loans may be secured by a second lien interest if the institution also holds the first lien on the property. No funds shall be advanced, under a legally binding commitment or otherwise, if the outstanding loan balance after the advance would exceed 85 percent (or 97 percent as provided in section 1.10(a) of the Act) of the appraised value of the real estate, except that a loan on which private mortgage insurance is obtained may exceed 85 percent of the appraised value of the real estate to the extent that the loan amount in excess of 85 percent is covered by such insurance. The real estate that is used to satisfy the loan-to-value limitation must be comprised primarily of agricultural or rural property, including agricultural land and improvements thereto, a farm-related business, a marketing or processing operation, a rural residence, or real estate used as an integral part of an aquatic operation.

(2) Notwithstanding the requirements of paragraph (b)(1) of this section, the lending institution may advance funds for the payment of taxes or insurance premiums with respect to the real estate, reschedule loan payments, grant partial releases of security interests in the real estate, and take other actions necessary to protect the lender's collateral position. Any action taken that results in exceeding the loan-to-value limitation shall be in accordance with a policy of the institution's board of directors and adequately documented in the loan file.

(3) Short- and intermediate-term loans may be secured or unsecured as the documented creditworthiness of the borrower warrants.

(4) In addition to the requirements in paragraph (b)(1) of this section, a long-term, non-farm rural home loan, including a revolving line of credit, shall be secured by a first lien on the property, except that it may be secured by a second lien if the institution also holds the first lien on the property. A short- or intermediate-term loan on a rural home, including a revolving line of credit, must be secured by a lien on the

property unless the financing is provided exclusively for repairs, remodeling, or other improvements to the rural home, in which case the loan may be secured by other property or unsecured if warranted by the documented creditworthiness of the borrower.

(5) Except as provided in § 614.4231, loans made under title III of the Act may be secured or unsecured, as appropriate for the purpose of the loan and the documented creditworthiness of the borrower.

**§§ 614.4210, 614.4220, 614.4222, 614.4230 [Removed]**

14. Sections 614.4210, 614.4220, 614.4222, and 614.4230 are removed.

15. Section 614.4231 is revised to read as follows:

**§ 614.4231 Certain seasonal commodity loans to cooperatives.**

Loans on certain commodities that are part of government programs shall comply with the criteria established for those programs. Security taken on program commodities shall be consistent with prudent lending practices and ensure compliance with the government program. The bank shall provide for periodic review by bank officials of any custodial activities and shall provide notice to the custodians that their activities are subject to review and examination by the Farm Credit Administration.

## Subpart F—Collateral Evaluation Requirements

16. Section 614.4245 is amended by adding a new paragraph (d) to read as follows:

**§ 614.4245 Collateral evaluation policies.**

* * * * *

(d) An institution's board of directors may adopt specific collateral evaluation requirements, consistent with the regulations in this subpart, for loans designated as part of a minimum information program.

## Subpart H—Loan Purchases and Sales

17. Section 614.4325 is amended by removing the reference ''§ 614.4160'' and adding in its place, the words ''the loan underwriting standards adopted pursuant to § 614.4150'' in the fourth sentence of paragraph (e); revising paragraph (a)(1); and adding new paragraph (h) to read as follows:

**§ 614.4325 Purchase and sale of interests in loans.**

(a) * * *

(1) *Interests in loans* means ownership interests in the principal amount, interest payments, or any aspect of a loan transaction and transactions involving a pool of loans, including servicing rights.

* * * * *

(h) *Transactions through agents.* Transactions pertaining to purchases of loans, including the judgment on creditworthiness, may be performed through an agent, provided that:

(1) The institution establishes the necessary criteria in a written agency agreement that outlines, at a minimum, the scope of the agency relationship and obligates the agent to comply with the institution's underwriting standards;

(2) The institution periodically reviews the agency relationship to determine if the agent's actions are in the best interest of the institution;

(3) The agent must be independent of the seller or intermediate broker in the transaction; and

(4) If an association's funding bank serves as its agent, the agency agreement must provide that:

(i) The association can terminate the agreement upon no more than 60 days notice to the bank;

(ii) The association may, in its discretion, require the bank to purchase from the association any interest in a loan that the association determines does not comply with the terms of the agency agreement or the association's loan underwriting standards.

## Subpart J—Lending Limits

**§ 614.4355 [Amended]**

18. Section 614.4355 is amended by removing the word ''seasonal'' and adding in its place, the word ''commodity'' the second place it appears in paragraphs (a)(6) and (b)(1) respectively, and in paragraph (a)(8).

**§ 614.4358 [Amended]**

19. Section 614.4358 is amended by removing the words ''on the credit factors set forth in § 614.4160'' and adding in their place, the words ''under the loan underwriting standards adopted pursuant to § 614.4150'' in paragraph (a)(1)(ii).

## Subpart O—Banks for Cooperatives Financing International Trade

**§ 614.4810 [Amended]**

20. Section 614.4810 is amended by removing the words ''credit factors listed in § 614.4160'' and adding in their place, the words ''the loan underwriting standards adopted pursuant to § 614.4150'' in paragraph (b).

## PART 619—DEFINITIONS

21. The authority citation for part 619 continues to read as follows:

**Authority:** Secs. 1.7, 2.4, 4.9, 5.9, 5.12, 5.17, 5.18, 7.0, 7.6, 7.7, 7.8 of the Farm Credit Act (12 U.S.C. 2015, 2075, 2160, 2243, 2246, 2252, 2253, 2279a, 2279b, 2279b–1, 2279b–2).

**§§ 619.9165 and 619.9290 [Removed]**

22. Sections 619.9165 and 619.9290 are removed.

Dated: September 24, 1997.

**Floyd Fithian,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. 97–25934 Filed 9–29–97; 8:45 am]

BILLING CODE 6705–01–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 97–NM–218–AD; Amendment 39–10143; AD 97–20–05]**

**RIN 2120–AA64**

## Airworthiness Directives; British Aerospace Model HS 748 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

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

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that is applicable to all British Aerospace Model HS 748 series airplanes. This action requires installation of a modified aileron cable pulley guard and rubbing strips. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent jamming or restricting of the aileron cable, which could lead to the loss of aircraft roll control.

**DATES:** Effective October 15, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 15, 1997.

Comments for inclusion in the Rules Docket must be received on or before October 30, 1997.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–218–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from AI(R) American Support, Inc., 13850 Mclearen

Road, Herndon, Virginia 20171. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2148; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:** The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on all British Aerospace Model HS 748 series airplanes. The CAA advises that it received a report indicating that jamming or restricting of the aileron cables located in the wing trailing edge structure can occur due to insufficient tension of the cables. Such jamming or restricting, if not corrected, could result in the loss of aircraft roll control.

## Explanation of Relevant Service Information

The manufacturer has issued Service Bulletin HS 748–27–70, Revision 2, dated May 20, 1994, which describes procedures for installation of a modified aileron cable pulley guard and rubbing strips. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The CAA classified this service bulletin as mandatory and issued British airworthiness directive 009–05–94, dated May 9, 1994, in order to assure the continued airworthiness of these airplanes in the United Kingdom.

## FAA's Conclusions

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.19) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

## Explanation of Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this amendment would require accomplishment of the actions specified in the service bulletin described previously.

## Cost Impact

None of the Model HS 748 series airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 11 work hours to accomplish the required actions, at an average labor charge of $60 per work hour. Required parts would cost approximately $100. Based on these figures, the cost impact of this AD would be $760 per airplane.

## Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

## Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this 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 under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the 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 that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–218–AD.'' The postcard will be date stamped and returned to the commenter.

## 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 final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from 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 the following new airworthiness directive:

**97–20–05 British Aerospace:** Amendment 39–10143. Docket 97–NM–218–AD.

*Applicability:* All Model HS 748 series airplanes, 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 (b) 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 prevent jamming or restricting of the aileron cable, accomplish the following:

(a) Within 6 months after the effective date of this AD, install a modified aileron cable pulley guard and rubbing strips in accordance with British Aerospace Service Bulletin HS 748–27–70, Revision 2, dated May 20, 1994.

(b) 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, Standardization Branch, ANM–113, FAA, Transport Airplane. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) 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.

(d) The installation shall be done in accordance with Jetstream Service Bulletin HS 748–27–70, Revision 2, dated May 20, 1994. 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 AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on October 15, 1997.

**Note 3:** The subject of this AD is addressed in British airworthiness directive 009–05–94, dated May 9, 1994.

Issued in Renton, Washington, on September 17, 1997.

**James V. Devany,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 97–25165 Filed 9–29–97; 8:45 am]

BILLING CODE 4910–13–U

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 96–NM–215–AD; Amendment 39–10146; AD 97–20–08]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus Model A300, A300–600, and A310 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to all Airbus Model A300, A300–600, and A310 series airplanes, that requires inspecting the bearings located in the mechanical control linkage of the nose landing gear (NLG) free-fall mechanism for discrepancies, replacing any discrepant bearings with stainless steel bearings, and conducting a test to ensure that the NLG free-fall mechanism extends properly. This amendment is prompted by a report indicating that, during an operational test of the NLG, the landing gear failed to extend. The actions specified by this AD are intended to prevent the bearings from seizing, which could lead to the loss of NLG free-fall extension capability.

**DATES:** Effective November 4, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 4, 1997.

**ADDRESSES:** The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Charles Huber, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2589; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Airbus Model A300, A300–600, and A310 series airplanes was published in the **Federal Register** on April 1, 1997 (62 FR 15441). That action proposed to require inspecting the bearings located in the mechanical control linkage of the nose landing gear (NLG) free-fall mechanism for discrepancies, replacing any discrepant bearings with stainless steel bearings, and conducting a test to ensure that the NLG free-fall mechanism extends properly.

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

Both commenters support the proposed rule.

### Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

### Cost Impact

The FAA estimates that 127 Model A300, A300–600, and A310 airplanes of U.S. registry will be affected by this AD, that it will take approximately 14 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $552 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $176,784, or $1,392 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the 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 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 final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from 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 the following new airworthiness directive:

**97–20–08 Airbus Industrie:** Amendment 39–10146. Docket 96–NM–215–AD.

*Applicability:* All Model A300, A300–600, and A310 series airplanes, 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 (d) 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 prevent the bearings in the mechanical control linkage of the nose landing gear (NLG) free-fall mechanism from seizing, which could lead to the loss of NLG free-fall extension capability, accomplish the following:

(a) Within 30 days after the effective date of this AD, conduct an inspection to determine whether carbon steel or stainless steel bearings are installed in the mechanical control linkage of the NLG free-fall mechanism, in accordance with Airbus Service Bulletin A300–32–0418 (for Model A300 series airplanes), A300–32–6061 (for Model A300–600 series airplanes), or A310–32–2098 (for Model A310 series airplanes), all Revision 1, all dated April 29, 1996.

(b) If stainless steel bearings are installed, prior to further flight, conduct a test to ensure that the NLG free-fall mechanism extends properly, in accordance with Airbus Service Bulletin A300–32–0418 (for Model A300 series airplanes), A300–32–6061 (for Model A300–600 series airplanes), or A310–32–2098 (for Model A310 series airplanes), all Revision 1, all dated April 29, 1996.

(c) If carbon steel bearings are installed, prior to further flight, replace them with stainless steel bearings, and conduct a test to ensure that the NLG free-fall mechanism extends properly, in accordance with Airbus Service Bulletin A300–32–0418 (for Model A300 series airplanes), A300–32–6061 (for Model A300–600 series airplanes), or A310–32–2098 (for Model A310 series airplanes), all Revision 1, all dated April 29, 1996.

(d) 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, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(e) 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.

(f) The actions shall be done in accordance with the following Airbus service bulletins, which contain the specified effective pages:

| Service bulletin referenced and date | Page No. | Revision level shown on page | Date shown on page |
|---|---|---|---|
| A300–32–0418, Revision 1, April 29, 1996 ..... | 1–6, 10–13<br>7–9, 14–23 | 1 Original ..... | April 29, 1996.<br>October 5, 1995. |
| A310–31–2098, Revision 1, April 29, 1996 ..... | 1–6, 8, 9, 11–14<br>7, 10, 15–25 | 1 Original ..... | April 29, 1996.<br>October 5, 1995. |
| A300–32–6061, Revision 1, April 29, 1996 ..... | 1–5, 8, 9, 11–14<br>6, 7, 10, 15–25 | 1 Original ..... | April 29, 1996.<br>October 5, 1995. |

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 Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on November 4, 1997.

Issued in Renton, Washington, on September 17, 1997.

**James V. Devany,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 97–25167 Filed 9–29–97; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 96–CE–23–AD; Amendment 39–10109; AD 96–12–03 R1]**

**RIN 2120–AA64**

## Airworthiness Directives; Aviat Aircraft, Inc. Models S–1S, S–1T, S–2, S–2A, S–2S, and S–2B Airplanes (Formerly Known as Pitts Models S–1S, S–1T, S–2, S–2A, S–2S, and S–2B Airplanes); Correction

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects the airworthiness directive (AD) number of an amendment that was published in the **Federal Register** on August 22, 1997 (62 FR 44535), and concerns Aviat Aircraft, Inc. Models S–1S, S–1T, S–2, S–2A, S–2S, and S–2B airplanes. The referenced amendment revises AD 96–12–03, but was inadvertently assigned the number of AD 97–17–07 instead of AD 96–12–03 R1. The AD currently requires repetitively inspecting the aft lower fuselage wing attach fitting on both wings for cracks and modifying any cracked aft lower fuselage wing attach fitting. Modifying the aft lower fuselage wing attach fitting on both wings eliminates the repetitive inspection requirement of the AD. This action corrects the amendment to reflect the right AD number throughout the entire document.

**EFFECTIVE DATE:** October 3, 1997.

**FOR FURTHER INFORMATION CONTACT:** Mr. Roger Caldwell, Aerospace Engineer, FAA, Denver Aircraft Certification Office, 26805 E. 68th Avenue, Room 214, Denver, Colorado 80249; telephone (303) 342–1086; facsimile (303) 342–1088.

**SUPPLEMENTARY INFORMATION:**

### Discussion

On August 13, 1997, the FAA issued Amendment 10109 (62 FR 44535, August 22, 1997), which applies to Aviat Models S–1S, S–1T, S–2, S–2A, S–2S, and S–2B airplanes. This action revises AD 96–12–03 by retaining the requirements of repetitively inspecting the aft lower fuselage wing attach fitting on both wings for cracks, and modifying any cracked aft lower fuselage wing attach fitting; except the action eliminates from the applicability those airplanes that were equipped with aft lower fuselage wing attach fittings, either P/N 76090, 2–2107–1, or 1–210–102, at manufacture. These aft lower fuselage wing attach fittings were incorporated at manufacture on the Model S–2B airplanes beginning with serial number 5349. AD 96–12–03 applied to all serial numbers of the Model S–2B airplanes.

### Need for the Correction

The AD number of this action is incorrectly referenced as AD 97–17–07 instead of AD 96–12–03 R1 throughout the document. Referencing the action as AD 97–17–07 may not allow operators of the affected airplanes that accomplished the intent of AD 96–12–03 to realize that the AD contains the same actions as contained in the original AD. The operators may spend unnecessary time tracking down information and approvals for ''unless already accomplished'' credit for the AD action.

### Correction of Publication

Accordingly, the publication of August 22, 1997 (62 FR 44535), of Amendment 39–10109; AD 97–17–07, which was the subject of FR Doc. 97–22046, is corrected as follows:

**§ 39.13 [Corrected]**

On page 44535, in the third column, 5th line from the top of the column, correct ''AD 97–17–07'' to ''AD 96–12–03 R1''.

On page 44536, in the third column, section 39.13, the sixth line in this section and the 19th line from the top of the column, correct ''97–17–07'' to ''96–12–03 R1''.

Action is taken herein to correct this reference in Amendment 39–10109 and to add this AD correction to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The effective date remains October 3, 1997.

Issued in Kansas City, Missouri on September 24, 1997.

**Henry A. Armstrong,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 97–25831 Filed 9–29–97; 8:45 am]

BILLING CODE 4910–13–U

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 97–CE–15–AD; Amendment 39–10148; AD 97–20–11]**

**RIN 2120–AA64**

## Airworthiness Directives; Socata—Groupe Aerospatiale Model TBM 700 Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that applies to certain Socata—Groupe Aerospatiale (Socata) Model TBM 700 airplanes. This AD requires removing the main landing gear (MLG) inboard doors and the door locking control mechanism (MOD 70–065–32). This AD is the result of an incident on one of the affected airplanes where the MLG inboard door locking hooks (hinges) corroded, caused the doors to jam, and prevented the MLG from extending. The Federal Aviation Administration's analysis reveals that removing the MLG inboard doors will not cause any airplane safety or performance problems. The actions specified by this AD are intended to prevent the MLG from failing to extend because of corroded MLG inboard locking hinges, which could result in loss of control of the airplane during landing operations.

**DATES:** Effective November 13, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 13, 1997.

**ADDRESSES:** Service information that applies to this AD may be obtained from Socata—Groupe Aerospatiale, Socata Product Support, Aeroport Tarbes-Ossun-Lourdes, B P 930, 65009 Tarbes Cedex, France; telephone 62.41.74.26; facsimile 62.41.74.32; or the Product Support Manager, Socata—Groupe Aerospatiale, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023; telephone (954) 964–6877; facsimile (954) 964–1668. This information may also be examined at

the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket 97–CE–15–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. Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut Street, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6934; facsimile (816) 426–2169.

**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 Socata Model TBM 700 airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on April 9, 1997 (62 FR 17125). The NPRM proposed to require removing the MLG inboard doors and the door locking control mechanism (MOD 70–065–32). Accomplishment of the proposed actions as specified in the NPRM would be in accordance with the Technical Instruction of Modification OPT70 KO59–32, dated December 1995, as referenced in Socata Service Bulletin 70–073, Amdt. 1, dated June 1996.

The NPRM was the result of an incident on one of the affected airplanes where the MLG inboard door locking hooks (hinges) corroded, caused the doors to jam, and prevented the MLG from extending. The FAA's analysis reveals that removing the MLG inboard doors will not cause any airplane safety or performance problems.

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

*Comment 1: No Justification for AD Action*

The commenter states that the FAA does not have substantiating engineering data to justify the unsafe condition proposed in the NPRM. This commenter believes that if the pilot-in-command is adequately accomplishing the preflight checks, then any corrosion in the MLG inboard door locking hooks (hinges) would be detected and then corrected. Thus, the MLG doors would not jam and prevent the MLG from extending.

The FAA does not concur that the commenter's determination that an unsafe condition does not exist is justified. The FAA analyzed the preflight procedures of the Socata TBM 700 airplanes and the preflight procedures of similar design airplanes. From this analysis, the FAA has determined that inspecting this area for corrosion is considered action over and above normal preflight procedures that the pilot is authorized to perform. In addition, the FAA always tries to mandate modifications or replacements rather than repetitive inspections. Removing the MLG doors and the door locking control mechanism is a modification that would eliminate the need for repetitive inspections, eliminate the unsafe condition identified by this AD, and not cause any adverse operational effects on the affected airplanes. No changes have been made to the final rule as a result of this comment.

*Comment 2: Proposed Alternative Method of Compliance*

The commenter states that removing the MLG inboard doors as proposed in the NPRM results in approximately 3–4 knots of performance degradation, and raises the level of cabin noise in the aircraft. Socata has issued SB No. 70–076–32, which specifies actions to address the noise issue (the FAA does not mandate accomplishment of this SB through AD action). The commenter explains that accomplishing this noise modification imposes substantial expense on the affected airplanes owners. For these reasons, the commenter has submitted a proposed alternative method of compliance (AMOC) that includes procedures for lubricating the inner landing gear door hinges and repetitively inspecting the inner landing gear door hinges every 50 hours time-in-service (TIS). The proposed AMOC also includes preflight visual inspections of the main landing gear doors prior to each flight. The commenter would like the proposed AMOC approved as an alternative to the proposed requirement of removing the MLG inboard doors and door locking control mechanisms.

The FAA is currently in the process of reviewing the information contained in the proposed AMOC and is working with the commenter toward approving this AMOC. All owners/operators of Socata TBM 700 airplanes may contact the FAA at the address specified in paragraph (d) of the AD to receive this AMOC (when and if it is approved) and to obtain the necessary documents pertinent to this AMOC.

## 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.

## Compliance Time of This AD

The unsafe condition specified in this AD develops primarily because of slush/debris accumulating in theMLG inboard doors area while landing in certain runway environments. Corrosion could have already developed on an airplane previously operated in certain slush/debris runway environments, regardless of future operation of the airplane. For this reason, the FAA has determined that the compliance time of this AD should be specified in both hours time-in-service (TIS) and calendar time (whichever occurs first), in order to assure that corrosion is not allowed to go undetected over time.

## Cost Impact

The FAA estimates that 47 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 3 workhours per airplane to accomplish this AD, and that the average labor rate is approximately $60 an hour. Socata will provide parts at no cost to the owners/operators of the affected airplanes. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $8,460. This figure is based on the presumption that no owner/operator of the affected airplanes has accomplished the required actions.

Socata has informed the FAA that parts have been distributed to equip approximately 30 of the affected airplanes. Presuming that each set of parts is incorporated on an affected airplane, the cost impact upon U.S. airplane owners/operators is reduced by $5,400 from $8,460 to $3,060.

## 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 USC 106(g), 40113, 44701.

#### §39.13 [Amended]

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

**97–20–11 Socata—Groupe Aerospatiale:** Amendment 39–10148; Docket No. 97–CE–15–AD.

*Applicability:* Model TBM 700 airplanes (serial numbers 1 through 109), certificated in any category, that do not have the main landing gear (MLG) inboard doors and the door locking control mechanism removed (MOD 70–065–32) in accordance with the Technical Instruction of Modification OPT70 KO59–32, dated December 1995, as referenced in Socata Service Bulletin (SB) 70–073, Amdt. 1, dated June 1996.

**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 (d) 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 100 hours time-in-service after the effective date of this AD or within the next 6 calendar months after the effective date of this AD, whichever occurs first, unless already accomplished.

To prevent the MLG from failing to extend because of corroded MLG inboard locking hinges, which could result in loss of control of the airplane during landing operations, accomplish the following:

(a) Remove the MLG inboard doors and the door locking control mechanism (MOD 70–065–32) in accordance with the Technical Instruction of Modification OPT70 KO59–32, dated December 1995, as referenced in Socata SB 70–073, Amdt. 1, dated June 1996.

(b) As of the effective date of this AD, no person may undo MOD 70–065–32 on any affected airplane, by reinstalling the MLG inboard doors and the door locking control mechanism.

(c) 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.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) The removal required by this AD shall be done in accordance with the Technical Instruction of Modification OPT70 KO59–32, dated December 1995, as referenced in Socata Service Bulletin 70–073, Amdt. 1, dated June 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 Socata—Groupe Aerospatiale, Socata Product Support, Aeroport Tarbes-Ossun-Lourdes, B P 930, 65009 Tarbes Cedex, France; or the Product Support Manager Socata—Groupe Aerospatiale, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023. Copies may be inspected at the FAA, Central Region, Office of the Regional 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.

(f) This amendment (39–10148) becomes effective on November 13, 1997.

Issued in Kansas City, Missouri, on September 24, 1997.

**Henry A. Armstrong,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 97–25832 Filed 9–29–97; 8:45 am]

BILLING CODE 4910–13–U

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

**[Docket No. 96N–0119]**

## 21 CFR Part 801

## Natural Rubber-Containing Medical Devices; User Labeling

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is issuing a final rule requiring labeling statements on medical devices, including device packaging containing natural rubber that contacts humans. The rule requires labeling of medical devices containing natural rubber latex that contacts humans to state: ''Caution: This Product Contains Natural Rubber Latex Which May Cause Allergic Reactions.''; labeling of medical devices containing dry natural rubber that contacts humans to state: ''This Product Contains Dry Natural Rubber.''; labeling of medical devices containing natural rubber latex in their packaging that contacts humans to state: ''Caution: The Packaging of This Product Contains Natural Rubber Latex Which May Cause Allergic Reactions.''; labeling of medical devices containing dry natural rubber in their packaging that contacts humans to state: ''The Packaging of This Product Contains Dry Natural Rubber.''; and that the claim of hypoallergenicity be removed from the labeling of medical devices that contain natural rubber. These requirements are being established in response to numerous reports of severe allergic reactions and deaths related to a wide range of medical devices containing natural rubber.

**EFFECTIVE DATE:** This final rule is effective September 30, 1998.

**FOR FURTHER INFORMATION CONTACT:** Donald E. Marlowe, Center for Devices and Radiological Health (HFZ–100), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20850, 301–443–2444, FAX 301–443–2296.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Natural latex is a milky fluid obtained in commercial quantities primarily from the *Heavea brasiliensis* (rubber) tree. There is often confusion concerning the terminology used to describe the raw agricultural materials derived from rubber-producing plants; products made from various intermediate forms of the

raw agricultural material (e.g., natural rubber latex, dry natural rubber); formulations of synthetic latex and synthetic rubber to which natural rubber has been added; and synthetic rubber and synthetic latex formulations that do not contain natural rubber.

''Natural latex,'' for the purposes of this rule, is defined as a milky fluid that consists of extremely small particles of rubber obtained from plants, principally from the *H. brasiliensis* (rubber) tree, dispersed in an aqueous medium. It contains a variety of naturally occurring substances, including cis-1,4-polyisoprene in a colloidal suspension (Ref. 1) and plant proteins, which are believed to be the primary allergen (Refs. 2, 3, and 4).

''Natural rubber,'' for the purposes of this rule, includes all materials made from or containing natural latex. Products that contain natural rubber are made using two commonly employed manufacturing processes, the natural rubber latex (NRL) process, and the dry natural rubber (DNR) process.

The NRL manufacturing process involves the use of natural latex in a concentrated colloidal suspension. Products are formed from natural rubber latex by dipping, extruding, or coating, and are typically referred to as containing or made of ''natural rubber latex.'' Examples of products that may contain natural rubber latex include medical gloves, catheters, tracheostomy tubes, and condoms.

The DNR manufacturing process involves the use of coagulated natural latex in the form of dried or milled sheets. Products are formed from dry natural rubber by compression molding, extrusion, or by converting the sheets into a solution for dipping. These products are typically referred to as containing or made of dry natural rubber or ''crepe'' rubber. Examples of products that may contain dry natural rubber include syringe plungers, vial stoppers, and injection ports on intravascular tubing.

The phrase, ''contains natural rubber,'' as used herein, also includes products described as made of ''synthetic latex'' or ''synthetic rubber'' that include natural rubber in their formulations. This rule does not apply to products made from synthetic latex or synthetic rubber that do not include natural rubber in their formulations.

FDA has noted an increase in the number of reports submitted to its medical device reporting system regarding sensitivity to natural latex proteins contained in medical devices, including deaths following barium enemas. These deaths were associated with anaphylactic reactions to the natural rubber latex cuff on the tip of barium enema catheters. Scientific studies and case reports have documented sensitivity to natural latex proteins found in a wide range of medical devices (see Refs. 2 through 23).

Based upon this information, the agency published a proposed rule on June 24, 1996 (61 FR 32618), to require labeling statements on medical devices containing natural rubber that contact humans. This final rule is based upon comments submitted in response to the June 24, 1996 proposed rule.

## II. Highlights of the Final Rule

### *A. Natural Rubber-Containing Devices; Labeling*

FDA is requiring the labeling for medical devices containing natural rubber that contacts humans to include a statement regarding the presence of natural rubber. The agency is issuing this rule because medical devices composed of natural rubber, or which contain components formulated from natural rubber, may pose a significant health risk to some consumers or health care providers who are sensitized to natural latex proteins. A statement in the labeling of medical devices identifying the presence of natural rubber latex is considered to be necessary for the safe and effective use of such devices.

''Contacts humans,'' for the purposes of this rule, means that the natural rubber contained in a medical device is intended to contact or is likely to contact the user or patient. This includes contact when the natural rubber containing device is connected to the patient by a liquid path or an enclosed gas path; or the natural rubber containing device is powdered, and the powder may carry natural latex proteins that may contaminate the environment of the user or patient.

The device may bear one or more of four labeling statements depending on the type of natural rubber in the device and depending on whether the natural rubber is in the device itself or in its packaging. The reasoning for requiring one or more of four separate statements is discussed more fully in comments 3 and 6 in section III of this document.

Medical devices containing rubber produced by the NRL process that contacts humans shall bear labeling with the following statement in bold print: ''Caution: This Product Contains Natural Rubber Latex Which May Cause Allergic Reactions.'' Representative examples of devices that contain NRL include: Cuffed enema/enterolysis catheters, latex condoms (with or without spermicidal lubricant), wound drains, cuffed airways, latex surgical gloves, and latex examination gloves.

The agency is also requiring that medical devices containing rubber produced by the DNR process that contacts humans include the following statement in bold print in their labeling: ''This Product Contains Dry Natural Rubber.'' Representative examples of devices that contain DNR include: Anesthesia masks, electrode pads, contraceptive diaphragms, crutch pads and tips, wheelchair tires, elastic components of bandages/face masks, syringe plungers, parenteral drug vial stoppers, and intravenous injection ports.

The agency is further requiring medical devices having packaging that contains natural rubber that contacts humans bear labeling with one of the following statements in bold print: ''Caution: The Packaging of This Product Contains Natural Rubber Latex Which May Cause Allergic Reactions.'' or ''The Packaging of This Product Contains Dry Natural Rubber.'', as appropriate. The purpose of such statements is to inform individuals who are sensitive to natural rubber about the presence of natural rubber in the packaging of devices that may be, by themselves, natural rubber-free.

### *B. Hypoallergenicity*

FDA believes that it is also necessary to prohibit certain labeling statements on medical devices that contain natural rubber. FDA believes that the labeling statement ''hypoallergenic,'' traditionally used with respect to medical gloves, cosmetics, and other products produced for individuals with chemical allergies, is interpreted by consumers to mean that the risk of allergic reactions to any component of the device would be minimal. This is not the case with devices that contain natural rubber. FDA has received reports of allergic reactions to medical gloves labeled as ''hypoallergenic.''

Use of the ''hypoallergenic'' label has been based on results of the modified (human) Draize test. While this test may be appropriate for detecting sensitization to residual levels of processing chemicals, the test does not detect sensitivity to natural latex proteins.

Thus, there is no reasonable assurance that the risk of allergic reactions to products that contain natural rubber, yet have reduced levels of processing chemicals, will be reduced for individuals who are sensitive to natural latex proteins. Therefore, the agency believes that the term ''hypoallergenic'' on the labeling of a device that contains natural rubber is misleading in that it

incorrectly implies that such device may be used safely by persons sensitive to natural latex proteins. For these reasons, FDA is requiring that the hypoallergenic claim be removed from the labeling of devices that contain natural rubber.

*C. Effects of This Regulation on Premarket Submission Requirements*

FDA will not require a new submission under section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360(k)) based upon labeling changes made to comply with this rule, provided that no other changes requiring a new 510(k) submission under 21 CFR 807.81 are made to the device. Devices subject to an approved premarket approval application, however, must submit any change to the device labeling that is required by this rule in the next interim report under 21 CFR 814.39(e). Combination products that have device and drug components but are regulated under drug premarket approval provisions shall indicate the labeling change in a supplement for changes that may be made before FDA approval, as required by 21 CFR 314.70(c). Combination products that have device and biological components, but that are regulated under the biologic premarket approval provisions, shall inform the agency of the labeling change in the manner described under 21 CFR 601.12.

**III. Summary of Comments**

The agency received 62 comments, all of which supported the principle of natural rubber labeling for the protection of natural rubber sensitive individuals. The comments, however, differed greatly in their specific approaches.

1. A few comments suggested using the term ''crepe rubber,'' instead of ''dry rubber,'' and suggested using the term ''synthetic rubber'' instead of ''synthetic latex.''

The agency agrees that ''synthetic rubber'' should be used to describe components of certain natural rubber products covered by this regulation and has added that term in the definition of ''natural rubber'' in § 801.437(b) (21 CFR 801.437(b)). Although the agency has discussed the meaning of crepe rubber in the preamble to this regulation, the agency does not agree that the term ''crepe rubber'' should be used in place of ''dry natural rubber'' in the regulation because the agency believes the term ''dry natural rubber'' is the term most commonly used to describe rubber manufactured by the DNR process.

2. One comment pointed out that there are other sources of natural rubber besides that identified in the preamble of the proposed rule, the *H. brasiliensis* tree.

The agency agrees and has clarified in the preamble of this regulation that there are other sources of plant-derived natural rubber used in the manufacture of devices that are subject to this rule. The preamble notes that the *H. brasiliensis* tree is the primary source of commercial natural latex, instead of the only source.

3. Several comments claimed that there is no information to suggest that dry natural rubber has caused allergic reactions in individuals sensitive to natural latex proteins; therefore, dry natural rubber should not be included in the labeling requirement.

The agency recognizes that there are lower levels of natural latex proteins in products produced by the dry natural rubber process. The agency, however, does not agree that there is no information to suggest that dry natural rubber has caused allergic reactions in individuals sensitive to natural latex proteins. To the contrary, there are numerous reports that levels of natural latex proteins found in dry rubber can cause allergic reactions (Refs. 24 through 27). Accordingly, the agency has concluded that it is in the best interest of the public health to provide labeling information that a product contains dry natural rubber, so that individuals who are sensitive to the levels of natural latex proteins found in dry natural rubber may make an informed decision regarding the use of the product.

While the agency believes that persons who may respond to the levels of natural latex proteins found in dry natural rubber need to be informed of the dry rubber content in a device, the agency does not believe that those individuals need to be informed of the health consequences associated with dry natural rubber. Because allergy is a dose-response phenomenon, persons who may react to natural latex protein levels found in dry rubber would have already experienced previous allergic reactions to the higher levels of natural latex proteins found in natural rubber latex products (see Ref. 28). Therefore, those individuals would generally be aware that dry natural rubber may cause them to suffer an allergic reaction. Accordingly, FDA is requiring that products that contain only dry rubber have labeling that informs consumers of the dry rubber content, but is not requiring that such products bear labeling that states the potential health consequences from the use of the product. Therefore, FDA is requiring in the final regulation, § 801.437(e), that devices that contain dry natural rubber bear labeling with the following statement: ''This Product Contains Dry Natural Rubber.''

Persons who would not react to the levels of natural latex proteins found in dry rubber, but would react to the higher levels of natural latex proteins found in natural rubber latex products, however, may never have been aware of previous allergic reactions (Ref. 28). These persons, therefore, need to be advised of the potential health consequences of natural rubber latex products. Accordingly, FDA is requiring products containing natural rubber latex to carry labeling that states the potential health consequences of such products, as well as a natural rubber latex content statement. Therefore, FDA is requiring in the final regulation, § 801.437(d), that devices containing natural rubber latex have labeling with the following statement in bold print: ''Caution: This Product Contains Natural Rubber Latex Which May Cause Allergic Reactions.''

This statement is also required if a device contains both natural rubber latex and dry natural rubber that may contact humans. In this instance, the single statement will serve to advise a person who may not be aware that natural rubber may cause reactions, and will also advise a person who is aware of his or her sensitivity to natural rubber that the product contains an ingredient that may cause a reaction.

4. Some comments claimed that the applicability of the labeling statement to devices that contain natural rubber ''that may directly or indirectly contact humans'' is overly broad. One comment suggested that the labeling statement be required only on devices that have an ''intended use'' that may lead to contact with humans. Other comments suggested the statement be limited to devices which would directly contact tissues.

The agency does not believe that the application of the labeling statement to devices that contain natural rubber ''that may directly or indirectly contact humans'' is overly broad. Latex proteins may elicit an allergic reaction in individuals who are sensitive to natural rubber, even if the proteins are introduced to the individual through an indirect route. The agency, however, recognizes that the term ''indirect contact'' may be interpreted more broadly than the agency intends. Therefore, in order to avoid confusion, the agency has modified the regulation to require the labeling statements only if the natural rubber contacts humans. The final regulation, § 801.437(b), defines the term ''contacts humans'' to mean that the natural rubber contained

in a device is intended to contact or is likely to contact the user or patient (e.g., latex medical gloves or latex enema tips). This includes contact when the device that contains natural rubber is connected to the patient by a liquid path or an enclosed gas path (e.g., intervenous administration sets, or blood collection or transfusion tubing with natural rubber injection ports, injection syringes with natural rubber plungers, or natural rubber tubing or connector components used in anesthesia or endoscopic insufflator circuits). This also includes contact when the device that contains natural rubber is fully or partially coated with a powder, and such powder may carry natural rubber proteins that may contaminate the environment of the user or patient (e.g., latex tourniquets). This definition makes it clear that the labeling statement is required on devices that have an intended use that could reasonably be expected to introduce natural latex proteins to humans.

5. Several comments suggested that the natural rubber labeling statement be expanded to apply to nonmedical natural rubber latex gloves and other consumer products that contain natural rubber. Other comments suggested that medical devices sold over-the-counter (OTC) to the consumer be exempt from the labeling requirements in order to avoid confusion regarding the natural rubber-content of other consumer goods that would not be subject to this labeling regulation.

The agency disagrees that the regulation should apply to nonmedical natural rubber latex gloves and other consumer products that contain natural rubber. The regulation of such products is beyond the scope of this rule. FDA's authority under the act to impose labeling requirements is restricted to products that meet the definition of foods, drugs, cosmetics, animal drugs, biologics, and devices, as those terms are defined under the act. This rule applies to devices as defined under section 201(h) of the act (21 U.S.C. 321(h)). Under section 201(h) of the act, a device is:

* * * an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory, which is * * * intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease, in man or other animals * * *, and which does not achieve any of its principle intended purposes through chemical action within or on the body of man or other animals and which is not dependent upon being metabolized for the achievement of its primary intended purposes.

Latex gloves and other products are subject to this rule, only if they meet the definition of device under section 201(h) of the act. Latex gloves that are not used in the cure, mitigation, treatment or prevention of disease are not devices within the meaning of section 201(h) of the act, and, therefore, are not subject to this rule. Latex medical gloves that are subject to this regulation include surgeon's gloves, as classified at 21 CFR 878.4460, and patient examination gloves, as classified at 21 CFR 880.6250.

FDA also does not agree with the suggestion that OTC medical devices be exempted from the labeling requirements in order to avoid confusion with natural rubber products that are not subject to this rule. The purpose of the labeling requirement is to provide essential information for individuals sensitive to natural latex proteins. An individual who is sensitive to natural latex proteins is equally likely to react to an OTC device that contains natural rubber, as to a prescription device that contains natural rubber. Therefore, it is equally important to provide essential information about OTC devices that contain natural rubber, as it is to provide information about prescription devices that contain natural rubber. Moreover, the agency does not believe that labeling, as required by this rule, on OTC devices, will cause significant confusion regarding the natural rubber content of consumer products that are not devices.

6. Several comments requested clarification on the applicability of the requirements to certain devices. Specifically, the comments asked whether the rule would apply to: Bandages with natural rubber in the adhesive; natural rubber-free devices packaged in a wrapper using natural rubber in the adhesive, especially where the adhesive would contact human tissue while unwrapping the device; foods or natural rubber-free devices handled or applied with natural rubber latex gloves; covered elastic stretch bands used to attach an accessory or component to a device; or, devices intended to contact only subcutaneous tissue.

A labeling statement is required for devices that contain natural rubber when the natural rubber contacts humans, as described in § 801.437(b) of the final rule. Accordingly, devices intended to contact subcutaneous tissue would be required to bear the appropriate statement.

Moreover, bandages with natural rubber in the adhesive would require the labeling statement. For this product, the natural rubber is intended to be applied directly to the skin. If natural rubber-containing adhesives in tapes, bindings, and similar items are intended to contact, or are likely to contact, the user or the patient, they are required to be labeled under this regulation. Covered elastic bands would not be considered to be in contact with humans, provided the covering blocks the migration of natural rubber proteins to the patient and user.

FDA does not believe it would be appropriate to require natural rubber labeling statements for natural rubber-free devices or foods that may be handled with latex gloves. As described previously in comment 5 of this document, requiring natural rubber labeling for products, such as foods, that are not devices is beyond the scope of this regulation. Moreover, FDA does not believe that requiring products that are handled by latex gloves, regardless of whether such products could be within the scope of this regulation as devices, is appropriate if such products do not contain natural rubber. Requiring labeling on products that may or may not come into contact with latex gloves would confuse consumers and would be impracticable to implement. Furthermore, FDA is not aware of any reports of allergic reactions to rubber-free products that latex gloves have contacted.

Under the final rule, natural rubber-containing packaging adhesives that typically are in areas that hold the flaps of packaging together would meet the criteria to subject the product to this rule only if they contact the patient or user. However, the agency is not aware of any evidence or reports of reactions to packaging adhesives. Given the pervasiveness of the use of adhesives that contain some amount of natural rubber latex, the lack of evidence that these adhesives cause adverse reactions, and the ability to open packaging with adhesives without coming into contact with the adhesives, the agency concludes that the adhesives in device packaging are not intended to contact humans and are not likely to contact humans. Therefore, if such adhesives are the sole source of natural rubber in the device packaging or the device itself, a device with such packaging would not be subject to this rule.

The agency stresses, however, that it considers device packaging to be an integral part of a device. Under section 201(h) of the act, a device includes any components, parts, or accessories. As an accessory to a device, the packaging is a device under section 201(h) of the act. A device that contains natural rubber in

its packaging, beyond that found in the adhesive (e.g., a device packaged in a latex sheath) is likely to contact the user or patient and must be labeled as containing natural rubber.

In order to avoid confusion and to clarify to the consumer whether it is the device itself or its packaging that contains natural rubber, however, the agency believes that a distinct labeling statement is appropriate for devices that have packaging that contains natural rubber that contacts humans. Accordingly, under § 801.437(f) and (g) of the final regulation, such devices shall have labeling with one of the following statements: ''Caution: The Packaging of This Product Contains Natural Rubber Latex Which May Cause Allergic Reactions.'' or ''The Packaging of This Product Contains Dry Natural Rubber.''

The agency notes that if one of these packaging statements is required, it shall appear regardless of whether there is a natural rubber statement relating to the product itself. For example, a device that contains dry natural rubber that contacts humans and is also packaged in dry natural rubber that contacts humans shall be labeled with both the statements: ''Caution: The Packaging of This Product Contains Dry Natural Rubber.'' and ''This Product Contains Dry Natural Rubber.''

7. Several comments suggested that the labeling statements be required only on finished medical devices, and that device components be exempt.

The agency agrees in part. The regulation applies to all finished devices and components that are intended to contact or are likely to contact the user or patient. The labeling statement does not apply to components shipped directly to a manufacturer or processor for use in the manufacture of a device because these components, during the time before distribution to consumers, would not be intended to contact, or likely to contact the user or patient. Under these circumstances, the parts or components are not accessible to health care workers or patients. If, however, a device component is sold directly to a consumer, including a patient or health care worker, and it is intended to contact or likely to contact a user or patient, it is required to be labeled under this regulation, regardless of whether it must be attached, inserted, or used in conjunction with other devices. Replacement parts marketed as accessories for medical devices that are intended to contact or likely to contact a user or patient also require the labeling statement.

8. One comment suggested that in vitro diagnostic devices be exempt because only dry natural rubber is used, there is usually no patient contact with the natural rubber components, and space is very limited for labeling. One comment suggested that other devices that do not contact the patient be exempted, regardless of whether the natural rubber contacts the tissues of the health care worker.

The agency believes that in vitro diagnostic devices should be exempt only to the extent that the natural rubber used in vitro diagnostic devices is not intended to contact or is not likely to contact the user or the patient. FDA, however, is requiring labeling for such devices if they are intended to contact or are likely to contact health care workers or other users, as well as the patient, because all latex-sensitive persons who use the device need to be informed of the product's natural rubber content.

9. One comment requested an exemption for the labeling of natural rubber latex condoms because such condoms clearly contain latex. The comment also believed an exemption should apply to latex condoms because space for labeling is limited, a warning regarding allergic reactions may have a chilling effect on the use by individuals who are not sensitive to natural rubber, and the statement may lead to confusion in differentiating between latex and natural skin condoms because natural skin condoms also contain some natural rubber latex and would require the statement as well.

The agency disagrees and will require latex condoms to bear a labeling statement that the product contains natural rubber latex that may cause allergic reactions. Even though consumers may be aware that the product contains latex, FDA believes that the additional information that natural rubber latex may cause allergic reactions is essential information to individuals who are not aware that natural rubber latex may cause allergic reactions. The agency believes that there is sufficient room on condom packaging for the required statement.

FDA does not believe that the statement will have a chilling effect on the use of condoms by individuals who are not sensitive to natural latex proteins. The statement, however, would clearly provide important information to individuals who are sensitive to natural latex proteins.

The agency further disagrees with the suggestion that the labeling statement would be required on natural skin condoms, and thereby confuse consumers with respect to the differences between latex and natural skin condoms. Although natural skin condoms do contain a natural rubber elastic band, this band is wrapped within the natural skin sheath, and there is no evidence to indicate that the natural rubber ever contacts the user. Therefore, natural skin condoms that have a latex component that is not intended to contact or likely to contact the user do not require the labeling statement. Accordingly, the absence of any latex labeling requirement for natural skin condoms obviates the comments concern about confusion that may result from latex labeling statements on both latex and natural skin condoms.

10. Although most comments supported the requirements of standard labeling requirements, some comments suggested that the proposed labeling statements were overly prescriptive, and that manufacturers should have wide latitude in the wording of the statement provided it contain a general latex ingredient statement. Other comments stated that the labeling statements did not provide sufficient warnings, and suggested that the agency require a caution stating that use of the device may lead to chronic asthma, dermatitis, or even anaphylactic shock and death.

The agency does not agree with comments suggesting the labeling should state possible reactions with specificity. FDA believes that the statement advising consumers that a product may cause an allergic reaction is specific enough to provide adequate warning.

The agency also does not believe that the required labeling statements are overly prescriptive and that manufacturers should be given wide latitude in the wording of labeling statements. The agency has determined that requiring standardized statements for devices containing natural rubber is the best approach for providing the essential information in a clear, consistent, and accurate manner.

FDA realizes that there may be some circumstances where it may be appropriate to tailor specific information concerning a device. If a manufacturer believes use of statements that vary from those prescribed by this regulation is appropriate, § 801.437(i) of the final regulation provides that the manufacturer may petition the agency for an exemption or variance from these requirements by submitting a citizen petition under 21 CFR 10.30. Unless the agency has specifically granted an exemption or variance, the agency will consider any variation from the required statement to be noncompliant, and the device will be deemed misbranded.

11. Several comments suggested that the agency recommend the use of

natural rubber-free devices, or require a labeling statement that nonnatural rubber alternatives are available. In contrast, some comments supported natural rubber labeling provided that the label be ''ergonomically equitable'' (sic) (i.e., not giving natural rubber-free devices a perceived advantage).

The agency does not recommend the use of one legally marketed device over another. Rather the agency is requiring that labeling for devices that contain natural rubber provide information upon which an individual may make an informed choice regarding the use of the device. The benefits of devices that contain natural rubber are well established, and the agency does not intend to discourage their use by persons who are not sensitive to natural rubber. Therefore, the agency will not require the labeling statement to recommend the use of rubber-free devices.

Furthermore, because the agency is not requiring a statement that recommends the use of natural rubber-free devices, the agency does not believe that this rule gives natural rubber-free devices an advantage over devices that contain rubber. Accordingly, the agency does not believe that further modifications to the required statements are necessary to address comments that suggested the labeling not give the impression that natural rubber-free products have an advantage over products that contain natural rubber.

12. One comment requested clarification on the labeling of combination products consisting of drugs that are packaged in device container vials with dry natural rubber stoppers.

This final regulation provides authority to require natural rubber labeling on all devices containing natural rubber, including devices that are contained within combination products. As discussed in more detail in this comment, FDA intends to apply the natural rubber labeling requirement to combination products, such as drugs in device containers that are regulated currently under drug authorities.

In a final rule that published in the **Federal Register** of November 21, 1991 (56 FR 58754), the agency explained that ''the term combination product means a product comprised of two or more different regulated entities, e.g., drug, device, or biologic * * *'' or two or more different regulated entities that are produced together as a single entity, packaged together, or used together to achieve the intended effect (see 21 CFR 3.2(e)). The fact that a single product contains two or more regulated entities does not in itself change the regulatory status of the individual entities.

Because the entities that comprise a combination product meet more than one jurisdictional definition, the agency may apply one or more sets of regulatory provisions to the product. The agency, for example, has applied both drug and device authorities, and both biological and device authorities, to certain combination products. (See Intercenter Agreement Between the Center for Drug Evaluation and Research and the Center for Devices and Radiological Health (the Drug/Device Agreement (Ref. 29)), and Intercenter Agreement Between the Center for Biologics Evaluation and Research and the Center for Devices and Radiological Health (the Biologics/Device Agreement (Ref. 30)) (hereinafter referred to collectively as the Intercenter Agreements).)

Device container vials with dry natural rubber stoppers, when used in combination with a drug product, may be subject to regulation under the statutes and regulations applicable to devices. A vial that has a natural rubber stopper meets the definition of a device under section 201(h) of the act, in that such vial is ''an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or some other similar or related article, including any component, part, or accessory * * *'' that is intended to cure, mitigate, treat, or prevent disease, which does not achieve any of its principal intended purposes through chemical action within or on the body of man or other animals and which is not dependent upon being metabolized for the achievement of its primary intended purposes. The agency regulates these empty vials, as well as other empty drug or biologic containers (such as stoppered vials for use in blood collection, intravenous containers, and blood bags), as devices.

When the drug is contained in a vial, however, the result is a combination product. The combination status of devices that serve as containers for drugs is specifically recognized in the Drug/Device Agreement. (See Ref. 29, p. 14.) To date, these combination products have been regulated only under the drug authorities (*Id*).

The agency intends to require that all combination products that contain natural rubber device components be labeled in accordance with this regulation. Although the agency could require all combination natural rubber products to comply with the regulation on its effective date, this regulation will be applied as follows: Natural rubber combination products that are currently listed in the Intercenter Agreements as being regulated under device labeling provisions will be required to comply with this rule on its effective date; natural rubber combination products that are listed in the Intercenter Agreements as being regulated under drug or biologic labeling provisions, however, will be subject to this regulation at the time of the effective date of this regulation, or at the time the Intercenter Agreements are amended to provide that these types of combination products are subject to this labeling regulation, whichever is later. FDA will provide notice in the **Federal Register** of the amendments to the Intercenter Agreements to apply this natural rubber labeling provision to all combination products that contain natural rubber device components.

At this time, the agency anticipates that the Drug/Device Intercenter Agreement will be amended to reflect that prefilled drug vial containers, transdermal patches, infusion pumps, and prefilled syringes that presently are regulated under drug authorities are also subject to this regulation. The agency believes, however, that this requirement will not affect many drug vial containers, because most drug stoppers are not being manufactured from dry natural rubber.

13. A few comments requested clarification on the applicability of the requirements to devices already in the marketplace or intended solely for export.

This rule is not intended to require manufacturers to recall any devices already in interstate commerce. Therefore, this rule does not apply to devices initially introduced or initially delivered for introduction into interstate commerce before the effective date of this regulation.

Devices intended solely for export will not be deemed misbranded for failure to comply with this regulation provided that the exporter meets the criteria of sections 801(e) and 802 of the act (21 U.S.C. 381(e) and 382). Nevertheless, FDA encourages the application of a natural rubber content statement to all exported devices containing natural rubber that may contact humans.

14. A few comments suggested that devices containing less than a minimum quantity of natural rubber, the amount to be determined by the agency, be exempt from the labeling requirement. One comment suggested that devices be labeled with the extractable natural latex protein content.

The agency agrees in principle, however, insufficient information currently exists regarding the minimum

amount of extractable natural latex protein that would not elicit an allergic reaction for this option to be practicable. Evidence indicates that some persons are reactive to extremely low levels of proteins (Ref. 31). The agency is unable to determine what minimum amount of natural latex proteins fails to elicit a reaction in some individuals, and, therefore, cannot exempt devices containing less than that minimum.

15. Several comments requested clarification on the level of packaging that would require a labeling statement. Some comments requested additional flexibility in the placement of the statement so that the statement may be put on the device labeling other than the label, especially where the device label may be too small to carry such a statement. Another comment recommended that the statement be required not only on the label and in other labeling, but on the device itself if the device is dispensed in bulk, as in the case with natural rubber latex examination gloves. Other comments suggested that bulk devices either remain in the original package in order to preserve the label, or that the agency require the user facility to educate and monitor the use of bulk devices containing natural rubber. Still another comment suggested that where bulk devices are removed to a separate dispensing container, the dispensing container also be required to be labeled with a natural rubber content statement.

FDA believes that the required labeling statements may be fitted on small labels. Because of the importance of the information contained in the labeling statements for individuals sensitive to natural latex proteins, the agency will require the appropriate statements concerning the natural rubber content of the products to be prominently and legibly displayed on all device labels, and other labeling, and to appear on the principal display panel of the device packaging, the outside package, container or wrapper, and the immediate device package, container, or wrapper.

This means, for example, that the labeling statement for adhesive bandages that are individually wrapped and sold in a box would appear on each individually wrapped bandage, on the box, and on any individual pieces of labeling, such as an instructions for use sheet included in the box. Devices packaged and sold in bulk dispensing containers would be required to display the appropriate statement on the dispensing container, as it is the immediate device container or package.

If the packaging of a device contains natural rubber, the final regulation requires that a separate statement that specifically cautions the user that the natural rubber is contained in the packaging itself. Statements relating to the natural rubber content of the packaging do not have to appear on the same levels of labeling as the cautionary statements relating to natural rubber content in the actual product. The statements cautioning the user that the packaging contains natural rubber shall appear, instead, only on the packaging that contains the natural rubber, and the outside package, container, or wrapper. Placement of cautionary statements in these locations should warn consumers adequately of the possible risks of allergic reactions to the packaging, while avoiding the potential for confusion that the actual products contain natural rubber.

FDA believes that requiring devices to remain in their original package at the user site, requiring labeling statements on dispensers that are sold separately from the natural rubber containing devices, and requiring user facilities to provide education concerning latex products and to monitor bulk product use, is impracticable and beyond the scope of the regulation. Furthermore, because of the potential manufacturing difficulties, the agency will not require devices to be embossed, imprinted, or otherwise labeled on the individual, unwrapped device. The agency believes that the labeling requirements in this regulation will provide adequate protection to the users and patients.

16. The vast majority of comments supported the removal of the ''hypoallergenic'' claim from the labeling of medical devices that contain natural rubber. Those comments that expressed unease about the removal of the claim stated that the term does convey meaningful information to the user. These comments suggested that an alternative term be applied, or that the regulation allow device labeling to state that the device presents a reduced potential for sensitizing users to natural rubber, or that the device contains less than a specified limit of natural latex proteins or processing chemicals as established by the agency. One comment stated that, until the agency proves that the tests currently employed are insufficient to support the ''hypoallergenic'' claim, the claim should be allowed.

The agency agrees that the term ''hypoallergenic'' provides important information to the consumer who is sensitive to processing chemicals, but believes that the term ''hypoallergenic'' on products containing natural rubber will mislead consumers to conclude erroneously that the product may not cause latex protein allergic reactions.

In the past, manufacturers have labeled their products ''hypoallergenic'' on the basis of results of the modified (human) Draize test. While this test may be appropriate for detecting sensitivity to residual levels of processing chemicals, the test cannot detect the presence of natural latex proteins. Furthermore, current manufacturing processes cannot reduce the levels of natural latex proteins below that to which some individuals may react.

The agency disagrees that the ''hypoallergenic'' label should be allowed to remain on devices that contain natural rubber until the agency proves that the tests currently employed are insufficient to support the ''hypoallergenic'' claim, or that claims should be allowed regarding reduced levels of latex proteins. The agency has received reports of allergic reactions to natural rubber gloves labeled as hypoallergenic. Given that the modified (human) Draize Test is not designed to detect levels of natural latex proteins that would not induce allergic responses, and that the agency is not aware of any current manufacturing processes that are designed to remove latex proteins below a level that may cause adverse reactions, the agency believes that it has sufficient evidence that the tests currently employed do not support the claim ''hypoallergenic'' with respect to the potential for allergic reactions to natural latex proteins.

The agency does agree that alternative statements should be applied to convey information about devices with reduced residual chemical levels to consumers who are sensitive to chemicals. For this reason, the agency is developing guidance for manufacturers who want to make claims relating to latex devices that have reduced manufacturing chemical residues. FDA will announce the availability of this draft guidance document entitled ''Testing for Skin Sensitization to Chemicals in Latex Products'' in a future issue of the **Federal Register**.

17. A few comments stated that the reference to the draft guidance document entitled ''Testing for Skin Sensitization to Chemicals in Latex Products'' in the preamble to the June 24, 1996 proposed rule, upon which this final rule is based, was inappropriate because the document is still in draft form, while another comment suggested the agency reference the draft guidance document in the regulation itself.

The agency does not believe it is appropriate to incorporate a draft guidance document into a regulation. The agency, however, does believe that

it is appropriate to use the preambles of a proposed and final rule relating to latex devices to inform the public that the agency is in the process of developing a guidance document relating to claims about the sensitizing potential of manufacturing chemical residues in latex devices.

18. The vast majority of comments supported the use of a symbol to indicate the presence of natural rubber in a device. These comments stated that the symbol would promote consumer recognition and could be used on devices that have labels that are too small to fit the full text of the statement. One comment suggested that the symbol be stamped on the actual devices, especially those sold in bulk packages. Some comments stated that the symbol should supplement, not replace the text of the statement. Those comments not supporting the use of a natural rubber symbol cautioned that a symbol should not be used until it is universally accepted. Another comment suggested that the agency establish the symbol and require its use.

The agency agrees that a symbol would be useful. The agency stresses, however, that any symbol is intended to supplement, not replace the required written labeling statements, and its use would be voluntary. The agency appreciates the comments and the suggested symbol designs that were submitted, but does not believe that there is sufficient acceptance of a symbol to require the use of a symbol at this time.

19. Several comments stated that the health benefits of the labeling statement are potentially so great that the effective date of the requirement should be less than 180 days from the date of publication of this final rule. Other comments complained that a 180-day implementation period is not sufficient to change the labeling on the numerous devices affected by this rule. These comments requested at least a 12-month implementation period. One of these comments further requested that implementation be a two-stage process, and that devices containing dry natural rubber not be required to carry the labeling statement until 24 months after publication of this final rule. Another comment requested a two-stage implementation process so that devices that only indirectly contact humans would not be required to carry the labeling statement until 36 months after publication, or that such devices not be required to carry any labeling statement.

The agency agrees that the public health concerns relating to allergic responses to natural rubber are great. The agency also acknowledges, however, that at the time of the publication of this regulation, manufacturers have labeling in stock that does not have the required statements. In order to minimize the burden to manufacturers of discarding labeling that has already been printed, and to allow sufficient time to reformat labeling, the agency is providing that the effective date of this final rule is 1 year after the date of publication. This effective date will allow most manufacturers sufficient time, before the effective date of this rule, to exhaust their existing supply of labeling stock. If a manufacturer uses the existing labeling stock before the effective date of this rule, however, FDA encourages manufacturers to add the required labeling statement at that time.

The agency does not believe that a two-stage implementation process is necessary, or that a period of longer than 1 year is necessary because 1 year should be adequate time to phase in new labeling, and reformat the labeling. Furthermore, the agency believes that a longer delay in the implementation of this rule would not be in the interest of the public health. The comment suggesting that devices that only indirectly contact humans not carry any natural rubber labeling statement is addressed in comment 4 of this document.

20. One comment suggested that manufacturers, distributors, and user facilities all be responsible for following the labeling requirements.

The agency agrees with the underlying concern that the labeling statement remain on devices. It is only necessary, however, to require manufacturers to properly label their products to ensure that consumers receive appropriate information concerning natural rubber products. Distributors and user facilities may not alter the device labeling. Any such alteration may be grounds for a charge of misbranding a device under sections 201(n) and 502(a), (c), and (f) of the act (21 U.S.C. 352(a), (c), and (f)).

21. A few comments complained that the rule could be misinterpreted to require labeling on all devices containing any natural rubber whatsoever. Others stated that the requirement would have a major impact on multinational companies, costing at least $15,000 per device for labeling. Another comment stated that the agency underestimated the impact of the rule, as each manufacturer will need to draft, review, and relabel primary and secondary packages of hundreds, if not thousands of devices.

The agency has clarified the scope of this regulation in order to minimize the possibility of misinterpretation. Under final § 801.437(b), an appropriate labeling statement is required on medical devices that contain natural rubber latex or dry natural rubber that contacts humans. The agency does not believe that this rule would require relabeling for hundreds or thousands of devices. In fact, the agency has only identified approximately 70 generic types of medical devices including combination products that are subject to this rule.

Furthermore, FDA does not agree that this rule will have a major impact on multinational companies because it would cost at least $15,000 per device for labeling. FDA estimates that the cost to revise the labeling would be between $1,000 and $2,000 for each type of device that is relabeled. Moreover, the cost of implementing this regulation is further minimized because the 1-year effective date of this regulation should allow most manufacturers to exhaust their current labeling stock prior to using the labeling that is required under this regulation.

## IV. Paperwork Reduction Act of 1995

The warning statements required by this regulation are ''public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public * * *'' (5 CFR 1320.3(c)(2)). Accordingly, FDA concludes that the labeling requirements in this final rule are not subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

## V. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(11) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

## VI. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The

agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. This rule primarily requires a labeling change which would not have a significant economic impact on small entities. Although this rule will require a labeling change on a substantial number of medical devices, manufacturers will be allowed up to 1 year after the effective date of this regulation to exhaust their existing supply of labeling, therefore, most manufacturers would exhaust their existing supply of labels. Moreover, the cost of reformatting the labeling, which is $1,000 to $2,000 for each different kind of device, is not significant. Accordingly, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

## VII. References

The following references have been placed on display in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.


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## List of Subjects in 21 CFR Part 801

Labeling, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 801 is amended as follows:

## PART 801—LABELING

1. The authority citation for 21 CFR part 801 continues to read as follows:

**Authority:** Secs. 201, 301, 501, 502, 507, 519, 520, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 357, 360i, 360j, 371, 374).

2. Section 801.437 is added to subpart H to read as follows:

### § 801.437 User labeling for devices that contain natural rubber.

(a) Data in the Medical Device Reporting System and the scientific literature indicate that some individuals are at risk of severe anaphylactic reactions to natural latex proteins. This labeling regulation is intended to minimize the risk to individuals sensitive to natural latex proteins and protect the public health.

(b) This section applies to all devices composed of or containing, or having packaging or components that are composed of, or contain, natural rubber that contacts humans. The term ''natural

rubber'' includes natural rubber latex, dry natural rubber, and synthetic latex or synthetic rubber that contains natural rubber in its formulation.

(1) The term ''natural rubber latex'' means rubber that is produced by the natural rubber latex process that involves the use of natural latex in a concentrated colloidal suspension. Products are formed from natural rubber latex by dipping, extruding, or coating.

(2) The term ''dry natural rubber'' means rubber that is produced by the dry natural rubber process that involves the use of coagulated natural latex in the form of dried or milled sheets. Products are formed from dry natural rubber by compression molding, extrusion, or by converting the sheets into a solution for dipping.

(3) The term ''contacts humans'' means that the natural rubber contained in a device is intended to contact or is likely to contact the user or patient. This includes contact when the device that contains natural rubber is connected to the patient by a liquid path or an enclosed gas path; or the device containing the natural rubber is fully or partially coated with a powder, and such powder may carry natural rubber proteins that may contaminate the environment of the user or patient.

(c) Devices containing natural rubber shall be labeled as set forth in paragraphs (d) through (h) of this section. Each required labeling statement shall be prominently and legibly displayed in conformance with section 502(c) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 352(c)).

(d) Devices containing natural rubber latex that contacts humans, as described in paragraph (b) of this section, shall bear the following statement in bold print on the device labeling:

''Caution: This Product Contains Natural Rubber Latex Which May Cause Allergic Reactions.''

This statement shall appear on all device labels, and other labeling, and shall appear on the principal display panel of the device packaging, the outside package, container or wrapper, and the immediate device package, container, or wrapper.

(e) Devices containing dry natural rubber that contacts humans, as described in paragraph (b) of this section, that are not already subject to paragraph (d) of this section, shall bear the following statement in bold print on the device labeling:

''This Product Contains Dry Natural Rubber.''

This statement shall appear on all device labels, and other labeling, and shall appear on the principal display panel of the device packaging, the outside package, container or wrapper, and the immediate device package, container, or wrapper.

(f) Devices that have packaging containing natural rubber latex that contacts humans, as described in paragraph (b) of this section, shall bear the following statement in bold print on the device labeling:

''Caution: The Packaging of This Product Contains Natural Rubber Latex Which May Cause Allergic Reactions.''

This statement shall appear on the packaging that contains the natural rubber, and the outside package, container, or wrapper.

(g) Devices that have packaging containing dry natural rubber that contacts humans, as described in paragraph (b) of this section, shall bear the following statement in bold print on the device labeling:

''The Packaging of This Product Contains Dry Natural Rubber.''

This statement shall appear on the packaging that contains the natural rubber, and the outside package, container, or wrapper.

(h) Devices that contain natural rubber that contacts humans, as described in paragraph (b) of this section, shall not contain the term ''hypoallergenic'' on their labeling.

(i) Any affected person may request an exemption or variance from the requirements of this section by submitting a citizen petition in accordance with § 10.30 of this chapter.

(j) Any device subject to this section that is not labeled in accordance with paragraphs (d) through (h) of this section and that is initially introduced or initially delivered for introduction into interstate commerce after the effective date of this regulation is misbranded under sections 201(n) and 502(a), (c), and (f) of the act (21 U.S.C. 321(n) and 352(a), (c), and (f)).

Dated: September 22, 1997.

**William K. Hubbard,**

*Associate Commissioner for Policy Coordination.*

[FR Doc. 97–25728 Filed 9–29–97; 8:45 am]

BILLING CODE 4160–01–F

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## DEPARTMENT OF STATE

## 22 CFR Part 41

**[Public Notice 2610]**

## Bureau of Consular Affairs; Visas: Passports and Visas Not Required for Certain Nonimmigrants

**AGENCY:** Bureau of Consular Affairs, DOS.

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

**SUMMARY:** Section 217 of the Immigration and Nationality Act (INA), as amended, extends the Visa Waiver Pilot Program (VWPP) to nationals of all countries that qualify under the provisions of the Pilot Program and which are designated by the Secretary of State and the Attorney General as countries whose nationals benefit from the waiver of the nonimmigrant B–1/B–2 visa requirement. This interim rule eliminates probationary entry status in the pilot program, designates Ireland (the only country formerly designated as a participating country with probationary status) as a permanent participating country and extends the VWPP to Slovenia.

**DATES:** This interim rule is effective September 30, 1997. Written comments are invited and must be received on or before October 30, 1997.

**ADDRESSES:** Written comments may be submitted, in duplicate, to the Chief, Legislation and Regulations Division, Visa Services, Room L–603C, Department of State, Washington, D.C. 20520–0106.

**FOR FURTHER INFORMATION CONTACT:** H. Edward Odom, Chief, Legislation and Regulations Division, Visa Office, Department of State, Washington, D.C. 20522–0113 (202) 663–1203.

**SUPPLEMENTARY INFORMATION:** This interim rule amends Part 41, Title 22 of the Code of Federal Regulations concerning visas for nonimmigrants pursuant to section 217 of the Immigration and Nationality Act, 8 U.S.C. 1187, as amended by Pub. L. 103–415, (108 Stat. 4299, October 25,1994), Pub. L. 103–416, (108 Stat. 4305, October 25, 1994), and Pub. L. 104–208, (110 Stat. 3009–702, September 30, 1996).

### Pub. L. 99–603

Section 313 of the Immigration Reform and Control Act of 1986 (IRCA), Pub. L. 99–603, amended the INA by adding a new section 217 (8 U.S.C. 1187). Section 217 provides for a nonimmigrant visa waiver pilot program (VWPP) which waives the nonimmigrant visa requirement for the admission of certain aliens into the United States for a period not to exceed ninety days. This original provision authorized the participation of eight countries in the VWPP to be designated by the Secretary of State and the Attorney General, acting jointly from among countries meeting specific criteria. These original qualifying countries included: France; the Federal

Republic of Germany; Italy; Japan; the Netherlands; Sweden; Switzerland; and the United Kingdom. (See **Federal Register** publications 53 FR 24903–24904, June 30, 1988; 53 FR 50161–50162, December 13, 1988; and 54 FR 27120–27121, June 27, 1989.)

**Pub. L. 101–649**

On November 29, 1990, the President signed the Immigration Act of 1990 (Pub. L. 101–649, 104 Stat. 4978). Section 201 revised the VWPP set forth in section 313 of IRCA (Sec. 217 INA, 8 U.S.C. 1187). It removed the eight-country cap and extended the provisions of the VWPP to all countries that meet the qualifying criteria of the Visa Waiver Pilot Program and were designated by the Secretary of State and the Attorney General in consultation with the Secretary of State as Pilot Program countries thereunder.

Effective October 1, 1991, Andorra, Austria, Belgium, Denmark, Finland, Iceland, Liechtenstein, Luxembourg, Monaco, New Zealand, Norway, San Marino, and Spain, having met all of the requirements for participants in the nonimmigrant Visa Waiver Pilot Program, were added as participants in the Program. (See 56 FR 46716–46717, September 13, 1991.) Brunei was designated as a participant in the Visa Waiver Pilot Program in an interim rule published at 58 FR 40581–40586 of the **Federal Register** of July 26, 1993.

**Pub. L. 103–415**

Section 1(m) of Pub. L. 103–415 again amended section 217 of the INA to extend the Visa Waiver Pilot Program through September 30, 1995.

**Pub. L. 103–416**

Section 210 of the Immigration and Nationality Technical Corrections Act of 1994 (INTC) (Pub. L. 103–416) amended section 217 of the INA extending the Visa Waiver Pilot Program to September 30, 1996. Section 211 of INTC created and established criteria for a new probationary qualification status for countries which met the criteria for that status under the VWPP and which were designated by the Secretary of State and the Attorney General, acting jointly, as countries whose nationals benefitted from the waiver of the nonimmigrant B–1/B–2 visa requirement.

The Department published an interim rule [59 FR 15872] to implement the provisions of sections 210 and 211 (Pub. L. 103–416) on March 28, 1995. Ireland was determined to be the only country which met the criteria set forth for such probationary qualification status. On July 8, 1996 Argentina was added as a non-probationary VWPP country (61 FR 35628–35629) and Australia became a non-probationary participating country on July 29, 1996 (61 FR 39318).

**Pub. L. 104–208**

On September 30, 1996 the President signed Pub. L. 104–208, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, (IIRIRA). Section 635 of this law again amended INA 217 by extending the Program until September 30, 1997. This law also named the Attorney General as the principal designator of VWPP countries, eliminated probationary VWPP qualification status and made countries then in such status (Ireland being the only country) permanent participating VWPP countries subject to the same disqualification criteria established for other VWPP countries.

**Requirements for VWPP Participation**

For a country to qualify as a participant in the VWPP, the country must agree to waive the visa requirement for nationals of the United States entering for business or pleasure for ninety (90) days or less, must meet statutorily prescribed limits on visa refusal rates for the prior two year period as well as the prior year; must meet statutorily prescribed limits on rates of exclusion at ports of entry and on overstay rates, and must have a machine readable passport program. The Attorney General, in consultation with the Secretary of State, has determined that Slovenia has met these requirements, and Slovenia, therefore, is added effective September 30, 1997 as a participating country in the Visa Waiver Pilot Program. (See the Immigration and Naturalization Service rule also published in this issue of the **Federal Register**.)

**Interim Rule**

The implementation of this rule as an interim rule, with a 30-day provision for post-promulgation public comments, is based upon the ''good cause'' exceptions set forth at 5 U.S.C. 553(b)(B) and 553(d)(3). Because this rule will facilitate tourist and business travel to and from Slovenia, delay for pre-promulgation public comment would be contrary to the public interest. This rule will, therefore, become effective upon publication in the **Federal Register.**

In accordance with 5 U.S.C. 605(b) (Regulatory Flexibility Act), it is certified that this rule does not have a ''significant adverse economic impact'' on a substantial number of small entities, because it is inapplicable. This rule is exempt from E.O. 12866 (Regulatory Planning and Review) but has been coordinated with the Immigration and Naturalization Service because action by the Attorney General is required under section 217 of the INA, as amended. The rule imposes no reporting or record-keeping action from the public requiring the approval of the Office of Management and Budget under the Paperwork Reduction Act. This rule has been reviewed as required by E.O. 12988 (Civil Justice Reform) and is certified to be in compliance therewith.

**List of Subjects in 22 CFR Part 41**

Aliens, Nonimmigrants, Visas, Passports, Temporary Visitors, Waivers.

This interim rule, with request for comments, amends Part 41, Title 22 by eliminating the pilot program which allowed countries to participate in the Program with probationary status and by adding Ireland and Slovenia to the list of participating countries in the Visa Waiver Pilot Program.

## PART 41—[AMENDED]

1. The authority citation for Part 41 continues to read:

**Authority:** 8 U.S.C. 1104.

2. Accordingly, paragraph (l) of § 41.2 is revised to read as follows:

**§ 41.2 Waiver by the Secretary of State and Attorney General of passport and/or visa requirements for certain categories of nonimmigrants.**

* * * * *

(l) *Visa waiver pilot program*. (1) Notwithstanding the provisions of paragraphs (a) through (k) of this section, a visa is not required of any person who seeks admission to the United States for a period of 90 days or less as a visitor for business or pleasure and who is eligible to apply for admission to the United States as a Visa Waiver Pilot Program applicant.

(2) Countries designated as pilot program countries under paragraph (l)(1), of this section are: the United Kingdom (effective July 1, 1988); Japan (effective December 15, 1988); France and Switzerland (effective July 1, 1989); The Federal Republic of Germany and Sweden (effective July 15, 1989); Italy and The Netherlands (effective July 29, 1989); Andorra, Austria, Belgium, Denmark, Finland, Iceland, Liechtenstein, Luxembourg, Monaco, New Zealand, Norway, San Marino, and Spain (effective October 1, 1991); Brunei (effective July 29, 1993); Ireland (effective April 1, 1995); Argentina (effective July 8, 1996); Australia (effective July 29, 1996) and Slovenia (effective September 30, 1997).

* * * * *

Dated: September 25, 1997.

**Mary A. Ryan,**

*Assistant Secretary for Consular Affairs.*

[FR Doc. 97–25951 Filed 9–29–97; 8:45 am]

BILLING CODE 4710–06–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 180

**[OPP–300554; FRL–5744–8]**

## RIN 2070-AB78

## Carfentrazone-ethyl; Temporary Pesticide Tolerance

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes a temporary tolerance for combined residues of the herbicide carfentrazone-ethyl (ethyl-alpha-2-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1H-1,2,4-triazol-1-yl]-4-fluorobenzenepropanoate) and its major wheat metabolites in or on corn (fodder, forage, and grain) and wheat (grain, hay, and straw). FMC requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1966 (Pub. L. 104–170).

**DATES:** This regulation is effective September 30, 1997. Objections and requests for hearings must be received by EPA on or before December 1, 1997.

**ADDRESSES:** Written objections and hearing requests, identified by the docket control number, OPP–300554, 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–300554], 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–300554. 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: Joanne I. Miller, Product Manager, 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) 305–6224, e-mail: miller.joanne@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of May 16, 1997 (62 FR 27040) (FRL–5717–4), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) announcing the filing of a pesticide petition (PP) for tolerance by FMC Corporation, 1735 Market St., Philadelphia, PA 19103. This notice included a summary of the petition prepared by FMC Corporation, the registrant. There were no comments received in response to the notice of filing. The petition requested that 40 CFR part 180 be amended by establishing a temporary tolerance for combined residues of the herbicide carfentrazone-ethyl (ethyl-alpha-2-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1H-1,2,4-triazol-1-yl]-4-fluorobenzenepropanoate), and its metabolite in or on field corn forage, fodder, and grain at 0.15 ppm; and for wheat hay, straw, and grain at 0.20 ppm part per million (ppm). This tolerance will expire on May 8, 1998. This tolerance request was submitted along with an application for an experimental use permit (EUP). The EUP proposed the experimental use of carfentrazone-ethyl on corn and wheat. Under FIFRA, section 5 for experimental use permits, a temporary tolerance level must be established if a pesticide may reasonably be expected to result in any residue in or on food or feed use.

### I. Risk Assessment and Statutory Findings

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. . . .''

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 percent 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 three 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 (non-nursing infants <1 year old) was not regionally based.

## II. 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 carfentrazone-ethyl and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a temporary tolerance for combined residues of carfentrazone-ethyl (ethyl-alpha-2-dichloro-5-[4-

(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1H-1,2,4-triazol-1-yl]-4-fluorobenzenepropanoate) and its metabolites on wheat at 0.20 ppm and corn at 0.15 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 carfentrazone-ethyl are discussed below.

1. A battery of acute toxicity studies placed technical carfentrazone in Toxicity Categories III and IV. No evidence of sensitization was observed following dermal application in guinea pigs.

2. A 90–day subchronic toxicity study was conducted in rats, with dietary intake levels of 58, 226, 4,700, 831 and 1,197 milligrams/kilograms/day (mg/kg/day) in males and 72, 284, 578, 1,008 and 1,427 mg/kg/day in females, respectively. A NOEL of 226 mg/kg/day (males) and 5,778 mg/kg/day (females) was established. LOELs of 470 mg/kg/day (males) and 578 mg/kg/day (females) was established based on decreases in body weights and/or gains, reductions in food consumption, alterations in clinical chemistry parameters, and histopathological lesions.

3. A reverse gene mutation assay (*salmonella typhirmurium*) yielded negative results, both with and without metabolic activation.

4. An *in vitro* mutation assay test yielded negative results, there was no indication of an increased incidence of gene mutation at the HGPRT locus as a result of exposure.

5. An *in vitro* mammalian cytogenetic test yielded positive under nonactivated conditions in this assay.

6. An *in vivo* micronucleus cytogenetic assay study was conducted in mice by IP injection of 600, 1,200 and 2,400 mg/kg to groups of five males and five females. There was no indication of an increased incidence in micronucleated polychromatic erythrocytes associated with exposure to the test material.

7. A 13–week study was conducted on four pure breed Beagle dogs/sex/group for 90 days at dietary intake levels of 0, 50, 150, 500 and 1,000 mg/kg/day. NOELs of 500 mg/kg/day for both sexes and the LOEL of 150 mg/kg/day, based on systemic toxicity (decrease in the rate of weight gain in females and an increase in porphyrin levels in both sexes).

8. An oral prenatal developmental study was administered by gavage to pregnant female New Zealand white rabbits (20/group) on days 7-19 of gestation at dose levels of 0, 10, 40, 150, or 300 mg/kg/day. There was no evidence of treatment-related prenatal developmental toxicity. The developmental LOEL was not determined. The developmental NOEL ≥ of 300 mg/kg/day.

*B. Toxicological Endpoints*

1. *Acute toxicity.* The Agency does not have a concern for an acute dietary assessment since the available data do not indicate any evidence of significant toxicity from a 1 day or single event exposure by the oral route, therefore an acute (food and water) risk assessment was not required.

2. *Chronic toxicity.* EPA has established the RfD for carfentrazone-ethyl at 0.06 mg/kg/day. This RfD is based on the NOEL of 60 mg/kg/day from a 90–day rat study with a 1,000 fold uncertainty factor.

3. *Carcinogenicity.* No concern for cancer risks were identified. Data from available studies do not indicate a treatment-related tumor problem, and cancer risk endpoints have not been identified.

*C. Exposures and Risks*

1. *From food and feed uses.* Tolerances have not yet been established for the combined residues of carfentrazone-ethyl (ethyl-alpha-2-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1H-1,2,4-triazol-1-yl]-4-fluorobenzenepropanoate), and its metabolites, in or on a variety of raw agricultural commodities. Due to the non-quantifiable carfentrazone-ethyl residues in/on the treated RAC's (except wheat forage, however, there is a label feeding restriction) fed to livestock and the limited number of acres involved, there is no expectation of secondary residues in livestock commodities of meat, meat-by-products, fat, milk, and eggs. Risk assessments were conducted by EPA to assess dietary exposures and risks from carfentrazone-ethyl 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 1 day or single exposure. No short and intermediate endpoints for occupational and residential exposure were identified.

ii. *Chronic exposure and risk.* The chronic dietary analysis indicates that exposure from the proposed temporary tolerances for use of carfentrazone-ethyl in/on corn and wheat for the U.S. population would account for less than 1% of the RfD. For children (1-6 years), the subgroup with the highest exposure, 1% of the RfD would be utilized. This chronic analysis for carfentrazone is an upper-bound estimate of dietary exposure with all residues at tolerance level and assuming 100% of the commodities to be treated. Since only 4,000 acres of wheat and 4,000 acres of corn will be treated under the EUP program (which represents less than 1% of the total wheat and corn harvested in the United States, this dietary analysis represents an over estimate of the percent RfD that will be utilized by the proposed temporary tolerances. Therefore, the chronic dietary risk resulting from the proposed temporary tolerances for carfentrazone-ethyl will not exceed the Agency's level of concern.

2. *From drinking water.* A chronic dietary risk assessment from drinking water was not conducted because of the short duration of the EUP (2 years) and the small percentage of treated acres for corn and wheat as a result of the proposed use (<1% of the total U.S. production for both commodities).

i. *Acute exposure and risk.* As part of the hazard assessment process, the Agency reviews the available toxicological data base to determine the endpoints of concern for acute dietary risk. There is no concern since the available data do not indicate any evidence of significant toxicity from a 1 day or single event exposure by the oral route. Therefore an acute dietary risk assessment was not required.

ii. *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 carfentrazone-ethyl 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 carfentrazone-ethyl 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*. The proposed uses for this pesticide does not include uses that would result in a non-dietary, non-occupational exposure.

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 carfentrazone-ethyl 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, carfentrazone-ethyl 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 carfentrazone-ethyl has a common mechanism of toxicity with other substances.

### *D. Aggregate Risks and Determination of Safety for U.S. Population*

1. *Acute risk*. The Agency does not have a concern for acute dietary assessment since the available data do not indicate any evidence of significant toxicity from a 1 day or single event exposure by the oral route. An acute dietary risk assessment was not required.

2. *Chronic risk*. The chronic dietary analysis indicates that exposure from the proposed temporary tolerances for use of carfentrazone-ethyl in/on corn and wheat for the U.S. population would account for less than 1% of the RfD. For children (1-6 years), the subgroup with the highest exposure, 1% of the RfD would be utilized. A chronic dietary risk (food and water) was not conducted for the following reasons: the short duration of the EUP, the small percentage of treated acres for corn and wheat as a result of the proposed use (<1% of the total U.S. production for both commodities; and the fact that these commodities are blended before consumption). This chronic analysis for carfentrazone-ethyl is an upper-bound estimate of dietary exposure with all residues at tolerance level and assuming 100% of the commodities to be treated. Since only 4,000 acres of wheat and 4,000 acres of corn will be treated under the EUP program, which represents less than 1% of the total wheat and corn harvested in the United States, this dietary analysis represents an over estimate of the percent RfD that will be utilized by the proposed temporary tolerances. Therefore, the chronic dietary risk resulting from the proposed temporary tolerances for carfentrazone-ethyl will not exceed the Agency's level of concern. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to carfentrazone-ethyl residues.

### *E. Aggregate Cancer Risk for U.S. Population*

The chronic dietary analysis indicates that exposure from the proposed temporary tolerances for use of carfentrazone-ethyl in/on corn and wheat for the U.S. population would account for less than 1% RfD. There is no concern for cancer risks identified. Data from available studies do not indicate a treatment-related tumor problem, and cancer endpoints have not been identified.

### *F. 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 carfentrazone-ethyl, EPA considered data from developmental toxicity studies in the rat and rabbit. 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 10-fold 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 data base 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*. i. A prenatal oral developmental toxicity study in rabbits with dose levels of 0, 10, 40, 150, or 300 mg/kg/day with a maternal LOEL of 300/mg/kg/day and the maternal NOEL of ≥150 mg/kg/day. There was not evidence of treatment-related prenatal developmental toxicity.

ii. A prenatal oral developmental toxicity study in the rat at dose levels of 0, 100, 600, or 1,250 mg/kg/day with a maternal LOEL of 600 mg/kg/day based on staining of the abdominogential area and of the cage pan liner; and with the maternal NOEL of 100 mg/kg/day. The developmental NOEL of 1,250 mg/kg/day was based upon a significant increase in the litter incidences of wavy and thickened ribs and with the developmental NOEL of 600 mg/kg/day.

c. *Reproductive toxicity study*. Under Title 40 of the Code of Federal Regulations, part 158, § 158.340, a 2-generation reproduction study is not required for an EUP when the TMRC is less than 50% of the RfD. Exposure from the proposed temporary tolerance of carafentrazone-ethyl from use on wheat and corn will account for less than 1% of the RfD.

d. *Pre- and post-natal sensitivity*. There was no evidence of pre-and post-natal sensitivity in the prenatal oral developmental studies discussed above.

e. *Conclusion*. All required toxicology studies have been completed for this phase of the registration process. The required developmental studies show no pre-natal sensitivity. Based on these findings as well as the generally low toxicity seen in all of the carfentrazone studies, EPA concludes there is reliable data supporting not using an additional 10-fold safety factor for the protection of infants and children. EPA believes the 1,000-fold safety factor used in assessing the carfentrazone risk is adequate to protect all consumers. The 1,000-fold safety factor includes a 100-fold factor for intra- and inter-species differences and a 10-fold factor because the RfD was based on subchronic study.

2. *Chronic risk*. EPA has concluded that aggregate exposure to carfentrazone-ethyl 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 carfentrazone-ethyl 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 carfentrazone-ethyl residues.

## III. Other Considerations

### *A. Metabolism in Plants and Animals*

The metabolism of carfentrazone-ethyl in plants is adequately understood for the purposes of these tolerances. For the purposes of the EUP, the residues of concern are the parent carfentrazone-ethyl and its two major metabolites. The nature of the residue in animals has not been reported. Due to the non-quantifiable carfentrazone-ethyl residues in/on the treated RACs, except wheat forage (there is a label feeding restriction in the EUP) fed to livestock and the limited number of acres involved, there is no expectation of secondary residues in livestock commodities of meat, meat-by-products, fat, milk, and eggs.

### *B. Analytical Enforcement Methodology*

There is a practical analytical method for detecting and measuring levels of carfentrazone and its metabolites in or on food with a limit of detection that allows monitoring of food with residues at or above the levels set in these tolerances. The proposed analytical method for determining residues is hydrolysis followed by gas chromatographic separation. For the parent carfentrazone-ethyl, acceptable method recoveries were established at a limit of quantitation (LOQ) of 0.05 ppm, and a limit of detection (LOD) was set at 0.01 ppm for all the field corn and wheat crop matrices. The methodology can also be used to determine major plant metabolites with similar LOQs and LODs. No analytical method for meat, milk and eggs has been submitted by the registrant. Since no temporary tolerances have been proposed for animal RACs, an analytical enforcement method for animals is not required for the EUP.

### *C. Magnitude of Residues*

The magnitude of the residue in animals has not been reported. These data will not be required for the EUP due to the non-quantifiable carfentrazone-ethyl residues in/on treated RACs (corn forage, fodder, and grain, and wheat hay, straw, and grain) fed to livestock and the limited number of acres involved. Residues were only found in wheat forage, therefore for the EUP only, a grazing restriction must be included to prohibit the grazing and harvesting of wheat forage as a feedstuff.

### *D. International Residue Limits*

There is no Codex proposal, no Canadian or Mexican limits for residues of carfentrazone-ethyl in corn or wheat. A compatibility issue is not relevant to the proposed tolerances for either crop.

## IV. Conclusion

Therefore, the temporary tolerance is established for combined residues of carfentrazone (ethyl-alpha-2-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1H-1,2,4-triazol-1-yl]-4-fluorobenzenepropanoate) and its metabolites in wheat at 0.20 ppm and corn at 0.15 ppm.

## V. 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 December 1, 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 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.

## VI. Public Docket

EPA has established a record for this rulemaking under docket control number OPP–300554 (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 Highway, 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.

## VII. Regulatory Assessment Requirements

This final rule establishes a temporary 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 temporary 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 actions published on May 4, 1981 (46 FR 24950) and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

## VIII. 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: September 22, 1997.

**Stephen L. Johnson,**

*Acting Director, 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 § 180.515, to read as follows:

### § 180.515 Carfentrazone-ethyl; temporary tolerances for residues.

(a) *General.* Temporary tolerances are established for combined residues of the herbicide carfentrazone-ethyl (ethyl-alpha-2-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1H-1,2,4-triazol-1-yl]-4-fluorobenzenepropanoate) and its major wheat metabolites carfentrazone-ethyl chloropropionic acid (alpha,2-dichloro-5-[4-difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1H-1,2,4-triazol-1-yl]-4-fluorobenzenepropanoic acid),3-hydroxymethyl-F8426-chloropropionic acid (alpha,2-dichloro-5-[4-difluoromethyl)-4,5-dihydro-3-hydroxymethyl-5-oxo-1H-1,2,4-triazol-1-yl]-4-fluorobenzenepropanoic acid) and 3-desmethyl-F8426 chloropropionic acid (alpha,2-dichloro-5-[4-difluoromethyl)-4,5-dihydro-5-oxo-1H-1,2,4-triazol-1-yl]-4-fluorobenzenepropanoic acid) and in or on the following food commodities:

| Commodity | Parts per million | Expiration/ revocation date |
|---|---|---|
| Corn fodder ..... | 0.15 | 5/8/98 |
| Corn forage ..... | 0.15 | 5/8/98 |
| Corn grain ..... | 0.15 | 5/8/98 |
| Wheat hay ..... | 0.2 | 5/8/98 |
| Wheat grain ..... | 0.2 | 5/8/98 |
| Wheat straw ..... | 0.2 | 5/8/98 |

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 97–25891 Filed 9–29–97; 8:45 am]

BILLING CODE 6560–50–F

## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 46 CFR Parts 1, 2, 4, 5, 10, 12, 24, 25, 26, 28, 30, 31, 32, 34, 35, 36, 39, 42, 44, 46, 54, 56, 58, 61, 62, 63, 64, 69, 76, 77, 92, 95, 96, 98, 107, 108, 109, 110, 111, 114, 115, 116, 117, 119, 122, 125, 147, 147A, 153, 154, 159, 160, 161, 162, 170, 171, 174, 175, 176, 177, 178, 180, 182, 183, 185, 188, 190, 193, 194, 195, and 199

**[CGD 97–057]**

## Technical Amendments; Organizational Changes; Miscellaneous Editorial Changes and Conforming Amendments

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** This rule amends Title 46, Code of Federal Regulations to reflect recent agency organizational changes. It also makes editorial changes throughout the title to correct addresses, update cross-references, make conforming amendments and make other technical corrections. This rule will have no substantive effect on the regulated public.

**EFFECTIVE DATE:** This rule is effective on September 30, 1997.

**ADDRESSES:** Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G–LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street SW., room 3406, Washington, DC 20593–0001 between 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:** Janet Walton, Project Manager, Standards Evaluation and Development Division (G–MSR–2), 202–267–0257.

**SUPPLEMENTARY INFORMATION:**

### Background and Purpose

Each year Title 46 of the Code of Federal Regulations is recodified on October 1. This rule makes miscellaneous editorial changes, conforming amendments, and revisions relating to recent Coast Guard organizational changes, to be included in the 1997 recodification of Title 46.

### Discussion of Changes

As part of its Headquarters reorganization, the Coast Guard changed senior management position titles from ''Chief'' to ''Assistant Commandant'' for the Acquisition, Civil Rights, Marine Safety and Environmental Protection, Operations, and Systems and Human Resources programs. This rule revises the Marine Safety and Environmental Protection title to conform to the current organization.

The rule also makes editorial changes throughout the title, corrects addresses, updates cross-references, and makes other technical corrections. This rule does not change any substantive requirements of existing regulations.

*Sections 1.03–15, 1.03–30, 1.03–35, and 1.03–40*

In sections 1.03–15((h) (2) and (3), 1.03–30 (a) and (b), and 1.03–35(a), the Coast Guard revises the appeal process concerning appeals to the Commandant and to the Marine Safety Center involving tonnage measurement; and removes both paragraph (c) of section 1.03–35 and section 1.03–40.

*Section 2.10–25*

Section 2.10–25 revises the definition for *Offshore supply vessel or OSV* to conform to the definition published in the Offshore Supply Vessels; Alternate Tonnage final rule; interpretation (61 FR 66613), published on December 18, 1996.

*Sections 24.10–17 and 25.30–20*

In section 24.10–17 and Table 25.30–20(a)(1), the Coast Guard removes references to motorboat classes ''A, 1, 2, or 3'' because the recreational boating safety regulations no longer refer to motorboat classes, but rely solely on vessel length category.

*Sections 69.15, 69.17, 69.19 and 69.23*

In sections 69.15, 69.17, 69.19 and 69.23, the Coast Guard changes the term ''Organizations authorized to measure vessels'' to ''Authorized measurement organizations'' for tonnage measurement and, in addition, makes available a current listing of authorized measurement organizations.

*Section 69.63*

This rule corrects a codification error, and subsequent publication errors, that dropped an element of the formula from § 69.63, Net tonnage.

*Sections 98.30–4, 98.30–5, 98.33–3, 147.40, 147.45, and 147.A.11*

The Coast Guard revises sections 98.30–4(a)(1), 98.30–5(a)(4), (b), and (e), 98.33–3 (a) and (b), 147.40 (a)(1) and (a)(2), 147.45(f)(3), and 147A.11(b)(5)(iii) to conform to 49 CFR Chapter I, Subchapter C (HAZARDOUS MATERIALS REGULATIONS), and the 1990 comprehensive revision and reorganization of that Subchapter.

Since this amendment relates to departmental management, organization, procedure, and practice, notice and comment on it are unnecessary and it may be made effective in fewer than 30 days after publication in the **Federal Register**. Therefore, this final rule is effective on September 30, 1997.

### Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. As this rule involves internal agency practices and procedures, it will not impose any costs on the public.

### Collection of Information

This rule contains no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

### Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

### Environment

The Coast Guard considered the environmental impact of this rule and concluded that under paragraph 2.B.2 of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. This exclusion is in accordance with paragraphs 2.B.2.e.(34) (a) and (b), concerning regulations that are editorial or procedural and concerning internal agency functions or organization. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

**Unfunded Mandates**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), (Pub. L. 104–4, 109 Stat. 48), requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for proposed and final rules that contain Federal mandates. A ''Federal mandate,'' is a new or additional enforceable duty, imposed on any State, local or tribal government, or the private sector. If any Federal mandate causes those entities, to spend, in the aggregate, $100 million or more in any one year the UMRA analysis is required. This rule does not impose Federal mandates on any State, local or tribal governments or the private sector.

**List of Subjects**

*46 CFR Part 1*

Administrative practice and procedure, Organization and functions (Government agencies), Reporting and recordkeeping requirements.

*46 CFR Part 2*

Marine safety, Reporting and recordkeeping requirements, Vessels.

*46 CFR Part 4*

Administrative practice and procedure, Alcohol abuse, Drug abuse, Drug testing, Investigations, Marine safety, National Transportation Safety Board, Nuclear vessels, Radiation protection, Reporting and recordkeeping requirements, Safety, Transportation.

*46 CFR Part 5*

Administrative practice and procedure, Alcohol abuse, Drug abuse, Investigations, Seamen.

*46 CFR Part 10*

Reporting and recordkeeping requirements, Schools, Seamen.

*46 CFR Part 12*

Reporting and recordkeeping requirements, Seamen.

*46 CFR Part 24*

Marine safety.

*46 CFR Part 25*

Fire prevention, Marine safety, Reporting and recordkeeping requirements.

*46 CFR Part 26*

Marine safety, Penalties, Reporting and recordkeeping requirements.

*46 CFR Part 28*

Fire prevention, Fishing vessels, Marine safety, Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

*46 CFR Part 30*

Cargo vessels, Foreign relations, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements, Seamen.

*46 CFR Part 31*

Cargo vessels, Marine safety, Reporting and recordkeeping requirements.

*46 CFR Part 32*

Cargo vessels, Fire prevention, Marine safety, Navigation (water), Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

*46 CFR Part 34*

Cargo vessels, Fire prevention, Marine safety.

*46 CFR Part 35*

Cargo vessels, Marine safety, Navigation (water), Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

*46 CFR Part 36*

Cargo vessels, Hazardous materials transportation, Marine safety.

*46 CFR Part 39*

Cargo vessels, Fire prevention, Hazardous materials transportation, Marine safety, Occupational safety and health, Reporting and recordkeeping requirements.

*46 CFR Part 42*

Penalties, Reporting and recordkeeping requirements, Vessels.

*46 CFR Part 44*

Reporting and recordkeeping requirements, Vessels.

*46 CFR Part 46*

Passenger vessels, Penalties, Reporting and recordkeeping requirements.

*46 CFR Part 54*

Reporting and recordkeeping requirements, Vessels.

*46 CFR Part 56*

Reporting and recordkeeping requirements, Vessels.

*46 CFR Part 58*

Reporting and recordkeeping requirements, Vessels.

*46 CFR Part 61*

Reporting and recordkeeping requirements, Vessels.

*46 CFR Part 62*

Reporting and recordkeeping requirements, Vessels.

*46 CFR Part 63*

Reporting and recordkeeping requirements, Vessels.

*46 CFR Part 64*

Reporting and recordkeeping requirements, Vessels.

*46 CFR Part 69*

Measurement standards, Penalties, Reporting and recordkeeping requirements, Vessels.

*46 CFR Part 76*

Fire prevention, Marine safety, Passenger vessels.

*46 CFR Part 77*

Marine safety, Navigation (water), Passenger vessels.

*46 CFR Part 92*

Cargo vessels, Fire prevention, Marine safety, Occupational safety and health, Seamen.

*46 CFR Part 95*

Cargo vessels, Fire prevention, Marine safety.

*46 CFR Part 96*

Cargo vessels, Marine safety, Navigation (water).

*46 CFR Part 98*

Cargo vessels, Hazardous materials transportation, Marine safety, Reporting and recordkeeping requirements, Water pollution control.

*46 CFR Part 107*

Marine safety, Oil and gas exploration, Reporting and recordkeeping requirements, Vessels.

*46 CFR Part 108*

Fire prevention, Marine safety, Occupational safety and health, Oil and gas exploration, Vessels.

*46 CFR Part 109*

Marine safety, Occupational safety and health, Oil and gas exploration, Reporting and recordkeeping requirements, Vessels.

*46 CFR Part 110*

Reporting and recordkeeping requirements, Vessels.

*46 CFR Part 111*

Vessels.

*46 CFR Part 114*

Incorporation by reference, Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

*46 CFR Part 115*

Fire prevention, Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

*46 CFR Part 116*

Marine safety, Passenger vessels.

*46 CFR Part 117*

Marine safety, Passenger vessels.

*46 CFR Part 119*

Marine safety, Passenger vessels.

*46 CFR Part 122*

Alcohol and alcoholic beverages, Drugs, Hazardous materials, Marine safety, Navigation (water), Passenger vessels, Reporting and recordkeeping requirements.

*46 CFR Part 125*

Administrative practice and procedures, Authority delegation, Hazardous materials transportation, Incorporation by reference, Marine safety, Offshore supply vessels, Oil and gas exploration, Vessels.

*46 CFR Part 147*

Hazardous materials transportation, Labeling, Marine safety, Packaging and containers, Reporting and recordkeeping requirements.

*46 CFR Part 147A*

Fire prevention, Hazardous substances, Occupational safety and health, Pesticides and pests, Seamen, Vessels.

*46 CFR Part 153*

Administrative practice and procedure, Cargo vessels, Hazardous materials transportation, Marine safety, Reporting and recordkeeping requirements, Water pollution control.

*46 CFR Part 154*

Cargo vessels, Gases, Hazardous materials transportation, Marine safety, Reporting and recordkeeping requirements.

*46 CFR Part 159*

Business and industry, Laboratories, Marine safety, Reporting and recordkeeping requirements.

*46 CFR Part 160*

Marine safety, Reporting and recordkeeping requirements.

*46 CFR Part 161*

Fire prevention, Marine safety, Reporting and recordkeeping requirements.

*46 CFR Part 162*

Fire prevention, Marine safety, Oil pollution, Reporting and recordkeeping requirements.

*46 CFR Part 170*

Marine safety, Reporting and recordkeeping requirements, Vessels.

*46 CFR Part 171*

Marine safety, Passenger vessels.

*46 CFR Part 174*

Marine safety, Vessels.

*46 CFR Part 175*

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

*46 CFR Part 176*

Fire prevention, Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

*46 CFR Part 177*

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

*46 CFR Part 178*

Marine safety, Passenger vessels.

*46 CFR Part 180*

Marine safety, Passenger vessels.

*46 CFR Part 182*

Marine safety, Passenger vessels.

*46 CFR Part 183*

Marine safety, Passenger vessels.

*46 CFR Part 185*

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

*46 CFR Part 188*

Marine safety, Oceanographic research vessels.

*46 CFR Part 190*

Fire prevention, Marine safety, Occupational safety and health, Oceanographic research vessels.

*46 CFR Part 193*

Fire prevention, Marine safety, Oceanographic research vessels.

*46 CFR Part 194*

Explosives, Hazardous materials transportation, Marine safety, Oceanographic research vessels.

*46 CFR Part 195*

Marine safety, Navigation (water), Oceanographic research vessels.

*46 CFR Part 199*

Cargo vessels, Incorporation by reference, Marine safety, Oil and gas exploration, Passenger vessels, Reporting and recordkeeping requirements, Vessels.

For the reasons set out in the preamble, the Coast Guard amends 46 CFR parts 1, 2, 4, 5, 10, 12, 24, 25, 26, 28, 30, 31, 32, 34, 35, 36, 39, 42, 44, 46, 54, 56, 58, 61, 62, 63, 64, 69, 76, 77, 92, 95, 96, 98, 107, 108, 109, 110, 111, 114, 115, 116, 117, 119, 122, 125, 147, 147A, 153, 154, 159, 160, 161, 162, 170, 171, 174, 175, 176, 177, 178, 180, 182, 183, 185, 188, 190, 193, 194, 195, and 199 as follows:

## PART 1—ORGANIZATION, GENERAL COURSE AND METHODS GOVERNING MARINE SAFETY FUNCTIONS

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

**Authority:** 5 U.S.C. 552; 14 U.S.C. 633; 46 U.S.C. 7701; 49 CFR 1.45, 1.46; § 1.01–35 also issued under the authority of 44 U.S.C. 3507.

### § 1.01–15 [Amended]

2. In § 1.01–15(b), in the undesignated paragraph after the note, remove the words ''parts 10, 12 or 187'' and add, in their place, the words ''parts 10 or 12''.

### § 1.01–25 [Amended]

3. In § 1.01–25(b), remove the word ''the'' immediately before the word ''Marine''.

4. In § 1.03–15, in paragraphs (g) and (j), remove the word ''Chief,'' and add, in its place, the words ''Assistant Commandant for''; and revise paragraphs (h)(2) and (h)(3) to read as follows:

### § 1.03–15 General.

* * * * *

(h) * * *

(2) Commandant (G-MS) for appeals involving vessel plan review or tonnage measurement issues; or

(3) Director, National Maritime Center, for appeals involving vessel documentation issues.

* * * * *

5. Revise § 1.03–30 to read as follows:

### § 1.03–30 Appeals from decisions or actions of the Marine Safety Center.

(a) Any person directly affected by a decision or action of the Marine Safety Center involving tonnage measurement or which otherwise affects a new vessel or plans for a vessel to be built may, after requesting reconsideration of the

decision or action by the Commanding Officer, Marine Safety Center, make a formal appeal, of that decision or action, via the Commanding Officer, Marine Safety Center, to the Commandant, in accordance with the procedures contained in § 1.03–15 of this subpart.

(b) Any person directly affected by a decision or action of the Marine Safety Center not involving tonnage measurement but which otherwise affects an existing vessel, prior to initiating a formal appeal, must request review of that decision or action by the cognizant OCMI. Following review by the cognizant OCMI, the decision or action under review may be appealed to the District Commander, in accordance with the procedures contained in § 1.03–20 of this subpart.

**§ 1.03–35 [Amended]**

6. In § 1.03–35(a), add the words ‘‘, tonnage measurement, or load line assignment’’ immediately before the words ‘‘on behalf of’’; and remove paragraph (c).

**§ 1.03–40 [Removed]**

7. Remove § 1.03–40.

**§§ 1.01–10 and 1.01–25 [Amended]**

8. In addition to the amendments set forth above, in 46 CFR part 1, remove the word ‘‘Chief, Marine Safety and Environmental Protection’’ and add, in its place, the words ‘‘Assistant Commandant for Marine Safety and Environmental Protection’’ in the following places:

(a) Section 1.01–10(b)(1) introductory text (2 places);
(b) Section 1.01–10(b)(1)(i) introductory text;
(c) Section 1.01–10(b)(1)(i)(A);
(d) Section 1.01–10(b)(1)(i)(B);
(e) Section 1.01–10(b)(1)(i)(C);
(f) Section 1.01–10(b)(1)(ii) introductory text;
(g) Section 1.01–10(b)(1)(ii)(A);
(h) Section 1.01–10(b)(1)(ii)(B);
(i) Section 1.01–10(b)(1)(ii)(C);
(j) Section 1.01–10(b)(1)(iii);
(k) Section 1.01–10(b)(1)(iv); and
(l) Section 1.01–25(b).

## PART 2—VESSEL INSPECTIONS

9. The authority citation for part 2 continues to read as follows:

**Authority:** 14 U.S.C. 664; 31 U.S.C. 9701; 33 U.S.C. 1903; 43 U.S.C. 1333, 1356; 46 U.S.C. 2110, 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46; Subpart 2.45 also issued under the authority of Act Dec. 27, 1950, Ch. 1155, secs. 1, 2, 64 Stat. 1120 [see 46 U.S.C. App. note prec. 1].

**§ 2.01–1 [Amended]**

10. In § 2.01–1(c), after ‘‘J (Electrical Engineering)’’, add ‘‘K (Small Passenger Vessels Carrying More Than 150 Passengers Or With Overnight Accommodations For More Than 49 Passengers), L (Offshore Supply Vessels),’’.

11. Revise § 2.01–7(b)(4) to read as follows:

**§ 2.01–7 Classes of vessels (including motorboats) examined or inspected and certificated.**

* * * * *

(b) * * *

(4) For small passenger vessels see part 114 of subchapter K (Small Passenger Vessels Carrying More Than 150 Passengers or with Overnight Accommodations for More Than 49 Passengers) and part 175 of subchapter T (Small Passenger Vessels) of this chapter.

* * * * *

**§ 2.01–13 [Amended]**

12. In § 2.01–13(c), remove the number ‘‘§ 146.02–2’’ and add, in its place, the number ‘‘§ 147.1’’.

**§ 2.01–15 [Amended]**

13. In § 2.01–15, in paragraph (a) introductory text, in the first sentence, remove the words ‘‘a vessel or her machinery’’ and add, in their place, the words ‘‘the vessel or its machinery’’; in paragraph (a)(2), remove the number ‘‘176.20–1’’ and add, in its place, the number ‘‘176.700’’; and in paragraph (b)(2), remove the number ‘‘176.01–27’’ and add, in its place, the words ‘‘subpart B’’.

**§ 2.01–60 [Amended]**

14. In § 2.01–60(a), remove the words ‘‘authorized by 46 U.S.C. 382b and regulations in part 143 of this chapter’’ and add, in their place, the words ‘‘authorized by 46 U.S.C. 2111 and regulations in part 9 of this chapter’’.

**§ 2.10–25 [Amended]**

15. In § 2.10–25, revise the definition of ‘‘Offshore Supply Vessel’’ to read as follows:

**§ 2.10–25 Definitions.**

* * * * *

*Offshore supply vessel* or *OSV* means a vessel that—

(1) Is propelled by machinery other than steam;

(2) Does not meet the definition of a passenger-carrying vessel in 46 U.S.C. 2101(22) or 46 U.S.C. 2101(35);

(3) Is more than 15 but less than 500 gross tons (as measured under the Standard, Dual, or Simplified Measurement System under part 69, subpart C, D, or E of this chapter) or less than 6,000 gross tons (as measured under the Convention Measurement System under part 69, subpart B of this chapter); and

(4) Regularly carries goods, supplies, individuals in addition to the crew, or equipment in support of exploration, exploitation, or production of offshore mineral or energy resources.

* * * * *

**§ 2.20–1 [Removed]**

16. Remove § 2.20–1.

**§ 2.20–50 [Amended]**

17. In § 2.20–50, remove the numbers ‘‘33.01–20, 34.01–5, 78.33–10, and 97.30–10’’ and add, in their place, the numbers ‘‘78.33–10 and 97.30–10’’.

**§ 2.75–1 [Amended]**

18. In § 2.75–1(c), remove the words ‘‘Chief, Office of Marine Safety, Security and Environmental Protection’’ and add, in their place, the words ‘‘Assistant Commandant for Marine Safety and Environmental Protection’’.

**§ 2.75–50 [Amended]**

19. In § 2.75–50(c), remove the words ‘‘(Commandant (G–M))’’ and add, in their place, the words ‘‘(G–M)’’.

**§§ 2.75–1, 2.75–5 and 2.75–50 [Amended]**

20. In addition to the amendments set forth above, in 46 CFR part 2, remove the word ‘‘Chief, Marine Safety and Environmental Protection’’ and add, in its place, the words ‘‘Assistance Commandant for Marine Safety and Environmental Protection’’ in the following places:

(a) Section 2.75–1(c);
(b) Section 2.75–5(a); and
(c) Section 2.75–50(c).

## PART 4—MARINE CASUALTIES AND INVESTIGATIONS

21. The authority citation for part 4 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 43 U.S.C. 1333; 46 U.S.C. 2103, 2306, 6101, 6301, 6305; 50 U.S.C. 198; 49 CFR 1.46. Authority for subpart 4.40: 49 U.S.C. 1903(a)(1)(E); 49 CFR 1.46.

**§ 4.03–2 [Amended]**

22. In § 4.03–2(a)(3), remove ‘‘§ 4.05–1(f)’’ and add, in its place, ‘‘§ 4.05–1(a)(7)’’.

**§ 4.06–60 [Amended]**

23. In § 4.06–60(a), remove the word ‘‘Serous’’ and add, in its place, the word ‘‘Serious’’.

**§ 4.07–1 [Amended]**

24. In § 4.07–1(c)(3), remove the word ‘‘man’’ and add, in its place, the word ‘‘person’’; and remove ‘‘title 46, U.S. Code, section 239’’ and add, in its place, ‘‘46 U.S.C. 6301’’.

**§ 4.07–10 [Amended]**

25–26. In § 4.07–10, in paragraph (a), introductory text remove the word ''indorsement'' and add, in its place, the word ''endorsement''; and, in paragraph (b), remove the words ''Commander, Coast Guard District Activities Europe'' and ''Commander, Coast Guard Activities Europe'' wherever they appear and add, in their place, the words ''Commander, Coast Guard MIO Europe''.

## PART 5—MARINE INVESTIGATION REGULATIONS—PERSONNEL ACTION

27. The authority citation for part 5 continues to read as follows:

**Authority:** 46 U.S.C. 2103, 7101, 7301, 7701; 49 CFR 1.46.

**§ 5.507 [Amended]**

28. In § 5.507(a), remove the word ''possbile'' and add, in its place, the word ''possible''.

**§ 5.521 [Amended]**

29. In § 5.521(a), remove the word ''Adminstrative'' and add, in its place, the word ''Administrative''.

**§ 5.527 [Amended]**

30. In § 5.527(c), remove the word ''Adminstrative'' and add, in its place, the word ''Administrative''.

**§ 5.537 [Amended]**

31. In § 5.537(c), remove the word ''the'' immediately before the word ''rules''.

## PART 10—LICENSING OF MARITIME PERSONNEL

32. The authority citation for part 10 continues to read as follows:

**Authority:** 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, 2110; 46 U.S.C. Chapter 71; 46 U.S.C. 7502, 7505, 7701; 49 CFR 1.45, 1.46; Sec. 10.107 also issued under the authority of 44 U.S.C. 3507.

**§ 10.112 [Amended]**

33. In § 10.112(b), remove the word ''G–MRP'' and add, in its place, the word ''G–MOC'.

## PART 12—CERTIFICATION OF SEAMEN

34. The authority citation for part 12 continues to read as follows:

**Authority:** 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, 2110; 46 U.S.C. 7301, 7302, 7503, 7505, 7701; 49 CFR 1.46.

**§ 12.01–6 [Amended]**

35. In § 12.01–6, in definition of *Conviction,* remove the word ''Untied'' and add, in its place, the word ''United''.

**Subpart 12.10–9—[Amended]**

36. In the final rule published June 26, 1997 (62 FR 34537), in the third column, under amendatory instruction 16, remove the words ''Subpart 12.10–9'' and add, in their place, the words ''§ 12.10–9.''

**Subpart 12.30—[Amended]**

37. In the final rule published June 26, 1997 (62 FR 34538), in the second column, in text of subpart 12.30, after the section heading ''*§ 12.30–1 Purpose of regulations*.'', remove the section heading ''*§ 12.30–3 Definitions*.'' the first time it appears.

## PART 24—GENERAL PROVISIONS

38. The authority citation for part 24 continues to read as follows:

**Authority:** 46 U.S.C. 2113; 3306, 4104, 4302; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

**§ 24.10–17 [Amended]**

39. In § 24.10–17(a), remove the word ''classes'' and add, in its place, the words ''length categories''; and in the last four sentences, which are a list of classes of motorboats, remove ''Class A—'', ''Class 1—'', ''Class 2—'', and Class 3—''.

## PART 25—REQUIREMENTS

40. The authority citation for part 25 continues to read as follows:

**Authority:** 33 U.S.C. 1903(b); 46 U.S.C. 3306, 4302; 49 CFR 1.46.

**§ 25.25–5 [Amended]**

41. In § 25.25–5(e), remove the number ''160.071'' and add, in its place, the number ''160.171''.

**§ 25.30–20 [Amended]**

42. In § 25.30–20(a), revise Table 25.30–20(a)(1) to read as follows:

**§ 25.30–20 Fire extinguishing equipment required.**

(a) * * *

TABLE 25.30–20(a)(1)

| Length, feet | Minimum number of B–1 hand portable fire extinguishers required [1] | |
|---|---|---|
| | No fixed fire extinguishing system in machinery space | Fixed fire extinguishing system in machinery space |
| Under 16 | 1 | 0 |
| 16 and over, but under 26 | 1 | 0 |
| 26 and over, but under 40 | 2 | 1 |
| 40 and over, but not over 65 | 3 | 2 |

[1] One B–11 hand portable fire extinguisher may be substituted for two B–I hand portable fire extinguishers.

* * * * *

**§§ 25.25–5 and 25.25–13 [Amended]**

43. In addition to the amendments set forth above, in 46 CFR part 25, remove the words ''exposure suit'' and add, in its place, the words ''immersion suit'' in the following places:

(a) Section 25.25–5(e) (2 places),

(b) Section 25.25–13(b); and

(c) Section 25.25–13(c).

## PART 26—OPERATIONS

44. The authority citation for part 26 continues to read as follows:

**Authority:** 46 U.S.C. 3306, 4104, 6101, 8105; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

**§ 26.03–10 [Amended]**

45. In § 26.03–10(a), remove the paragraph (a) designation.

## PART 28—REQUIREMENTS FOR COMMERCIAL FISHING INDUSTRY VESSELS.

46. The authority citation for part 28 continues to read as follows:

**Authority:** 46 U.S.C. 3316, 4502, 4505, 4506, 6104, 10603; 49 CFR 1.46.

**§ 28.40 [Amended]**

47. In § 28.40(b), under the entry for International Maritime Organization (IMO), remove the word ''England'' and add, in its place, the words ''United Kingdom''; and under the entry for Underwriters Laboratories, Inc. (UL), remove the words ''333 Pfingsten Rd., Northbrook, IL 60062'' and add, in their place, the words ''12 Laboratory Drive, Research Triangle Park, NC 27709–3995''.

## PART 30—GENERAL PROVISIONS

48. The authority citation for part 30 continues to read as follows:

**Authority:** 46 U.S.C. 2103, 3306, 3703; 49 U.S.C. 5103, 5106; 49 CFR 1.45, 1.46; Section 30.01–2 also issued under the authority of 44 U.S.C. 3507; Section 30.01–5 also issued under the authority of Sec. 4109, Pub. L. 101–380, 104 Stat. 515.

### § 30.01–5 [Amended]

49. In § 30.01–5(g), remove the words ''Table 30.25–5'' and add, in their place, the words ''Table 30.25–1''.

### § 30.30–9 [Amended]

50. In § 30.30–9, remove the words ''parts 5, 10, and 12 of this chapter'' and add, in their place, the words ''parts 5, 10, and 13 of this chapter.''

## PART 31—INSPECTION AND CERTIFICATION

51. The authority citation for part 31 is revised to read as follows:

**Authority:** 33 U.S.C. 1321(j); 46 U.S.C. 3306;.46 U.S.C. 3316, as amended by Sec. 607, Pub. L. 104–324, 110 Stat. 3901; 46 U.S.C. 3703, 8105; 49 U.S.C. App 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.46.

### § 31.01–1 [Amended]

52. In § 31.01–1(a), remove the word ''oftener'' and add, in its place, the words ''more often''.

## PART 32—SPECIAL EQUIPMENT, MACHINERY, AND HULL REQUIREMENTS

53. The authority citation for part 32 continues to read as follows:

**Authority:** 46 U.S.C. 2103, 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46; Subpart 32.59 also issued under the authority of Sec. 4109, Pub. L. 101–380, 104 Stat. 515.

### § 32.01–1 [Amended]

54. In § 32.01–1(b), under the entry for American Society for Testing and Materials (ASTM), remove the words ''1916 Race Street, Philadelphia, PA 19103'' and add, in their place, the words ''100 Barr Harbor Drive, West Conshohocken, PA 19428–2959''.

### § 32.53–1 [Amended]

55. In § 32.53–1(a)(2), remove the citation ''46 U.S.C. 391a(2)'' and add, in its place, ''46 U.S.C. 3701''.

### § 32.53–3 [Amended]

56. In § 32.53–3(a), remove the word ''Chief,'' and add, in its place, the words ''Assistant Commandant for''; and in (d) and (e), remove the words ''Chief, Office of'' and add, in their place, the words ''Assistant Commandant for''.

## PART 34—FIREFIGHTING EQUIPMENT

57. The authority citation for part 34 continues to read as follows:

**Authority:** 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

### § 34.01–15 [Amended]

58. In § 34.01–15(b), under the entry for American Society for Testing and Materials (ASTM), remove the words ''1916 Race Street, Philadelphia, PA 19103'' and add, in their place, the words ''100 Barr Harbor Drive, West Conshohocken, PA 19428–2959''.

## PART 35—OPERATIONS

59. The authority citation for part 35 continues to read as follows:

**Authority:** 33 U.S.C. 1321(j); 46 U.S.C. 3306, 3703, 6101; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

### § 35.01–3 [Amended]

60. In § 35.01–3(b), under the entry for American Society for Testing and Materials, remove the words ''1916 Race St., Philadelphia, PA 19103'' and add, in their place, the words ''100 Barr Harbor Drive, West Conshohocken, PA 19428–2959''.

## PART 36—ELEVATED TEMPERATURE CARGOES

61. The authority citation for part 36 continues to read as follows:

**Authority:** 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

### § 36.01–1 [Amended]

62. In § 36.01–1(c), remove the words ''part 146'' and add, in their place, the words ''part 148''.

## PART 39—VAPOR CONTROL SYSTEMS

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

**Authority:** 33 U.S.C. 1231; 46 U.S.C. 3306, 3703, 3715(b); 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

### § 39.10–5 [Amended]

64. In § 39.10–5(b), under the entry for American Society for Testing and Materials (ASTM), remove the words ''1916 Race Street, Philadelphia, PA 19103'' and add, in their place, the words ''100 Barr Harbor Drive, West Conshohocken, PA 19428–2959''.

## PART 42—DOMESTIC AND FOREIGN VOYAGES BY SEA

65. The authority citation for part 42 is revised to read as follows:

**Authority:** 46 U.S.C. 5101–5116; 49 CFR 1.46; section 42.01–5 also issued under the authority of 44 U.S.C. 3507.

### § 42.01–1 [Amended]

66. In § 42.01–1, remove the words ''the International Voyage Load Line Act of 1973, as amended (46 U.S.C. 86–86i), and Coastwise Load Line Act of 1935, as amended (46 U.S.C. 88–88i)'' and add, in their place, the words ''46 U.S.C. 5101–5116''.

### § 42.03–5 [Amended]

67. In § 42.03–5(b)(1)(ii), remove the words ''section 445 of Title 46, U.S. Code'' and add, in their place, the words ''46 U.S.C. 2113''.

### § 42.03–10 [Amended]

68. Amend § 42.03–10 as follows:

a. In paragraph (a), remove the words ''the International Load Line Act of 1973, as amended (46 U.S.C. 86–86i)'' and add, in their place, the words ''46 U.S.C. 5101–5116'', and remove the words ''the Coastwise Load Line Act of 1935, as amended (46 U.S.C. 88–88i)'' and add, in their place, the words ''46 U.S.C. 5101–5116'';

b. In paragraph (b), remove the words ''the International Load Line Act of 1973, as amended (46 U.S.C. 86–86i) and the Coastwise Load Line Act of 1935, as amended (46 U.S.C. 88–88i)'' and add, in their place, the words ''46 U.S.C. 5101–5116'';

c. In paragraph (c), remove the words ''the International Load Line Act of 1973, as amended, the Coastwise Load Line Act of 1935, as amended'' and add, in their place, the words ''46 U.S.C. 5101–5116''; and

d. In paragraph (d)(2), remove the words ''International Loan Line Convention'' and add, in their place, the words ''International Load Line Convention''.

### § 42.07–50 [Amended]

69. Amend § 42.07–50 as follows:

a. In paragraph (a), remove the words ''title 46, United States Code, sections 86i and 88g'' and add, in their place, the words ''46 U.S.C. 5116'';

b. In paragraph (b)(1), remove the words ''46 United States Code, section 86g or 88c in accordance with section 86h or 88f'' and add, in their place, the words ''46 U.S.C. 5112, in accordance with 46 U.S.C. 5113'';

c. In paragraph (b)(2), remove the words ''title 46, United States Code, sections 86i and 88g'' and add, in their

place, the words ''46 U.S.C. 5112 and 5116'';

d. In paragraph (b)(3), remove the words ''title 46, U. S. Code, section 86i or 88g'' and add, in their place, the words ''46 U.S.C. 5112 or 5116'';

e. In paragraph (b)(5), remove the words ''under the provisions of title 46, United States Code, section 239, and the regulations prescribed thereunder in part 137 of subchapter K (Marine Investigations and Suspension and Revocation Proceedings) of this chapter'' and add, in their place, the words ''under the provisions of 46 U.S.C. Chapter 77, and the regulations in 46 CFR part 5'';

f. Revise the text of paragraph (c) to read as set forth below.

g. In paragraph (d), remove the words ''title 46, United States Code, section 86i or 88g'' and add, in their place, the words ''46 U.S.C. 5116''.

The revised text is set forth as follows:

**§ 42.07–50 Penalties for violations**

* * * * *

(c) In determining offenses, 46 U.S.C. 5116 provides that 'Each day of a continuing violation is a separate violation.'; and

## PART 44—SPECIAL SERVICE LIMITED DOMESTIC VOYAGES

70. The authority citation for part 44 is revised to read as follows:

**Authority:** 46 U.S.C. 5101–5116; 49 CFR 1.46.

## PART 46—SUBDIVISION LOAD LINES FOR PASSENGER VESSELS

71. The authority citation for part 46 is revised to read as follows:

**Authority:** 46 U.S.C. 3306; 46 U.S.C. 5101–5116; E.O. 12234, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

72. Revise the subpart heading for Subpart 46.01 to read as follows:

### Subpart 46.01—Purpose

**§ 46.01–5 [Removed]**

73. Remove § 46.01–5.

**§ 46.01–15 [Amended]**

74. In paragraph (d), remove the words ''the International Load Line Act of 1973 as amended (46 U.S.C. 86–86i) or the Coastwise Load Line Act of 1935, as amended (46 U.S.C. 88–88i)'' and add, in their place, the words ''46 U.S.C. 5101–5116''.

**§ 46.01–20 [Amended]**

75. In paragraph (a), remove the words ''the International Load Line Act of 1973, as amended (46 U.S.C. 86–86i), or the Coastwise Load Line Act of 1935, as amended (46 U.S.C. 88–88i)'' and add, in their place, the words ''46 U.S.C. 5101–5116''.

## PART 54—PRESSURE VESSELS

76. The authority citation for part 54 continues to read as follows:

**Authority:** 33 U.S.C. 1509; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

**§ 54.01–1 [Amended]**

77. In § 54.01–1(b), under the entry for American Society for Testing and Materials (ASTM), remove the words ''1916 Race Street, Philadelphia, PA 19103'' and add, in their place, the words ''100 Barr Harbor Drive, West Conshohocken, PA 19428–2959''.

## PART 56—PIPING SYSTEMS AND APPURTENANCES

78. The authority citation for part 56 continues to read as follows:

**Authority:** 33 U.S.C. 1321(j), 1509; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

**§ 56.01–2 [Amended]**

79. In § 56.01–2(b), under the entry for American Society for Testing and Materials (ASTM), remove the words ''1916 Race Street, Philadelphia, PA 19103'' and add, in their place, the words ''100 Barr Harbor Drive, West Conshohocken, PA 19428–2959''.

## PART 58—MAIN AND AUXILIARY MACHINERY AND RELATED SYSTEMS

80. The authority citation for part 58 continues to read as follows:

**Authority:** 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3, CFR 1980 Comp., p. 277; 49 CFR 1.46.

**§ 58.03–1 [Amended]**

81. In § 58.03–1(b), under the entry for American Society for Testing and Materials (ASTM), remove the words ''1916 Race Street, Philadelphia, PA 19103'' and add, in their place, the words ''100 Barr Harbor Drive, West Conshohocken, PA 19428–2959''; and under the entry for International Maritime Organization (IMO), add the words ''Publications Section'' immediately before the words ''4 Albert Embankment'' and remove the word ''England'' and add, in its place, the words ''United Kingdom''.

## PART 61—PERIODIC TESTS AND INSPECTIONS

82. The authority citation for part 61 continues to read as follows:

**Authority:** 43 U.S.C. 1333; 46 U.S.C. 2103, 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

**§ 61.03–1 [Amended]**

83. In § 61.03–1(b), under the entry for American Society for Testing and Materials (ASTM), remove the words ''1916 Race Street, Philadelphia, PA 19103'' and add, in their place, the words ''100 Barr Harbor Drive, West Conshohocken, PA 19428–2959''.

## PART 62—VITAL SYSTEM AUTOMATION

84. The authority citation for part 62 continues to read as follows:

**Authority:** 46 U.S.C. 3306, 3703, 8105; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

**§ 62.05–1 [Amended]**

85. In § 62.05–1(a), remove the word ''the'' immediately preceding the word ''Marine''.

## PART 63—AUTOMATIC AUXILIARY BOILERS

86. The authority citation for part 63 continues to read as follows:

**Authority:** 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

**§ 63.05–1 [Amended]**

87. In § 63.05–1(b), remove the words ''Underwriters'' Laboratories, Inc. (UL), 333 Pfingsten Road, Northbrook, Illinois 60062'' and add, in their place, the words ''Underwriters Laboratories, Inc. (UL), 12 Laboratory Drive, Research Triangle Park, NC 27709–3995''.

## PART 64—MARINE PORTABLE TANKS AND CARGO HANDLING SYSTEMS

88. The authority citation for part 64 continues to read as follows:

**Authority:** 46 U.S.C. 3306, 3703; 49 U.S.C. app. 1804; 49 CFR 1.46.

**§ 64.2 [Amended]**

89. In § 64.2(b), under the entry for American Society of Mechanical Engineers, remove the word ''1345'' and add, in its place, the word ''345''.

## PART 69—MEASUREMENT OF VESSELS

90. The authority citation for part 69 continues to read as follows:

**Authority:** 46 U.S.C. 2301, 14103; 49 CFR 1.46.

91. In § 69.15 revise the heading and paragraph (a) to read as follows:

**§ 69.15 Authorized measurement organizations.**

(a) Except as under paragraphs (c) and (d) of this section, all U.S. vessels to be measured or remeasured under the Convention, Standard, or Dual Measurement Systems must be measured by an authorized measurement organization meeting the requirements of § 69.27. A current listing of authorized measurement organizations can be obtained from Commanding Officer, U.S. Coast Guard Marine Safety Center (MSC–3), 400 7th Street S.W., Washington, DC 20590–0001.

* * * * *

92. Revise § 69.17(a) to read as follows:

**§ 69.17 Application for measurement services.**

(a) Applications for measurement are available from and, once completed, are submitted to the authorized measurement organization that will perform the services. The contents of the application are described in this part under the requirement for each system.

* * * * *

93. Revise § 69.19(a) to read as follows:

**§ 69.19 Remeasurement and adjustment of tonnage.**

(a) If a vessel that is already measured is to undergo a structural alteration or if the use of a space within that vessel is to be changed, a remeasurement may be required. Vessel owners shall report immediately to an authorized measurement organization any intent to structurally alter the vessel or to change the use of a space within the vessel. The organization advises the owner if remeasurement is necessary. Spaces not affected by the alteration or change need not be remeasured.

* * * * *

94. Revise § 69.23 to read as follows:

**§ 69.23 Fees.**

Measurement organizations are authorized to charge a fee for measurement services. Information on fees is available directly from the organizations.

**§ 69.27 [Amended]**

95. In § 69.27, in paragraphs (b)(5), (d) introductory text, and (d)(4)(vii), remove the words ''Memorandum of Agreement'' and add, in their place, the words ''written agreement'; and remove paragraph (e).

96. Revise § 69.63 to read as follows:

**§ 69.63 Net tonnage.**

Net tonnage (NT) is determined by the formula:

$$NT = K_2 V_C \left(\frac{4d}{3D}\right)^2 + K_3\left(N_1 + \frac{N_2}{10}\right),$$

in which:

$V_c$ = total volume of cargo spaces in cubic meters.

$K_2 = 0.2 + 0.02 \log_{10} V_c$.

$$K3 = 1.25\left(\frac{GT + 10{,}000}{10{,}000}\right)$$

D = molded depth amidships in meters, as ''molded depth'' is defined in § 69.53.

d = molded draft amidships in meters, as ''molded draft'' is defined in § 69.53.

$N_1$ = number of passengers in cabins with not more than eight berths, as ''passenger'' is defined in § 69.53.

$N_2$ = number of other passengers, as ''passenger'' is defined in § 69.53.

GT = gross tonnage as determined under § 69.57.

$N_1$ plus $N_2$ must equal the total number of passengers the vessel is permitted to carry as indicated on the ship's Passenger Certificate. If $N_1$ plus $N_2$ is less than 13, both $N_1$ and $N_2$ are zero.

$\left(\frac{4d}{3D}\right)^2$ must not be greater than unity.

$K_2 V_c \left(\frac{4d}{3D}\right)^2$ must not be less than 0.25 GT.

NT must not be less than 0.30 GT.

**§ 69.73 [Amended]**

97. In § 69.73(a), remove the word ''supart'' and add, in its place, the word ''subpart''.

**§ 69.111 [Amended]**

98. In § 69.111(c)(3), remove the word ''breaths'' and add, in its place, the word ''breadths''.

**§ 69.117 [Amended]**

99. In § 69.117, in paragraph (e)(2)(ii), add the word ''length'' immediately before the words ''of the vessel'' the second time they appear; and in paragraph (e)(3), remove the word ''or'' immediately before the words ''more than two feet'' and add, in its place, the word ''of''.

**§ 69.209 [Amended]**

100. In § 69.209(a)(4), remove the words ''that is indicated as a houseboat on Coast Guard Form CG–5397''.

## PART 76—FIRE PROTECTION EQUIPMENT

101. The authority citation for part 76 continues to read as follows:

**Authority:** 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

**§ 76.01–2 [Amended]**

102. In § 76.01–2(b), under the entry for American Society for Testing and Materials (ASTM), remove the words ''1916 Race Street, Philadelphia, PA 19103'' and add, in their place, the words ''100 Barr Harbor Drive, West Conshohocken, PA 19428–2959''.

## PART 77—VESSEL CONTROL AND MISCELLANEOUS SYSTEMS AND EQUIPMENT

103. The authority citation for part 77 continues to read as follows:

**Authority:** 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

**§ 77.01–3 [Amended]**

104. In § 77.01–3(b), under the entry for American Society for Testing and Materials, remove the words ''1916 Race St., Philadelphia, PA 19103'' and add, in their place, the words ''100 Barr Harbor Drive, West Conshohocken, PA 19428–2959''.

## PART 92—CONSTRUCTION AND ARRANGEMENT

105. The authority citation for part 92 is revised to read as follows:

**Authority:** 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

**§ 92.01–2 [Amended]**

106. In § 92.01–2(b), under the entry for American Society for Testing and Materials (ASTM), remove the words ''1916 Race Street, Philadelphia, PA 19103'' and add, in their place, the words ''100 Barr Harbor Drive, West Conshohocken, PA 19428–2959''.

## PART 95—FIRE PROTECTION EQUIPMENT

107. The authority citation for part 95 continues to read as follows:

**Authority:** 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

**§ 95.01–2 [Amended]**

108. In § 95.01–2(b), under the entry for American Society for Testing and Materials (ASTM), remove the words ''1916 Race Street, Philadelphia, PA 19103'' and add, in their place, the words ''100 Barr Harbor Drive, West Conshohocken, PA 19428–2959''.

## PART 96—VESSEL CONTROL AND MISCELLANEOUS SYSTEMS AND EQUIPMENT

109. The authority citation for part 96 continues to read as follows:

**Authority:** 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

### § 96.01–3 [Amended]

110. In § 96.01–3(b), under the entry for American Society for Testing and Materials, remove the words ''1916 Race St., Philadelphia, PA 19103'' and add, in their place, the words ''100 Barr Harbor Drive, West Conshohocken, PA 19428–2959''.

## PART 98—SPECIAL CONSTRUCTION, ARRANGEMENT, AND OTHER PROVISIONS FOR CERTAIN DANGEROUS CARGOES IN BULK

111. The authority citation for part 98 continues to read as follows:

**Authority:** 33 U.S.C. 1903; 46 U.S.C. 3306, 3703; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

### § 98.30–1 [Amended]

112. In § 98.30–1(b)(3), remove the words ''Director, Office of Hazardous Materials Transportation (OHMT)'' and add, in their place, the words ''Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration (AAHMS)''.

### § 98.30–4 [Amended]

113. In § 98.30–4, in paragraphs (a)(2) introductory text, (a)(2)(ii), and (c), remove the words ''Director, OHMS'' and ''Director, OHMT'' and add, in their place, the word ''AAHMS''; remove footnote 1 to paragraph (a)(1); and revise paragraph (a)(1) to read as follows:

### § 98.30–4 Vessels carrying portable tanks other than MPTs.

(a) * * *

(1) An IM 101 or IM 102 tank authorized for its contents in accordance with Columns 7 and 8C of the Hazardous Materials Table of 49 CFR 172.101.

114. In § 98.30–5 revise paragraphs (a)(4), (b), and (e) to read as follows:

### § 98.30–5 Materials authorized for transfer to and from a portable tank.

(a) * * *

(4) Any environmentally hazardous substance, liquid, N.O.S., Class 9, listed in table 1 of appendix A of 49 CFR 172.101, and any aqueous solution of an environmentally hazardous substance, solid, N.O.S., Class 9, listed in that table, that meets the definition of ''hazardous substance'' in 49 CFR 171.8; and

* * * * *

(b) Grade D and Grade E combustible liquids with a flash point of 100°F (38°C) or higher by closed cup test that are not listed by name in the Table of 49 CFR 172.101 may be transferred to and from an MPT or an IM 102 portable tank conforming to the entry for note ''T1'' of 49 CFR 172.102(c)(7)(i).

* * * * *

(e) Environmentally hazardous substances (see paragraph (a)(4) of this section) may be transferred only to or from an IM 101 or IM 102 portable tank or an MPT.

* * * * *

115. In § 98.33–1(b)(2), remove the words ''176.340(a)(2)'' and add, in their place, the words ''176.340(b)''; and add note 1 to paragraph (b)(1) to read as follows:

### § 98.33–1 Applicability.

* * * * *

(b) * * *

(1) * * *

**Note to paragraph (b)(1):** Copies of Specifications 178.251 and 178.253 may be obtained from the Commandant (G-MSO–3).

* * * * *

116. In § 98.33–3, in paragraph (a), remove the words ''except hazardous substance 'ORM–E' '' and revise paragraph (b) to read as follows:

### § 98.33–3 Cargoes authorized.

* * * * *

(b) Any environmentally hazardous substance, liquid N.O.S., Class 9, listed in table 1 of appendix A of 49 CFR 172.101, and any aqueous solution of an environmentally hazardous substance, solid, N.O.S., Class 9, listed in that table, that meets the definition of ''Hazardous substance'' in 49 CFR 171.8.

* * * * *

## PART 107—INSPECTION AND CERTIFICATION

117. The authority citation for part 107 is revised to read as follows:

**Authority:** 43 U.S.C. 1333, 46 U.S.C. 3306; 46 U.S.C. 3316 as amended by Sec. 607, Pub. L. 104–324, 110 Stat. 3901; 49 CFR 1.45, 1.46; § 107.05 also issued under the authority of 44 U.S.C. 3507.

### § 107.115 [Amended]

118. In § 107.115, in paragraph (b), under the entry for International Cargo Gear Bureau, remove the words '', 17 Battery Place'' and add, in their place, the words ''Inc., 90 West Street—Suite 1612''; and under the entry for Underwriters Laboratory, remove the words ''Laboratory, 333 Pfingsten Road, Northbrook, Illinois 60062'' and add, in their place, the words ''Laboratories, 12 Laboratory Drive, Research Triangle Park, NC 27709–3995''.

## PART 108—DESIGN AND EQUIPMENT

119. The authority citation for part 108 continues to read as follows:

**Authority:** 43 U.S.C. 1333; 46 U.S.C. 3102, 3306; 49 CFR 1.46.

### § 108.101 [Amended]

120. In § 108.101(b), under the entry for American Society for Testing and Materials (ASTM), remove the words ''1916 Race Street, Philadelphia, PA 19103'' and add, in their place, the words ''100 Barr Harbor Drive, West Conshohocken, PA 19428–2959''; and under the entry for International Maritime Organization (IMO), add the words ''Publications Section'' immediately before the words ''4 Albert Embankment'' and remove the word ''England'' and add, in its place, the words ''United Kingdom''.

## PART 109—OPERATIONS

121. The authority citation for part 109 is revised to read as follows:

**Authority:** 43 U.S.C. 1333; 46 U.S.C. 3306, 6101, 10104; 49 CFR 1.46.

### Appendix A—[Amended]

122. In the heading to Appendix A of part 109, remove the number ''3–78'' and add, in its place, the number ''4–78''.

## PART 110—GENERAL PROVISIONS

123. The authority citation for part 110 continues to read as follows:

**Authority:** 33 U.S.C. 1509; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.45, 1.46; § 110.01–2 also issued under 44 U.S.C. 3507.

### § 110.10–1 [Amended]

124. In § 110.10–1(b), under the entry for International Maritime Organization (IMO), add the words ''Publications Section'' immediately before the words ''4 Albert Embankment'' and remove the word ''England'' and add in its place, the words ''United Kingdom''; and under the entry for Underwriters Laboratories, Inc. (UL), remove the words ''ATTN: Publications Stock, 333 Pfingsten Rd., Northbrook, IL 60062–2096'' and add, in their place, the words ''12 Laboratory Drive, Research Triangle Park, NC 27709–3995''.

## PART 111—ELECTRICAL SYSTEMS—GENERAL REQUIREMENTS

125. The authority citation for part 111 continues to read as follows:

**Authority:** 46 U.S.C. 3306, 3703; 49 CFR 1.46.

**§ 111.50–3 [Amended]**

126. In § 111.50–3(b)(2), remove the words ''Subpart 111.93'' and add, in its place, ''subchapter F of this chapter''.

## PART 114—GENERAL PROVISIONS

127. The authority citation for part 114 continues to read as follows:

**Authority:** 46 U.S.C. 2103, 3306, 3703; 49 U.S.C. App. 1804; 49 CFR 1.45, 1.46; 114.900 also issued under authority of 44 U.S.C. 3507.

**§ 114.400 [Amended]**

128. In the definition of *Corrision-resistant material or corrosion-resistant*, remove the word ''Corrision-resistant'' and add, in its place, the word ''Corrosion-resistant''; in the definition of *High seas*, remove the word ''Untied'' and add, in its place, the word ''United''; and in the definition of *High Speed Craft*, remove the word ''the'' and add, in its place, the word ''that'' immediately before the word ''alternative''.

**§ 114.600 [Amended]**

129. In § 114.600(b), under the entry for American Society for Testing and Materials (ASTM), remove the words ''1916 Race St., Philadelphia, PA 19103'' and add, in their place, the words ''100 Barr Harbor Drive, West Conshohocken, PA 19428–2959''; and under the entry for International Maritime Organization (IMO), add the words Publications Section'' immediately before the words ''4 Albert Embankment'' and add the words ''United Kingdom'' following the word ''7SR''.

## PART 115—INSPECTION AND CERTIFICATION

130. The authority citation for part 115 continues to read as follows:

**Authority:** 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3306; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 743; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

**§ 115.920 [Amended]**

131. In § 115.920(d), remove the word ''changes'' and add, in its place, the word ''change'' immediately before the words ''the information''.

**§ 115.930 [Amended]**

132. In § 115.930, remove the word ''as'' immediately before the word ''least'' and add, in its place, the word ''at''.

**§§ 115.103 and 115.808 [Amended]**

133. In addition to the amendments set forth above, in 46 CFR part 115—

Remove the words ''lifejacket'', and ''lifejackets'' wherever they appear, and add, in their place, the words ''life jacket'' or ''life jackets in the following sections:

(a) Section 115.103; and

(b) Section 115.808 (a)(2), (a)(4), (d), (e) introductory text (2 places), and (e)(2).

## PART 116—CONSTRUCTION AND ARRANGEMENT

134. The authority citation for part 116 continues to read as follows:

**Authority:** 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

**§ 116.500 [Amended]**

135. In § 116.500(k)(1), remove the word ''passager'' and add, in its place, the word ''passenger''.

**§ 116.510 [Amended]**

136. In § 116.510(b)(2), remove the word ''be'' and add, in its place, the word ''Be''.

**§ 116.820 [Amended]**

137. In § 116.820(d) (1) and (2), remove the word ''meter'' and add, in its place, the word ''meters''.

## PART 117—LIFESAVING EQUIPMENT AND ARRANGEMENTS

138. The authority citation for part 117 continues to read as follows:

**Authority:** 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

**§ 117.10 [Amended]**

139. In § 117.10, remove the words ''subchapter H'' and add, in their place, the words ''subchapter W''.

**§ 117.70 [Amended]**

140. In § 117.70(a)(1), remove the word ''diamter'' and add, in its place, the word ''diameter''.

**§ 117.71 [Amended]**

141. Amend § 117.71 as follows:

a. In paragraph (b), remove the word ''the'' immediately before the word ''persons'';

b. In paragraph (d), remove the word ''lifejackets'' wherever it appears, and add, in its place, the words ''life jackets''; and

c. In paragraph (d), add a comma immediately following the word ''1999''.

**§ 117.130 [Amended]**

142. In § 117.130(a)(2), remove the word ''stowed'' and add, in its place, the word ''Stowed''.

## PART 119—MACHINERY INSTALLATION

143. The authority citation for part 119 continues to read as follows:

**Authority:** 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

**§ 119.405 [Amended]**

144. In § 119.405, add the word ''the'' immediately before the word ''Commandant''.

**§ 119.510 [Amended]**

145. In § 119.510(b), remove the word ''is'' and add, in its place, the word ''in''.

## PART 122—OPERATIONS

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

**Authority:** 46 U.S.C. 2103, 3306, 6101; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

**§ 122.610 [Amended]**

147. In § 122.610, remove the word ''marking'' and add, in its place, the word ''markings''.

**§ 122.910 [Amended]**

148. In § 122.910, remove the word ''is'' immediately before the word ''subchapter'' and add, in its place, the word ''in''.

## PART 125—GENERAL

149. The authority citation for part 125 continues to read as follows:

**Authority:** 46 U.S.C. 2103, 3306, 3703; 49 U.S.C. App. 1804; 49 CFR 1.46.

**§ 125.180 [Amended]**

150. In § 125.180(b), under the entry for American Society of Mechanical Engineers (ASME), remove the word ''10027'' and add, in its place, the word ''10017''; under the entry for American Society for Testing and Materials (ASTM), remove the words ''1916 Race St., Philadelphia, PA 19103'' and add, in their place, the words ''100 Barr Harbor Drive, West Conshohocken, PA 19428–2959''; under the entry for International Maritime Organization (IMO), remove the word ''England'' and add, in its place, the words ''United Kingdom''; and under the entry for Underwriters Laboratories, Inc. (UL), remove the words ''333 Pfingsten Rd., Northbrook, IL 60062'' and add, in their place, the words ''12 Laboratory Drive,

Research Triangle Park, NC 27709–3995''.

## PART 147—HAZARDOUS SHIPS' STORES

151. The authority citation for part 147 continues to read as follows:

**Authority:** 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

### § 147.3 [Amended]

152. Amend § 147.3 as follows:

a. Remove the number ''173.115(b)'' and add, in its place, the number ''173.120(b)'' in the definition for *Combustible liquid;*

b. Remove the number ''173.300'' and add, in its place, the number ''173.115'' in the definition for *Compressed gas;* and

c. Remove the number ''173.115(a)'' and add, in its place, the number ''173.120(a)'' in the definition for *Flammable liquid*.

### § 147.7 [Amended]

153. In § 147.7(c), under the entry for Underwriters Laboratories, Inc. (UL), remove the words ''Publications Stock, 333 Pfingsten Road, Northbrook, IL 60062'' and add, in their place, the words ''12 Laboratory Drive, Research Triangle Park, NC 27709–3995''.

### § 147.30 [Amended]

154. In § 147.30(a)(3), remove the numbers ''172.101 and 173.2'' and add, in their place, the numbers ''172.101, 173.2, and 173.2(a)''.

155. Revise §§ 147.40 (a)(1) and (a)(2) to read as follows:

### § 147.40 Materials requiring Commandant (G–MSO) approval.

(a) * * *

(1) Poison gases of Class 2, Division 2.3 and toxic liquids of Class 6, Division 6.1 which are poisonous by inhalation in Hazard Zone A.

(2) Explosives of Divisions 1.1 or 1.2.

* * * * *

156. Revise § 147.45(f)(3) to read as follows:

### § 147.45 Flammable and Combustible liquids.

* * * * *

(f) * * *

(3) A non-bulk packaging authorized for Class 3 (flammable) liquids or combustible liquids under 49 CFR 173.201, 173.202, or 173.203, as referenced for the specific liquid in column 8B of the Hazardous Materials Table of 49 CFR 172.101.

* * * * *

### § 147.95 [Amended]

157. Amend § 147.95 as follows:

a. In paragraph (a), remove the words ''176.135 through 176.159'' and add, in their place, the words ''176.122 through 176.138'; and

b. In paragraph (c)(2), remove the word ''176.83'' and add, in its place, the words ''176.140 through 176.146''.

## PART 147A—INTERIM REGULATIONS FOR SHIPBOARD FUMIGATION

158. The authority citation for part 147A continues to read as follows:

**Authority:** 46 U.S.C. App. 1804; 49 CFR 1.46.

159. Revise § 147A.11(b)(5)(iii) to read as follows:

### § 147A.11 Person in charge of fumigation; before fumigation.

* * * * *

(b) * * *

(5) * * *

(iii) In accordance with 49 CFR 173.9(c) or section 8.10 of the *General Introduction of the International Maritime Dangerous Goods Code*. The word ''unit'' on the warning sign may be replaced with ''vessel,'' ''barge,'' ''hold,'' or ''space,'' as appropriate.

* * * * *

## PART 153—SHIPS CARRYING BULK LIQUID, LIQUEFIED GAS, OR COMPRESSED GAS HAZARDOUS MATERIALS

160. The authority citation for part 153 continues to read as follows:

**Authority:** 46 U.S.C. 3703; 49 CFR 1.46. Section 153.40 issued under 49 U.S.C. 5103. Sections 153.470 through 153.491, 153.1100 through 153.1132, and 153.1600 through 153.1608 also issued under 33 U.S.C. 1903(b).

### § 153.4 [Amended]

161. In § 153.4(b), under the entry for American Society for Testing and Materials (ASTM), remove the words ''1916 Race Street, Philadelphia, PA 19103'' and add, in their place, the words ''100 Barr Harbor Drive, West Conshohocken, PA 19428–2959''.

## PART 154—SAFETY STANDARDS FOR SELF-PROPELLED VESSELS CARRYING BULK LIQUEFIED GASES

162. The authority citation for part 154 continues to read as follows:

**Authority:** 46 U.S.C. 3703, 9101; 49 CFR 1.46.

### § 154.1 [Amended]

163. In § 154.1(b), under the entry for American Society for Testing and Materials, remove the words ''1916 Race St., Philadelphia, PA 19103'' and add, in their place, the words ''100 Barr Harbor Drive, West Conshohocken, PA 19428–2959''; under the entry for International Maritime Organization, remove the words ''4 Albert Embankment, Lndon SE1 75R, U.K.'' and add, in their place, the words ''Publications Section, 4 Albert Embankment, London SE1 7SR, United Kingdom; and under the entry for Underwriters Laboratories, Inc., remove the words ''333 Pfingsten Rd., Northbrook, IL 60062'' and add, in their place, the words ''12 Laboratory Drive, Research Triangle Park, NC 27709–3995''.

## PART 159—APPROVAL OF EQUIPMENT AND MATERIALS

164. The authority citation for part 159 continues to read as follows:

**Authority:** 46 U.S.C. 3306, 3703; 49 CFR 1.45, 1.46; Section 159.001–9 also issued under the authority of 44 U.S.C. 3507.

### § 159.001–4 [Amended]

165. In § 159.001–4(b), under the entry for International Maritime Organization (IMO), remove the word ''England'' and add, in its place, the words ''United Kingdom''.

## PART 160—LIFESAVING EQUIPMENT

166. The authority citation for part 160 continues to read as follows:

**Authority:** 46 U.S.C. 2103, 3306, 3703, and 4302; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

### § 160.051–0 [Amended]

167. In § 160.051–0(b), under the entry for American Society for Testing and Materials, remove the words ''1916 Race St., Philadelphia, PA 19103'' and add, in their place, the words ''100 Barr Harbor Drive, West Conshohocken, PA 19428–2959''.

### § 160.055–1 [Amended]

168. In § 160.055–1(c), remove the words ''1916 Race Street, Philadelphia, Pa. 19103'' and add, in their place, the words ''100 Barr Harbor Drive, West Conshohocken, PA 19428–2959''.

### § 160.076–11 [Amended]

169. In § 160.076–11(b), under the entry for Underwriters Laboratories (UL), remove the words ''P.O. Box 13995'' and add, in their place, the words ''12 Laboratory Drive''.

### § 160.171–3 [Amended]

170. In § 160.171–3(b), under the entry for American Society for Testing and Materials, remove the words ''1916 Race Street, Philadelphia, PA 19103'' and add, in their place, the words ''100 Barr Harbor Drive, West Conshohocken, PA 19428–2959''; and under the entry

for Underwriters Laboratories, Inc., remove the words ''333 Pfingston Rd., Northbrook, IL 60062'' and add, in their place, the words ''12 Laboratory Drive, Research Triangle Park, NC 27709–3995''.

**§ 160.174–3 [Amended]**

171. In § 160.174–3(b), under the entry for American Society for Testing and Materials, remove the words ''1916 Race Street, Philadelphia, PA 19103'' and add, in their place, the words ''100 Barr Harbor Drive, West Conshohocken, PA 19428–2959''.

**§ 160.176–4 [Amended]**

172. In § 160.176–4(b), under the entry for American Society for Testing and Materials (ASTM), remove the words ''1916 Race St., Philadelphia, PA 19103'' and add, in their place, the words ''100 Barr Harbor Drive, West Conshohocken, PA 19428–2959''; and under the entry for Underwriters Laboratories (UL), remove the words ''P.O. Box 13995'' and add, in their place, the words ''12 Laboratory Drive''.

## PART 161—ELECTRICAL EQUIPMENT

173. The authority citation for part 161 continues to read as follows:

**Authority:** 46 U.S.C. 3306, 3703, 4302; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

**§ 161.002–1 [Amended]**

174. In § 161.002–1(b), under the entry for International Maritime Organization (IMO), add the words ''Publications Section'' immediately before the words ''4 Albert Embankment'' and remove the word ''England'' and add, in its place, the words ''United Kingdom''; and under the entry for Underwriters Laboratories, Inc. (UL), remove the words ''ATTN: Publication Stock, 333 Pfingsten Road, Northbrook, IL 60062–2096'' and add, in their place, the words ''12 Laboratory Drive, Research Triangle Park, NC 27709–3995''.

**§ 161.010–1 [Amended]**

175. In § 161.010–1(b), under the entry for Underwriters Laboratories, Inc., remove the words ''333 Pfingsten Road, Northbrook, Illinois 60062'' and add, in their place, the words ''12 Laboratory Drive, Research Triangle Park, NC 27709–3995''.

## PART 162—ENGINEERING EQUIPMENT

176. The authority citation for part 162 continues to read as follows:

**Authority:** 33 U.S.C. 1321(j), 1903; 46 U.S.C. 3306, 3703, 4104, 4302; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 11735, 38 FR 21243, 3 CFR, 1971–75 Comp., p. 793; 49 CFR 1.46.

**§ 162.027–1 [Amended]**

177. § 162.027–1(b), under the entry for American Society for Testing and Materials (ASTM), remove the words ''1916 Race Street, Philadelphia, PA 19103'' and add, in their place, the words ''100 Barr Harbor Drive, West Conshohocken, PA 19428–2959''.

## PART 170—STABILITY REQUIREMENTS FOR ALL INSPECTED VESSELS

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

**Authority:** 43 U.S.C. 1333; 46 U.S.C. 2103, 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

**§ 170.015 [Amended]**

179. In § 170.015(b), under the entry for American Society for Testing and Materials (ASTM), remove the words ''1916 Race Street, Philadelphia, PA 19103'' and add, in their place, the words ''100 Barr Harbor Drive, West Conshohocken, PA 19428–2959''; and under the entry for International Maritime Organization (IMO), add the words ''United Kingdom'' immediately following the word ''7SR''.

## PART 171—SPECIAL RULES PERTAINING TO VESSELS CARRYING PASSENGERS

180. The authority citation for part 171 continues to read as follows:

**Authority:** 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

**§ 171.080 [Amended]**

181. In § 171.080(a), remove the word ''(d)'' and add, in its place, the words ''(e), (f), or (g)''.

## PART 174—SPECIAL RULES PERTAINING TO SPECIFIC VESSEL TYPES

182. The authority citation for part 174 continues to read as follows:

**Authority:** 42 U.S.C. 9118, 9119, 9153; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

**§ 174.007 [Amended]**

183. In § 174.007(b), under the entry for American Society for Testing and Materials (ASTM), remove the words ''1916 Race Street, Philadelphia, PA 19103'' and add, in their place, the words ''100 Barr Harbor Drive, West Conshohocken, PA 19428–2959''.

## PART 175—GENERAL PROVISIONS

184. The authority citation for part 175 continues to read as follows:

**Authority:** 46 U.S.C. 2103, 3306, 3703; 49 U.S.C. App. 1804; 49 CFR 1.45, 1.46; 175.900 also issued under the authority of 44 U.S.C. 3507.

**§ 175.400 [Amended]**

185. In § 175.400, in the definition of *High Seas*, remove the word ''Untied'' and add, in its place, the word ''United''.

**§ 175.600 [Amended]**

186. In § 175.600(b), under the entry for American Society for Testing and Materials (ASTM), remove the words ''1916 Race St., Philadelphia, PA 19103'' and add, in their place, the words ''100 Barr Harbor Drive, West Conshohocken, PA 19428–2959''; and under the entry for International Maritime Organization (IMO), add the words ''Publications Section'' immediately before the words ''4 Albert Embankment'' and add the words ''United Kingdom'' immediately following the word ''7SR''.

## PART 176—INSPECTION AND CERTIFICATION

187. The authority citation for part 176 continues to read as follows:

**Authority:** 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3306; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

**§ 176.114 [Amended]**

188. In § 176.114(a), remove the word ''certificate'' and add, in its place, the word ''Certificate''.

**§ 176.302 [Amended]**

189. Amend § 176.302 as follows:

a. Remove the word ''posed'' and add, in its place, the word ''posted'';

b. Add the word ''in'' immediately before the words ''an open''; and

c. Remove the word ''boats'' and add, in its place, the word ''boat''.

**§ 176.306 [Amended]**

190. In § 176.306, remove the word ''posed'' and add, in its place, the word ''posted''.

**§ 176.801 [Amended]**

191. In § 176.801(a), remove the word ''it's'' immediately before the word ''passengers'' and add, in its place, the word ''its''.

## PART 177—CONSTRUCTION AND ARRANGEMENT

192. The authority citation for part 177 continues to read as follows:

**Authority:** 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

**§ 177.100 [Amended]**

193. In § 177.100, remove the word ''certificate'' and add, in its place, the word ''Certificate''.

**§ 177.710 [Amended]**

194. In § 177.710, remove the word ''Overnigt'' and add, in its place, the word ''Overnight''.

**§ 177.810 [Amended]**

195. In § 177.810(c), remove the word ''Construction'' and add, in its place, the word ''construction''.

## PART 178—INTACT STABILITY AND SEAWORTHINESS

196. The authority citation for part 178 continues to read as follows:

**Authority:** 43 U.S.C. 1333; 46 U.S.C. 2103, 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

**§ 178.340 [Amended]**

197. In § 178.340(c), remove the number ''178.330(c)'' and add, in its place, the number ''178.330(a)''.

## PART 180—LIFESAVING EQUIPMENT AND ARRANGEMENTS

198. The authority citation for part 180 continues to read as follows:

**Authority:** 46 U.S.C. 2104, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

**§ 180.70 [Amended]**

199. In § 180.70(a)(2), remove the word ''buoys'' and add, in its place, the word ''buoy''.

**§ 180.71 [Amended]**

200. In § 180.71(b) introductory text, remove the words ''the person'' and add, in their place, the word ''persons''; and in paragraph (d), remove the word ''lifejackets'', wherever it appears, and add, in its place, the words ''life jackets''.

**§ 180.150 [Amended]**

201. In § 180.150(b), remove the word ''A'' at the beginning of the first sentence, and add, in its place, the word ''An''.

**§ 180.207 [Amended]**

202. In § 180.207(d), remove the word ''lake'' and add, in its place, the word ''lakes''.

**§ 180.208 [Amended]**

203. In § 180.208(b), remove the word ''certificate'' and add, in its place, the word ''certificated''.

**§ 180.410 [Amended]**

## PART 182—MACHINERY INSTALLATION

204–205. The authority citation for part 182 continues to read as follows:

**Authority:** 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 180 Comp., p. 277; 49 CFR 1.46.

**§ 182.405 [Amended]**

206. In § 182.405, remove the words ''case by case'' and add, in their place, the words ''case-by-case''; and add the word ''the'' before the word ''Commandant''.

**§ 182.458 [Amended]**

207. In § 182.458(b), remove the word ''Projected'' and add, in its place, the word ''Project''.

**§ 182.460 [Amended]**

208. In § 182.460(a)(1)(ii), remove the words ''or the bilge'' and add, in their place, the words ''of the bilge''.

**§ 182.520 [Amended]**

209. In § 182.520(b)(2), remove the word ''fo'' and add, in its place, the word ''of''.

**§ 182.620 [Amended]**

210. In § 182.620(a)(2), remove the word ''is'' immediately before the words ''not more'' and add, in its place, the word ''in''.

## PART 183—ELECTRICAL INSTALLATION

211. The authority citation for part 183 continues to read as follows:

**Authority:** 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

**§ 183.130 [Amended]**

212. In § 183.130(b), add the words ''of this part'' at the end of the last sentence.

**§ 183.330 [Amended]**

213. In § 183.330(j), add the words ''in Subchapter J'' immediately after the word ''§ 111.30–19(a)''.

**§ 183.340 [Amended]**

214. In § 183.340(q)(3), remove the word ''and'' and add, in its place, the word ''end''.

**§ 183.352 [Amended]**

215. In § 183.352(a), remove the word ''kilowatt'' and add, in its place, the word ''kilowatts''.

**§ 183.380 [Amended]**

216. In § 183.380(h)(2), add the words ''in Subchapter J'' immediately after word ''§ 111.70–1''.

## PART 185—OPERATIONS

217. The authority citation for part 185 continues to read as follows:

**Authority:** 46 U.S.C. 2103, 3306, 6101; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

**§ 185.210 [Amended]**

218. In § 185.210(b)(2), remove the word ''use'' and add, in its place, the word ''used''.

**§ 185.220 [Amended]**

219. In § 185.220, remove the words ''of employee'' and add, in their place, the words ''or employee''.

**§ 185.506 [Amended]**

220. In § 185.506(a)(1), remove the word ''exists'' and add, in its place, the word ''exits''.

**§ 185.518 [Amended]**

221. In § 185.518(a), remove the word ''instruction'' and add, in its place, the word ''instructions''.

**§ 185.728 [Amended]**

222. In § 185.728(a), remove the words ''is an inflatable'' and add, in their place, the words ''in an inflatable''.

## PART 188—GENERAL PROVISIONS

223. The authority citation for part 188 continues to read as follows:

**Authority:** 46 U.S.C. 2113, 3306; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

**§ 188.10–71 [Amended]**

224. In § 188.10–71, remove the words ''Title 53 of the Revised Statutes and acts amendatory thereof or supplementary thereto'' and add, in their place, the words ''Title 46, United States Code''.

## PART 190—CONSTRUCTION AND ARRANGEMENT

225. The authority citation for part 190 continues to read as follows:

**Authority:** 46 U.S.C. 2113, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

**§ 190.01–3 [Amended]**

226. In § 190.01–3(b), under the entry for American Society for Testing and Materials (ASTM), remove the words ''1916 Race Street, Philadelphia, PA 19103'' and add, in their place, the words ''100 Barr Harbor Drive, West Conshohocken, PA 19428–2959''.

## PART 193—FIRE PROTECTION EQUIPMENT

227. The authority citation for part 193 continues to read as follows:

**Authority:** 46 U.S.C. 2213, 3102, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

**§ 193.01–3 [Amended]**

228. § 193.01–3(b), under the entry for American Society for Testing and Materials, remove the words ''1916 Race Street, Philadelphia, PA 19103'' and add, in their place, the words ''100 Barr Harbor Drive, West Conshohocken, PA 19428–2959''.

## PART 194—HANDLING, USE, AND CONTROL OF EXPLOSIVES AND OTHER HAZARDOUS MATERIALS

229. The authority citation for 194 continues to read as follows:

**Authority:** 46 U.S.C. 2103, 2113, 3306; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

**§ 194.05–3 [Amended]**

230. In § 194.05–3(b), add ''(G-MSO)'' immediately following the word ''Commandant''.

**§ 194.05–7 [Amended]**

231. In § 194.05–7(c)(1), remove the number ''176.83'' and add, in its place, the number ''176.144''.

**§ 194.10–35 [Amended]**

232. In § 194.10–35(e), remove the number ''176.150'' and add, in its place, the number ''176.137''.

## PART 195—VESSEL CONTROL AND MISCELLANEOUS SYSTEMS AND EQUIPMENT

233. The authority citation for part 195 continues to read as follows:

**Authority:** 46 U.S.C. 2113, 3306; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

**§ 195.01–3 [Amended]**

234. In § 195.01–3(b), under the entry for American Society for Testing and Materials, remove the words ''1916 Race St., Philadelphia, PA 19103'' and add, in their place, the words ''100 Barr Harbor Drive, West Conshohocken, PA 19428–2959''.

## PART 199—LIFESAVING APPLIANCES AND ARRANGEMENTS

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

**Authority:** 46 U.S.C. 3306, 3703; 46 CFR 1.46.

**§ 199.05 [Amended]**

236. In § 199.05(b), under the entry for American Society for Testing and Materials (ASTM), remove the words ''1916 Race Street, Philadelphia, PA 19103'' and add, in their place, the words ''100 Barr Harbor Drive, West Conshohocken, PA 19428–2959''; and under the entry for International Maritime Organization (IMO), add the words ''Publications Section'' immediately before the words ''4 Albert Embankment'' and remove the word ''England'' and add, in its place, the words ''United Kingdom''.

Dated: September 19, 1997.

**R.C. North,**

*Rear Admiral, U. S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.*

[FR Doc. 97–25573 Filed 9–29–97; 8:45 am]

BILLING CODE 4910–14–P

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## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Parts 0 and 1

**[DA 97–1994]**

## Commission Organization and Agency Practice and Procedure

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Federal Communications Commission is amending part 1 of the Commission's Rules to remove specific references which are either superseded by the Office of Government Ethics' regulations or which are rendered obsolete because there is no equivalent language in the revised statute. The Commission is also amending part 0 to correct an oversight in the functions of the Managing Director and authority delegated to the General Counsel to clarify that the Designated Agency Ethics Official is responsible for making determinations concerning waivers of section 4(b) of the Communications Act and the Federal conflict of interest statutes.

**EFFECTIVE DATE:** September 30, 1997.

**FOR FURTHER INFORMATION CONTACT:** Sharon B. Kelley, Office of General Counsel, (202) 418–1720.

**SUPPLEMENTARY INFORMATION:**

*Adopted:* September 15, 1997.
*Released:* September 16, 1997.

1. The rule changes below remove from part 1 of the Commission's rules on Commission Practice and Procedure specific references to 18 U.S.C. § 207 which are either superseded by the Office of Government Ethics' (OGE's) regulations found at 5 CFR 2641, or rendered obsolete because there is no equivalent language in revised 18 U.S.C. § 207.

2. There have been several significant amendments to 18 U.S.C. § 207. Under the Ethics Reform Act of 1989, Public Law 101–194 (1989), sections 207 (g) and (j) were removed. A subsequent amendment to section 207(c)(2)(A)(ii) substituted ″level 5 of the Senior Executive Service'' for ''level 5 of the Executive Schedule'' and an amendment to section 207(j) provided an additional exception from the one-year bar found at 18 U.S.C. §§ 207 (c) and (d) for certain political activity by senior Federal employees. *OGE Reauthorization Act of 1996,* Public Law 104–179, §§ 5, 6 (1996). Because the references to section 207 contained in part 0 of the Commission's rules have been superseded by OGE regulations or made obsolete by subsequent changes to section 207, we are removing them herein.

3. In compliance with the OGE's new government-wide Standards of Ethical Conduct (5 CFR 2635), on July 20, 1994, the Commission adopted an *Order* delegating authority to the General Counsel to assume the responsibilities of serving as the Commission's Designated Agency Ethics Official (DAEO). 59 FR 39703 (August 4, 1994), 9 FCC Rcd. 3596 (1994); 5 CFR 2638.201–2638.202; 47 CFR 0.251(a). Although determinations concerning waivers of the applicability of section 4(b) of the Communications Act and the Federal conflict of interest statutes (*i.e.*, 18 U.S.C. §§ 203, 205 and 208) fall within the broad delegated authority given to the DAEO, *see* 5 CFR 2638.201, corresponding revisions were not made to the functions of the Office of the Managing Director and authority delegated to the General Counsel in part 0 of the Commission's rules. 47 CFR 0.11(a) (9)and 0.251. To correct this oversight, we are amending these sections to reflect that the DAEO is responsible for making determinations concerning waivers of section 4(b) of the Communications Act and the Federal conflict of interest statutes.

4. The revisions adopted in this *Order* apply to internal rules of agency personnel organization, management, practice and procedure for which notice and comment is not required. 5 U.S.C. §§ 553 (a)(2), (b)(3)(A) and (d).

5. Accordingly, effective upon publication in the **Federal Register**, parts 0 and 1 of the Commission's rules, as set forth below, pursuant to the authority contained in sections 4(i), 5(c) and 303(r) of the Communications Act, 47 U.S.C. §§ 154(i), 155(c) and 303(r), and section 0.231(b) of the Commission's regulations, 47 CFR 0.231(b).

**List of Subjects**

*47 CFR Part 0*

Commission Organization.

*47 CFR Part 1*

Practice and Procedure.

Federal Communications Commission.

**Andrew S. Fishel,**

*Managing Director.*

**Rule Changes**

Parts 0 and 1 of Title 47 of the Code of Federal Regulations are amended as follows:

## PART 0—COMMISSION ORGANIZATION

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

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

### § 0.11 Functions of the office.

2. In § 0.11, remove and reserve paragraph (a)(9).

### § 0.231 Authority delegated.

3. In § 0.231, remove and reserve paragraphs (c) and (f).

### § 0.251 Authority delegated.

4. In § 0.251, add new paragraph (i) to read as follows:

* * * * *

(i) The General Counsel is delegated authority to make determinations regarding and waive the applicability of section 4(b) of the Communications Act (47 U.S.C. § 154(b)) and the Federal conflict of interest statutes (18 U.S.C. §§ 203, 205 and 208).

## PART 1—PRACTICE AND PROCEDURE

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

**Authority:** 47 U.S.C. 151, 154, 207, 303 and 309(j) unless otherwise noted.

### § 1.25 [Removed and Reserved]

6. Section 1.25 is removed and reserved.

### § 1.28 [Removed and Reserved]

7. Section 1.28 is removed and reserved.

### § 1.29 [Removed and Reserved]

8. Section 1.29 is removed and reserved.

[FR Doc. 97–25853 Filed 9–29–97; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Parts 1, 73, and 74

**[MM Docket No. 96–58, FCC 97–290]**

## Certain Minor Changes in Broadcast Facilities Without a Construction Permit

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The *Report and Order* (R&O) in MM Docket No. 96–58 adopts proposals made by the Commission in the *Notice of Proposed Rulemaking* (61 FR 15439, April 8, 1996) in this proceeding to streamline the Commission's rules and processes applicable to broadcast stations. These rule and process changes eliminate the construction permit requirement for certain minor changes to broadcast facilities, replacing the present two-step construction permit/license application process with a one-step modification-of-license application, filed after the broadcaster has implemented the permitted changes. The types of modifications permitted under the new process were chosen so that interference to other facilities would not be created by the changes. Additional rules sections were revised to make clarifications and to conform the rules to present policy.

**EFFECTIVE DATE:** December 1, 1997.

**FOR FURTHER INFORMATION CONTACT:** Dale Bickel, Mass Media Bureau, Audio Services Division, (202) 418–2720, or via the Internet at dbickel@fcc.gov. For additional information concerning the information collections contained in the R&O, contact Judy Boley at (202) 418–0214, or via the Internet at jboley@fcc.gov.

**SUPPLEMENTARY INFORMATION:** This is the synopsis of the Commission's *Report and Order* in MM Docket No. 96–58, adopted August 14, 1997, and released August 22, 1997. The complete text of this *Report and Order*, is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, DC, and may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., at (202) 857–3800, 1231 20th Street, N.W., Washington, DC 20036. The complete text is also available as a Word Perfect 5.1 file through the Internet at http://www.fcc.gov/Bureaus/Mass__Media/Orders/1997/fcc97290.wp .

**Synopsis of the Report and Order**

1. The rule and procedure changes adopted in the *Report and Order* in MM Docket 96–58 were enabled by Congress' change, at the Commission's request, of Section 403(m) in the Communications Act in its Telecommunications Act of 1996. Subsequently, in the *Notice of Proposed Rulemaking*, the Commission proposed to eliminate the requirement for a construction permit in certain instances of modifications to broadcast facilities, replacing the two-step construction permit/application process with a single step modification of license application, which would be filed by the permittee or licensee of the station once the permitted modifications had been made.

2. The circumstances in which ''one step'' modifications may be made through the filing of a license application are as follows, briefly:

(1) Most commercial FM stations which comply with § 73.207 spacing rules with respect to all other stations, and which are not operating with the maximum permitted facilities, may increase effective radiated power (ERP) to the maximum permitted for the station class.

(2) Commercial FM stations and most TV stations presently operating with zero or reduced vertically polarized power, may increase the vertically polarized ERP up to the authorized horizontal ERP without a construction permit.

(3) Noncommercial educational FM stations presently operating with zero or reduced vertically polarized ERP may also increase the vertical ERP up to the authorized horizontal ERP, provided that the FM station is not located within a specified radius of a TV Channel 6 station.

(4) Decreases in ERP will be permitted for FM stations, provided that the required coverage to the community of license is maintained.

(5) The § 73.215 contour protection designation for an FM commercial station may be deleted where a short-spaced station has moved away, allowing the contour protection station to become licensed per § 73.207.

(6) If an FM or TV antenna is replaced, or for installation of a new antenna, the applicant may mount the antenna up to 2 meters above or 4 meters below the value specified on its license or construction permit.

(7) FM and TV directional antennas may be replaced under certain circumstances.

(8) Former licensed main auxiliary applications for FM and TV stations may be relicensed as auxiliary (backup)

facilities without a construction permit, even at changed power or where the auxiliary facility must change frequency to match that of the main station. AM stations may reduce power for an auxiliary facility which was previously licensed on the same frequency as the primary station.

(9) Commercial stations may file a modification-of-license application to become licensed as noncommercial educational. Conversely, some noncommercial educational stations in the commercial FM band or television bands may become licensed as commercial via the same means.

3. The Commission also changed several other rules sections, discussed briefly as follows:

(1) FM directional stations may commence program test operations at half power while awaiting staff review of the license application. This eliminates a 10 day wait between final installation of the antenna and the start of operations.

(2) Requests for waiver of the main studio rule (47 CFR 73.1125) may be submitted by letter, eliminating the requirement for a Form 301 or Form 340 construction permit application.

(3) A new rule 47 CFR 73.316(c)(9) is added to codify the policy which requires that the measured FM directional pattern be at least 85% of the authorized composite FM directional pattern for contour protection stations authorized under §§ 73.215 or 73.509.

(4) A new rule 47 CFR 73.1692 is added which will codify the current conditions imposed on construction permits for AM, FM, and TV stations which are authorized to construct on or near AM stations.

(5) A new rule 47 CFR 73.525(e)(1)(vii) is added to address the matter of FM noncommercial educational stations which propose to locate very near (within the 90 dBu contour) of a TV Channel 6 station.

4. The rules set forth in the *Report and Order* are intended to reduce the amount of processing time, cost, and burden on both applicants and the Commission. By eliminating the construction permit requirement for the circumstances described in the previous paragraph, an applicant can save the 4 months' minor change construction permit application time, as well as several hundred dollars in processing fees in addition to the costs inherent in preparing the application.

**Final Paperwork Reduction Act of 1995 Analysis**

5. This *Report and Order* contains new or modified information collections subject to the Paperwork Reduction Act of 1995 (''*PRA*''). It has been submitted to the Office of Management and Budget (''OMB'') for review under the *PRA*.

6. This *Report and Order* eliminates the requirement for a minor change application in several instances of minor changes to broadcast facilities for which approval was almost automatic under the existing process, and in which the elimination of the construction permit would be unlikely to have an adverse impact on existing broadcast stations. These changes will cause revisions in the following collections:

*OMB Approval Number:* 3060–0506.

*Title:* Application for FM Broadcast Station License.

*Form No.:* FCC 302–FM.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Businesses or other for-profit, not-for-profit institutions.

*Number of Respondents:* 757.

*Estimated time per response:* 4 hours—33 hours (This time varies depending on the type of application filed. This collection is contracted out to communications attorneys and consulting engineers for completion of the form.).

*Total annual burden:* 2,082.

*Needs and Uses:*

7. Licensees and permittees of FM broadcast stations are required to file FCC Form 302–FM to obtain a new or modified station license, and/or to notify the Commission of certain changes in the licensed facilities of these stations.

8. On August 14, 1997 the Commission adopted a *Report and Order* in MM Docket No. 96–58 which adopted the changes as proposed in the *NPRM* and as approved by OMB on July 2, 1996. Additionally, the Commission adopted revisions to the FCC Form 302–FM. The revisions for FCC 302–FM are contained in Appendix C of the *Report and Order*. Until such times as the forms are revised to incorporate this information, applicants using the one-step licensing process must file this supplement with the FCC 302–FM.

9. The data is used by FCC staff to confirm that the station has been built to terms specified in the outstanding construction permit, and to update FCC station files. Data is then extracted from FCC 302–FM for inclusion in the subsequent license to operate the station. Applications using the new one-step process will be reviewed to ensure that the minor changes made by the station will not have any significant impact on other stations and the public.

*OMB Approval Number:* 3060–0029.

*Title:* Application for TV Broadcast Station License.

*Form No.:* FCC 302–TV.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Businesses or other for-profit, not-for-profit institutions.

*Number of Respondents:* 83.

*Estimated time per response:* 21 hours—29 hours (This time varies depending of the type of application filed. This collection is contracted out to communications attorneys and consulting engineers for completion of the form.).

*Total annual burden:* 210.

*Needs and Uses:*

10. Licensees and permittees of FM broadcast stations are required to file FCC Form 302-TV to obtain a new or modified station license, and/or to notify the Commission of certain changes in the licensed facilities of these stations.

11. On August 14, 1997 the Commission adopted a *Report and Order* in MM Docket No. 96–58 which adopted the changes as proposed in the *NPRM* and as approved by OMB on July 2, 1996. Additionally, the Commission adopted revisions to the FCC Form 302–TV. The revisions for FCC 302–TV are contained in Appendix D of the Report and Order. Until such times as the forms are revised to incorporate this information, applicants using the one-step licensing process must file this supplement with the FCC 302–TV.

12. The data is used by FCC staff to confirm that the station has been built to terms specified in the outstanding construction permit, and to update FCC station files. Data is then extracted from FCC 302–TV for inclusion in the subsequent license to operate the station. Applications using the new one-step process will be reviewed to ensure that the minor changes made by the station will not have any significant impact on other stations and the public.

*OMB Approval Number:* 3060–0171.

*Title:* Section 73.1125—Station main studio location.

*Form No.:* None.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Businesses or other for-profit, not-for-profit institutions.

*Number of Respondents:* 155.

*Estimated time per response:* 0.5 hours—5 hours (This time varies depending of the type of application filed. The waiver request is contracted out to communications attorneys and consulting engineers for completion of the form.).

*Total annual burden:* 108.

*Needs and Uses:*

13. Section 73.1125(a) requires AM, FM or TV licensees to locate their main studio at any point within the station's

principal community contours. If the station relocates its main studio from one point to another within the principal community contour or from a point outside the principal community contour to one within it, the licensee is required to notify the FCC pursuant to § 73.1125(b)(1).

14. On August 14, 1997 the Commission adopted a *Report and Order* in MM Docket No. 96–58 which adopted the changes as proposed in the *NPRM* and as approved by OMB on July 2, 1996. The revision to § 73.1125(b)(2) will eliminate the delay and expense of completing the construction permit application and will enable licensees/permittees to make this change with minimal delay.

15. The notification required by § 73.1125(b)(1) is used by FCC staff to assure that the station main studio is located within the principal community contour and many times serves to notify us of a change in the mailing address. The data received as justification for waiver of § 73.1125(b)(2) will enable FCC staff to determine whether the circumstances are sufficient to warrant waiver of the Commission's main

**Final Regulatory Flexibility Analysis**

16. As required by the *Regulatory Flexibility Act,* 5 U.S.C. Section 603 (''RFA''),[1] an Initial Regulatory Flexibility Analysis (''IRFA'') was incorporated in *Amendment of Parts 73 and 74 of the Commission's Rules to Permit Certain Minor Changes Without A Construction Permit.*[2] The Commission sought written public comments on the proposals in the *NPRM,* including on the IRFA. The Commission's Final Regulatory Flexibility Analysis (FRFA) in this *Report and Order* conforms to the RFA as amended.[3]

*A. Need For and Objectives of the Proposed Rules:*

17. The Commission's Rules currently require a construction permit for virtually all minor changes to AM, FM, and TV broadcast stations. This procedure was required by Section 319(d) of the Communications Act. In 1996, at the request of the Commission, Congress modified Section 319(d) in the *Telecommunications Act of 1996,* Pub. L. 104–104, 110 Stat. 56 (1996), to eliminate the prohibition against waiving the permit requirement for applicants wanting to make minor changes to broadcast station facilities.[4] The Commission therefore proposed revisions to its broadcast regulations to replace, in certain instances, the two step construction permit-license process with a single step licensing procedure.

18. By making these changes, the present four month period presently required to process and grant a construction permit will be eliminated for those applicants choosing to use these new procedures. In addition, the present minor change application filing fee (presently $690.00) will not be required from applicants for one-step license applications, thereby easing the financial burden for simple changes. The changes will also expedite new and improved service to the public, with minimal impact on existing stations. The specified changes may be made without prior authorization from the Commission; however, it is the licensee's or permittee's responsibility to determine whether the particular installation complies with the Commission's rules and regulations. The circumstances in which the Commission will permit the filing of one-step licensing applications are listed in 47 CFR 73.1690(c).

B. Summary of Significant Issues Raised by the Public Comments in Response to the IFRA.

19. No comments were received specifically in response to the IFRA contained in the *Notice of Proposed Rulemaking.* However, commenters did address the effects of the proposed rule changes on FM and TV licensees, including small businesses. Generally, commenters favored the rule changes proposed, with minor changes, some of which have been incorporated into the rules specified in the Appendix. *See* Comments at paragraphs 8, 14, 17, 23, 26, 28–29, 34, 38, 43–46, 48, 52, 55–58, 66, 68, 73, 75, 77, 80, 83 and 85 of the *Report and Order.*

*C. Description and Estimate of the Number of Small Entities To Which Rules Will Apply.*

20. *Definition of a ''Small Business''.* The RFA generally defines ''small entity'' as having the same meaning as the terms ''small organizations'', ''small businesses'', and ''small governmental jurisdictions'', and the same meaning as the term ''small business concern'' under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate for its activities.[5] A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (''SBA'').[6] According to the SBA's regulations, entities engaged in radio or television broadcasting (Standard Industrial Classification (''SIC'') Code 4833 for television and 4832 for radio) may have a maximum of $5.0 million or $10.5 million, respectively, in annual receipts in order to qualify as a small business concern.[7] 13 CFR 121.201. This standard also applies in determining whether an entity is a small business for purposes of the RFA.

Establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational and other television stations. Also included here are establishments primarily engaged in television broadcasting and which produce taped television program materials.

21. Pursuant to 5 U.S.C. Section 601(3), the statutory definition of a small business applies ''unless an agency after consultation with the Office of Advocacy of the SBA and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.''[8] While we believe that the

[1] See 47 U.S.C. Section 603.

[2] *Notice of Proposed Rulemaking* in MM Docket No. 96–58, 11 FCC Rcd 8800, 61 FR 15439 (April 8, 1996).

[3] See 5 U.S.C. Section 604. The *Regulatory Flexibility Act,* see 5 U.S.C. Section 601 *et. seq.* has been amended by the *Contract With America Advancement Act of 1996,* Public Law 104–104, 110 Stat. 847 (1996) (''CWAAA''). Title II of the CWAAA is the *Small Business Regulatory Enforcement Act of 1996* (''SBREFA'').

[4] Section 319(d) has been modified to read in relevant part as follows: ''With respect to any broadcasting station, the Commission shall not have authority to waive the requirement of a permit for construction, except that the Commission may by regulation determine that a permit shall not required for minor changes in the facilities of authorized broadcast stations.'' Public Law 104–104, Section 403(m), 110 Stat 56 (1996).

[5] *Small Business Act,* 15 U.S.C. Section 632 (1996).

[6] 5 U.S.C. Section 601(b) (incorporating by reference the definition of ''small business concern'' in 15 U.S.C. Section 632). Pursuant to 5 U.S.C. Section 601(b), the statutory definition of a small business applies ''unless an agency after consultation with the Office of Advocacy if the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.''

[7] This revenue cap appears to apply to noncommercial educational television stations, as well as to commercial television stations. *See* Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual (1987), at 283, which describes ''Television Broadcasting Stations (SIC Code 4833) as:

[8] While we believe that the SBA's definition of ''small business'' greatly overstates the number of

foregoing definition of ''small business'' greatly overstates the number of radio and television broadcast stations that are small businesses and is not suitable for purposes of determining the impact of the new rules on small business, we did not propose an alternative definition in the IRFA. Accordingly, for purposes of this *Report and Order,* we utilize the SBA's definition in determining the number of small businesses to which the rules apply, but we reserve the right to adopt a more suitable definition of ''small business'' as applied to radio and television broadcast stations and to consider further the issue of the number of small entities that are radio and television broadcasters in the future. Further, in this RFA, we will identify the different classes of small radio and television stations that may be impacted by the rules adopted in this *Report and Order.*

22. *Commercial Radio and Television Services:* The proposed rules and policies adopted in this *Report and Order* will apply to full service television broadcasting licensees, radio broadcasting licensees, potential licensees of either service and may have an effect on FM and TV translators stations as well as low power TV stations (''LPTV''). The rules will also apply to full service television stations and may have an effect on TV translator facilities and low power TV stations (''LPTV''). The SBA defines a television broadcasting station that has no more than $10.5 million in annual receipts as a small business.[9] Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services.[10] Included in this industry are commercial, religious, educational, and other television stations.[11] Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials.[12] Separate establishments primarily engaged in producing taped television program materials are classified under another SIC number.[13] There were 1,509 television stations operating in the nation in 1992.[14] That number has remained fairly constant as indicated by the approximately 1,560 operating television broadcasting stations in the nation as of June, 1997.[15] For 1992 [16] the number of television stations that produced less than $10.0 million in revenue was 1,155 establishments.[17]

23. Additionally, the SBA defines a radio broadcasting station that has no more than $5 million in annual receipts as a small business.[18] A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public.[19] Included in this industry are commercial religious, educational, and other radio stations.[20] Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce radio program materials are similarly included.[21] However, radio stations which are separate establishments and are primarily engaged in producing radio program material are classified under another SIC number.[22] The 1992 Census indicates that 96 percent (5,861 of 6,127) radio station establishments produced less than $5 million in revenue in 1992.[23] Official Commission records indicate that 11,334 individual radio stations were operating in 1992.[24] As of June, 1997 official Commission records indicate that 12,177 radio stations were operating.[25]

24. Thus, the proposed rules will affect approximately 1,560 television stations; approximately 1,201 of those stations are considered small businesses. [26] Additionally, the proposed rules will affect 12,177 radio stations, approximately 11,689 of which are small businesses. [27] These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-television or non-radio affiliated companies. We recognize that the proposed rules may also impact minority and women owned stations, some of which may be small entities. In 1995, minorities owned and

radio and television broadcast stations that are small businesses and is not suitable for purposes of determining the impact of the proposals on small radio and television stations. However, for purposes of this *Report and Order,* we utilize the SBA's definition in determining the number of small businesses to which the proposed rules would apply, but we reserve the right to to adopt a more suitable definition of ''small business'' as applied to radio and television broadcast stations or other entities subject to the rules adopted in this *Report and Order* and to consider further the issue of the number of small entities that are radio and television broadcasters or other small media entities in the future. *See Report and Order* in MM Docket 93–48 (*Children's Television Programming*), 11 FCC Rcd 10660, 10737–38, 61 FR 43981 (August 27, 1996), citing 5 U.S.C. 601 (3). In our *Notice of Inquiry* in GN Docket No. 96–113B, *In the matter of Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses,* 11 FCC Rcd 6280, 61 FR 33066 (June 26, 1996), we requested commenters to provide profile data about small telecommunications businesses in particular services, including television and radio, and the market entry barriers they encounter, and we also sought comment as to how to define small businesses for purposes of implementing Section 257 of the Telecommunications Act of 1996, which requires us to identify market entry barriers and to prescribe regulations to eliminate those barriers. Additionally, in our *Order and Notice of Proposed Rulemaking in MM Docket 96–16, In the Matter of Streamlining Broadcast EEO Rules and Policies, Vacating the EEO Forfeiture Policy Statement and Amending Section 1.80 of the Commission's Rules to Include EEO Forfeiture Guidelines,* 11 FCC Rcd 5154, 61 FR 9964 (March 12, 1996), we invited comment as to whether relief should be afforded to stations: (1) based on small staff and what size staff would be considered sufficient for relief, e.g., 10 or fewer full-time employees; (2) based on operation in a small market; or (3) based on operation in a market with a small minority work force.

[9] 13 CFR 121.201, Standard Industrial Code (SIC) 4833 (1996).

[10] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications and Utilities, Establishment and Firm Size, Series UC92-S–1, Appendix A–9 (1995).

[11] *Id. See* Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual (1987), at 283, which describes ''Television Broadcasting Stations (SIC Code 4833) as:

Establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational and other television stations. Also included here are establishments primarily engaged in television broadcasting and which produce taped television program materials.

[12] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications and Utilities, Establishment and Firm Size, Series UC92-S–1, Appendix A–9 (1995).

[13] Id. SIC 7812 (Motion Picture and Video Tape Production); SIC 7922 (Theatrical Producers and Miscellaneous Theatrical Services (producers of live radio and television programs).

[14] FCC News Release No. 31327, January 13, 1993; Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, *supra* note 78, Appendix A–9.

[15] FCC News Release No. 75604, July 31, 1997.

[16] Census for Communications' establishments are performed every five years ending with a ''2'' or ''7''. *See* Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, *supra* note 78, III.

[17] The amount of $10 million was used to estimate the number of small business establishments because the relevant Census categories stopped at $9,999,999 and began at $10,000,000. No category for $10.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information.

[18] 13 CFR 121.201, SIC 4832.

[19] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, supra note 78, Appendix A–9.

[20] *Id.*

[21] *Id.*

[22] *Id.*

[23] The Census Bureau counts radio stations located at the same facility as one establishment. Therefore, each co-located AM/FM combination counts as one establishment.

[24] FCC News Release No. 31327, January 13, 1993.

[25] FCC News Release No. 77504, July 31, 1997.

[26] We use the 77 percent figure of TV stations operating at less than $10 million for 1992 and apply it to the 1997 total of 1551 TV stations to arrive at 1,194 stations categorized as small businesses.

[27] We use the 96% figure of radio station establishments with less than $5 million revenue from the Census data and apply it to the 12,135 individual station count to arrive at 11,649 individual stations as small businesses.

controlled 37 (3.0%) of 1,221 commercial television stations and 293 (2.9%) of the commercial radio stations in the United States.[28] According to the U.S. Bureau of the Census, in 1987 women owned and controlled 27 (1.9%) of 1,342 commercial and non-commercial television stations and 394 (3.8%) of 10,244 commercial and non-commercial radio stations in the United States.[29] We recognize that the numbers of minority and women broadcast owners may have changed due to an increase in license transfers and assignments since the passage of the 1996 Act.

25. It should also be noted that the foregoing estimates do not distinguish between network-affiliated[30] stations and independent stations. As of April 1996, the BIA Publications, Inc. Master Access Television Analyzer Database indicates that about 73% of all commercial television stations were affiliated with the ABC, CBS, NBC, Fox, UPN, or WB networks. Moreover, 7% of those affiliates have secondary affiliations.[31]

26. There are currently 4991 TV translators, and 2001 LPTV stations which may be affected by the new rules, if they decide to convert to digital television.[32] The FCC does not collect financial information of any broadcast facility and the Department of Commerce does not collect financial information on these broadcast facilities. We will assume for present purposes, however, that most, if not all, LPTV stations and translator stations, could be classified as small businesses, if considered by themselves. Thus, translator stations generally can be considered affiliates, as that term is defined in the SBA regulations, with full service stations. Given this situation, these stations would likely have annual revenues that exceed the SBA maximum to be designated as small businesses.

27. In addition to owners of operating radio and television stations, any entity who seeks or desires to obtain a television or radio broadcast license may be affected by the proposals contained in this item. The number of entities that may seek to obtain a television or radio broadcast license is unknown.

28. Additionally, the proposed changes to the cable/MDS cross-ownership attribution rule will apply to cable and MDS entities. The SBA has developed a definition of small entities for cable and other pay television services under Standard Industrial Classification 4841 (SIC 4841), which covers subscription television services, which includes all such companies with annual gross revenues of $11 million or less.[33] This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau, there were 1,323 such cable and other pay television services generating less than $11 million in revenue that were in operation for at least one year at the end of 1992.[34] This figure is overinclusive since it includes other pay television services, not only cable and MDS.

29. *Alternative Classification of Small Stations.* An alternative way to classify small radio and television stations is the number of employees. The Commission currently applies a standard based on the number of employees in administering its Equal Employment Opportunity (EEO) for broadcasting.[35] Thus, radio or television stations with fewer than five full-time employees are exempted from certain EEO reporting and record-keeping requirements.[36]

30. *Cable Systems.* The Communications Act contains a definition of a small cable system operator, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.''[37] The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 617,000 subscribers is deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate.[38] Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals 1,450.[39] Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would

[28] *Minority Commercial Broadcast Ownership in the United States,* U.S. Dep't of Commerce, National Telecommunications and Information Administration, The Minority Telecommunications Development Program (''MTDP'') (April 1996). MTDP considers minority ownership as ownership of more than 50% of a broadcast corporation's stock, voting control in a broadcast partnership, or ownership of a broadcasting property as an individual proprietor. *Id.* The minority groups included in this report are Black, Hispanic, Asian, and Native American.

[29] *See* Comments of American Women in Radio and Television, Inc. in MM Docket No. 94–149 and MM Docket No. 91–140, at 4 n.4 (filed May 17, 1995), citing 1987 Economic Censuses, *Women-Owned Business,* WB87–1, U.S. Dep't of Commerce, Bureau of the Census, August 1990 (based on 1987 Census). After the 1987 Census report, the Census Bureau did not provide data by particular communications services (four-digit Standard Industrial Classification (SIC) Code), but rather by the general two-digit SIC Code for communications (#48). Consequently, since 1987, the U.S. Census Bureau has not updated data on ownership of broadcast facilities by women, nor does the FCC collect such data. However, we sought comment on whether the Annual Ownership Report Form 323 should be amended to include information on the gender and race of broadcast license owners. *Policies and Rules Regarding Minority and Female Ownership of Mass Media Facilities, Notice of Proposed Rulemaking,* 10 FCC Rcd 2788, 2797, 61 FR 6068 (February 1, 1995).

[30] In this context, ''affiliation'' refers to any local broadcast television station that has a contractural arrangement with aprogramming network to carry the network's signal. This definition of affiliated station includes both stations owned and operated by a network and stations owned by other entities.

[31] Secondary affilations are secondary to the primary affiliation of the station and generally afford the affiliate additional choice of programming.

[32] FCC News Release No. 72712, March 6, 1997, Broadcast Station Totals as of February 28, 1997.

[33] 13 CFR 121.201.

[34] 1992 Census, *supra,* at Firm Size 1–123. *See Memorandum Opinion and Order and Notice of Proposed Rule Making* in MM Docket No. 92–266 and CS Docket No. 96–157, 11 FCC Rcd 9517, 953, 61 FR 45356 (1996).

[35] The Commission's definition of a small broadcast station for purposes of applying its EEO rules was adopted prior to the requirement of approval by the SBA pursuant to Section 3(a) of the *Small Business Act,* 15 U.S.C. Section 632, as amended by Section 222 of the *Small Business Credit and Business Opportunity Enhancement Act of 1992,* Public Law 102–366, Section 222(b)(1), 106 Stat. 999 (1992), as further amended by the *Small Business Administration Reauthorization and Amendments Act of 1994,* Public Law 103–403, Section 301, 108 Stat. 4187 (1994). However, this definition was adopted after public notice and opportunity for comment. *See Report and Order* in Docket No. 18244, 23 FCC 2d 430 (1970), 35 FR 8925 (June 6, 1970).

[36] *See, e.g.,* 47 CFR Section 73.3612 (Requirement to file annual employment reports on FCC Form 395 applies to licensees with five or more full-time employees); *First Report and Order* in Docket No. 21474 (*Amendment of Broadcast Equal Employment Opportunity Rules and FCC Form 395*), 70 FCC 2d 1466 (1979), 50 FR 50329 (December 10, 1985). The Commission is currently considering how to decrease the administrative burdens imposed by the EEO rule on small stations while maintaining the effectiveness of our broadcast EEO enforcement. *Order and Notice of Proposed Rule Making in MM Docket 96–16 (Streamlining Broadcast EEO Rules and Policies, Vacating the EEO Forfeiture Policy Statement and Amending Section 1.80 of the Commission's Rules to Include EEO Forfeiture Guidelines),* 11 FCC Rcd 5154 (1996), 61 FR 09964 (March 12, 1996). One option under consideration is whether to define a small station for purposes of affording such relief as one with ten or fewer full-time employees.

[37] 47 U.S.C. § 543(m)(2).

[38] 47 CFR 76.1403(b).

[39] Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

qualify as small cable operators under the definition in the Communications Act.

31. The Commission has developed its own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a ''small cable company,'' is one serving fewer than 400,000 subscribers nationwide.[40] Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable system operators at the end of 1995.[41] Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators that may be affected by the proposal adopted in this Notice. Under the Commission's rules, a small cable system is a cable system with 15,000 or fewer subscribers owned by a cable company serving 400,000 or fewer subscribers over all of its cable systems.

32. *MDS.* The Commission redefined the definition of ''small entity'' for the auction of MDS as an entity that together with its affiliates has average gross annual revenues that are not more than $40 million for the preceding three calendar years.[42] This definition of a small entity in the context of MDS auctions has been approved by the SBA.[43]

33. The Commission completed its MDS auction in March 1996 for authorizations in 493 basic trading areas (BTAs). Of 67 winning bidders, 61 qualified as small entities. Five bidders indicated that they were minority-owned and four winners indicated that they were women-owned businesses. MDS is a service heavily encumbered with approximately 1,573 previously authorized and proposed MDS facilities and information available to us indicates that no MDS facility generates revenue in excess of $11 million annually. We conclude that for purposes of this FRFA, there are approximately 1,634 small MDS providers as defined by the SBA and the Commission's auction rules.

34. *Newspapers.* Some of the proposals delineated above may also apply to daily newspapers that hold or seek to acquire an interest in a broadcast station that would be treated as attributable under the proposals. A newspaper is an establishment that is primarily engaged in publishing newspapers, or in publishing and printing newspapers.[44] The SBA defines a newspaper that has 500 or fewer employees as a small business.[45] Based on data from the U.S. Census Bureau, there are a total of approximately 6,715 newspapers, and 6,578 of those meet the SBA's size definition.[46] However, we recognize that some of these newspapers may not be independently owned and operated and, therefore, would not be considered a ''small business concern'' under the Small Business Act.[47] We are unable to estimate at this time how many newspapers are affiliated with larger entities. Moreover, the proposal would apply only to daily newspapers, and we are unable to estimate how many newspapers that meet the SBA's size definition are daily newspapers. Consequently, we estimate that there are fewer than 6,578 newspapers that may be affected by the proposed rules.

*D. Description of Recordkeeping and Other Projected Compliance Requirements*

35. Applicants filing a one-step license application will be required to provide a reduced amount of information as compared to that currently required for a construction permit. This information may consist of a radiofrequency radiation analysis to insure public safety, directional antenna information to insure protection to other stations, etc. as set forth Appendices C and D of the *Report and Order.* The information required in Appendices C and D with a one-step license application generally is the minimum necessary for the Commission to verify compliance with its rules and regulations.

36. It must be noted that a permittee or licensee is not required to subject itself to the new one-step license requirements if it chooses not to do so. Any permittee or licensee may, at its option, use the present two-step process of obtaining a construction permit, followed by the filing of a license application once construction is complete. However, in many instances, the new procedures will reduce the time and expense required to implement certain minor changes to broadcast stations.

37. Most permittees and licensees retain professional consulting engineers or legal counsel, or both in preparing construction permit applications. We do not expect this to change significantly by the adoption of the new rules and procedures. However, the time needed for the preparation of the simplified one-step applications will be reduced, translating into time and money savings for the broadcast applicant.

*E. Steps Taken To Minimize Burden on Small Entities and Significant Alternatives Considered and Rejected*

38. Pursuant to the RFA, 5 U.S.C. § 603(c), we have considered whether there is a significant economic impact on a substantial number of small entities. The action taken does not impose additional burdens on small entities. Indeed, the opposite is true. The minor change application filing fee will be eliminated for applicants which meet the criteria for eligibility for applicants which meet the criteria for eligibility in 47 CFR 73.1690 as set forth below. One-step license applications also require that lesser amounts of information be submitted to the Commission as compared to a construction permit application. The rule and policy changes will have a positive economic impact, as eligible entities, including small entities, will be able to increase their service or make certain modifications without prior Commission authorization and with fewer legal challenges. All entities will still be able to file informal objections against a one-step license application, just as they may do now against a construction permit application. This should address the concerns of those commenters who sought a special notice and comment period for each one-step license application.

**F. Report to Congress**

39. The Commission shall send a copy of this Final Regulatory Flexibility Analysis along with this *Report and Order* in a report to Congress pursuant to Section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, codified at 5 U.S.C. Section 801(a)(1)(A). A copy of this RFA will

[40] 47 CFR 76.901(e). The Commission developed this definition based on its determinations that a small cable system operator is one with annual revenues of $100 million or less. *Implementation of Sections of the 1992 Cable Act: Rate Regulation, Sixth Report and Order and Eleventh Order on Reconsideration,* 10 FCC Rcd 7393, 60 FR 10534 (February 27, 1995).

[41] Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

[42] 47 CFR 21.961(b)(1).

[43] *See Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding,* MM Docket No. 94–31 and PP Docket No. 93–253, Report and Order, 10 FCC Rcd 9589, 60 FR 36524 (July 17, 1995).

[44] 13 CFR 121.201 (SIC 2711).

[45] *Id.*

[46] U.S. Small Business Administration 1992 Economic Census Industry and Enterprise Report, Table 3, SIC Code 2711 (Bureau of the Census data adapted by the Office of Advocacy of the U.S. Small Business Administration).

[47] 15 U.S.C. § 632.

also be published in the **Federal Register**.

**Ordering Clauses**

40. Accordingly, it is ordered that pursuant to the authority contained in Sections 4(i), 303(r), and 307(c) of the Communications Act of 1934, as amended, 47 CFR Parts 1, 73, and 74 are amended as set forth below.

41. It is further ordered that the requirements and regulations established in this *Report and Order* will become effective December 1, 1997 or upon receipt by Congress of a report in compliance with the Contract with America Advancement Act of 1996, Public Law 104–121, whichever date is later.

42. For further information contact Dale Bickel of the Audio Services Division, Mass Media Bureau at (202) 418–2720, or by e-mail at dbickel@fcc.gov.

**List of Subjects**

*47 CFR Part 1*

Practice and procedure.

*47 CFR Part 73*

Radio broadcasting, Television broadcasting.

*47 CFR Part 74*

Experimental Radio, Auxiliary, Special Broadcast and Other Program Distributional Services.

Federal Communications Commission

**Shirley Suggs,**

*Chief, Publications Branch.*

**Rule Changes**

Parts 1, 73, and 74 of title 47 are amended to read as follows:

## PART 1—PRACTICE AND PROCEDURE

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

**Authority:** 47 U.S.C. 154, 158.

2. Section 1.1104 is amended by adding entries in the table for 1. b.(1), 2. b.(1), and 3. b.(1) to read as follows:

**§ 1.1104 Schedule of charges for applications and other filings in the mass media services.**

| Action | FCC Form No. | Fee amount | Payment type code | Address |
|---|---|---|---|---|
| * * * | * | * | * | * |
| 1. * * * b. * * * (1) Main Studio Request. | 159 & Corres. ..... | 690 | MPT | Federal Communications Commission, Mass Media Services, P.O. Box 358165, Pittsburgh, PA 15251–5165. |
| * * * | * | * | * | * |
| 2. * * * b. * * * (1) Main Studio Request. | 159 & Corres. ..... | 690 | MPT | Federal Communications Commission, Mass Media Services, P.O. Box 358190, Pittsburgh, PA 15251–5190. |
| * * * | * | * | * | * |
| 3. * * * b. * * * (1) Main Studio Request. | 159 & Corres. ..... | 690 | MPT | Federal Communications Commission, Mass Media Services, P.O. Box 358195, Pittsburgh, PA 15251–5195. |
| * * * | * | * | * | * |

## PART 73—RADIO BROADCAST SERVICES

3. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, 336.

4. Section 73.14 is amended by adding the following new definition in alphabetical order to read as follows:

**§ 73.14 AM Broadcast definitions.**

* * * * *

*Auxiliary facility*. An auxiliary facility is an AM antenna tower(s) separate from the main facility's antenna tower(s), permanently installed at the same site or at a different location, from which an AM station may broadcast for short periods without prior Commission authorization or notice to the Commission while the main facility is not in operation (*e.g.*, where tower work necessitates turning off the main antenna or where lightning has caused damage to the main antenna or transmission system) (*See* § 73.1675).

* * * * *

5. Section 73.310(a) is amended by adding the following definitions in alphabetical order to read as follows:

**§ 73.310 FM technical definitions.**

* * * * *

*Auxiliary facility*. An auxiliary facility is an antenna separate from the main facility's antenna, permanently installed on the same tower or at a different location, from which a station may broadcast for short periods without prior Commission authorization or notice to the Commission while the main facility is not in operation (*e.g.*, where tower work necessitates turning off the main antenna or where lightning has caused damage to the main antenna or transmission system) (*See* § 73.1675).

* * * * *

*Composite antenna pattern*. The composite antenna pattern is a relative field horizontal plane pattern for 360 degrees of azimuth, for which the value at a particular azimuth is the greater of the horizontally polarized or vertically polarized component relative field values. The composite antenna pattern is normalized to a maximum of unity (1.000) relative field.

* * * * *

6. Section 73.316 is amended by adding new paragraph (c)(9), revising paragraph (e), and removing paragraphs (f), (g), (h), and (i) to read as follows:

**§ 73.316 FM antenna systems.**

* * * * *

(c) * * *

(9) In the case of an application for license upon completion of antenna construction for a station authorized pursuant to § 73.215 or § 73.509, a showing that the root mean square (RMS) of the measured composite antenna pattern (encompassing both the horizontally and vertically polarized radiation components (in relative field)) is at least 85% of the RMS of the

authorized composite directional antenna pattern (in relative field). The RMS values, for a composite antenna pattern specified in relative field values, may be determined from the following formula:

RMS = the square root of:

$$\frac{[(\text{relative field value 1})^2 + (\text{relative field value 2})^2 + \cdots + (\text{last relative field value})^2]}{\text{number of relative field values summed}}$$

where the relative field values are taken from at least 36 evenly spaced radials for the entire 360 degrees of azimuth. The application for license must also demonstrate that coverage of the community of license by the 70 dBu contour is maintained for stations authorized pursuant to § 73.215 on Channels 221 through 300, as required by § 73.315(a), while noncommercial educational stations operating on Channels 201 through 220 must show that the 60 dBu contour covers at least a portion of the community of license.

* * * * *

(e) Where an FM licensee or permittee proposes to mount its antenna on an AM antenna tower, or locate within 3.2 km of an AM antenna tower, the FM licensee or permittee must comply with § 73.1692.

7. Section 73.525 is amended by adding new paragraph (e)(1)(vii) to read as follows:

**§ 73.525 TV Channel 6 protection.**

* * * * *

(e) * * *

(1) * * *

(vii) In cases where the predicted interference area to Channel 6 television from a noncommercial educational FM station will be located within the 90 dBu F(50,50) contour of the television Channel 6 station, the location of the FM interfering contour must be determined using the assumption that the Channel 6 field strength remains constant at 90 dBu everywhere within the 90 dBu TV contour. The FM to Channel 6 U/D signal strength ratio specified in § 73.599 corresponding to the Channel 6 TV field strength of 90 dBu shall be used.

* * * * *

8. Section 73.681 is amended by adding the following new definition in alphabetical order to read as follows:

**§ 73.681 Definitions.**

* * * * *

*Auxiliary facility*. An auxiliary facility is an antenna separate from the main facility's antenna, permanently installed on the same tower or at a different location, from which a station may broadcast for short periods without prior Commission authorization or notice to the Commission while the main facility is not in operation (*e.g.*, where tower work necessitates turning off the main antenna or where lightning has caused damage to the main antenna or transmission system) (*See* § 73.1675).

* * * * *

9. Section 73.685 is amended by revising paragraph (h) to read as follows:

**§ 73.685 Transmitter location and antenna system.**

* * * * *

(h) Where a TV licensee or permittee proposes to mount an antenna on an AM antenna tower, or locate within 3.2 km of an AM antenna tower, the TV licensee or permittee must comply with § 73.1692.

10. Section 73.1125 is amended by revising paragraph (b)(2) to read as follows.

**§ 73.1125 Station main studio location.**

* * * * *

(b) * * *

(2) Written authority to locate a main studio outside a station's principal community contour for the first time must be obtained from the Audio Services Division, Mass Media Bureau for AM and FM stations, or the Television Branch, Video Services Division, Mass Media Bureau for television stations before the studio may be moved to that location. Where the main studio is already authorized at a location outside the station's principal community contour, and the licensee or permittee desires to specify a new location also located outside the station's principal community contour, written authority must also be received from the Commission prior to the relocation of the main studio. Authority for these changes may be requested by filing a letter with an explanation of the proposed changes with the appropriate division. Licensees or permittees should be aware that the filing of a letter request for written authority to locate the main studio outside the principal community contour does not imply approval of the relocation request, because each request is addressed on a case-by-case basis. A filing fee is required for commercial AM, FM, or TV licensees or permittees filing a letter request under this section (*see* § 1.1104).

* * * * *

11. Section 73.1620 is amended by revising paragraph (a)(2), adding paragraphs (a)(3) and (a)(4), and revising paragraph (b) to read as follows:

**§ 73.1620 Program tests.**

(a) * * *

(2) The permittee of an FM station with a directional antenna system must file an application for license on FCC Form 302–FM requesting authority to commence program test operations at full power with the FCC in Washington, D.C. This license application must be filed at least 10 days prior to the date on which full power operations are desired to commence. The application for license must contain any exhibits called for by conditions on the construction permit. The staff will review the license application and the request for program test authority and issue a letter notifying the applicant whether full power operation has been approved. Upon filing of the license application and related exhibits, and while awaiting approval of full power operation, the FM permittee may operate the directional antenna at one half (50%) of the authorized effective radiated power. Alternatively, the permittee may continue operation with its existing licensed facilities pending the issuance of program test authority at the full effective radiated power by the staff.

(3) FM licensees replacing a directional antenna pursuant to § 73.1690 (c)(2) without changes which require a construction permit (*see* § 73.1690(b)) may immediately commence program test operations with the new antenna at one half (50%) of the authorized ERP upon installation. If the directional antenna replacement is an EXACT duplicate of the antenna being replaced (i.e., same manufacturer, antenna model number, AND measured composite pattern), program tests may commence with the new antenna at the full authorized power upon installation. The licensee must file a modification of license application on FCC Form 302–FM within 10 days of commencing operations with the newly installed antenna, and the license application must contain all of the exhibits required by § 73.1690(c)(2). After review of the modification-of-license application to cover the antenna change, the

Commission will issue a letter notifying the applicant whether program test operation at the full authorized power has been approved for the replacement directional antenna.

(4) The permittee of an AM station with a directional antenna system must file an application for license on FCC Form 302–AM requesting program test authority with the FCC in Washington, DC at least ten (10) days prior to the date on which it desires to commence program test operations. The application must provide an AM directional antenna proof of performance, containing the exhibits required by § 73.186. After review of the application to cover the construction permit, the Commission will issue a letter notifying the applicant whether program test operations may commence. Program test operations may not commence prior to issuance of staff approval.

(b) The Commission reserves the right to revoke, suspend, or modify program tests by any station without right of hearing for failure to comply adequately with all terms of the construction permit or the provisions of § 73.1690(c) for a modification of license application, or in order to resolve instances of interference. The Commission may, at its discretion, also require the filing of a construction permit application to bring the station into compliance the Commission's rules and policies.

* * * * *

12. Section 73.1675 is amended by revising paragraph (c) to read as follows:

**§ 73.1675 Auxiliary facilities.**

* * * * *

(c) (1) Where an FM or TV licensee proposes to use a formerly licensed main facility as an auxiliary facility, or proposes to modify a presently authorized auxiliary facility, and no changes in the height of the antenna radiation center are required in excess of the limits in § 73.1690(c)(1), the FM or TV licensee may apply for the proposed auxiliary facility by filing a modification of license application. The modified auxiliary facility must operate on the same channel as the licensed main facility. An exhibit must be provided with this license application to demonstrate compliance with § 73.1675(a). All FM and TV licensees may request a decrease from the authorized facility's ERP in the license application. An FM or TV licensee may also increase the ERP of the auxiliary facility in a license modification application, provided the application contains an analysis demonstrating compliance with the Commission's radiofrequency radiation guidelines, and an analysis showing that the auxiliary facility will comply with § 73.1675(a). Auxiliary facilities mounted on an AM antenna tower must also demonstrate compliance with § 73.1692 in the license application.

(2) Where an AM licensee proposes to use a former licensed main facility as an auxiliary facility with an ERP less than or equal to the ERP specified on the former main license, the AM station may apply to license the proposed auxiliary facility by filing a modification of license application on Form 302-AM. The proposed auxiliary facilities must have been previously licensed on the same frequency as the present main facility. The license application must contain an exhibit to demonstrate compliance with § 73.1675(a).

13. Section 73.1690 is amended by revising paragraphs (b) and (c) to read as follows:

**§ 73.1690 Modification of transmission systems.**

* * * * *

(b) The following changes may be made only after the grant of a construction permit application on FCC Form 301 for commercial stations or Form 340 for noncommercial educational stations:

(1) Any construction of a new tower structure for broadcast purposes, except for replacement of an existing tower with a new tower of identical height and geographic coordinates.

(2) Any change in station geographic coordinates, including coordinate corrections. FM and TV directional stations must also file a construction permit application for any move of the antenna to another tower structure located at the same coordinates.

(3) Any change which would require an increase along any azimuth in the composite directional antenna pattern of an FM station from the composite directional antenna pattern authorized (*see* § 73.316), or any increase from the authorized directional antenna pattern for a TV station (*see* § 73.685).

(4) Any change in the directional radiation characteristics of an AM directional antenna system. *See* § 73.45 and § 73.150.

(5) Any decrease in the authorized power of an AM station or the ERP of a TV station, or any decrease or increase in the ERP of an FM commercial station, which is intended for compliance with the multiple ownership rules in § 73.3555.

(6) For FM noncommercial educational stations, any of the following:

(i) Any increase in the authorized maximum ERP, whether horizontally or vertically polarized, for a noncommercial educational FM station operating on Channels 201 through 220, or a Class D FM station operating on Channel 200..

(ii) For those FM noncommercial educational stations on Channels 201 to 220, or a Class D FM station operating on Channel 200, which are within the separation distances specified in Table A of § 73.525 with respect to a Channel 6 television station, any increase in the horizontally or vertically polarized ERP from the presently authorized ERP.

(iii) For those FM noncommercial educational stations on Channels 201 through 220 which are located within the separation distances in § 73.525 with respect to a Channel 6 television station, or a Class D FM station operating on Channel 200, any decrease in the presently authorized horizontal effective radiated power which would eliminate the horizontal ERP to result in use of vertical ERP only.

(iv) For those FM noncommercial educational stations which employ separate antennas for the horizontal ERP and the vertical ERP, mounted at different heights, the station may not increase or decrease either the horizontal ERP or the vertical ERP without a construction permit.

(7) Any increase in the authorized ERP of a television station, FM commercial station, or noncommercial educational FM station, except as provided for in §§ 73.1690(c)(4), (c)(5), or (c)(7), or § 73.1675(c)(1) in the case of auxiliary facilities.

(8) A commercial TV or noncommercial educational TV station operating on Channels 14 or Channel 69 may increase its horizontally or vertically polarized ERP only after the grant of a construction permit. A television station on Channels 15 through 21 within 341 km of a cochannel land mobile operation, or 225 km of a first-adjacent channel land mobile operation, must also obtain a construction permit before increasing the horizontally or vertically polarized ERP (*see* Part 74, § 74.709(a) and (b) for tables of urban areas and corresponding reference coordinates of potentially affected land mobile operations).

(c) The following FM and TV station modifications may be made without prior authorization from the Commission. A modification of license application must be submitted to the Commission within 10 days of commencing program test operations pursuant to § 73.1620. With the exception of applications filed solely pursuant to Sections (c)(6), (c)(9), or (c)(10), the modification of license application must contain an exhibit demonstrating compliance with the

Commission's radiofrequency radiation guidelines. In addition, except for applications solely filed pursuant to Sections (c)(6) or (c)(9), where the installation is located within 3.2 km of an AM tower or is located on an AM tower, an exhibit demonstrating compliance with § 73.1692 is also required.

(1) Replacement of an omnidirectional antenna with one of the same or different number of antenna bays, provided that the height of the antenna radiation center is not more than 2 meters above or 4 meters below the authorized values. Any concurrent change in ERP must comply with § 73.1675(c)(1), 73.1690(4), (c)(5), or (c)(7). Program test operations at the full authorized ERP may commence immediately upon installation pursuant to § 73.1620(a)(1).

(2) Replacement of a directional FM antenna, where the measured composite directional antenna pattern does not exceed the licensed composite directional pattern at any azimuth, where no change in effective radiated power will result, and where compliance with the principal coverage requirements of § 73.315(a) will be maintained by the measured directional pattern. The antenna must be mounted not more than 2 meters above or 4 meters below the authorized values. The modification of license application on Form 302-FM to cover the antenna replacement must contain all of the data in the following sections (i) through (v). Program test operations at one half (50%) power may commence immediately upon installation pursuant to § 73.1620(a)(3). However, if the replacement directional antenna is an exact replacement (i.e., no change in manufacturer, antenna model number, AND measured composite antenna pattern), program test operations may commence immediately upon installation at the full authorized power.

(i) A measured directional antenna pattern and tabulation on the antenna manufacturer's letterhead showing both the horizontally and vertically polarized radiation components and demonstrating that neither of the components exceeds the authorized composite antenna pattern along any azimuth.

(ii) Contour protection stations authorized pursuant to § 73.215 or § 73.509 must attach a showing that the RMS (root mean square) of the composite measured directional antenna pattern is 85% or more of the RMS of the authorized composite antenna pattern. *See* § 73.316(c)(9). If this requirement cannot be met, the licensee may include new relative field values with the license application to reduce the authorized composite antenna pattern so as to bring the measured composite antenna pattern into compliance with the 85% requirement.

(iii) A description from the manufacturer as to the procedures used to measure the directional antenna pattern. The antenna measurements must be performed with the antenna mounted on a tower, tower section, or scale model equivalent to that on which the antenna will be permanently mounted, and the tower or tower section must include transmission lines, ladders, conduits, other antennas, and any other installations which may affect the measured directional pattern.

(iv) A certification from a licensed surveyor that the antenna has been oriented to the proper azimuth.

(v) A certification from a qualified engineer who oversaw installation of the directional antenna that the antenna was installed pursuant to the manufacturer's instructions.

(3) A directional TV station on Channels 2 through 13 or 22 through 68, or a directional TV station on Channels 15 through 21 which is in excess of 341 km (212 miles) from a cochannel land mobile operation or in excess of 225 km (140 miles) from a first-adjacent channel land mobile operation (*see* Part 74, § 74.709(a) and (b) for tables of urban areas and reference coordinates of potentially affected land mobile operations), may replace a directional TV antenna by a license modification application, if the proposed horizontal theoretical directional antenna pattern does not exceed the licensed horizontal directional antenna pattern at any azimuth and where no change in effective radiated power will result. The modification of license application on Form 302–TV must contain all of the data set forth in § 73.685(f).

(4) Commercial and noncommercial educational FM stations operating on Channels 221 through 300 (except Class D), NTSC TV stations operating on Channels 2 through 13 and 22 through 68, and TV stations operating on Channels 15 through 21 that are in excess of 341 km (212 miles) from a cochannel land mobile operation or in excess of 225 km (140 miles) from a first-adjacent channel land mobile operation [*see* Part 74, § 74.709(a) and (b) for tables of urban areas and reference coordinates of potentially affected land mobile operations], which operate omnidirectionally, may increase the vertically polarized effective radiated power up to the authorized horizontally polarized effective radiated power in a license modification application. Noncommercial educational FM licensees and permittees on Channels 201 through 220, that do not use separate antennas mounted at different heights for the horizontally polarized ERP and the vertically polarized ERP, and are located in excess of the separations from a Channel 6 television station listed in Table A of § 73.525(a)(1), may also increase the vertical ERP, up to (but not exceeding) the authorized horizontally polarized ERP via a license modification application. Program test operations may commence at full power pursuant to § 73.1620(a)(1).

(5) Those Class A FM commercial stations which were permitted to increase ERP pursuant to MM Docket No. 88–375 by a modification of license application remain eligible to do so, provided that the station meets the requirements of § 73.1690 (c)(1) and is listed on one of the Public Notices as authorized to increase ERP, or by a letter from the Commission's staff authorizing the change. These Public Notices were released on November 3, 1989; November 17, 1989; December 8, 1989; March 2, 1990; and February 11, 1991. The increased ERP must comply with the multiple ownership requirements of § 73.3555. Program test operations may commence at full power pursuant to § 73.1620(a)(1).

(6) FM contour protection stations authorized pursuant to § 73.215 which have become fully spaced under § 73.207 may file a modification of license application to delete the § 73.215 contour protection designation with an exhibit to demonstrate that the station is fully spaced in accordance with § 73.207. The contour protection designation will be removed upon grant of the license application. Applications filed under this rule section will be processed on a first come / first served basis with respect to conflicting FM commercial minor change applications and modification of license applications (including those filed pursuant to § 73.1690 (b) and (c)(6) and (c)(7)).

(7) FM omnidirectional commercial stations, and omnidirectional noncommercial educational FM stations operating on Channels 221 through 300 (except Class D), which are not designated as contour protection stations pursuant to § 73.215 and which meet the spacing requirements of § 73.207, may file a license modification application to increase ERP to the maximum permitted for the station

class, provided that any change in the height of the antenna radiation center remains in accordance with § 73.1690(c)(1). Program test operations may commence at full power pursuant to § 73.1620(a)(1). All of the following conditions also must be met before a station may apply pursuant to this section:

(i) The station may not be a ''grandfathered'' short-spaced station authorized pursuant to § 73.213 or short-spaced by a granted waiver of § 73.207;

(ii) If the station is located in or near a radio quiet zone, radio coordination zone, or a Commission monitoring station (*see* § 73.1030 and § 0.121(c)), the licensee or permittee must have secured written concurrence from the affected radio quiet zone, radio coordination zone, or the Commission's Compliance and Information Bureau in the case of a monitoring station, to increase effective radiated power PRIOR to implementation. A copy of that concurrence must be submitted with the license application to document that concurrence has been received;

(iii) The station does not require international coordination as the station does not lie within the border zones, or clearance has been obtained from Canada or Mexico for the higher power operation within the station's specified domestic class and the station complies with § 73.207(b)(2) and (3) with respect to foreign allotments and allocations;

(iv) The increased ERP will not cause the station to violate the multiple ownership requirements of § 73.3555.

(8) FM commercial stations and FM noncommercial educational stations may decrease ERP on a modification of license application provided that exhibits are included to demonstrate that all six of the following requirements are met:

(i) Commercial FM stations must continue to provide a 70 dBu principal community contour over the community of license, as required by § 73.315(a). Noncommercial educational FM stations must continue to provide a 60 dBu contour over at least a portion of the community of license. The 60 and 70 dBu contours must be predicted by use of the standard contour prediction method in § 73.313(b), (c), and (d).

(ii) For both commercial FM and noncommercial educational FM stations, the location of the main studio remains within the 70 dBu principal community contour, as required by § 73.1125, or otherwise complies with that rule. The 70 dBu contour must be predicted by use of the standard contour prediction method in § 73.313(b), (c), and (d).

(iii) For commercial FM stations only, there is no change in the authorized station class as defined in § 73.211.

(iv) For commercial FM stations only, the power decrease is not necessary to achieve compliance with the multiple ownership rule, § 73.3555.

(v) Commercial FM stations, noncommercial educational FM stations on Channels 221 through 300, and noncommercial educational FM stations on Channels 200 through 220 which are located in excess of the distances in Table A of § 73.525 with respect to a Channel 6 TV station, may not use this rule to decrease the horizontally polarized ERP below the value of the vertically polarized ERP.

(vi) Noncommercial educational FM stations on Channels 201 through 220 which are within the Table A distance separations of § 73.525, or Class D stations on Channel 200, may not use the license modification process to eliminate an authorized horizontally polarized component in favor of vertically polarized-only operation. In addition, noncommercial educational stations operating on Channels 201 through 220, or Class D stations on Channel 200, which employ separate horizontally and vertically polarized antennas mounted at different heights, may not use the license modification process to increase or decrease either the horizontal ERP or vertical ERP without a construction permit.

(9) The licensee of an AM, FM, or TV commercial station may propose to change from commercial to noncommercial educational on a modification of license application, provided that the application contains completed Sections II and IV of FCC Form 340. In addition, a noncommercial educational AM licensee, a TV licensee on a channel not reserved for noncommercial educational use, or an FM licensee on Channels 221 to 300 (except Class D FM) on a channel not reserved for noncommercial educational use, may apply to change from educational to commercial via a modification of license application, and no exhibits are required with the application. The change will become effective upon grant of the license application.

(10) Replacement of a transmission line with one of a different type or length which changes the transmitter operating power (TPO) from the authorized value, but not the ERP, must be reported in a license modification application to the Commission.

* * * * *

14. New § 73.1692 is added to read as follows:

**§ 73.1692 Broadcast station construction near or installation on an AM broadcast tower.**

Where a broadcast licensee or permittee proposes to mount a broadcast antenna on an AM station tower, or where construction is proposed within 0.8 km of an AM nondirectional tower or within 3.2 km of an AM directional station, the broadcast licensee or permittee is responsible for ensuring that the construction does not adversely affect the AM station, as follows:

(a) *Installations on an AM nondirectional tower.* During installation of the broadcast antenna and related equipment, the AM station shall determine operating power by the indirect method (*see* § 73.51). Upon the completion of the installation, antenna impedance measurements on the AM antenna shall be made, and, prior to or simultaneously with the filing of the license application covering the broadcast station installation, an application on FCC Form 302–AM (including a tower sketch of the installation) shall be filed with the Commission for the AM station to return to direct power measurement.

(b) *Installations on an AM directional array.* Prior to commencing construction, the broadcast permittee or licensee shall notify the AM station so that, if necessary, the AM station may determine operating power by the indirect method (*see* § 73.51) and request special temporary authority pursuant to § 73.1635 to operate with parameters at variance in order to maintain monitoring point field strengths within authorized limits. Both prior to the commencement of construction and upon completion of construction, a partial proof of performance (as defined by § 73.154) shall be conducted to establish that the AM array has not been adversely affected. Prior to or simultaneously with filing of the license application to cover the broadcast station construction, the results of the partial proof of performance shall be filed with the Commission on Form 302–AM.

(c) *Tower erections or modifications within 0.8 km of an AM nondirectional tower.* Prior to commencing the construction of tower modifications, or the erection of a new tower, within 0.8 km of an AM nondirectional tower, the broadcast permittee or licensee is required to notify the AM station so that the AM station may commence determining operating power by the indirect method (*see* § 73.51). The broadcast licensee or permittee shall be responsible for the installation and continued maintenance of detuning apparatus necessary to prevent adverse

effects on the radiation pattern of the AM station. Both prior to construction of the tower modifications and upon completion of construction, antenna impedance measurements of the AM station shall be made. In addition, sufficient field strength measurements taken at a minimum of 10 locations along each of 8 equally spaced radials, shall be made to establish that the AM radiation pattern is essentially omnidirectional. Prior or simultaneously with the filing of the application for license to cover this permit, the results of the impedance measurements and the field strength measurements shall be filed with the Commission on FCC Form 302–AM for the AM station to return to the direct method of power determination.

(d) *Tower erections or modifications within 3.2 km of an AM directional station.* Prior to commencing construction of tower modifications, or the erection of a new tower structure, within 3.2 km of an AM directional array, the broadcast permittee or licensee shall notify the AM station so that, if necessary, the AM station may determine operating power by the indirect method (*see* § 73.51) and request special temporary authority pursuant to § 73.1635 to operate with parameters at variance in order to maintain monitoring point field strengths within authorized limits. The broadcast licensee or permittee shall be responsible for the installation and continued maintenance of detuning apparatus necessary to prevent adverse effects upon the radiation pattern of the AM station. Both prior to the commencement of construction and upon completion of construction, a partial proof of performance (as defined by § 73.154) shall be conducted to establish that the AM array has not been adversely affected. Prior to or simultaneously with filing of the license application to cover the broadcast station construction, the results of the partial proof of performance shall be filed with the Commission on Form 302–AM.

15. Section 73.3500 is amended by removing the entry for ''Form 302'' and adding the following entries in the order of the form number to read as follows:

**§ 73.3500 Application and report forms.**

* * * * *

Form 302–AM—Application for AM Broadcast Station License

Form 302–TV—Application for Television Broadcast Station License

* * * * *

16. Section 73.3536 is amended by revising paragraph (b)(1) to read as follows:

**§ 73.3536 Application for license to cover construction permit.**

* * * * *

(b) * * *

(1)(i) Form 302–AM for AM stations, ''Application for New AM Station Broadcast License.''

(ii) Form 302–FM for FM stations, ''Application for FM Station License.''

(iii) Form 302–TV for television stations, ''Application for TV Station Broadcast License.''

* * * * *

17. Section 73.3537 is amended to read as follows:

**§ 73.3537 Application for license to use former main antenna as an auxiliary.**

*See* § 73.1675, *Auxiliary facility.*

18. Section 73.3538 is amended by revising the introductory text, the introductory text of paragraph (a), paragraphs (a)(1), (a)(2), and (a)(3), and by removing paragraphs (a)(5), (a)(6) and (a)(7) and adding paragraph (b)(3) to read as follows:

**§ 73.3538 Application to make changes in an existing station.**

Where prior authority is required from the FCC to make changes in an existing station, the following procedures shall be used to request that authority:

(a) An application for construction permit using the forms listed in § 73.3533 must be filed for authority to:

(1) Make any of the changes listed in § 73.1690(b).

(2) Change the hours of operation of an AM station, where the hours of operation are specified on the license or permit.

(3) Install a transmitter which has not been approved (type accepted) by the FCC for use by licensed broadcast stations.

* * * * *

(b) * * *

(3) Relocation of a main studio outside the principal community contour may require the filing and approval of a letter request for authority to make this change prior to implementation. *See* § 73.1125.

19. Section 73.3544 is amended by revising paragraph (a) to read as follows:

**§ 73.3544 Application to obtain a modified station license.**

* * * * *

(a) The changes specified in § 73.1690(c) may be made by the filing of a license application using the forms listed in § 73.3536(b)(1).

* * * * *

## PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER DISTRIBUTIONAL SERVICES

20. The authority citation for part 74 continues to read as follows:

**Authority:** 47 U.S.C. 154, 307, 554.

21. Section 74.780 is amended by adding the following entry in numerical order to read as follows:

**§ 74.780 Broadcast regulations applicable to translators, low power, and booster stations.**

* * * * *

Section 73.1692—Construction near or installation on an AM broadcast tower.

* * * * *

22. Section 74.1235 is amended by revising paragraph (h) to read as follows:

**§ 74.1235 Power limitations and antenna systems.**

* * * * *

(h) All applications must comply with § 73.316, paragraphs (d) and (e) of this chapter.

* * * * *

23. Section 74.1237 is amended by adding paragraph (e) to read as follows:

**§ 74.1237 Antenna location.**

* * * * *

(e) A translator or booster station to be located on an AM antenna tower or located within 3.2 km of an AM antenna tower must comply with § 73.1692 of this chapter.

[FR Doc. 97–25788 Filed 9–29–97; 8:45 am]

BILLING CODE 6712–01–P

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## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Parts 32, 43, and 64

**[CC Docket No. 96–193; FCC 97–145]**

## Reform of Filing Requirements and Carrier Classifications; Anchorage Telephone Utility, Petition for Withdrawal of Cost Allocation Manual; Correction

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule, Correction.

**SUMMARY:** This document contains a correction to the final rule which was published Thursday, July 24, 1997, (62 FR 39776). This rule defined the ''Indexed revenue threshold for a given year'' in § 32.9000.

**EFFECTIVE DATE:** August 25, 1997.

**FOR FURTHER INFORMATION CONTACT:** Warren Firschein, Accounting and Audits Division, Common Carrier Bureau, (202) 418–0844.

**SUPPLEMENTARY INFORMATION:**

### Background

On July 24, 1997, the Commission published a Report and Order, which defined the ''Indexed revenue threshold for a given year'' in § 32.9000, Glossary of terms. This new definition in § 32.9000 is the subject of this correction.

### Correction

Accordingly, in the publication of 62 FR 39776, July 24, 1997 of the final rule on page 39777, column 3, remove instruction number 3, and on page 39778, in the final column, remove the definition in § 32.9000 for ''Index revenue threshold for a given year.''

Federal Communications Commission.

**Shirley S. Suggs,**

*Chief, Publications Branch.*

[FR Doc. 97–25738 Filed 9–29–97; 8:45 am]

BILLING CODE 6712–01–P

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## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Parts 43 and 64

**[CC Docket No. 90–337, FCC 96–459]**

## Regulation of International Accounting Rates

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; announcement of effective date.

**SUMMARY:** The Commission amended its rules to permit U.S. carriers to negotiate alternative settlement payment arrangements. Certain of these rules contained new and modified information collection requirements. These rules became effective on March 21, 1997.

**EFFECTIVE DATE:** The amendments to 47 CFR §§ 43.61 and 64.1002 became effective on March 21, 1997 (62 FR 5535, February 6, 1997).

**FOR FURTHER INFORMATION CONTACT:** Kathryn O'Brien, Attorney-Advisor, Policy and Facilities Branch, Telecommunications Division, International Bureau, (202) 418–1470.

**SUPPLEMENTARY INFORMATION:** On November 26, 1996, the Commission adopted an order permitting flexibility in international accounting rate policies, a summary of which was published in the **Federal Register**. See 62 FR 5535, February 6, 1997. Certain amendments to the Commission's rules imposed new or modified information collection requirements. We stated that ''the amendments to §§ 43.61 and 64.1002 take effect either upon approval by the Office of Management and Budget (OMB) or March 10, 1997, whichever occurs later. When approval is received, the agency will publish a document announcing the effective date.'' The information collections were approved by OMB on March 21, 1997. See OMB Nos. 3060–0106 and 3060–0764. This publication satisfies our statement that the Commission would publish a document announcing the effective date of the rules.

### List of Subjects in 47 CFR Parts 43 and 64

Communications common carriers, Reporting and recordkeeping requirements.

Federal Communications Commission.

**Shirley S. Suggs,**

*Chief, Publications Branch.*

[FR Doc. 97–25679 Filed 9–29–97; 8:45 am]

BILLING CODE 6712–01–P

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## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 68

**[CC Docket No. 87–124; FCC 97–242]**

## Access to Telecommunications Equipment and Services by Persons With Disabilities (Hearing Aid Compatibility); Correction

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; correction.

**SUMMARY:** The Federal Communications Commission published in the **Federal Register** of August 14, 1997 (62 FR 43481), an *Order on Reconsideration* that amended rules for the provision of telephones with volume control. This document corrects a typographical error in the regulatory text of the amended rules.

**EFFECTIVE DATE:** September 30, 1997.

**FOR FURTHER INFORMATION CONTACT:** Andy Firth, Attorney, 202/418–1898, Fax 202/418–2345, TTY 202/418–2224, afirth@fcc.gov, Network Services Division, Common Carrier Bureau.

**SUPPLEMENTARY INFORMATION:** In FR Doc. 97–20899, published in the **Federal Register** of August 14, 1997 (62 FR 43481), a typographical error appeared in § 68.112(b)(3) of the amended rules. The following correction removes the error.

### Correction

**§ 68.112 [Corrected]**

On page 43484, in the second column, in § 68.112, in paragraph (b)(3)(iii) introductory text, line 3, the reference ''(b)(3)(i)(A)'' is corrected to read ''(b)(3)(i)''.

Federal Communications Commission.

**Shirley S. Suggs,**

*Chief, Publications Branch.*

[FR Doc. 97–25790 Filed 9–29–97; 8:45 am]

BILLING CODE 6712–01–P

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## DEPARTMENT OF TRANSPORTATION

## National Highway Traffic Safety Administration

## 49 CFR Part 571

**[Docket 85–06; Notice 13]**

**RIN 2127–AG35**

## Federal Motor Vehicle Safety Standards; Hydraulic Brake Systems; Passenger Car Brake Systems

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation

**ACTION:** Final rule.

**SUMMARY:** This document extends the requirements of Federal motor vehicle safety standard (FMVSS) No. 135, Passenger Car Brake Systems, to trucks, buses, and multipurpose passenger vehicles with a gross vehicle weight rating (GVWR) of 3,500 kilograms (7,716 pounds) or less. Manufacturers of such vehicles have the option of complying with either FMVSS No. 105, Hydraulic Brake Systems, or FMVSS No. 135 for an interim period of five years, after which all such vehicles with a GVWR of 3,500 kilograms or less must comply with FMVSS No. 135. This amendment is consistent with the agency's policy of achieving international harmonization whenever such harmonization is also consistent with the statutory authority to ensure motor vehicle safety.

**DATES:** Effective Date: The amendments of this final rule are effective December 1, 1997. As of this date, manufacturers have the option of complying with either FMVSS No. 105 or FMVSS No. 135. Compliance with FMVSS No. 135 becomes mandatory on September 1, 2002.

Petitions for Reconsideration: Any petition for reconsideration of this rule must be received by NHTSA no later than November 14, 1997.

**ADDRESSES:** Petitions for reconsideration should be submitted to: Administrator,

National Highway Traffic Safety Administration, 400 Seventh Street S.W., Washington D.C. 20590.

**FOR FURTHER INFORMATION CONTACT:** Mr. Samuel Daniel, Jr., Office of Crash Avoidance Standards, National Highway Traffic Safety Administration, 400 Seventh Street S.W., Washington D.C. 20590 (202) 366–4921.

**SUPPLEMENTARY INFORMATION:**

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## I. Background

### *A. History of FMVSS No. 135*

On February 2, 1995, NHTSA published in the **Federal Register** (60 FR 6411) a final rule (Docket 85–06, Notice 8) to establish Federal motor vehicle safety standard (FMVSS) No. 135, Passenger Car Brake Systems. The intent of the new standard is to provide international harmonization of light passenger vehicle brake system test procedures and requirements. Although Standard No. 135 currently applies to passenger cars only, the agency stated in the final rule preamble that it would consider applying FMVSS No. 135 to additional light vehicles at a later date. A petition for reconsideration filed by General Motors (GM) in response to the final rule included the recommendation that the standard be extended to cover light trucks and vans (LTVs). GM indicated that the harmonized European light vehicle standard, Economic Commission for Europe (ECE) Regulation, R13–H, is applicable to passenger cars and vehicles that are analogous to LTVs in this country.

In this final rule, after considering the public comments to the Notice of Proposed Rulemaking (NPRM), Notice 11 of Docket 85–06, NHTSA has extended the applicability of FMVSS No. 135 to LTVs with a GVWR of 3,500 kilograms or less. This document explains the changes incorporated in the final rule and the reasons for the agency's decision.

### *B. Harmonization of U.S. and European Braking Regulations*

In order to eliminate any unnecessary non-tariff barriers to trade in accordance with the General Agreement on Tariffs and Trade (GATT), the United States has participated in discussions held within the Meeting of Experts on Brakes and Running Gear (GRRF) of the United Nations Economic Commission for Europe (ECE). As a result of these discussions, NHTSA has developed and published FMVSS No. 135 for passenger cars, and the GRRF has also developed and published a new Regulation, R13–H, which would be compatible with FMVSS No. 135.

NHTSA has emphasized throughout the rulemaking that any requirements it adopts must also be consistent with the need for safety and the Safety Act. The agency repeats that safety will not be compromised in its efforts to harmonize the FMVSS with ECE Regulations.

### *C. Summary of Notice of Proposed Rulemaking*

On May 2, 1996, NHTSA published in the **Federal Register** (61 FR 19602) an NPRM (Docket 85–06, Notice 11) proposing to apply FMVSS No. 135 to trucks, buses and multipurpose passenger vehicles with a GVWR of 4536 kilograms (10,000 pounds) or less. The NPRM further proposed that manufacturers of such vehicles have the option of complying with either FMVSS No. 105 or FMVSS No. 135 for an interim period of five years, after which time all vehicles with a GVWR of 10,000 pounds or less would be required to comply with Standard No. 135. Notice 11 stated that the extension of the applicability of Standard No. 135 to LTVs would be consistent with the agency policy of achieving international harmonization whenever possible and consistent with the agency's statutory mandate to ensure motor vehicle safety.

## II. Summary of Comments (Docket 85–06, Notice 11)

The agency received eight written comments in response to the NPRM, five from vehicle manufacturers, two from vehicle trade associations, and one from a safety advocacy group. In general, the vehicle manufacturers and the trade associations conditionally supported the rulemaking for LTVs up to 8,000 pounds GVWR while the safety advocacy group opposed it.

### *A. Gross Vehicle Weight Limit for FMVSS No. 135 Applicability*

Notice 11 proposed to extend Standard No. 135 to passenger vehicles with a GVWR of 10,000 pounds (4,536 kg) or less, including trucks, buses, and multipurpose vehicles (LTVs).

GM indicated that it participated in the development of the American Automobile Manufacturers Association (AAMA) response to this NPRM. The AAMA submission requested that the requirements of Standard No. 135 be applied to vehicles with a GVWR of 8000 pounds (3,629 kilograms) or less. According to GM, AAMA believes the 500-Newton pedal force specified in Standard No. 135 is inappropriate for vehicles with a GVWR above 8,000 pounds.

The Japanese Automobile Manufacturers Association (JAMA) supported the extension of Standard No. 135 to LTVs, but was concerned that adoption of the requirements as proposed would not further international harmonization, a goal stated by the agency in the preamble. JAMA recommended that NHTSA consult further with the ECE and JAMA before moving ahead with the proposed amendment. JAMA contended that extending Standard No. 135 to LTVs with a GVWR of 10,000 pounds or less would decrease the similarity between Standard No. 135 and R13–H. R13–H is applicable to the ''M1'' vehicle category in the European classification scheme, which includes all types of passenger vehicles with a maximum capacity of eight. A table in the JAMA submission shows that the test conditions and requirements in No. 105 and ECE R13 are similar and are applicable to vehicles of similar weight. The table also highlights the differences between test conditions and requirements in Standard No. 135 and the conditions and requirements for LTVs in Standard No. 105 and ECE R13.

Chrysler indicated that it was an active participant in the discussions that culminated in the publication of FMVSS No. 135, which Chrysler contends was intended for passenger cars. Chrysler pointed out that the proposed extension of the applicability of Standard No. 135 to LTVs up to 10,000 pounds GVWR would result in the standard being applicable to some of the vehicles in four different categories of the European vehicle classification system. These four categories include passenger vehicles with a capacity of eight or less, passenger vehicles with a capacity greater than eight and a GVWR of 11,023 pounds (5,000 kilograms) or less, non-passenger vehicles with a GVWR of

7,716 pounds (3,500 kilograms) or less, and non-passenger vehicles with a GVWR up to 26,455 pounds (12,000 kilograms). Vehicles in the latter three categories are not currently required to meet R13–H, the European counterpart of No. 135.

Nissan does not support the application of FMVSS No. 135 to LTVs with a GVWR of 10,000 pounds or less. Nissan stated that the proposed rule would decrease the similarity between Standard No. 135 and ECE R13–H, resulting in a negative impact on international harmonization. Nissan indicated that LTVs with a GVWR of 10,000 pounds or less could fall into one of four European categories, ''M1'', ''M2'', ''N1'', or ''N2'', which would make harmonization of the R13 very difficult. Nissan also stated that there is no apparent activity among ECE members to apply the harmonized light duty passenger vehicle standard, R13–H, to vehicles in the M2, N1, or N2 classes.

AAMA stated that its member companies would support extending Standard No. 135 to LTVs with a GVWR of 8,000 pounds (3,629 kilograms) or less. An 8,000-pound weight limit would better harmonize No. 135 with the requirements of ECE R13–H, which applies to category ''M1'' vehicles.

Ford supported the extension of Standard No. 135 to LTVs with a GVWR of 8,000 pounds or less in the interest of international harmonization. In its initial comments to this rulemaking proposal, Ford indicated that several of that company's vehicles with a GVWR below 8,000 pounds would require substantial redesign to meet all applicable Standard No. 135 requirements. In a supplemental submission, however, Ford indicated that the Standard No. 135 requirements could be met by all its vehicles with a GVWR of 8,000 pounds or less, within the proposed leadtime, without major modification or economic burden.

Advocates for Highway and Auto Safety (Advocates) did not specifically address the weight range issues cited by most commenters. Advocates is opposed to extending No. 135 to cover LTVs, regardless of vehicle weight, stating that the agency failed to demonstrate the desirability of extending No. 135 applicability to LTVs. Advocates cited a lack of actual cost or safety benefits data in the proposed rule and further indicated that the organization believes No. 135 represents a decrease in the overall brake system safety level when compared to No. 105. For example, Advocates points out that the pre-burnish, water, and dynamic emergency brake tests of No. 105 are not included in No. 135 and longer stopping distances are permitted in No. 135 than in No. 105.

*B. Brake Standard for Light Trucks and Vans With GVWR Above Standard No. 135 Limit*

GM indicated that AAMA recommended that the Notice 11 proposal be modified for LTVs with a GVWR between 8,000 and 10,000 pounds to allow a maximum pedal force of 700 Newtons. GM believes the brake systems on its vehicles in this weight range would meet all requirements with a 500-Newton maximum pedal force and that company supports rulemaking as proposed in Notice 11.

JAMA supported the rulemaking proposal, but recommended that NHTSA consult further with the ECE and JAMA to enhance international harmonization of Standard No. 135 and ECE R13–H before proceeding with the proposed amendment.

Chrysler recommended that Standard No. 135 requirements be extended to include LTVs with a GVWR up to 8,000 pounds. Chrysler also recommended that a pedal force limit of 700 Newtons be allowed for vehicles with a GVWR between 8,000 pounds and 10,000 pounds vehicles, consistent with the ECE Regulations and Standard No. 105.

Nissan did not support the application of Standard No. 135 to LTVs with a GVWR below 10,000 pounds. Nissan stated that there is no apparent activity among ECE members to apply R13–H, which is harmonized with Standard No. 135, to vehicles in this class.

Volkswagen supported the proposed rule as written.

AAMA supported the extension of the applicability of Standard No. 135 to vehicles with a GVWR above 8,000 pounds provided the pedal force limit is raised from 500 Newtons to 700 Newtons for vehicles with a GVWR between 8,000 and 10,000 pounds.

Ford stated that the agency should include two provisions in the rulemaking for vehicles with a GVWR over 8000 pounds (3,629 kilograms). Ford requested that a provision be included in Standard No. 135 to allow a maximum pedal force of 700 Newtons for vehicles with a GVWR above 8,000 pounds and also requested that the stopping distance be increased for the ''Engine Off'' tests. Ford indicated that Standard No. 105 specifies unique performance requirements for vehicles with a GVWR between 8,000 and 10,000 pounds. Application of the No. 105 test conditions and requirements to vehicles with a GVWR between 8,000 pounds and 10,000 pounds (4,536 kilograms) would more closely align the proposed rulemaking with ECE R13–H, the harmonized European braking standard.

## III. NHTSA Decision

*A. Overview*

A1. Lighter Vehicles

The U.S. automobile manufacturers and the AAMA indicated that many LTVs with a GVWR less than 10,000 pounds are currently being used as passenger vehicles (small trucks, vans, and sport utility vehicles) and should meet passenger car brake system requirements. According to Ward's Automotive Yearbook, an average of about 9.4 million passenger cars and 5.6 million LTVs with a GVWR under 10,000 pounds have been sold annually in the U.S. in recent years.

Most commenters recommended that the cut-off GVWR for an extension of No. 135 applicability to LTVs be substantially less than 10,000 pounds, the value proposed in Notice 11. GM, Chrysler, Ford, and AAMA indicated that brake performance requirements are more stringent in No. 135 than in No. 105. These commenters indicated that the heavier vehicles in the weight range may not meet the performance requirements of No. 135 without substantial brake system redesign. These commenters also indicated that brake systems for vehicles with a GVWR above 8,000 pounds may have undesirable consumer characteristics such as increased noise, wear, and pedal travel, if these systems are designed to meet No. 135 requirements.

Advocates opposed the rulemaking proposed in Notice 11, stating that No. 135 represents a reduction in the safety level of brake systems when compared with Standard No. 105. Advocates made arguments in their comments to Notice 8 of Docket 85–06, the final rule establishing Standard No. 135, that are similar to its Notice 11 comments. Advocates stated in response to Notice 8 that No. 135 was less stringent than Standard No. 105 since Standard No. 135 did not include several Standard No. 105 test procedures and allowed longer stopping distances. Advocates' comparison of stopping distances is based on a simplistic conversion of stopping distances from English to metric units, which indicates that the allowed stopping distances in No. 135 are longer than No. 105 stopping distances for comparable test speeds. Advocates' evaluation, however, did not consider the conditioning of the brakes prior to a given test, which is an important factor in determining the stringency of brake performance requirements. More importantly, the

current extension of No. 135 will require LTVs to meet the same levels of braking performance required for passenger cars, something that is not required currently under No. 105. NHTSA believes that No. 135 should be applied to LTVs despite Advocates' objections. The final rule for No. 135, which did not quantify the safety benefits associated with the rulemaking, was issued over the objections of Advocates and others.

Vehicle manufacturers and the AAMA also stated that the rulemaking proposed in Notice 11 would decrease the harmonization between Standard No. 135, and the European standard for light duty passenger vehicles, ECE R13–H. Most of the vehicles covered by R13–H have a loaded weight below 8,000 pounds (3,629 kilograms), whereas the NPRM proposed extending No. 135 to LTVs with a GVWR up to 10,000 pounds (4,536 kilograms).

GM indicated that the vehicles manufactured by that company could meet the requirements of No. 135 within the 5-year leadtime proposed. However, Chrysler, Ford, and AAMA recommended that No. 135 be applied only to vehicles with a GVWR below 8,000 pounds. Based on the comments on this issue, NHTSA believes that the maximum GVWR for the application of No. 135 to LTVs should be below 8,000 pounds.

The agency estimates, based on Ward's Automotive Yearbook figures, that about 75 percent of the 5.6 million LTVs with a GVWR of 10,000 pounds or less sold annually in the US are Class 1 vehicles with a GVWR below 6,000 pounds (2,722 kilograms). NHTSA further estimates the annual sales of LTVs with a GVWR between 8,000 and 10,000 pounds to be 0.5 to 0.7 million vehicles, or about 10 to 13 percent of all LTVs with a GVWR below 10,000 pounds. The agency believes, therefore, that brake system redesign for these vehicles alone could be particularly burdensome. Also, any safety benefit that would result from the application of the Standard No. 135 requirements to this group of LTVs would be limited by the low sales volume.

The agency believes that there are two values that should be considered for the maximum weight of No. 135 applicability to LTVs. Standard No. 135 would be consistent with Standard No. 105 if the extension to LTVs covered vehicles with a maximum GVWR up to 8,000 pounds, since Standard No. 105 contains unique braking performance requirements for vehicles with a GVWR between 8,000 and 10,000 pounds. As previously stated, an 8,000-pound GVWR limit for the extension is supported by the AAMA, Ford, and Chrysler and would cover 85 to 90 percent of all LTVs with a GVWR below 10,000 pounds.

The agency believes the effects on international harmonization that would result from the extension of Standard No. 135 as proposed in Notice 11 (10,000 pound cut-off) should be considered. The European equivalent of Standard No. 135, ECE R13–H, is applicable to vehicles in the M1 category, passenger vehicles with a passenger capacity of eight. Although there is no weight limit specified for the M1 class, these vehicles rarely have a weight capacity above 7,000 pounds. The proposed 10,000-pound GVWR limit would extend the applicability of Standard No. 135 to vehicles in three European vehicle classes not covered by R13–H. The standard that applies to these classes, R13, is not consistent with No. 135 with regard to test conditions and performance requirements; hence harmonization of Standard No. 135 and ECE R13 would be difficult.

The agency believes that 3,500 kg is a logical value for the maximum applicable GVWR for No. 135 extension to LTVs since this value is used in the European system as the maximum GVWR for vehicles in the ''N1'' class, or light duty non-passenger vehicles. Therefore, harmonization of Standard No. 135 and R13 would not affect all European light duty vehicles. Also, since 3,500 kilograms (7716 pounds) and 3,629 kilograms (8,000 pounds) are similar quantities, the number of vehicles affected by either choice is similar.

A2. Heavier Vehicles

The brake test specifications in No. 135 allow a maximum pedal force during braking of 500 Newtons for most of the performance test series including, Cold Effectiveness, Hot Performance, Power Brake Unit or Brake Power Assist Unit Inoperative. Most manufacturers indicated that 500 Newtons is insufficient pedal force for vehicles with a GVWR above 8,000 pounds and inconsistent with the pedal force requirements in No. 105 and ECE R13 for these vehicles.

GM indicated that it participated in the development of the AAMA response to Notice 11 of Docket 85–06 and acknowledged the reasons AAMA requested that the maximum allowable pedal force in No. 135, 500 Newton, be increased to 700 Newton for vehicles with a GVWR above 8,000 pounds. However, GM indicated vehicles manufactured by that company could meet the current No. 135 requirements over the five-year leadtime period proposed in the NPRM. GM cited several reasons for supporting Notice 11 including the following: LTVs are being widely used to transport people; the proposed five-year leadtime should be sufficient to make necessary LTV brake changes; and, M1 class European vehicles are analogous to the vehicles that would be covered by adoption of the NPRM.

JAMA submitted a table highlighting brake test conditions and performance requirements for FMVSS No. 135, FMVSS No. 105, and ECE R13, the European standard for light weight commercial vehicles. According to the table, Standard No. 105, and R13, which applies to light duty vehicles not covered by R13–H, allow a maximum pedal force of 680 Newtons and 700 Newtons, respectively, whereas No. 135 allows a maximum pedal force of 500 Newtons. JAMA suggested that NHTSA consult further with Europe and Japan before proceeding with rulemaking based on the NPRM since the proposed rule would represent a significant divergence between the US and European light duty vehicle brake standards.

Chrysler believes that the pedal force limit of 500 Newtons specified in No. 135 is appropriate for vehicles up to 8,000 pounds GVWR. That company recommended, however, that the standard be modified to allow a pedal force of 700 Newtons for vehicles with a GVWR between 8,000 and 10,000 pounds. Chrysler indicated that a 500-Newton pedal force limit for vehicles with a GVWR above 8,000 pounds could result in braking systems that have a negative impact on customer satisfaction. Compliant braking systems for such vehicles could require higher friction linings and higher brake pedal ratios resulting in increased brake noise, wear, and pedal travel.

Nissan opposed the NPRM, claiming that the harmonization of No. 135 and R13–H would be adversely affected. According to Nissan, Notice 11 proposes applying No. 135 to vehicles in this country, that are equivalent to European M2, N1, and N2 vehicles, which are not covered by the harmonized standard, R13–H.

VW supported issuance of a final rule based on the NPRM.

AAMA stated that it would support the Notice 11 NPRM if the No. 135 test conditions were changed to allow for a 700-Newton maximum pedal force for vehicles with a GVWR above 8,000 pounds. AAMA cited several reasons to justify the change including the following: improved harmonization of No. 135 with the European standard (R13–H), since the standard covering

most European vehicles that are comparable to LTVs in this country, allows a 700-Newton pedal force; the 700-Newton pedal force would affect mostly commercial, non-passenger vehicles; most sport utility vehicles and other small trucks would be required to meet the more stringent No. 135 requirements.

Ford requested that a provision be included in No. 135 to allow a maximum pedal force of 700 Newtons for vehicles with a GVWR above 8,000 pounds. Allowance of a 700-Newton pedal force is consistent with ECE R13 requirements, according to Ford, for light passenger vehicles and would more closely align and harmonize the US and European requirements.

Several vehicle manufacturers and the AAMA requested that the agency apply No. 135, modified to allow a 700-Newton peak pedal force, to LTVs with a GVWR above 8,000 pounds, instead of No. 135 as currently written, which limits pedal force to 500 Newtons.

International harmonization was cited by the commenters as a major reason for requesting that the maximum allowable pedal force be raised to 700 Newtons for vehicles with a GVWR above 8,000 pounds. The European equivalent of Standard No. 135, R13–H, applies to passenger vehicles with maximum passenger capacity of eight and allows a maximum pedal force of 500 Newtons. Although a maximum GVWR is not specified for these M1 class vehicles, their loaded weight rarely exceeds 7,000 pounds (3,175 kilograms). Other light duty vehicle classes in the European system are allowed a maximum pedal force of 700 Newtons during brake performance testing. The commenters also stated that No. 105 allows a maximum pedal force of 680 Newtons (150 pounds) for all vehicles with a GVWR of 10,000 pounds or less. Additionally, Ford, Chrysler, and AAMA indicated that a 500-Newton brake pedal force limit for vehicles in the 8,000 to 10,000-pound range could result in brake systems with low customer satisfaction due to increased noise, lining and rotor wear, and brake pedal travel.

The agency notes that GM stated that No. 135 requirements could be met by that company's LTVs, including those in the 8,000 to 10,000-pound GVWR range. GM cited several reasons for supporting Notice 11 including the observation that M1 class European vehicles are analogous to the vehicles in this country that would be covered if the NPRM were adopted. NHTSA disagrees with GM regarding the international harmonization issue. As noted above, M1 vehicles rarely exceed 7,000 pounds GVWR. Most commenters argued that vehicles with a loaded weight above 8,000 pounds are not analogous to M1 vehicles and are not subject to the same braking requirements as M1 vehicles.

The comments and analytical data provided by Ford indicate that several of that company's 8,000 to 10,000-pound vehicles may not be able to comply with No. 135, based on computer simulations. NHTSA believes that the data provided by Ford indicate that the five-year leadtime would be adequate to obtain compliance with No. 135 (500-Newton pedal force) for its vehicles in this weight class, without a major cost burden.

The agency does not have data relating to the Chrysler and AAMA observation that brake systems meeting the No. 135 requirements for vehicles with a GVWR above 8,000 pounds would have low customer satisfaction. There is the potential for systems with low customer satisfaction, but NHTSA believes that sufficient leadtime will avoid this problem.

Advocates for Highway and Auto Safety (Advocates) objected to the proposed rulemaking stating that the agency had not addressed the associated costs and benefits. The agency has no data specifically addressing the incremental cost associated with the application of No. 135 to LTVs with a GVWR less than 10,000 pounds. NHTSA believes the cost of LTV compliance with No. 135 will be similar to the cost incurred for passenger cars, especially for the smaller LTVs. Although several manufacturers indicated that substantial brake system redesign would be necessary for vehicles with a loaded weight above 8,000 pounds to meet No. 135, none provided cost information. Additionally, the agency has not attempted to quantify the benefits that would be realized if these vehicles were in compliance with No. 135.

Currently, Standard No. 105 utilizes 4,536 kilograms (10,000 pounds) as the maximum GVWR for light duty vehicles and the braking test conditions, procedures, and requirements are different for vehicles with a GVWR above 4536 kilograms. The agency will continue to use 4,536 kilograms to separate light and heavy duty vehicles with regard to brake system standards. This would ensure continued consistency with FHWA's Office of Motor Carriers, which also utilizes 10,000 pounds as the GVWR to separate light and heavy duty vehicles for application of that agency's safety regulations.

There are several options when considering the appropriate brake system standard for vehicles with a GVWR between 3,500 and 4536 kilograms. Both Standards No. 105 and No. 135 could be applied to these vehicles as well as Standard No. 135 modified to allow a 700-Newton brake pedal force, as requested by several commenters. The provisions in No. 135 specify wheel lock sequence performance, to address directional stability during braking, whereas No. 105 has no related requirements. The pre-burnish test, water test, and dynamic emergency brake test are provisions in Standard No. 105 that are not included in Standard No. 135. The agency believes that Standard No. 105 should be applied to vehicles with a GVWR above 3,500 kg for continuity with present requirements. Specifying Standard No. 105 compliance for these vehicles would provide most of the benefits of Standard No. 135 while alleviating the manufacturer concerns about significant brake system redesign if Standard No. 135 were applied to these vehicles.

In response to Notice 11, most vehicle manufacturers and the AAMA recommended that the agency issue a final rule in which No. 135, modified to allow 700 Newtons pedal force, be applied to vehicles with a GVWR between 3,500 and 4536 kilograms. The agency is conducting brake system testing/analyses on vehicles in this weight range in addition to reviewing the testing data from Ford. After it finishes these testing/analyses, NHTSA will publish a separate notice for the brake systems of LTVs with a GVWR between 3,500 and 4,536 kilograms.

*B. Application*

B1. Lighter Vehicles

After considering the public comments to the NPRM (Notice 11), the agency has decided, with this final rule, to extend the applicability of No. 135 to LTVs with a maximum GVWR of 3,500 kilograms (7,716 pounds) instead of the 4,536 kilograms (10,000 pounds) proposed in Notice 11 of Docket 85–06. Accordingly, the title of No. 135 will be modified to reflect the extension to LTVs, as proposed in Notice 11, and the applicability section of No. 135 proposed in Notice 11 will be modified.

B2. Heavier Vehicles

Notice 11 of Docket 85–06 proposed to extend the applicability of Standard No. 135 to LTVs with a GVWR of 4,536 kilograms (10,000 pounds) or less. Most motor vehicle manufacturers objected to the proposal as written, indicating that compliance with No. 135 may require major brake system modifications for vehicles with a GVWR above 3,629

kilograms (8,000 pounds). After considering the public comments to the NPRM (Notice 11), NHTSA has decided not to extend the applicability of Standard No. 135 to LTVs with a GVWR between 3,500 kilograms (7,716 pounds) and 4,536 kilograms (10,000 pounds). The agency has further decided that No. 105 will still be applicable to LTVs with a GVWR between 3,500 and 4536 kilograms at this time.

## IV. Leadtime

The five-year leadtime for the application of FMVSS No. 135 to LTVs is consistent with the leadtime provided for No. 135 applicability to passenger cars in the final rule for No. 135 (Docket 85–06, Notice 8). As is the case with passenger car applicability of No. 105, compliance with FMVSS No. 105 is optional between December 1, 1997 and September 1, 2002. It is anticipated that this leadtime is sufficient to allow manufacturers of LTVs with a GVWR of 3,500 kilograms and below to complete any required brake system modifications during scheduled redesign periods so that the economic burden will be minimal.

As previously stated, the agency is reviewing data submitted by Ford and data from recently conducted brake testing to assess the performance of vehicles with a GVWR between 3,500 and 4,536 kilograms relative to FMVSS No. 135. The agency will publish a separate notice on these vehicles in the future. If the agency determines that these vehicles should be covered by FMVSS No. 135, sufficient leadtime will be provided to ensure vehicle modifications will not cause significant burden.

## V. Regulatory Analysis

### *A. Executive Order 12866 and DOT Regulatory Policies and Procedures*

This notice has not been reviewed under Executive Order 12866. NHTSA has considered the impacts of this rulemaking action and determined that it is not ''significant'' within the meaning of the Department of Transportation's regulatory policies and procedures. The agency believes that application of FMVSS No. 135 to LTVs with a GVWR of 3,500 kilograms or less will ensure an equivalent level of safety for those aspects of performance covered by FMVSS No. 105. This final rule will add brake performance and offer safety benefits in areas not addressed in FMVSS No. 105.

In the final rule for FMVSS No. 135 (60 FR 6411), the agency indicated that the incremental cost of passenger car compliance with No. 135 as compared to No. 105 compliance would be minor. These minor incremental costs are associated with differences in the actual compliance testing costs and minor brake system redesign for some marginal brake systems. Compliance testing costs were estimated to be slightly less for No. 135 testing than for No. 105 testing since the No. 135 procedures are shorter. The agency also believes the Adhesion Utilization (AU) properties of LTVs may be different from the AU properties of most passenger cars. The NHTSA estimates that some brake system adjustments will be required for LTVs to comply with the AU, or directional stability test in Standard No. 135. The agency stated in the Notice of proposed rulemaking (61 FR 19603) that the application of Standard No. 135 to LTVs would not impose significant costs on vehicle manufacturers. The agency further stated that the cost impacts are so minimal as not to warrant a full regulatory evaluation and NHTSA believes that the impact assessment in the NPRM is still valid. The substantial lead time proposed for mandatory LTV compliance should enable manufacturers to incorporate necessary changes as part of model change over, in phases if necessary.

### *B. Regulatory Flexibility Act*

NHTSA has also considered the effects of both this proposal under the Regulatory Flexibility Act. I hereby certify that it would not have a substantial economic impact on a substantial number of small entities. Accordingly, the agency has not prepared a regulatory flexibility analysis.

NHTSA concluded that the FMVSS No. 135 final rule had no significant impact on a substantial number of small entities. That conclusion is also valid for this final rule since most of the vehicles affected by this rulemaking are manufactured by entities that also manufacture passenger cars. Accordingly, the incremental cost would be small and would not likely affect vehicle sales.

### *C. National Environmental Policy Act*

NHTSA has analyzed this final rule for the purposes of the National Environmental Policy Act of 1969. The agency has determined that implementation of this action will not have any significant effect on the quality of human environment. This final rule will result in no changes to motor vehicle or motor vehicle equipment production or disposal processes.

### *D. Executive Order 12612 (Federalism)*

NHTSA has analyzed this action under the principles and criteria in Executive Order 12612. The agency believes that this rulemaking action will not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. There are no State laws affected by this final rule.

### *E. Executive Order 12778 (Civil Justice Reform)*

This rulemaking will have no retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles produced for use in that State. The 49 U.S.C. 30161 sets forth a procedure for judicial review of rulemakings establishing, amending, or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

## List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, the agency amends Title 49 of the Code of Federal Regulations at Part 571 as follows:

## PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 continues to read as follows:

**Authority:** 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.105 is amended by revising S3, to read as follows:

### Part 571.105—Standard No. 105; Hydraulic Brake Systems

* * * * *

S3. Application. This standard applies to hydraulically-braked vehicles with a GVWR greater than 3,500 kilograms (7,716 pounds). This standard applies to hydraulically-braked passenger cars manufactured before September 1, 2000, and to hydraulically-braked multipurpose passenger vehicles, trucks and buses with a GVWR of 3,500 kilograms or less that are manufactured before September 1, 2002. At the option of the

manufacturer, hydraulically-braked passenger cars manufactured before September 1, 2000, and hydraulically-braked multipurpose passenger vehicles, trucks and buses with a GVWR of 3,500 kilograms (7,716 pounds) or less manufactured before September 1, 2002, may meet the requirements of Federal Motor Vehicle Safety Standard No. 135, Light Vehicle Brake Systems instead of this standard.

* * * * *

3. Section 571.135 is amended by revising the heading and section S3 to read as follows:

**Part 571.135—Standard No. 135; Light Vehicle Brake Systems**

* * * * *

S3. Application. This standard applies to passenger cars manufactured on or after September 1, 2000 and to multi-purpose passenger vehicles, trucks and buses with a gross vehicle weight rating (GVWR) of 3,500 kilograms (7,716 pounds) or less, manufactured on or after September 1, 2002. In addition, at the option of the manufacturer, passenger cars manufactured before September 1, 2000, and multi-purpose passenger vehicles, trucks and buses with a GVWR of 3,500 kilograms (7,716 pounds) or less, manufactured before September 1, 2002, may meet the requirements of this standard instead of Federal Motor Vehicle No. 105, Hydraulic Brake Systems.

* * * * *

Issued on: September 18, 1997.

**Ricardo Martinez,**

*Administrator.*

[FR Doc. 97–25907 Filed 9–29–97; 8:45 am]

BILLING CODE 4910–59–P

# Proposed Rules

Federal Register
Vol. 62, No. 189
Tuesday, September 30, 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 HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Parts 201, 312, 314, and 601

**[Docket No. 97N–0165]**

**RIN 0910–AB20**

## Regulations Requiring Manufacturers to Assess the Safety and Effectiveness of New Drugs and Biological Products in Pediatric Patients; Public Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notification of a public meeting.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing a public meeting to discuss issues related to the agency's proposed rule on regulations requiring manufacturers to assess the safety and effectiveness of new drugs and biological products in pediatric patients. The proposed rule, previously announced in the **Federal Register**, requested written comments and proposed new regulations requiring pediatric studies of certain new drug and biological products. The purpose of the meeting is to provide experts in the field and interested individuals an opportunity to discuss specific issues raised by the proposed rule. The agency is seeking comment and specific data on the proposed rule.

**DATES:** The public meeting will be held on October 27, 1997, from 9 a.m. to 6 p.m. Please arrive no later than 8:30 a.m. to allow time for security clearance. Written requests for oral presentations should be received by the agency on or before October 14, 1997. Written comments must be submitted on or before November 13, 1997.

**ADDRESSES:** The public meeting will be held at the Cohen Bldg., auditorium, 330 C St. SW., Washington, DC. Submit written requests for oral presentations to Lisa Barclay, Office of Policy (HF–22), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. To expedite processing, fax written requests for oral presentations to 301–594–6777. To ensure timely handling, the outer envelope or facsimile cover sheet should be clearly marked with: Docket No. 97N–0165, ''Pediatric Labeling Meeting,'' ATTN: Lisa Barclay. Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:**

Khyati N. Roberts, Center for Drug Evaluation and Research (HFD–6), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–6779, FAX 301–594–5493, e-mail robertsk@cder.fda.gov, or

Elaine C. Esber, Center for Biologics Evaluation and Research (HFM–30), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0641, FAX 301–827–0644, e-mail esber@1.cber.fda.gov.

**SUPPLEMENTARY INFORMATION:**

### I. Background

In the **Federal Register** of August 15, 1997 (62 FR 43900), the agency published a proposed rule for new regulations requiring pediatric studies of certain new drug and biological products. The proposed rule would attempt to partially address a lack of pediatric use information by requiring that manufacturers of a limited class of new drug and biological products provide sufficient data and information to support directions for pediatric use for the claimed indications before, or soon after, approval. Manufacturers of a limited class of already marketed drugs and biologics would also, in compelling circumstances, have to provide such data. The proposed rule is part of a comprehensive effort to increase the number of new drug and biological products with clinically significant use in children that carry adequate labeling for use in that subpopulation.

Because of the importance of ensuring the safety and effectiveness of the medications administered to children and the need to address the absence of pediatric labeling in the most effective manner possible, FDA, in cooperation with the American Academy of Pediatrics, is announcing a public meeting at which recognized experts in the field, members of the pharmaceutical industry, and other interested parties will have an opportunity to discuss certain issues raised by the proposed rule. FDA will consider information presented and discussed at the meeting and written comments submitted to the Dockets Management Branch in the development of the final rule. There is no fee for this public meeting.

### II. Scope of Meeting

The purpose of this meeting is to complement the process for gathering written comments and recommendations on certain issues raised by the proposed rule. The meeting will provide recognized experts in the field, members of the pharmaceutical industry, and other interested parties an opportunity to discuss these issues. The agency is specifically seeking comment and data on the following:

(1) What should be considered a ''substantial number'' of pediatric patients?

(2) Whether the rule should be restricted to new chemical entities, including new (never-before-approved) drugs, antibiotics and biological products, or whether it should be applied more broadly (e.g., to applications for chemical variations of approved products, new indications, new dosage forms or routes of administration)?

(3) Whether the proposed grounds for waiving the pediatric study requirement are adequate and whether additional grounds may exist?

(4) What would constitute sufficient data or an adequate pediatric clinical trial? and

(5) How should dose and safety levels for each of the different pediatric age groups or stages of development be established? Relevant to this issue, the agency solicits comment on special problems associated with studies in neonates and young infants.

### III. Requests for Oral Presentations

Persons who wish to participate in the meeting must file a written or facsimile request for oral presentation with the Office of Policy (address and fax numbers above). The request for oral presentation should contain the speaker's name, address, telephone and fax numbers, title, business affiliation, if any, topic, a brief summary of the

presentation, and approximate amount of time requested for the presentation.

The agency requests that persons or groups having similar interests consolidate their presentations and present them through a single representative. Because presentations will be limited to 1 day, the agency may not be able to accommodate all requests for oral presentations. FDA will allocate the time available for the meeting among the persons who properly file requests for oral presentations. If time permits at the conclusion of the meeting, FDA may allow participation from both interested persons attending the meeting who did not submit a written request for an oral presentation and those who requested an opportunity to make a presentation, but, due to the time limitations, were not granted the request.

## IV. Requests for Comments

Interested persons may, on or before November 13, 1997, submit written comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

## V. Special Accommodations

In order to accommodate the need for space or technical support, persons who are planning on using audiovisual equipment during their oral presentations are urged to provide advance notice of their planned attendance to one of the contact persons identified above. If you need special accommodations due to a disability, please contact one of the contact persons listed above at least 7 days in advance.

## VI. Transcripts

Transcripts of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting at a cost of 10 cents per page.

Dated: September 24, 1997,

**William K. Hubbard,**

*Associate Commissioner for Policy Coordination.*

[FR Doc. 97–25937 Filed 9-29-97; 8:45 am]

BILLING CODE 4160–01–F

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

**21 CFR Part 1310**

**[DEA–156P]**

**RIN #1117–aa43**

## Listed Chemicals; Proposed Establishment of Thresholds for Iodine and Hydrochloric Gas (Hydrogen Chloride Gas)

**AGENCY:** Drug Enforcement Administration (DEA), Justice.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Comprehensive Methamphetamine Control Act of 1996 (MCA) establishes that, effective October 3, 1996, iodine and hydrogen chloride gas are List II chemicals under the Controlled Substances Act (CSA). The inclusion of these chemicals under the CSA requires that each regulated person must keep records and file reports as specified in Title 21 Code Federal Regulations (21 CFR) Part 1310. Since the MCA did not establish thresholds for iodine and hydrogen chloride gas, recordkeeping and reporting requirements became applicable to all domestic transactions of these chemicals. While this notice of proposed rulemaking is proposing a domestic threshold of 0.0 kilograms for hydrogen chloride gas, it proposes to set a domestic threshold of 0.4 kilograms for iodine. This iodine threshold will remove the recordkeeping requirement for many iodine transactions.

This notice of proposed rulemaking also proposes to reinsert the table in 21 CFR 1310.04(f)(2)(iv), listing thresholds for exports, transshipments, and international transactions to designated countries set forth in 1310.08(b). The DEA's final rule regarding implementation of the Domestic Chemical Diversion Control Act of 1993, published on June 22, 1995 [60 FR 32447] inadvertently omitted the table from the section.

**DATES:** Written comments or objections must be received on or before December 1, 1997.

**ADDRESSES:** Comments and objections should be submitted in quintuplicate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, D.C. 20537, Attention: DEA Federal Register Representative/CCR.

**FOR FURTHER INFORMATION CONTACT:** Frank Sapienza, Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, D.C. 20537, Telephone (202) 307–7183.

**SUPPLEMENTARY INFORMATION:** The MCA was signed into law on October 3, 1996, Section 204 of the MCA amends Section 102(35) of the CSA (21 U.S.C. 802(35)) to include iodine and hydrogen chloride gas as List II chemicals. Section 204(b)(1) and (2) of the MCA also states that ''iodine shall not be subject to the requirements for listed chemicals provided in section 1018 of the Controlled Substances Import and Export Act (21 U.S.C. 971).'' Therefore, the MCA does not impose import/export requirements on iodine. The MCA, however, does not ''limit the authority of the Attorney General to impose the requirements for listed chemicals provided in section 1018 of the Controlled Substances Import and Export Act (21 U.S.C. 971).'' Although the DEA is not imposing import/export restrictions on iodine at this time, the DEA is currently reviewing available data on iodine to determine if such controls are warranted.

Prior to the MCA, hydrogen chloride gas, also known as anhydrous hydrochloric acid, was already a List II chemical under the CSA (21 CFR 1310.02(b)(8)). Pursuant to 21 CFR 1310.08, all domestic and import transactions of hydrogen chloride gas have been exempt from the regulatory controls under the CSA. In addition, all exports, transshipments and international transactions of hydrogen chloride gas have been exempt from the regulatory controls except those to all South American countries and Panama. Exports to all South American countries and Panama above a threshold of 27 kilograms have been regulated transactions (21 CFR 1310.08(b)). The MCA amends the CSA to impose only domestic controls on iodine and domestic and international controls on hydrogen chloride gas.

The majority of the clandestine laboratories seized in the United States manufacture methamphetamine, a Schedule II controlled substance. Since 1990, more than 2,400 methamphetamine laboratories have been seized in the United States by the DEA. The most frequently used synthesis among clandestine laboratory operators today is the ephedrine/pseudoephedrine reduction method which utilizes hydriodic acid. Hydriodic acid is a List I chemical with a domestic threshold of one liter. With the increased controls on hydriodic acid, clandestine laboratory operators have turned to producing their own hydriodic acid or using iodine directly in the synthesis. Clandestine laboratory

operators, since 1992, have been utilizing iodine either directly in the ephedrine/pseudoephedrine reduction method or have been using iodine to produce hydriodic acid, the traditional reducing agent in the ephedrine/pseudoephedrine reduction method. Hydrogen chloride gas, on the other hand, can be used in the clandestine synthesis of most controlled substances to convert the basic form of a controlled substance to its hydrochloride salt. It is often used in the illicit production of methamphetamine.

Certain provisions of the CSA and its regulations are applicable only to regulated transactions involving listed chemicals. For purposes of defining a regulated transaction (21 U.S.C. 802(39)), the CSA provides that the Attorney General may impose a threshold amount for each listed chemical. A threshold amount is established to determine whether a receipt, sale, importation or exportation within a calendar month or multiple transactions by an individual within a calendar month are considered regulated transactions. If the transaction is considered a regulated transaction, then they are recordkeeping and reporting requirements as specified in 21 CFR 1310.

The DEA examined several types of information in proposing a domestic threshold for iodine: legitimate use in industry, including the quantities normally required for such uses; quantities purchased by clandestine laboratory operators; quantities seized at clandestine laboratory sites; and its use in the production of methamphetamine. The number of clandestine laboratories using iodine in the synthesis of methamphetamine has increased drastically in the past five years. In 1992, the DEA documented that 18 of the 228 (approximately 6 percent) methamphetamine clandestine laboratories seized by DEA used iodine. During 1996, at least 290 methamphetamine clandestine laboratories seized by DEA used iodine. The majority of these clandestine laboratories are producing small quantities (i.e., less than one-half kilogram) of methamphetamine. Seizures of iodine at the clandestine laboratory sites ranged from approximately 10 grams to 3,000 kilograms. The DEA cannot determined the source of all of the iodine seized at clandestine laboratory sites due to clandestine laboratory operators removing the original labels or transferring the iodine to other unmarked containers. At those sites where iodine was seized in its original containers, DEA identified that the iodine was being purchased from either veterinary supply stores, feed and tack/farm supply stores or chemical distributors.

The DEA sought information from legitimate handlers of iodine (i.e., manufacturers, end-users, distributors, and veterinary, feed and farm supply stores/companies) to determine the uses of iodine and the quantities typically found in legitimate transactions. Of particular interest to DEA was the sale of relatively small quantities of iodine for cauterization of a hoof wound and for the treatment of thrush. The DEA sought information from over 300 veterinary suppliers and feed and farm supply stores to determine if the stores sold iodine. Of the 300 stores and suppliers which provided information, only nine sold iodine. Several suppliers and end-users stated that a two-ounce bottle of iodine would last a rancher or a farrier several months and that, typically, an individual would purchase at the most 3–2 ounce bottles (approximately 0.2 kilograms) at a time.

Based on this information, the DEA is proposing a domestic threshold of 0.4 kg for iodine. This would ensure the most effective controls on the diversion of iodine while minimizing the impact on industry, particularly for small businesses such as veterinary, feed, and farm supply stores.

The proposed domestic threshold of hydrogen chloride gas is based upon several items: its legitimate use in industry; quantities used by legitimate industry; and quantities of hydrogen chloride gas seized at clandestine laboratories.

Hydrogen chloride gas is sold in cylinders. Traditionally, cylinders of hydrogen chloride gas have been seen mostly at methamphetamine clandestine laboratory sites in the western part of the United States. Most of the cylinders seized at the clandestine laboratory sites contain approximately 60 pounds of hydrogen chloride gas. Small cylinders which contain 0.5 pounds of hydrogen chloride gas have also been seen at some laboratory sites.

The DEA gathered information on the legitimate uses of hydrogen chloride gas in the United States. The major uses of hydrogen chloride gas were determined to be in the cotton industry, the electronic/silicon industry, the pharmaceutical industry and other industries for use in chemical syntheses. All of these industries use large quantities of hydrogen chloride gas for their manufacturing processes. Generally, thousands of pounds are involved in single transactions with the exception of smaller quantities (i.e., single or multiple cylinders) being used by research, analytical or synthetic laboratories. There are also safety issues regarding the handling of hydrogen chloride gas. Since the majority of hydrogen chloride gas transactions involve thousands of pounds and to ensure the most effective controls on the diversion of hydrogen chloride gas, the DEA proposes a domestic threshold of 0 kg for hydrogen chloride gas. A threshold of 0 kg means that all sales of hydrogen chloride gas would be regulated.

Before the MCA was passed, hydrogen chloride gas, also known as anhydrous hydochloric acid, was already a List II chemical under the CSA (21 CFR 1310.02(b)(8)). All domestic and import transactions, and exports, transshipments and international transactions, except those to all South American countries and Panama, have been exempt from regulatory controls under the CSA. Exports, transshipments and international transactions of hydrogen chloride gas to all South American countries and Panama above a threshold of 27 kilograms have been regulated transactions pursuant to 21 CFR 1310.08(b). These transactions became regulated due to the DEA having evidence that hydrogen chloride gas was being diverted from illicit channels to illicit channels for cocaine hydrochloride production in these countries. With the passage of the MCA, both domestic and international controls apply to hydrogen chloride gas.

The DEA is also including in this proposed **Federal Register** notice the reinsertion of the table in 21 CFR 1310.04(f)(2)(iv), listing thresholds for exports, transshipments, and international transactions to designated countries set forth in 1310.08(b). The DEA's final rule regarding implementation of the Domestic Chemical Diversion Control Act of 1993, published on June 22, 1995 [60 FR 32447] inadvertently omitted the table from the section.

The Deputy Assistant Administrator of DEA's Office of Diversion Control hereby certifies that this proposed rulemaking will have no significant impact upon entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. Controls on iodine apply to iodine crystals. These controls do not pertain to common household products such as iodine tinctures of iodide salts. The proposed iodine rulemaking applies only to those companies manufacturing and distributing iodine in larger volumes. Recordkeeping requirements will not impact researchers or other end-users. Further, this proposed rule is not a significant regulatory action

pursuant to the criteria of Executive Order 12866, since the 0.4 kg iodine threshold does not affect small businesses and since there is not a large industry for hydrogen chloride gas. Therefore, this proposed rule has not been reviewed by the Office of Management and Budget.

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

**List of Subjects in 21 CFR Part 1310**

Drug traffic control, Reporting and recordkeeping requirements.

For reasons set out above, 21 CFR part 1310 is proposed to be amended as follows:

## PART 1310—[AMENDED]

1. The authority citation for part 1310 continues to read as follows:

**Authority:** 21 U.S.C. 802, 830, 871(b).

2. Section 1310.02 is proposed to be amended by revising paragraph (b)(8) and adding paragraph (b)(11) to read as follows:

**§ 1310.02 Substances covered.**

* * * * *

(b) List II chemicals:

* * * * *

(8) Hydrochloric acid (Including Hydrogen chloride gas)

* * * * *

(11) Iodine

* * * * *

3. Section 1310.04 is proposed to be amended by adding new paragraphs (f)(2)(ii) (H) and (I), and revising (f)(2)(iv) to read as follows:

**§ 1310.04 Maintenance of records.**

* * * * *

(f) * * *

(2) * * *

(i) * * *

(ii) Domestic Sales

| Chemical | Threshold by volume | Threshold by weight |
|---|---|---|
| * | * | * |
| (H) Iodine .. | N/A ..... | 0.4 kilograms. |
| (I) Hydrogen chloride gas. | N/A ..... | 0.0 kilograms. |

(iii) * * *

(iv) Exports, Transshipments and International Transactions to Designated Countries As Set Forth in § 1310.08(b).

| Chemical | Threshold by volume | Threshold by weight |
|---|---|---|
| (A) Hydrochloric acid. | 50 gallons ... | N/A. |
| (1) Hydrogen chloride gas. | N/A ..... | 27 kilograms. |
| (B) Sulfuric acid. | 50 gallons ... | N/A. |

* * * * *

4. Section 1310.08 is proposed to be amended by adding new paragraphs (f) and (g) to read as follows:

**§ 1310.08 Excluded transactions**

* * * * *

(f) Import and export transactions of iodine.

(g) Import transactions of hydrogen chloride gas.

Dated: July 21, 1997.

**John H. King,**

*Deputy Assistant Administrator, Office of Diversion Control.*

[FR Doc. 97–25362 Filed 9–29–97; 8:45 am]

BILLING CODE 4410–09–M

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## LEGAL SERVICES CORPORATION

## 45 CFR Part 1643

## Restriction on Assisted Suicide, Euthanasia, and Mercy Killing

**AGENCY:** Legal Services Corporation.

**ACTION:** Proposed rule.

**SUMMARY:** This rule is intended to implement a new statutory restriction that amends the Legal Services Corporation Act (''LSC'' or ''Corporation'') and is applicable to recipients of grants from the Legal Services Corporation. The restriction prohibits the use of LSC funds by recipients for legal or other assistance that would cause, assist in, advocate for, or fund assisted suicide, euthanasia, or mercy killing.

**DATES:** Comments should be received on or before October 30, 1997.

**ADDRESSES:** Comments should be submitted to the Office of the General Counsel, Legal Services Corporation, 750 First St. NE., 11th Floor, Washington, DC 20002–4250.

**FOR FURTHER INFORMATION CONTACT:** Office of the General Counsel, (202) 336–8817.

**SUPPLEMENTARY INFORMATION:** The Assisted Suicide Funding Restriction Act of 1997 (''Assisted Suicide Act'' or ''Act''), Pub. L. 105–12, was enacted and became effective on April 30, 1997. Several provisions of the Assisted Suicide Act expressly apply to the Legal Services Corporation, one of which amends Section 1007(b) of the LSC Act, 42 U.S.C. 2996f(b)(11). This rule is intended to implement this legislation as it applies to the Corporation and its recipients.

**Background and Summary of Law**

The stated purpose of the Assisted Suicide Act is to maintain current Federal policy that Federal funds not be used to support, assist in, or advocate for assisted suicide, euthanasia or mercy killing. H. Rep. No. 46, 105th Cong., 1st Sess. at 3 (April 8, 1997). Although assisted suicide, euthanasia and mercy killing are illegal in almost all states, Congress was concerned that pending litigation might change the status quo and wanted to make it clear by legislation that, regardless of a change in State law, Federal policy would remain the same. H. Rep. at 3–4. Subsequent to the passage of the Act, the Supreme Court upheld as constitutional laws in the States of New York and Washington which prohibit assisted suicide and euthanasia. See *Vacco* v. *Quill,* 117 S. Ct. 2293 (1997); *Washington* v. *Glucksberg,* 117 S. Ct. 2302 (1997). The State of Oregon, on the other hand, adopted an initiative in 1996 that legalized physician-assisted suicide for competent, terminally ill adults. H. Rep. at 4. Court challenges have kept the law from going into effect and a new initiative to repeal the law will be on the ballot this November. See Associated Press, September 15, 1997 (1997 WL 2549490); *Lee* v. *Oregon,* 107 F.3d 1382 (9th Cir. Feb. 27, 1997); Petition for Certiorari Filed, 65 USLW 3783 (May 16, 1997) (No. 96–1824).

The Assisted Suicide Act applies to numerous Federally funded health care programs and facilities, such as Medicare, Medicaid, CHAMPUS and the veterans' and military health care systems. It also applies to certain legal aid and advocacy programs, including the Legal Services Corporation.

Section 9 of the Assisted Suicide Act amends Section 1007(b) of the LSC Act to provide that '' No funds made available by the Corporation under this title, either by grant or contract, may be used * * * to provide legal assistance in a manner inconsistent with the Assisted Suicide Funding Restriction Act of 1997.'' Section 5 of the Assisted Suicide Act sets out the restrictions as they apply to LSC funds by generally prohibiting the use of appropriated funds for legal or other assistance for the purpose of (1) securing or funding any

activity or service that would assist in or cause the suicide, euthanasia, or mercy killing of an individual; (2) compelling any person or entity to provide funding or service for such purposes; or (3) asserting or advocating a legal right to assisted suicide, euthanasia or mercy killing. Finally, Section 3(b) clarifies what activities are not included within the restrictions.

This proposed rule implements those sections of the Act that apply to the Corporation. A section-by-section analysis of this proposed rule is set out below.

*Section 1643.1 Purpose*

The purpose of this proposed rule is to ensure that LSC recipients do not use any LSC funds to engage in legal assistance activities inconsistent with the Assisted Suicide Act.

*Section 1643.2 Definitions*

The definitions in this section are all based primarily on the House Report for the Assisted Suicide Act and the common dictionary definitions of the terms. H. Rep. at 12; Random House Webster's College Dictionary (1997) (''Webster's''). Assisted suicide is defined as providing any means to another person to enable or assist that person to commit suicide. See Webster's at 80 (suicide aided by a person, esp. a physician, who organizes the logistics of the suicide). For example, if a doctor provided a person with a lethal drug overdose so that the person could commit suicide by ingesting the lethal overdose, the action of providing the drug overdose would constitute assisted suicide.

Euthanasia and mercy killing have the same meaning. The consistent use of both terms throughout the Act might suggest that they are two different activities. However, both the House Report and Webster's Dictionary give them the same meaning. Apparently, State laws commonly use the terms together or use one term or the other to mean the same activity.[1] Euthanasia and mercy killing are defined as the active means by one person to cause the death of another person for reasons assumed to be merciful, regardless of whether the person who is killed consents to be killed. According to the House Report, such a death is often considered merciful because the person is deemed to be dying or suffering or the person is considered to be a burden on family, community or society. H. Rep. at 12.

Suicide is defined as the taking of one's own life voluntarily and intentionally and is included in this rule to clarify its meaning within the term assisted suicide.

*Section 1643.3 Prohibition*

This section prohibits the use of LSC funds by recipients for legal or other assistance for those activities delineated therein. Paragraph (a) prohibits a recipient from using LSC funds for any action that would cause or assist in causing the suicide, euthanasia or mercy killing of an individual. This would include, for example, providing a client with assistance to obtain the means of death or providing a client the financial means for death by suicide or euthanasia.

Paragraph (b) prohibits the use of LSC funds for compelling any person or private or governmental entity to engage in the activities prohibited in paragraph (a). For example, a recipient could not provide legal assistance to a client for the purpose of suing a public or private hospital to permit the individual to receive assistance in committing suicide in its facilities.

Paragraph (c) implements Section 5(a)(3) of the Assisted Suicide Act and prohibits asserting or advocating a legal right to cause or assist in causing the suicide, euthanasia, or mercy killing of an individual. This means, for example, that legal assistance could not be provided to assert that a law or regulation prohibiting or regulating assisted suicide, euthanasia, or mercy killing is unconstitutional or otherwise in violation of the law. It would also prohibit any lobbying efforts to promote or advocate for passage of legislation that would legalize assisted suicide, euthanasia, or mercy killing.

*Section 1643.4 Applicability*

Paragraph (a) of this section is based on Section 3 (b) of the Assisted Suicide Act, which clarifies that the Act's restrictions do not apply to or affect any limitation relating to certain activities. Subparagraphs (a)(1) through (a)(3) clarify that the restrictions are intended to include the use of active means of causing death, such as by lethal injection or the provision of a lethal oral drug overdose, but do not apply to or affect any limitation relating to decisions to withhold or withdraw medical care, medical treatment, nutrition, or hydration. Nor do the restrictions apply to or affect limitations relating to abortion activities. This means that the Corporation's current restrictions on abortion activities are unaffected by this rule and are still in full force and effect in their current status, see 45 CFR § 1610.2 (a)(7) and (b)(10).

LSC recipients traditionally do not become involved in legal assistance in the area of assisted suicide or euthanasia, but they do provide legal assistance to clients in preparing advance directives, such as living wills and powers of attorney. The preparation of such documents will generally be unaffected by this rule, because the rule's restriction only applies to active means of causing death. Advance directives normally apply to passive actions, such as withholding or withdrawing nutrition or medical care. Only if an advance directive includes a directive to secure death by active means, that is, by assisted suicide, euthanasia or mercy killing, would it be restricted by this rule. This is unlikely since such actions are illegal in most States.

Subparagraph (a)(4) clarifies that the restriction does not include treatment aimed solely at alleviating suffering, even if the treatment has the unintended consequence of risking or shortening life. Thus, the restriction would not include the administration of morphine for the purpose of alleviating pain, even if its use might risk causing death or risk shortening life because it might also have the side effect of suppressing respiratory functions. The restriction, however, would include treatment that has a two-fold purpose of alleviating pain or discomfort and causing death.

Paragraph (b) clarifies that the prohibition on LSC funds does not apply to a recipient's non-LSC funds. Section 5 of the Assisted Suicide Act expressly applies the restriction only to ''funds appropriated by Congress.'' This is also reflected in the House Report, which provides:

Section 5 is not intended to have the effect of de-funding an entire program, such as a Legal Services program or other legal or advocacy program, simply because some State or privately funded portion of that program may advocate for or file suit to compel funding or services for assisted suicide. This section is intended only to restrict Federal funds from being used for such activities.

House Report at 19–20. Recipients may have other Federal grants restricted by various provisions of the Assisted Suicide Act. This paragraph does not affect the recipient's obligation to comply with all the terms of such a grant. Although this rule restricts only the use of LSC grant funds, a recipient's other funds are still subject to any

[1] The terms are found in statutes from 45 States and the District of Columbia, which disapprove of euthanasia, mercy killing, suicide, or assisted suicide in their natural death/living will statutes, or in their durable power of attorney for health care acts. For citations to these statutes, see Relief or Reproach?: Euthanasia Rights in the Wake of Measure 16, 74 Oregon Law Review, 449, 462 notes 44 and 45 (Summer 1995).

restrictions that are included in other grant agreements.

*Section 1643.5 Recipient Policies, Procedures and Recordkeeping*

This section requires the recipient to establish written policies and procedures to guide the recipient's staff to ensure compliance with this rule. Recipients are also required to maintain sufficient documentation to demonstrate compliance with this part. The type of recordkeeping necessary to demonstrate compliance with this rule would be documentation that only non-LSC funds were used for any activities prohibited by this rule.

**List of Subjects in 45 CFR Part 1643**

Grants, Health Care, Legal Services, Lobbying.

For reasons set forth in the preamble, LSC proposes to amend Chapter XVI of Title 45 by adding part 1643 as follows:

## PART 1643—RESTRICTION ON ASSISTED SUICIDE, EUTHANASIA, AND MERCY KILLING

Sec.
1643.1 Purpose.
1643.2 Definitions.
1643.3 Prohibition.
1643.4 Applicability.
1643.5 Recipient policies, procedures and recordkeeping.

**Authority:** Pub. L. 105–12; 42 U.S.C. 2996f (b)(11).

### § 1643.1 Purpose.

This part is intended to ensure that recipients do not use any LSC funds for any assisted suicide, euthanasia or mercy killing activities prohibited by this part.

### § 1643.2 Definitions.

(a) Assisted suicide means the provision of any means to another person with the intent of enabling or assisting that person to commit suicide.

(b) Euthanasia (or mercy killing) is the active means by one person to cause the death of another person for reasons assumed to be merciful, regardless of whether the person killed consents to be killed.

(c) Suicide means the act or instance of taking one's own life voluntarily and intentionally.

### § 1643.3 Prohibition.

No recipient may use LSC funds to assist in, support, or fund any activity or service which has a purpose of assisting in, or to bring suit or provide any other form of legal assistance for the purpose of:

(a) Securing or funding any item, benefit, program, or service furnished for the purpose of causing, or the purpose of assisting in causing, the suicide, euthanasia, or mercy killing of any individual;

(b) Compelling any person, institution, or governmental entity to provide or fund any item, benefit, program, or service for such purpose; or

(c) Asserting or advocating a legal right to cause, or to assist in causing, the suicide, euthanasia, or mercy killing of any individual.

### § 1643.4 Applicability.

(a) The restriction in § 1643.3 shall not apply to or affect any limitation relating to:

(1) The withholding or withdrawing of medical treatment or medical care;

(2) The withholding or withdrawing of nutrition or hydration;

(3) Abortion; or

(4) The use of items, goods, benefits, or services furnished for purposes relating to the alleviation of pain or discomfort even if they may increase the risk of death, unless they are furnished for the purpose of causing or assisting in causing death.

(b) This part does not apply to activities funded with a recipient's non-LSC funds.

### § 1643.5 Recipient policies, procedures and recordkeeping.

The recipient shall adopt written policies and procedures to guide its staff in complying with this part and shall maintain records sufficient to document the recipient's compliance with this part.

Dated: September 25, 1997.

**Suzanne B. Glasow,**

*Senior Assistant General Counsel.*

[FR Doc. 97–25913 Filed 9–29–97; 8:45 am]

BILLING CODE 7050–01–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Transit Administration

## 49 CFR Parts 653 and 654

**[Docket No. FTA–97–2925]**

**RIN 2132–AA56**

## Prevention of Prohibited Drug Use in Transit Operations; Prevention of Alcohol Misuse in Transit Operations

**AGENCY:** Federal Transit Administration, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** In response to a request from a transit agency, the Federal Transit Administration (FTA) proposes to allow employers to use the results of post-accident drug and alcohol tests administered by State or local law enforcement personnel when the State and local law enforcement officials have independent authority for the tests and the employer obtains the results in conformance with State and local law. In short, in a very limited number of cases, the employer would be relieved of administering post-accident drug and alcohol tests. If this amendment is adopted, it could ease the burden of employers in testing ''safety-sensitive'' employees after an accident has occurred; it may also relieve some ''safety-sensitive'' employees from taking duplicative post-accident drug and alcohol tests.

**DATES:** Comments on this proposed rule must be submitted by December 1, 1997.

**ADDRESSES:** Written comments must refer to the docket number that appears above and be submitted to the United States Department of Transportation, Central Dockets Office, PL–401, 400 Seventh Street, S.W. Washington, D.C. 20590. All comments received will be available for inspection at the above address from 10 a.m. to 5 p.m., e.t. Monday through Friday, except Federal holidays. Those desiring the agency to acknowledge receipt of their comments should include a self-addressed stamped postcard with their comments.

**FOR FURTHER INFORMATION CONTACT:** For program issues: Judy Meade, Director of the Office of Safety and Security (202) 366–2896 (telephone) or (202) 366–7951 (fax). For legal issues: Nancy Zaczek, Office of the Chief Counsel (202) 366–4011 (telephone) or (202) 366–3809 (fax). Electronic access to this and other rules may be obtained through FTA's Transit Safety and Security Bulletin Board at 1–800–231–2061 or through the FTA World Wide Web home page at http://www.fta.bts.gov; both services are available seven days a week.

**SUPPLEMENTARY INFORMATION:**

### I. Background

On February 14, 1994, FTA issued 49 CFR parts 653 and 654, which require recipients of certain categories of FTA funding to test safety-sensitive employees for the use of five prohibited drugs and the misuse of alcohol. In addition to five other types of testing, not relevant to this discussion, the rules require employers to conduct post-accident testing of certain safety-sensitive employees within eight hours of the accident for the misuse of alcohol and within 32 hours for the use of prohibited drugs. (The standards for determining which ''safety-sensitive'' employees must be tested are set out in the rule and are not relevant to this discussion.) If an employer cannot test

such employees within the specified time period, the rules require the employer to prepare and maintain a record stating why such test was not promptly administered.

On February 6, 1996, Mr. William Millar, as Executive Director of the Port Authority of Allegheny County (Port Authority), asked FTA to accept the results of a post-accident drug and alcohol test administered by a State or local law enforcement official or emergency medical personnel as meeting the requirements of FTA's drug and alcohol rules, in other words, to ''federalize'' these locally administered tests.

Mr. Millar's request was prompted by a collision between two buses that had occurred on January 12, 1996 on the Martin Luther King Busway in Pittsburgh, Pennsylvania. Mr. Millar described the accident as follows:

At approximately 7:10 a.m., in adverse weather conditions, a bus traveling from [d]owntown Pittsburgh crossed the center line and collided with an inbound bus. The driver of the inbound vehicle was killed. The operator of the outbound bus was severely injured and taken to a local hospital for emergency surgery. He remained on the hospital's 'critical' list for approximately four days and underwent additional surgery.

Due to the driver's medical condition and unconsciousness, Port Authority's Drug and Alcohol Program personnel were unable to conduct substance tests meeting federal standards. Nevertheless, it appears that blood tests were taken on both operators which could determine their use of alcohol or prohibited drugs. Reports from local law enforcement officials have revealed that neither driver had drugs or alcohol in their systems. However, if drugs or alcohol had been found, Federal regulations make clear that tests administered by either the hospital or law enforcement officials on the surviving bus operator would not have met [F]ederal standards, regardless of the quality of the hospital, the legality of the police investigation or the proficiency of the laboratories used to conduct the tests.

To remedy this situation, Mr. Millar suggested that FTA amend the regulations to allow a ''post-accident medical emergency testing procedure,'' which would include

(a) The permissible use by a public transit agency of a blood or urine sample drawn by hospital personnel and submitted by the transit agency to a laboratory certified by the Department of Health and Human Services when the blood or urine is collected: (i) in the course of routine medical procedures; or (ii) upon the request of law enforcement or regulatory personnel; or (iii) upon the request of authorized personnel of the transit agency's Drug and Alcohol Program[.]

(b) The permissible use of blood or urine test results when said tests, whether initiated by hospitals or law enforcement personnel, meet the requirements of state law with respect to chain of custody of the samples and medical certification or expertise of the laboratories.

Mr. Millar further suggested that a post-accident medical emergency be presumed by the employer whenever, following an accident involving death or personal injury to any person:

(a) A covered employee has reported to or been transported to a medical facility for the receipt of emergency medical care; or (b) a covered employee is a patient in a medical facility and is unconscious or substantially impaired to prevent testing by transit agency personnel.

## II. FTA's Response

As Mr. Millar's letter illustrates, conducting post-accident tests within the timeframes specified by the rules is frequently difficult and sometimes impossible. FTA provided for this situation by allowing employers to prepare and maintain a record stating why a test was not promptly administered. Mr. Millar's letter, however, highlights a ''gap'' in FTA's rules; in some instances, an employer may not be able to test a ''safety-sensitive'' employee, although the employee has undergone drug and alcohol tests administered by local police or by medical personnel. Should the employer be able to use those results to meet the requirements of the rules, and if so, under what circumstances?

Mr. Millar suggested that an employer should be able to direct medical personnel to perform blood, breath, and urine tests on ''safety-sensitive'' employees who are receiving medical treatment after an accident has occurred. FTA, however, does not have the authority to require medical personnel to perform these tests; hence, we have not adopted this particular suggestion.

Mr. Millar further suggested that an employer be permitted to use the results of any tests performed by medical personnel as part of the routine post-accident medical examination of the ''safety-sensitive'' employee. Again, FTA does not have the authority to require medical personnel to provide the results of these tests to the employer. Hence, we do not propose to adopt this suggestion.

Mr. Millar also suggested that an employer use the results of any tests conducted by State or local law enforcement personnel as part of their accident investigation. This proposed amendment could strike a reasonable balance: the ''safety-sensitive'' employee is protected by the standards and procedures of State and local law, and the traveling public is protected by allowing the employer to use the test results, if necessary, to remove a ''safety-sensitive'' employee from his or her ''safety-sensitive'' position. However, it must be emphasized that the tests must be conducted in conformance with State and local law and the results be obtained by the employer in conformance with State and local law.

Although FTA proposes this change to the rules, we do not believe that employers would be able to use it frequently, based on the experience of the Federal Highway Administration (FHWA). Currently, FHWA allows employers to use the results of post-accident tests conducted by State or local law enforcement officials if the employer can obtain those results; because of privacy concerns, however, employers frequently cannot obtain them. Moreover, this rule, if adopted, could not provide an employer any authority to require the police to perform the tests for the employer or to give the employer the results of tests performed at the police's initiative.

In the few cases when the employer can obtain the results from the police, this amendment could be extremely useful. First, it would allow an employer to use the results of a blood test, which is not authorized under FTA's rules. Second, an employer could use the test results, so long as the test was administered in accordance with State or local law, which means that the employer is not obligated, in this very narrow class of cases, to follow the procedures specified in 49 CFR part 40. In other words, for these cases, State or local law would supersede part 40.

We seek comment on this proposed amendment.

## III. Regulatory Analyses and Notices

This is not a significant rule under Executive Order 12866 or under the Department's Regulatory Policies and Procedures. There are no significant Federalism implications to warrant the preparation of a Federalism Assessment. The Department certifies that this rule will not have a significant economic impact on a substantial number of small entities; allowing employers to use the results of a post-accident drug and alcohol test administered by or under the direction of State or local law enforcement personnel is unlikely to significantly increase the costs for employers.

## List of Subjects in 49 CFR Parts 653 and 654

Alcohol testing, Drug testing, Grant programs—transportation, Mass transportation, Reporting and

recordkeeping requirements, Safety and transportation.

For the reasons set forth in the preamble, FTA proposes to amend Title 49 Code of Federal Regulations, part 653 and 654 as follows:

## PART 653—PREVENTION OF PROHIBITED DRUG USE IN TRANSIT OPERATIONS

1. The authority citation for part 653 continues to read as follows:

**Authority:** 49 U.S.C. 5331; 49 CFR 1.51.

### § 653.45 [Amended]

2. Section 653.45 is amended by adding paragraph (d) to read as follows:

* * * * *

(d) The results of a blood or urine test for the use of prohibited drugs, conducted by Federal, State, or local officials having independent authority for the test, shall be considered to meet the requirements of this section, provided such tests conform to the applicable Federal, State, or local testing requirements, and that the test results are obtained by the employer.

## PART 654—PREVENTION OF ALCOHOL MISUSE IN TRANSIT OPERATIONS

3. The authority citation for part 654 continues to read as follows:

**Authority:** 49 U.S.C. 5331; 49 CFR 1.52.

### § 654.33 [Amended]

4. Section 654.33 is amended by adding paragraph (d) to read as follows:

* * * * *

(d) The results of a blood or breath test for the misuse of alcohol, conducted by Federal, State, or local officials having independent authority for the test, shall be considered to meet the requirements of this section, provided such tests conform to the applicable Federal, State, or local testing requirements, and that the results of the tests are obtained by the employer.

Issued on: September 24, 1997.

**Gordon J. Linton,**

*Administrator.*

[FR Doc. 97–25742 Filed 9–29–97; 8:45 am]

BILLING CODE 4910–57–U

# Notices

Federal Register
Vol. 62, No. 189
Tuesday, September 30, 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

### Office of the Secretary

**[Docket No. 97–056–6]**

### Declaration of Extraordinary Emergency Because of the Mediterranean Fruit Fly

A serious outbreak of the Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), has occurred in Florida.

The Mediterranean fruit fly is one of the most destructive pests of over 200 species of fruits, nuts, and vegetables, especially citrus and stone fruits. The pest can develop rapidly and spread easily, causing severe damage to entire citrus and other fruit and vegetable growing areas. At least 43 countries are known to regulate in some manner for the Mediterranean fruit fly.

As of August 1997, infestations of the Mediterranean fruit fly had been found in portions of Hillsborough, Manatee, Orange, Polk, and Sarasota Counties, FL. The presence of this fruit fly in the continental United States could severely disrupt the fruit and vegetable industry due to the loss of export markets. The Florida agricultural industry, worth an estimated $6 billion annually, is based on continued trade in international markets. According to industry sources, in 1996 the value of Florida citrus exports, in fresh and juice form, was estimated at approximately $940 million.

Control and eradication of Mediterranean fruit fly is difficult. Management of the pest is through quarantine and containment of regulated articles. Initial emergency action was taken by the State of Florida and the Animal and Plant Health Inspection Service (APHIS). Since shortly after the first Mediterranean fruit fly was detected in Hillsborough County, FL, on May 28, 1997, APHIS and the State of Florida have been conducting a coordinated program to eradicate this fruit fly infestation in Florida. The program, which involves trapping, malathion bait spray treatments, sterile fly releases, and restrictions on the movement of Mediterranean fruit fly host material, has proven successful. The last detection of the pest came on August 26, 1997, in Polk County, FL. Additional treatments, followed by a period of intensive trapping, are still necessary to complete the program. However, on September 19, 1997, a State administrative law judge in Florida ruled that several of the emergency regulations under which the State's eradication program has operated were invalid. Without such regulations, the State of Florida is unable to continue to take action necessary to control and eradicate the Mediterranean fruit fly in Florida.

This infestation of Mediterranean fruit fly represents a threat to United States fruit and vegetable crops. It constitutes a real danger to the national economy and seriously burdens interstate and foreign commerce. Therefore, the U.S. Department of Agriculture has determined that an extraordinary emergency exists because of the existence of Mediterranean fruit fly in Florida and the inability of the State of Florida to continue to take action necessary to control and eradicate it.

Therefore, in accordance with 7 U.S.C. 150dd, this declaration of extraordinary emergency authorizes the Secretary to: (1) Seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of, in such manner as the Secretary deems appropriate, any product or article of any character whatsoever, or means of conveyance that the Secretary has reason to believe is infested with or contains Mediterranean fruit fly; and (2) quarantine, treat, or apply other remedial measures to, in such manner as the Secretary deems appropriate, any premises, including articles on such premises, that the Secretary has reason to believe are infested with Mediterranean fruit fly. The Governor of Florida has been informed of these facts.

*Effective Date:* This declaration of extraordinary emergency shall become effective September 24, 1997.

**Dan Glickman,**

*Secretary of Agriculture.*

[FR Doc. 97–25857 Filed 9–29–97; 8:45 am]

BILLING CODE 3410–34–P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

**[PY–97–007]**

### United States Grade Standards for Poultry and Rabbits

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice.

**SUMMARY:** The Agricultural Marketing Service (AMS) is soliciting comments on its proposal to change the United States Grade Standards for Poultry. Specifically, AMS proposes to change existing grade standards for boneless parts, skinless carcasses and parts, and boneless, skinless parts. New grade standards would be added for ready-to-cook (raw), boneless, skinless drumsticks and legs; and raw size-reduced boneless, skinless products. AMS proposes also to clarify existing standards for defeathering by detailing specific feather tolerances for grades A-B-, and C-quality carcasses and parts. Additionally, AMS proposes to terminate the authority to grade-identify boneless, skinless products under three tentative standards that were used to develop the proposed new grade standards. From time to time, sections in the standards are affected by changes in poultry processing technology and marketing. This notice updates the standards to reflect these changes.

**DATES:** Comments must be received on or before December 1, 1997.

**ADDRESSES:** Written comments may be submitted to Douglas C. Bailey at the Standardization Branch, Poultry Division, AMS, USDA, Room 3944-South Bldg., STOP 0259, 1400 Independence Avenue, SW, Washington, D.C. 20250–0259; or faxed to (202) 690–0941.

All comments received will be available for public inspection during regular business hours (8 a.m.–4:30 p.m. eastern time).

The current United States Grade Standards for Poultry and Rabbits, along with the proposed changes, are available either through the above address or by accessing AMS's Internet site at: www.ams.usda.gov/standards/standpy.htm.

**FOR FURTHER INFORMATION CONTACT:** Contact Rex A. Barnes at (202) 720–3271.

**SUPPLEMENTARY INFORMATION:** Poultry grading is a voluntary program provided under the Agricultural Marketing Act of 1946, as amended, 7 U.S.C. 1621 *et seq.*, and is offered on a fee-for-service basis. Section 203(c) of the Agricultural Marketing Act of 1946, as amended, directs and authorizes the Secretary of Agriculture ''to develop and improve standards of quality, condition, grade, and packaging and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices * * *'' AMS is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities.

On December 4, 1995, the Voluntary United States Grade Standards for Poultry and Rabbits were removed from the Code of Federal Regulations (CFR) as part of the National Performance Review program to eliminate unnecessary regulations and to improve those that remain in force. AMS will continue to administer the voluntary standards, maintaining their existing numbering system, and will make copies of the official standards available upon request. The United States Grade Standards for Poultry are now referred to as AMS 70.200 *et seq.* and the United States Grade Standards for Rabbits are now referred to as AMS 70.300 *et seq.*

On March 30, 1995, June 12, 1995, and February 15, 1996, AMS published in the **Federal Register** tentative standards for: (1) Raw boneless, skinless legs and drumsticks; (2) raw boneless, skinless products, without added ingredients; and (3) cooked boneless, skinless products, without added ingredients, respectively.

The tentative standards for raw and cooked products have been in effect for over a year, permitting the determination of production requirements, the evaluation of consumer acceptance, and the collection of other necessary data.

Processor feedback has indicated that they are pleased with the marketing capabilities of grade-identified raw products under the tentative standards. The Agency received no requests to grade product under the cooked boneless, skinless product tentative standard, and little feedback about the cooked standard.

In response to findings from the use of tentative standards and feedback from industry and graders responsible for applying the standards, AMS proposes to change the standards for poultry to include raw boneless, skinless legs, drumsticks, and size-reduced products. The proposal would also allow the use of clear to semi-clear marinades and sauces for grade-identified products, provided the ingredients do not alter the applicable grade factors or detract from the appearance of the product. At the same time, AMS would terminate the authority for the use of the three tentative standards.

AMS proposes to add poultry tenderloins and wing portions to the standards and make each eligible for grade identification. Tenderloins would be identified as grade A-quality; and wing portions would be identified as grade A-, B-, or C-quality parts. The current standards cover these parts, but do not clearly define how each part is cut.

The proposal would update the feather criteria in grade A-, B-, and C-quality poultry carcasses and parts and grade A-quality poultry roasts. Current standards require that poultry either be ''free of feathers'' or possess only a few feathers when examined at normal grading speeds. The proposed standards would specify the number and length of protruding feathers allowed on poultry for each grade, and limit the length of hair and/or down permitted on ducks and geese. The proposal reflects the Agency's actual grading interpretation and practices, and does not require a change in existing procedures.

The following proposed changes would extend additional flexibility in the marketing of grade identified poultry products:

(1) The standards for boneless parts would be revised to include drumsticks and legs, address boneless, skin-on parts only, and exclude tenderloins. Tenderloins and other boneless, skinless parts, and their respective requirements, would be covered under a proposed new section. This change organizes requirements for each product type by section and makes the standards clearer and more ''user friendly.''

(2) For trimming of boneless, skinless poultry legs and drumsticks, the proposed standard would require at least one-half of the drumstick and leg remain intact, and the part need no longer retain the meat yield of the original part. This change was revised from requirements in the tentative standard which were not based on the Agency's long-standing policy that parts must be in recognizable portions for identification purposes and that the ''one-half'' requirement provides a minimum relationship to the meat yield.

(3) A proposed new section for grade A-quality tenderloins and other whole muscle boneless, skinless parts would update current criteria by: (a) Including all such parts; (b) allowing only slight discolorations on the flesh; and (c) requiring parts to be free of bone, cartilage, blood clots, bruises, cuts, tears, and holes.

The following proposed changes would establish standards for size-reduced poultry products:

(1) Requirements for Grade A-quality raw size-reduced boneless, skinless products in the form of sliced, diced, and other similarly cut poultry products would be added to the standards. To date, the standards have only addressed raw poultry carcasses, parts, and roasts.

(2) The section title under the tentative standard would be revised from ''Ready-to-Cook, Boneless-Skinless Poultry Products, Without Added Ingredients'' to ''Size-Reduced Poultry Products.'' This change clarifies that this section covers size-reduced poultry products exclusively.

(3) The requirements for the ''size-reduced'' section would be revised from the tentative standards to require uniformity in product size and shape to be dictated by the size-reduction process. This change is necessary because it is improbable that all products of this nature would be uniform, especially since new technology, including slicing and dicing procedures, will constantly be improved, advanced, and discovered.

(4) Requirements for products labeled ''sliced (part)'' would be added to the standards. The product will consist of the specific part (such as breast, thigh, etc.) indicated. Additionally, these products shall: (a) Originate from the slicing of the boneless, skinless part and (b) collectively approximate the shape of the original part prior to slicing. Further, the slices need not come from the same part. These requirements are consistent with current guidelines for cut-up chickens labeled as ''whole chicken, cut-up,'' where all parts need not come from the same chicken.

Other miscellaneous changes are proposed to remove obsolete material and otherwise clarify, update, simplify, and technically correct the standards. These changes to the poultry grade standards are editorial or housekeeping in nature and impose no new requirements.

Dated: September 24, 1997.

**Lon Hatamiya,**

*Administrator, Agricultural Marketing Seravice.*

[FR Doc. 97–25918 Filed 9–29–97; 8:45 am]

BILLING CODE 3410–02–U

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. 97–091–1]**

### AgrEvo USA Co.; Receipt of Petition for Determination of Nonregulated Status for Canola Genetically Engineered for Glufosinate Tolerance

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice.

**SUMMARY:** We are advising the public that the Animal and Plant Health Inspection Service has received a petition from AgrEvo USA Company seeking a determination of nonregulated status for canola designated as Transformation Event T45, which has been genetically engineered for tolerance to the herbicide glufosinate. The petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. In accordance with those regulations, we are soliciting public comments on whether this canola presents a plant pest risk.

**DATES:** Written comments must be received on or before December 1, 1997.

**ADDRESSES:** Please send an original and three copies of your comments to Docket No. 97–091–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 97–091–1. A copy of the petition and any comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing access to that room to inspect the petition or comments are asked to call in advance of visiting at (202) 690–2817 to facilitate entry into the reading room.

**FOR FURTHER INFORMATION CONTACT:** Dr. James Lackey, Biotechnology Evaluation, BSS, PPQ, APHIS, Suite 5B05, 4700 River Road Unit 147, Riverdale, MD 20737-1236; (301) 734–7612. To obtain a copy of the petition, contact Ms. Kay Peterson at (301) 734–4885; e-mail: mkpeterson@aphis.usda.gov.

**SUPPLEMENTARY INFORMATION:** The regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered ''regulated articles.''

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for determination of nonregulated status must take and the information that must be included in the petition.

On July 24, 1997, APHIS received a petition (APHIS Petition No. 97–205–01p) from AgrEvo USA Company (AgrEvo) of Wilmington, DE, requesting a determination of nonregulated status under 7 CFR part 340 for canola (*Brassica napus* L.) designated as Transformation Event T45 (event T45), which has been genetically engineered for tolerance to the herbicide glufosinate. The AgrEvo petition states that the subject canola should not be regulated by APHIS because it does not present a plant pest risk.

As described in the petition, event T45 canola has been genetically engineered to contain the *pat* gene derived from *Streptomyces viridochromogenes*. The *pat* gene encodes the enzyme phosphinothricin-N-acetyltransferase (PAT), which confers tolerance to the herbicide glufosinate. Expression of the *pat* gene is controlled by the 35S promoter and terminator derived from the plant pathogen cauliflower mosaic virus. The *Agrobacterium tumefaciens* method was used to transfer the added genes into the parental cultivar *B. napus* var. AC EXCEL.

Event T45 canola has been considered a regulated article under the regulations in 7 CFR part 340 because it contains gene sequences from plant pests. The subject canola has been field tested in Canada since 1995, and in the U.S. since 1996 under APHIS permits. In the process of reviewing the permit applications for field trials of this canola, APHIS determined that the vectors and other elements were disarmed and that the trials, which were conducted under conditions of reproductive and physical containment or isolation, would not present a risk of plant pest introduction or dissemination. Event T45 canola has been approved for commercial sale in Canada.

In the Federal Plant Pest Act, as amended (7 U.S.C. 150aa *et seq.*), ''plant pest'' is defined as ''any living stage of: Any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances, which can directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any processed, manufactured or other products of plants.'' APHIS views this definition very broadly. The definition covers direct or indirect injury, disease, or damage not just to agricultural crops, but also to plants in general, for example, native species, as well as to organisms that may be beneficial to plants, for example, honeybees, rhizobia, etc.

The U. S. Environmental Protection Agency (EPA) is responsible for the regulation of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 136 *et seq.*). FIFRA requires that all pesticides, including herbicides, be registered prior to distribution or sale, unless exempt by EPA regulation. In cases in which genetically modified plants allow for a new use of an herbicide or involve a different use pattern for the herbicide, EPA must approve the new or different use. When the use of the herbicide on the genetically modified plant would result in an increase in the residues of the herbicide in a food or feed crop for which the herbicide is currently registered, or in new residues in a crop for which the herbicide is not currently registered, establishment of a new tolerance or a revision of the existing tolerance would be required. Residue tolerances for pesticides are established by EPA under the Federal Food, Drug and Cosmetic Act (FFDCA), as amended (21 U.S.C. 301 *et seq.*), and the Food and Drug Administration (FDA) enforces tolerances set by EPA under the FFDCA.

FDA published a statement of policy on foods derived from new plant varieties in the **Federal Register** on May 29, 1992 (57 FR 22984–23005). The FDA statement of policy includes a discussion of FDA's authority for ensuring food safety under the FFDCA, and provides guidance to industry on the scientific considerations associated with the development of foods derived from new plant varieties, including those plants developed through the techniques of genetic engineering. AgrEvo has begun consultation with FDA on the subject canola.

In accordance with § 340.6(d) of the regulations, we are publishing this notice to inform the public that APHIS will accept written comments regarding the Petition for Determination of Nonregulated Status from any interested person for a period of 60 days from the date of this notice. The petition and any comments received are available for public review, and copies of the petition may be ordered (see the **ADDRESSES** section of this notice).

After the comment period closes, APHIS will review the data submitted by the petitioner, all written comments received during the comment period, and any other relevant information. Based on the available information, APHIS will furnish a response to the petitioner, either approving the petition in whole or in part, or denying the petition. APHIS will then publish a notice in the **Federal Register** announcing the regulatory status of AgrEvo's event T45 canola, and the availability of APHIS' written decision.

**Authority:** 7 U.S.C. 150aa–150jj, 151–167, and 1622n; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(c).

Done in Washington, DC, this 24th day of September 1997.

**Terry L. Medley,**

*Aministrator, Animal and Plant Health Inspection Service.*

[FR Doc. 97–25858 Filed 9–29–97; 8:45 am]

BILLING CODE 3410–34–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–831]**

### Fresh Garlic From the People's Republic of China; Final Results of Antidumping Duty Administrative Review and Partial Termination of Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Final Results of Antidumping Duty Administrative Review.

**SUMMARY:** On June 20, 1997, the Department of Commerce published the preliminary results of administrative review of the antidumping duty order on fresh garlic from the People's Republic of China. The review covers nine producers/exporters of subject merchandise. The period of review is November 1, 1995, through October 31, 1996.

We gave interested parties an opportunity to comment on the preliminary results. Since we received no comments from interested parties, the final results are the same as our preliminary results. The final dumping margin is listed below the section entitled *''Final Results of the Review.''*

**EFFECTIVE DATE:** September 30, 1997.

**FOR FURTHER INFORMATION CONTACT:** Andrea Chu or Robin Gray, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4733.

**SUPPLEMENTARY INFORMATION:**

### Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to19 CFR Part 353 (April 1997).

### Background

On June 20, 1997, the Department published the preliminary results of administrative review (62 FR 33601) of the antidumping duty order on fresh garlic from the PRC (November 16, 1994, 59 FR 59209). Because we determined that one named respondent, Rizhao Hanxi Fisheries & Comprehensive Development Co., Ltd., failed to submit a complete response to our questionnaire and the remaining named respondents failed to respond at all to our questionnaires, we preliminarily determined to use facts otherwise available for cash deposit and assessment purposes for all PRC producers/exporters of the subject merchandise. We received no comments from interested parties on our preliminary results.

We have conducted this administrative review in accordance with section 751 of the Tariff Act.

### Scope of the Review

The products subject to this antidumping duty order are all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, provisionally preserved, or packed in water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing. The differences between grades are based on color, size, sheathing and level of decay.

The scope of this order does not include: (a) garlic that has been mechanically harvested and that is primarily, but not exclusively, destined for non-fresh use; or (b) garlic that has been specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed.

The subject merchandise is used principally as a food product and for seasoning. The subject garlic is currently classifiable under subheadings 0703.20.0000, 0710.80.7060, 0710.80.9750, 0711.90.6000, and 2005.90.9500 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

In order to be excluded from the antidumping duty order, garlic entered under the HTSUS subheadings listed above that is (1) mechanically harvested and primarily, but not exclusively, destined for non-fresh use or (2) specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed must be accompanied by declarations to the Customs Service to that effect.

### Final Results of the Review

As a result of our review, we determine that a margin of 376.67 percent exists for all producers/exporters of the subject merchandise from the PRC for the period November 1, 1995 through October 31, 1996.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following cash deposit requirements will be effective upon publication of these final results for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Tariff Act: (1) for all PRC exporters, all of which were found not to be entitled to separate rates, the cash deposit will be 376.67 percent; and (2) for other non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation

of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22 (1997).

Dated: September 11, 1997.

**Robert S. LaRussa,**

*Assistant Secretary for Import Administration.*

[FR Doc. 97–25784 Filed 9–29–97; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Western Michigan University; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

*Docket Number:* 97–053. *Applicant:* Western Michigan University, Kalamazoo, MI 49008–5167. *Instrument:* Electron Energy Analyzer. *Manufacturer:* Scienta Instrument AB, Sweden. *Intended Use:* See notice at 62 FR 40334, July 28, 1997.

*Comments:* None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides highest energy resolution of 5.0 meV with resolving power to 1500. The National Institute of Standards and Technology and Brookhaven National Laboratory advised on May 27, 1997 that (1) these capabilities are pertinent to the applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use (comparable case).

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

**Frank W. Creel,**

*Director, Statutory Import Programs Staff.*

[FR Doc. 97–25785 Filed 9–29–97; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[Docket No. 970829215–7215–01]**

**RIN 0648–ZA34**

### NOAA Pan-American Climate Studies (PACS), Program Announcement

**AGENCY:** Office of Global Programs, National Oceanic and Atmospheric Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** The Pan-American Climate Studies (PACS) Program is a contribution to the National Oceanic and Atmospheric Administration (NOAA) Climate and Global Change Program, and as such is designed to improve our ability to observe, understand, predict, and respond to changes in the global environment. This program builds on NOAA's mission requirements and longstanding capabilities on global change research and prediction. The PACS Program is a contributing element of the U.S. Global Change Research Program (USGCRP), which is coordinated by the interagency Committee on Environmental and Natural Resources. NOAA's program is designed to complement other agency contributions to that national effort. The PACS Program has a timeframe of 1995–2004.

**DATES:** Strict deadlines for submission to the FY 1998 process are: Letters of intent must be received at OGP no later than Friday, October 3, 1997. Full proposals must be received at OGP no later than Friday, December 5, 1997. Applicants who have not received a response to their letter of intent by Friday, October 17, 1997 should contact Michael Patterson at, 301–427–2089 ext. 12, patterson@ogp.noaa.gov; Andrea Ray, 303–497–6000, ajr@cdc.noaa.gov; or Roxane Ronca, 301–427–2089 ext. 507, ronca@ogp.noaa.gov. We anticipate that review of full proposals will occur during early 1998 and funding should begin during the spring of 1998 for most approved projects. May 1, 1998, should be used as the proposed start date on proposals, unless otherwise directed by a program manager. Applicants should be notified of their status within 6 months. All proposals must be submitted in accordance with the guidelines below. Failure to heed these guidelines may result in proposals being returned without review.

**ADDRESSES:** Proposals may be submitted to: Office of Global Programs, National Oceanic and Atmospheric Administration, 1100 Wayne Avenue, Suite 1225, Silver Spring, MD 20910–5603, Attn.: Michael Patterson.

**FOR FURTHER INFORMATION CONTACT:** Michael Patterson at the above address, 301–427–2089, ext. 12, patterson@ogp.noaa.gov; Andrea Ray, 303–497–6000, ajr@cdc,noaa.gov; or Roxane Ronca, 301–427–2089, ext. 507, ronca@ogp.noaa.gov.

**SUPPLEMENTARY INFORMATION:**

#### Funding Availability

This Program Announcement is for projects to be conducted by investigators both inside and outside of NOAA, over a period of up to three years. Actual funding levels will depend upon the final FY 1998 budget appropriations, current plans are for approximately $1.2 million to be available for new (or renewing) PACS awards. The funding instrument for extramural awards will be a grant unless it is anticipated that NOAA will be substantially involved in the implementation of the project, in which case the funding instrument should be a cooperative agreement. Examples of substantial involvement may include but are not limited to proposals for collaboration between NOAA or NOAA scientists and a recipient scientist or technician and/or contemplation by NOAA of detailing Federal personnel to work on proposed projects. NOAA will make decisions regarding the use of a cooperative agreement on a case-by-case basis. Funding for non-U.S. institutions and contractual arrangements for services and products for delivery to NOAA are not available under this announcement. Matching share is not required by this program.

#### Program Authority

**Authority:** 49 U.S.C. 44720(b); 33 U.S.C. 883d, 883e; 15 U.S.C. 2904; 15 U.S.C. 2931 et seq.

**(CFDA No. 11.431)—Climate and Atmospheric Research**

*Program Objectives*

The overall goal of PACS is to extend the scope and improve the skill of operational seasonal-to-interannual climate prediction over the Americas. Particular emphasis is placed on understanding the mechanisms associated with warm season rainfall and its potential predictability. In addition to seasonal mean rainfall and temperature, PACS is concerned with the frequency of occurrence of significant weather events over the course of a season or seasons.

The scientific objectives of PACS are to promote a better understanding and more realistic simulation of (1) The role of boundary processes in forcing of seasonal-to-interannual climate variability over the Americas, (2) the structure and evolution of tropical SST fields, (3) the seasonally varying mean climate over the Americas and adjacent ocean regions, (4) the structure, variability, and influence on climate in the Americas of the ITCZ/cold tongue complex and subtropical status cloud decks, (5) the relevant land surface processes that shape the distribution of continental precipitation.

Consistent with the above objectives, PACS has initiated an integrated program with the GEWEX Continental-Scale International Project (GCIP) focusing on warm season rainfall over North America. In this collaboration, PACS will supply the larger-scale ocean/atmosphere modeling and diagnostics expertise and the observations in and above the oceans and GCIP will provide the more locally focused land/atmosphere modeling and diagnostics and continental observations. This research will require the use of mesoscale models applied in a climatological setting. Proposals in this emerging research area are invited under this announcement.

*Program Priorities*

The FY 1998 PACS Program Announcement invites empirical and modeling studies in the following areas:

(1) Investigations into large-scale atmosphere-ocean interactions in the tropical Atlantic and eastern Pacific in the context of the climatological-mean annual march and/or seasonal-to-interannual climate variability.

(2) Investigations into the climatological mean and interannual variability of warm season rainfall over the Americas on Spatial scales ranging from tens to thousands of kilometers, emphasizing links between that variability and the adjacent oceans.

Field, monitoring, and/or observational efforts are not encouraged at this time. PACS intends to invite proposals for a field program in the FY 1999 Announcement as a U.S. contribution to an international field program in the tropical Eastern Pacific to be conducted in 2000.

*Eligibility*

Extramural eligibility is not limited and is encouraged with the objective of developing a strong partnership with the academic community. Non-academic proposers are urged to seek collaboration with academic institutions. Universities, non-profit organizations, for profit organizations, State and local governments, and Indian Tribes, are included among entities eligible for funding under this announcement. Funding for non-U.S. institutions is not available under this announcement.

*Letters of Intent*

Letters of Intent (LOI): (1) Letters should be no more than two pages in length and include the name and institution of principal investigator(s), a statement of the problem, brief summary of work to be completed, and approximate cost of the project. (2) Evaluation will be by program management. (3) It is in the best interest of applicants and their institutions to submit letters of intent; however, it is not a requirement. (4) Facsimile and electronic mail are acceptable for letters of intent only. (5) Projects deemed unsuitable during LOI review will not be encouraged to submit full proposals.

*Evaluation Criteria*

Consideration for financial assistance will be given to those proposals which address one of the Program Priorities listed below and meet the following evaluation criteria:

(1) Scientific Merit (20%): Intrinsic scientific value of the subject and the study proposed.

(2) Relevance (20%): Importance and relevance to the goal of the Climate and Global Change Program and to the research areas listed above.

(3) Methodology (20%): Focused scientific objective and strategy, including measurement strategies and data management considerations; project milestones; and final products.

(4) Readiness (20%): Nature of the problem; relevant history and status of existing work; level of planning, including existence of supporting documents; strength of proposed scientific and management team; past performance record of proposers.

(5) Linkages (10%): Connections to existing or planned national and international programs; partnerships with other agency or NOAA participants, where appropriate.

(6) Costs (10%): Adequacy of proposed resources; appropriate share of total available resources; prospects for joint funding; identification of long-term commitments.

*Selection Procedures*

All proposals will be evaluated and ranked in accordance with the assigned weights of the above evaluation criteria by (1) independent peer mail review, and/or (2) independent peer panel review; both NOAA and non-NOAA experts in the field may be used in this process. Their recommendations and evaluations will be considered by the program managers in final selections. Those ranked by the panel and program as not recommended for funding will not be given further consideration and will be notified of non-selection. For the proposals rated either Excellent, Very Good or Good, the program managers will: (a) ascertain which proposals meet the objectives, fit the criteria posted, and do not substantially duplicate other projects that are currently funded by NOAA or are approved for funding by other federal agencies, hence, awards may not necessarily be made to the highest-scored proposals, (b) select the proposals to be funded, (c) determine the total duration of funding for each proposal, and (d) determine the amount of funds available for each proposal.

Unsatisfactory performance by a recipient under prior Federal awards may result in an application not being considered for funding.

*Proposal Submission*

The guidelines for proposal preparation provided below are mandatory. Failure to heed these guidelines may result in proposals being returned without review.

(a) Full Proposals

(1) Proposals submitted to the NOAA Climate and Global Change Program must include the original and two unbound copies of the proposal. (2) Investigators are not required to submit more than 3 copies of the proposal, however, the normal review process requires 20 copies. Investigators are encouraged to submit sufficient proposal copies for the full review process if they wish all reviewers to receive color, unusually sized (not 8.5 x 11″), or otherwise unusual materials submitted as part of the proposal. Only three copies of the Federally required forms are needed. (3) Proposals must be

limited to 30 pages (numbered), including budget, investigators vitae, and all appendices, and should be limited to funding requests for one to three year duration. Appended information may not be used to circumvent the page length limit. Federally mandated forms are not included within the page count. (4) Proposals should be sent to the NOAA Office of Global Programs at the above address. (5) Facsimile transmissions and electronic mail submission of full proposals will not be accepted.

(b) Required Elements

All proposals should include the following elements:

*(1) Signed title page:* The title page should be signed by the Principal Investigator (PI) and the institutional representative and should clearly indicate which project area is being addressed. The PI and institutional representative should be identified by full name, title, organization, telephone number and address. The total amount of Federal funds being requested should be listed for each budget period.

*(2) Abstract:* An abstract must be included and should contain an introduction of the problem, rationale and a brief summary of work to be completed. The abstract should appear on a separate page, headed with the proposal title, institution(s) investigator(s), total proposed cost and budget period.

(3) *Results from prior research:* The results of related projects supported by NOAA and other agencies should be described, including their relation to the currently proposed work. Reference to each prior research award should include the title, agency, award number, PIs, period of award and total award. The section should be a brief summary and should not exceed two pages total.

(4) *Statement of work:* The proposed project must be completely described, including identification of the problem, scientific objectives, proposed methodology, relevance to the goal of the Climate and Global Change Program, and the program priorities listed above. Benefits of the proposed project to the general public and the scientific community should be discussed. A year-by-year summary of proposed work must be included clearly indicating that each year's proposed work is severable and can easily be separated into annual increments of meaningful work. The statement of work, including references but excluding figures and other visual materials, must not exceed 15 pages of text. Investigators wishing to submit group proposals that exceed the 15 page limit should discuss this possibility with the appropriate program officer prior to submission. In general, proposals from 3 or more investigators may include a statement of work containing up to 15 pages of overall project description plus up to 5 additional pages for individual project descriptions.

(5) *Budget:* Applicants must submit a Standard Form 424 (4–92) ''Application for Federal Assistance'', including a detailed budget using the Standard Form 424a (4–92), ''Budget Information—Non-Construction Programs''. The form is included in the standard NOAA application kit. The proposal must include total and annual budgets corresponding with the descriptions provided in the statement of work. Additional text to justify expenses should be included as necessary.

(6) *Vitae:* Abbreviated curriculum vitae are sought with each proposal. Reference lists should be limited to all publications in the last three years with up to five other relevant papers.

(7) *Current and pending support:* For each investigator, submit a list that includes project title, supporting agency with grant number, investigator months, dollar value and duration. Requested values should be listed for pending support.

(8) *List of suggested reviewers:* The cover letter may include a list of individuals qualified and suggested to review the proposal. It also may include a list of individuals that applicants would prefer to not review the proposal. Such lists may be considered at the discretion of the program officers.

(c) Other Requirements

(1) Applicants may obtain a standard NOAA application kit from the Program Office.

Primary Applicant Certification—All primary applicants must submit a completed Form CD–511, ''Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying''. Applicant are also hereby notified of the following:

1. Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR Part 26, section 105) are subject to 15 CFR Part 26, ''Nonprocurement Debarment and Suspension,'' and the related section of the certification form prescribed above applies;

2. Drug Free Workplace—Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR Part 26, Subpart F, ''Government wide Requirements for Drug-Free Workplace (Grants)'' and the related section of the certification form prescribed above applies;

3. Anti-Lobbying—Persons (as defined at 15 CFR Part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, ''Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions'', and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

4. Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, ''Disclosure of Lobbying Activities,'' as required under 15 CFR part 28, appendix B.

*Lower Tier Certifications*

(1) Recipients must require applicants/bidders for subgrants, contracts, subcontracts, or lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, ''Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying'' and disclosure Form SF–LLL, ''Disclosure of Lobbying Activities.'' Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

(2) Recipients and subrecipients are subject to all applicable Federal laws and Federal and Department of Commerce policies, regulations, and procedures applicable to Federal financial assistance awards.

(3) Preaward Activities—If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that may have been received, there is no obligation to the applicant on the part of Department of Commerce to cover preaward costs.

(4) This program is subject to the requirements of OMB Circular No. A–110, ''Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations'', and 15 CFR Part 24, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and

Local Governments'', as applicable. Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

(5) All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of, or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management, honesty, or financial integrity.

(6) A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

(7) No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

(i) The delinquent account is paid in full,

(ii) a negotiated repayment schedule is established and at least one payment is received, or

(iii) Other arrangements satisfactory to the Department of Commerce are made.

(8) Buy American-Made Equipment or Products—Applicants are encouraged that any equipment or products authorized to be purchased with funding provided under this program must be American-made to the maximum extent feasible.

(9) The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct cost dollar amount in the application, whichever is less.

(d) If an application is selected for funding, the Department of Commerce has no obligation to provide any additional future funding in connection with the award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the Department of Commerce.

(e) In accordance with Federal statutes and regulations, no person on grounds of race, color, age, sex, national origin or disability shall be excluded from participation in, denied benefits of, or be subjected to discrimination under any program or activity receiving financial assistance from the NOAA Climate and Global Change Program. The NOAA Climate and Global Change Program does not have direct TDD (Telephonic Device for the deaf) capabilities, but can be reached through the State of Maryland supplied TDD contact number, 800–735–2258, between the hours of 8:00 am–4:30 pm.

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 unless that collection of information displays a current valid OMB control number. The standard forms have been approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act under OMB approval number 0348–0043, 0348–0044, and 0348–0046. Classification: This notice has been determined to be not significant for purposes of Executive Order 12866.

Dated: September 23, 1997.

**J. Michael Hall,**

*Director, Office of Global Programs, National Oceanic and Atmospheric Administration.*

[FR Doc. 97–25781 Filed 9–29–97; 8:45 am]

BILLING CODE 3510–12–M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Singapore

September 24, 1997.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs adjusting limits.

**EFFECTIVE DATE:** October 2, 1997.

**FOR FURTHER INFORMATION CONTACT:** Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The current limits for certain categories are being adjusted, variously, for swing, carryover and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Also see 61 FR 56523, published on November 1, 1996.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

**D. Michael Hutchinson,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

September 24, 1997.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 28, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Singapore and exported during the twelve-month period which began on January 1, 1997 and extends through December 31, 1997.

Effective on October 2, 1997, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

| Category | Adjusted twelve-month limit |
|---|---|
| 331 | 531,568 dozen pairs. |
| 338/339 | 1,423,057 dozen of which not more than 755,394 dozen shall be in Category 338 and not more than 839,904 dozen shall be in Category 339. |
| 347/348 | 1,121,818 dozen of which not more than 631,654 dozen shall be in Category 347 and not more than 491,287 dozen shall be in Category 348. |
| 604 | 976,975 kilograms. |
| 631 | 619,405 dozen pairs. |
| 639 | 3,790,643 dozen. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 1996.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs

exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 97–25799 Filed 9–29–7; 8:45 am]

BILLING CODE 3510–DR–F

## COMMODITY FUTURES TRADING COMMISSION

### Chicago Board of Trade Futures Contracts in Corn and Soybeans; Proposed Disapproval of Exchange Listing for Trading of January 1999 Soybean Futures Contract and March 1999 Corn Futures Contract

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of, and Request for Public Comment on, Proposed Disapproval of Contract Listing and Proposed Disapproval and Proposed Order to Change and to Supplement Chicago Board of Trade Proposal on Contract Specifications.

**SUMMARY:** The Commodity Futures Trading Commission (''Commission'') has issued a Proposed Order to the Board of Trade of the City of Chicago (''CBT''), under sections 5a(a)(10) and 15 of the Commodity Exchange Act (''Act''), 7 U.S.C. 7a(a)(10) and 19, to change and to supplement its proposal regarding the delivery terms of the CBT corn and soybean futures contracts. Notice of the Commission's Proposed Order was published in the **Federal Register** on Monday, September 22, 1997. 62 FR 49474. The Proposed Order proposed a number of changes and supplements to the CBT proposal for its corn and soybean futures contracts. The Commission also proposed to disapprove, to change and to supplement the terms of the July and December 1999 corn futures contracts and the July and November 1999 soybean futures contracts proposed by the CBT.

The Commission has become aware that the Board of Trade of the City of Chicago (CBT) notified its members on September 19, 1997, of its intent to propose listing for trading the January 1999 soybean futures contract and the March 1999 corn futures contract. By letter dated September 23, 1997, the Commission notified the CBT that the Commission is proposing under sections 5a(a)(10), 5a(a)(12), 8a(7) and 15 of the Act to disapprove the listing for trading and to disapprove, to change and to supplement the terms of the January 1999 soybean futures contract and the March 1999 corn futures contract on the same basis and for the same reasons as it has determined in its Proposed Order of September 15, 1997, to propose to disapprove, to change and to supplement the July and December 1999 corn futures contracts and the July and November 1999 soybean futures contracts.

The Commission has determined that publication of the notice to the CBT proposing to disapprove the listing and to disapprove, to change and to supplement the terms of the January 1999 soybean futures contract and the March 1999 corn futures contract is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

**DATES:** Comment must be received by October 22, 1997.

**ADDRESSES:** Comments should be mailed to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, attention: Office of the Secretariat; transmitted by facsimile at (202) 418–5521; or transmitted electronically at [secretary@cftc.gov]. Reference should be made to ''Corn and Soybean Delivery Points—Additional Delivery Months.''

**FOR FURTHER INFORMATION CONTACT:** John Mielke, Acting Director, or Paul M. Architzel, Chief Counsel, Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, (202) 418–5260, or electronically, Mr. Architzel at [PArchitzel@cftc.gov].

**SUPPLEMENTARY INFORMATION:** Section 5a(a)(10) of the Act provides that as a condition of contract market designation, boards of trade are required to:

> permit the delivery of any commodity, on contracts of sale thereof for future delivery, of such grade or grades, at such point or points and at such quality and locational price differentials as will tend to prevent or diminish price manipulation, market congestion, or the abnormal movement of such commodity in interstate commerce. If the Commission after investigation finds that the rules and regulations adopted by a contract market permitting delivery of any commodity on contracts of sale thereof for future delivery, do not accomplish the objectives of this subsection, then the Commission shall notify the contract market of its finding and afford the contract market an opportunity to make appropriate changes in such rules and regulations. If the contact market within seventy-five days fails to make the changes which in the opinion of the Commission are necessary to accomplish the objectives of this subsection, then the Commission after granting the contract market an opportunity to be heard, may change or supplement such rules and regulations of the contract market to achieve the above objectives * * * .

The Commission, on September 15, 1997, issued a Proposed Order under sections 5a(a)(10) and 15 of the Act to change and to supplement the proposal of the CBT relating to the delivery specifications of the corn and soybean futures contracts. That proposal was submitted in response to prior Commission notification to the CBT that its futures contracts for corn and soybeans no longer were in compliance with the requirements of section 5a(a)(10) of the Act. The text of the Proposed Order was published in the **Federal Register**, and public comment was requested thereon. 62 FR 49474 (September 22, 1997).

The Commission has become aware that the CBT notified its members on September 19, 1997, of its intent to propose listing for trading of the January 1999 soybean futures contract and the March 1999 corn futures contract. By letter dated September 23, 1997, the Commission notified the CBT that it is proposing under sections 5a(a)(10), 5a(a)(12), 8a(7) and 15 of the Act to disapprove the listing for trading and to disapprove, to change and to supplement the terms of the January 1999 soybean futures contract and the March 1999 corn futures contract on the same basis and for the same reasons as it has determined in its Proposed Order of September 15, 1997, to propose to disapprove, to change and to supplement the July and December 1999 corn futures contracts and the July and November 1999 soybean futures contracts.

A public hearing on the Proposed Order has been scheduled for October 15, 1997, (or at an earlier date if the CBT requests) at the Commission's Washington, D.C. office. The CBT also will have an opportunity at that public hearing to make an oral presentation before the Commission on the matters raised in this notice to disapprove the listing and to disapprove, to change and to supplement the January 1999 soybean futures contract and the March 1999 corn futures contract. The Commission will also accept written comments from the CBT on this issue on or before the date of the hearing. The text of this notification is as follows:

September 23, 1997.

Mr. Patrick Arbor,

*Chairman of the Board, Board of Trade of the City of Chicago, 141 W. Jackson Blvd., Chicago, Illinois 60604–2994.*

Re: Proposed Disapproval of Exchange Listing for Trading of January 1999 Soybean Futures Contract and March 1999 Corn Futures Contract

Dear Mr. Arbor: The Commission is aware that the Board of Trade of the City of Chicago (CBT) notified its members on September 19, 1997, of its intent to propose listing for trading the January 1999 soybean futures contract and the March 1999 corn futures contract.

The Commodity Futures Trading Commission (Commission) hereby notifies the CBT that listing the above contract months is not consistent with the abbreviated review provisions of Commission rule 1.41(l), 17 CFR 1.41(l), and will be subject to the usual review and approval procedures under section 5a(a)(12) of the Commodity Exchange Act (Act) and rule 1.41(b). Commission rule 1.41(l) provides that all changes in contract months shall be deemed approved by the Commission ten days after notice of the change is received by the Commission if consistent with the Act and the Commission's regulations.[1]

The Commission, by letter dated December 19, 1996, notified the CBT that the delivery terms of its corn and soybean futures contracts are not consistent with the requirements of section 5a(a)(10) of the Act. In its December 19, 1996 notification, the Commission stated:

[i]n light of the Commission's determination that the CBT's futures contracts in corn and soybeans no longer comply with the requirements of section 5a(a)(10) of the Act, the CBT should refrain from listing additional months for trading in those contracts during the pendency of these proceedings.

61 FR 67998, 67999 (December 26, 1997).

On September 15, 1997, the Commission issued a proposed Order to change and to supplement the CBT's response to the December 19, 1996 section 5a(a)(10) notice and to disapprove, to change and to supplement the terms proposed by the CBT for the July and December 1999 corn and July and November 1999 soybean futures contracts, which were listed by the CBT without Commission approval. The Commission has notified the CBT under the proposed Order that the CBT will have an opportunity to be heard by the Commission on October 15, 1997, or sooner if the CBT requests.

The delivery specifications intended by the CBT to be applicable to the January 1999 soybean futures contract and the March 1999 corn futures contract are the same as those that the Commission proposed to disapprove for application to the July and December 1999 corn futures contracts and the July and November 1999 soybean futures contracts in its Proposed Order of September 15, 1997. Listing additional delivery months under either the contract terms found by the Commission to violate the provisions of section 5a(a)(10) or under proposed terms on which the Commission already has taken action proposing disapproval is not consistent with the provisions and policies of the Act. The Commission proposes to disapprove the listing of these contract months on those grounds.

Because the Commission finds that listing these trading months is not consistent with Commission rule 1.41(l) and that Commission review and approval under section 5a(a)(12) and rule 1.41(b) is required prior to their listing, their listing for trading by the CBT is not legally authorized at the present time. Moreover, the Commission proposes under sections 5a(a)(10), 5a(a)(12), 8a (7) and 15 of the Act to disapprove the listing for trading and to disapprove, to change and to supplement the terms of the January 1999 soybean futures contract and the March 1999 corn futures contract on the same bases and for the same reasons as it has stated in its December 19, 1996 notification and its Proposed Order of September 15, 1997.

A public hearing on the Proposed Order of September 15, 1997, has been scheduled for October 15, 1997, (or at an earlier date if the CBT requests) at the Commission's Washington, D.C. office. The CBT also will have an opportunity at that public hearing to make an oral presentation before the Commission on the matters raised in this notice to disapprove the listing and to disapprove, to change and to supplement the January 1999 soybean futures contract and the March 1999 corn futures contract. The Commission will also accept written comments from the CBT on this issue on or before the date of the hearing.

The Commission also reserves all of its authority under the Act to bring appropriate legal action against the CBT for the violation of section 5a(a)(12) of the Act and Commission rules 1.41(b) and 1.41(l) which require the CBT to obtain approval by the Commission prior to listing new delivery months for trading. Such reservation of authority relates to the January, July and November 1999 soybeans futures contracts and the March, July and December 1999 corn futures contracts, as well as any contract months CBT attempts to list without prior approval hereafter.[2] As the Commission noted in its Proposed Order of September 15, 1997, the Commission is prepared to approve immediately the listing of delivery months which incorporate the Commission's proposed changes and supplements.

The Commission hereby instructs the CBT that it must notify all market participants that the Commission has not approved the listing of these contract months as required by law and that the Commission has proposed to disapprove the listing and to disapprove, to change and to supplement the terms proposed by the CBT.

By the Commission.

Jean A. Webb,

*Secretary of the Commission.*

The Commission has determined that publication of this Proposed Disapproval of Contract Listing and Proposed Order to Disapprove, to Change and to Supplement the Chicago Board of Trade Proposal on Contract Specifications relating to the January 1999 soybean futures contract and the March 1999 corn futures contract for public comment will assist the Commission in its consideration of these issues. Accordingly, the Commission is requesting written comments from interested members of the public.

Issued in Washington, D.C., this 23rd day of September, 1997, by the Commodity Futures Trading Commission.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 97–25779 Filed 9–29–97; 8:45 am]

BILLING CODE 6351–01–P

[1] Commission rule 1.41(l) provides, in part, that:

Notwithstanding the provisions of paragraph (b) of this section, all changes in trading months shall be deemed approved by the Commission ten days after written notice of such a change is received by the Commission if:

(i) The change is consistent with a rule of the contract market governing the listing of trading months which has been approved by the Commission, and with the Act and the Commission's regulations; * * *.

[2] In this regard, the Commission notes that the listing of contract months under the current contract terms prior to the December notification's finding that the contracts' terms are in violation of section 5a(a)(10) of the Act is fundamentally different from the listing of trading months after such a finding has been made.

## DEPARTMENT OF DEFENSE

### Department of the Air Force

### HQ USAF Scientific Advisory Board Meeting

The Science & Technology Panel Review of Air Force Research Laboratory (AFRL), in support of the HQ USAF Scientific Advisory Board, will meet in Dayton, OH on November 3–7, 1997, from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to gather information, receive briefings and review AFRL.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697–8404.

**Barbara A. Carmichael,**

*Alternate Air Force Federal Register Liaison Officer.*

[FR Doc. 97–25887 Filed 9–29–97; 8:45 am]

BILLING CODE 3910–01–P

## DEPARTMENT OF DEFENSE

### Department of the Air Force

### HQ USAF Scientific Advisory Board Meeting

The Science and Technology (S&T) Panel Meeting in support of the HQ USAF Scientific Advisory Board will meet at ANSER, Arlington, VA on December 2–3, 1997, from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to gather information and receive briefings.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697–8404.

**Barbara A. Carmichael,**

*Alternate Air Force Federal Register Liaison Officer.*

[FR Doc. 97–25888 Filed 9–29–97; 8:45 am]

BILLING CODE 3910–01–P

## DEPARTMENT OF DEFENSE

### Department of the Army

### Notification of the U.S. Army Freedom of Information Act (FOIA) Electronic Reading Room on the Internet

**AGENCY:** U.S. Army.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Freedom of Information Act, as amended by the ''Electronic Freedom of Information Act Amendments of 1996'', the United States Army has implemented an Electronic Reading Room. The Electronic Reading Room may be accessed on the World Wide Web at the following Internet address: http://www.rmd.belvoir.army.mil/err.htm

**FOR FURTHER INFORMATION CONTACT:** Questions regarding the Freedom of Information Act should be addressed to Rose Marie Christensen, phone (703) 607–3377, Chief, Department of the Army Freedom of Information/Privacy Acts Office, Suite 201, 1725 Jefferson Davis Highway, Arlington, VA 22202.

**SUPPLEMENTARY INFORMATION:** The Freedom of Information Act requires that records described in Title 5 U.S.C. Section 552(a)(2) (A), (B), (C), and (D) created on or after November 1, 1996 shall be made available electronically by November 1, 1997. These electronic records will be released in the Electronic Reading Room and are available for public review 24 hours a day.

**Eric E. Tolbert,**

*Chief, Records Management Program Services.*

[FR Doc. 97–25932 Filed 9–29–97; 8:45 am]

BILLING CODE 3710–08–M

## DEPARTMENT OF DEFENSE

### Department of the Army

### Availability of U.S. Patent Application for Non-Exclusive, Exclusive, or Partially Exclusive Licensing

**AGENCY:** U.S. Army Chemical and Biological Defense Command, DoD.

**ACTION:** Notice.

**SUMMARY:** In accordance with 37 CFR 404.6 announcement is made of the availability for licensing of U.S. Patent application for non-exclusive, exclusive, or partially exclusive licensing. The patent application listed below has been assigned to the United States Government as represented by the Secretary of the Army, Washington, DC.

*Title:* Rapidly Deployable, Man-Portable, Inflatable, Chemical, Biological, Radiological & Explosive Containment System.

*Description:* This invention relates to a relatively light weight containment system which can be used to contain or mitigate the effects of explosively disseminated chemical and/or biological devices.

*Patent Application Number:* 08/871,665.

*Filing Date:* June 9, 1997.

**FOR FURTHER INFORMATION CONTACT:** Mr. John Biffoni, Patent Attorney, U.S. Army CBDCOM, AMSCB–GC, APG, MD 21010–5423, Phone (410) 671–1158.

**SUPPLEMENTARY INFORMATION:** Written objections must be filed on or before October 30, 1997.

**Gregory D. Showalter,**

*Army Federal Register, Liaison Officer.*

[FR Doc. 97–25933 Filed 9–29–97; 8:45 am]

BILLING CODE 3710–08–M

## DEPARTMENT OF EDUCATION

**RIN 1850–ZA01**

### 21st Century Community Learning Centers Program

**AGENCY:** Department of Education.

**ACTION:** Notice of proposed priorities.

**SUMMARY:** The Secretary proposes priorities for the 21st Century Community Learning Centers Program, administered by the Office of Educational Research and Improvement (OERI). The Secretary may use these priorities in fiscal year 1998 and subsequent years. The Secretary takes this action to focus Federal assistance on stimulating and expanding significant learning programs available to children and youth beyond regular school hours. The proposed absolute priority is also designed to ensure wide and effective use of program funds to support centers that provide expanded learning opportunities for children and youth in a safe and drug-free environment, and engage the support of citizens in those efforts. The proposed competitive priorities concern serving early adolescents and middle school students and services related to core academic subjects.

**DATES:** Comments must be received on or before November 14, 1997.

**ADDRESSES:** All comments concerning the proposed priority should be addressed to Dr. Robert Stonehill, U.S. Department of Education, Office of Educational Research and Improvement, 555 New Jersey Avenue, NW, Room 504, Washington, DC 20208–5644. Comments may also be sent by fax (202–219–2198) or e-mail (robert__stonehill@ed.gov).

**FOR FURTHER INFORMATION CONTACT:** Carol J. Mitchell or Amanda Clyburn, U.S. Department of Education, Office of Educational Research and Improvement, 555 New Jersey Avenue, NW, Room 504, Washington, DC 20208–5644. E-mail addresses are: carol__j.__mitchell@ed.gov or amanda__clyburn@ed.gov. 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. Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audio tape, or computer diskette) on request to the contact person listed in the preceding paragraph.

**SUPPLEMENTARY INFORMATION:** The 21st Century Community Learning Centers Act authorizes the Secretary to award grants to rural and inner-city public elementary or secondary schools, or consortia of such schools, to enable them to plan, implement, or expand projects that benefit the educational, health, social service, cultural and recreational needs of a rural or inner-city community.

A Community Learning Center established in a local public school can, among other things, be a stimulating, safe, supervised and cost-effective after-school, weekend or summer haven for

children and youth—and their families. As reported in the recent Department of Education publication Keeping Schools Open as Community Learning Centers: Extending Learning in a Safe, Drug-free Environment Before and After School, recent research shows that a stimulating environment of this type can improve thinking and language performance of participating children and youth. Research also indicates that these programs reduce crime, delinquency, and victimization of children and youth. However, although the number of after-school child care programs has grown over the last 20 years, there are still far too few communities that offer effective, organized and extended opportunities for learning outside the regular school day. Of the 49,000 before- and after-school programs available in the U.S. in 1991, only about a third were housed in public schools. And, for in-school and out-of-school care programs, only a tiny percent served older children and youth. In 1995, there were 23.5 million school-age children with parents in the workforce. But as recently as the 1993–94 school year, only 3.4 percent of children in public elementary and combined schools were enrolled in any of the estimated 18,000 before- or after-school programs at public schools. Seventy percent of all public elementary and combined schools did not have before- or after-school programs.

The needs and demands are clear: a 1994 survey of parents found that 56 percent think that many parents leave their children alone too much after school, and a 1989 survey of school principals found that 84 percent agreed that there is a need for before- and after-school programs. But even though the number of after-school programs is growing, the demand is growing faster, as thousands of parents who currently care for their children during the day are encouraged to enter the workforce.

After-school programs are well positioned to reduce the incidence of drug use and violence and their detrimental effects on learning. Research by the Federal Bureau of Investigation indicates that the hours between 3 and 6 p.m. are when youth aged 12 to 17 are most at risk of committing or of being victims of violent acts. After-school programs located at Community Learning Centers will give youth a safe and supervised place to go during these hours. For that reason, the Secretary is proposing a competitive priority for those applicants for Community Learning Centers that will serve early adolescents and middle-school students.

**Priorities**

The proposed absolute priority supports centers that have a goal of providing learning opportunities for students in a safe and drug-free environment. For example, before- and after-school programs can be a place in which tutors provide reading help to younger children or in which mentors guide older children to take challenging mathematics and science courses that pave the way to college, and help them succeed in those courses. However, programs applying for assistance are required to carry out at least four of the activities listed in section 10905 of the Elementary and Secondary Education Act (20 U.S.C. 8245), and should propose an array of inclusive and supervised services that include extended learning opportunities (such as enriched instruction, tutoring or homework help) but may also include safety and drug-free interventions; recreational, musical and artistic activities; and opportunities to use advanced technology, particularly for those children who do not have access to computers or telecommunications at home. Although the proposed absolute priority requires that children and youth be served, applicants may propose projects that also serve and involve other members of the community.

The proposed priorities authorize the Department to give a preference to applicants that propose to serve the academic needs of participating children and youth. These can include services that will assist students who need additional support to master reading and literacy skills, both by directly providing reading services as well as tutoring and mentoring programs in supervised locations. For younger children who are not reading as well as they should, Community Learning Centers can provide extended time in which to overcome the obstacles that have in the past prevented them from becoming good readers. The proposed priorities will also encourage schools to develop strategies to address the needs of students who can benefit from additional enrichment or challenge in mathematics or science, or who are not performing as well as they should. Community learning centers can provide extended hours for students to learn and review basic concepts they may have missed during class, to delve deeper into a more challenging curriculum, or to participate in enjoyable hands-on activities and experiments.

The Secretary will announce the final priorities in a notice in the **Federal Register**. The final priorities will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of particular projects depends on the availability of funds, the content of the final priorities, the quality of the applications received, and the requirements in the law for equitable representation nationally and within states of rural and inner-city programs. The first cycle of awards will be made from fiscal year 1998 funds. If applications of high quality remain unfunded, additional awards may be made in fiscal year 1999, pending availability of funds. The publication of the proposed priorities does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements.

**Note:** This notice does *not* solicit applications. A notice inviting applications under this competition will be published in the **Federal Register** concurrent with or following publication of the notice of final priorities. If you would like your name to be put on a mailing list to receive an application package, you may fax your request to Annie Thompson at (202) 219–2198, or e-mail it to her at: annie__ thompson@ed.gov.

**Proposed Absolute Priority**

Under 34 CFR 75.105 (c)(3), the Secretary proposes to give an absolute preference to applications that meet the proposed absolute priority in the next paragraph. The Secretary proposes to fund under this competition only applications that meet this absolute priority.

*Activities to Expand Learning Opportunities*

The Secretary proposes to fund *only* those applications for 21st Century Community Learning Centers grants that include, among the array of services required and authorized by the statute, activities that offer significant expanded learning opportunities for children and youth in the community and that contribute to reduced drug use and violence.

**Proposed Competitive Priorities**

Under 34 CFR 75.105 (c)(2)(i), the Secretary proposes to give preference to applications that meet one or both of the two competitive priorities in the next two paragraphs. The Secretary proposes to give up to five (5) points for each competitive priority addressed in an application (for a maximum of 10 points if an application addresses both competitive priorities). These points would be in addition to any points the application earns under the selection

criteria which will be published in the application package.

*Proposed Competitive Priority 1*—Projects that propose to serve early adolescents and middle-school students.

*Proposed Competitive Priority 2*—Projects designed to assist students to meet or exceed state and local standards in core academic subjects such as reading, mathematics or science, as appropriate to the needs of the participating children.

**Executive Order 12866**

This notice of proposed priorities has been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice of proposed priorities are those resulting from statutory requirements and those determined by the Secretary as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of proposed priorities, the Secretary has determined that the benefits of the proposed priorities justify the costs.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comment on whether there may be further opportunities to reduce any potential costs or increase potential benefits resulting from these proposed priorities without impeding the effective and efficient administration of the program.

*Summary of Potential Costs and Benefits*

There are no identified costs associated with this notice of proposed priorities. Announcement of the priorities will not result in costs to State and local governments or to recipients of grant funds.

**Intergovernmental Review**

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

**Invitation To Comment**

Interested persons are invited to submit comments and recommendations regarding this notice of proposed priorities. All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in Room 504, 555 New Jersey Avenue, NW, Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m. Eastern Time, Monday through Thursday of each week except Federal holidays.

On request the Department supplies an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking docket for these proposed priorities. An individual with a disability who wants to schedule an appointment for this type of aid may call (202) 205–8113 or (202) 260–9895. An individual who uses a TDD may call the Federal Information Relay Service at 1–800–877–8339, between 8 a.m., and 8 p.m., Eastern time, Monday through Friday.

**Electronic Access to this Document**

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf), on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

**Note:** The official version of this document is the document published in the **Federal Register**.

**Program Authority:** 20 U.S.C. 8241–8247.

(Catalog of Federal Domestic Assistance Number 84.287, 21st Century Community Learning Centers Program)

Dated: September 19, 1997.

**Ricky T. Takai,**

*Acting Assistant Secretary for Educational Research and Improvement.*

[FR Doc. 97–25917 Filed 9–29–97; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER97–4097–000]**

### Bangor Hydro Electric Company; Notice of Filing

September 24, 1997.

Take notice that on September 3, 1997, Bangor Hydro Electric Company tendered for filing an amendment in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, 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 385.214). All such motions or protests should be filed on or before October 7, 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. 97–25809 Filed 9–29–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP97–529–000]**

### Chandeleur Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

September 24, 1997.

Take notice on September 17, 1997, Chandeleur Pipe Line Company (Chandeleur), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, First Revised Tariff Sheet No. 43, to be effective October 1, 1997.

Chandeleur states that the filing is being made to comply the Commission's Order 636C; Order on Remand.

Chandeleur states that copies of the filing are being served on its customers, state commissions and interested parties.

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, NE, Washington, DC 20426,

in accordance with Sections 385.214 and 385.211 of the Commission's Regulations. All such motions or protests should 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. 97–25817 Filed 9–29–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP97–525–000]**

### CNG Transmission Corporation; Notice of Section 4 Filing

September 24, 1997.

Take notice that on September 17, 1997, CNG Transmission Corporation (CNG) tendered for filing pursuant to Section 4 of the Natural Gas Act, a notice of termination of service on line H–13805 in Sherman District, Calhoun County, West Virginia.

CNG states that it is selling this line to Pocono Energy Corporation. CNG further states that no contract for transportation service with CNG will be canceled or terminated as a result of the proposed abandonment of service.

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. Under section 154.210 of the Commission's Regulation, all such motions or protests should be filed on or before September 29, 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. 97–25816 Filed 9–29–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP97–743–000]**

### Columbia Gas Transmission Corporation; Notice of Application

September 24, 1997.

Take notice that on September 10, 1997, Columbia Gas Transmission Corporation (Columbia), a Delaware corporation, having its principal place of business at 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314–1599, filed an abbreviated application pursuant to Section 7(b) of the Natural Gas Act seeking permission to abandon its Justus, Gore, Utica, Coshocton, and Swan Compressor Stations, including all associated equipment, appurtenances and buildings. All of these facilities are located in Ohio.

Columbia states the facilities proposed for abandonment were constructed as gas supply facilities to compress locally produced gas into Columbia's pipeline system for delivery to various markets in Ohio. Due to a decline in the production and Columbia's termination release program of producer contracts, the stations proposed for abandonment are no longer needed and uneconomical to operate.

Columbia estimates the cost of retiring associated with these stations to be $210,100 with an estimated net debit to accumulated provision for depreciation of $1,619,250.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 15, 1997, file with the Federal Energy Regulatory Commission, 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 proceedings. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and 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 Columbia to appear or be represented at the hearing.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–25804 Filed 9–29–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. GT97–34–003]**

### Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

September 24, 1997.

Take notice that on September 19, 1997, Columbia Gas Transmission Corporation (Columbia) tendered for filing the following revised tariff sheet to its FERC Gas Tariff, Second Revised Volume No. 1, bearing an effective date of November 1, 1997:

First Revised Sheet No. 500B

On July 31, 1997, Columbia filed with the Federal Energy Regulatory Commission (Commission) an original tariff sheet that referenced Columbia's service agreement with the West Ohio Gas Company. By the Commission's letter order issued August 26, 1997, in these proceedings, the Commission accepted the filing. However, the West Ohio Gas Company has merged with the East Ohio Gas Company and assumed the name of the East Ohio Gas Company. The instant filing reflects the name change from the West Ohio Gas Company to the East Ohio Gas Company on the tariff sheet identifying the service agreement.

Columbia states that copies of this filing have been mailed to all of its

customers, affected state regulatory commissions, and all parties to this proceeding, and in Docket No. RP95–408. This filing is also available for public inspection at its offices at 12801 Fair Lakes Parkway, Fairfax, Virginia; and 700 Thirteenth Street, NW., Suite 900, Washington, DC.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, Dockets Room, Office of the Secretary, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's regulations. All such protests must be filed as provided in Section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. A copy of this filing is on file with the Commission and is available for public inspection in the Commission's Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–25810 Filed 9–29–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. CP97–762–000]**

## East Tennessee Natural Gas; Notice of Request Under Blanket Authorization

September 24, 1997.

Take notice that on September 19, 1997, East Tennessee Natural Gas (East Tennessee), P.O. Box 2511, Houston, Texas 77252–2511, filed in Docket No. CP97–762–000 a request pursuant to Sections 157.205, 157.212(a), and 157.216(b) of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212(a), and 157.216(b) for authorization to modify the Coatney Road Measurement Station (Coatney Rd. Station) and to abandon the existing portable rotary meter station which serves Knoxville Utilities Board (KUB), a local distribution company, all in Knox County, Tennessee, under the blanket certificate issued in Docket No. CP82–412–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

East Tennessee states that the existing meter at the Coatney Rd. Station is rated for only 275 psig. East Tennessee notes that KUB has a pressure regulation station located immediately downstream of the Coatney Rd. Station which is designed and constructed for East Tennessee's mainline pressure of 640 psig. According to East Tennessee, KUB has requested that the Coatney Rd. Station be at 640 psig. In order to meet KUB's request, East Tennessee proposes to perform the following modifications to the Coatney Rd. Station: (1) Replace the existing portable measurement and regulation station which includes removing screwed pipe; (2) relocate approximately sixteen feet of two-inch diameter piping between East Tennessee and KUB from above ground to underground; (3) install one Energy Economics high pressure positive displacement meter; (4) install a block valve and a by-pass valve; (5) replace the existing shelter with a new shelter which will be approximately 10′L x 10′ W x 8′H; and (6) install new meter run piping which is two-inch diameter piping that would extend approximately five feet on each side of the meter.

East Tennessee estimates that cost that it will pay for the project will be $98,000. East Tennessee contends that it will own, operate and maintain the facilities. East Tennessee asserts that there will be no impact on peak or annual deliveries because it is not proposing to increase KUB's maximum contract quantity. East Tennessee states it has attached copies of its blanket clearance letters from the U.S. Fish and Wildlife Service and the Tennessee Historical Commission. Additionally, East Tennessee states that it sent a notification of the request to the Tennessee Public Service Commission of the proposed abandonment of this facility. East Tennessee states that the proposal is not prohibited by an existing tariff, and East Tennessee has sufficient capacity to accomplish the deliveries specified without detriment or disadvantage to its other customers. East Tennessee submitted the letter dated September 11, 1997 from KUB to East Tennessee, in which KUB notes its consent to the abandonment of the old meter.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulation 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 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. 97–25807 Filed 9–29–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. CP97–732–000]**

## Florida Gas Transmission Company; Notice of Request Under Blanket Authorization

September 24, 1997.

Take notice that on September 8, 1997, Florida Gas Transmission Company (FGT), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP97–732–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct, own, and operate a new delivery point, located in Vermilion Parish, Louisiana, under FGT's blanket certificate issued in Docket No. CP82–553–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

FGT proposes to construct, own, and operate a delivery point in Vermilion Parish, Louisiana, to accommodate FGT's transportation and delivery of gas, on an interruptible basis, to Magnum Gas Marketing, Inc. (Magnum) to serve the City of Kaplan. FGT states the proposed delivery point will include 2-inch tap, approximately 25 feet of 2-inch pipeline, electronic flow measurement (EFM) equipment, and any related appurtenant facilities necessary for FGT to deliver up to 600 Mcf per day into Magnum's meter station.

FGT declares Magnum has elected to construct their meter station and to reimburse FGT for all costs directly and indirectly incurred for the construction of the tap, connecting pipe, and EFM equipment. FGT states the proposed delivery point is estimated to cost $39,800 inclusive of tax gross-up.

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. 97–25801 Filed 9–29–97; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP97–297–002]**

## Florida Gas Transmission Company; Notice of Refund Report

September 24, 1997.

Take notice that on September 19, 1997, Florida Gas Transmission Company (''FGT'') tendered for filing with the Federal Energy Regulatory Commission a report of transition cost recovery (''TCR'') refunds distributed to FGT's eligible shippers on August 29, 1997. In compliance with the Commission's Letter Order dated July 29, 1997 in Docket No. RP97–297–001, FGT allocated a total refund of $1,349,573.55, including interest through the refund date, on a pro rata basis based on actual recoveries from FGT's shippers during the month of April, 1997, the month in which the TCR overcollections occurred.

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, NE, Washington, DC 20426 in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided by Section 154.210 of the Commission's rules and 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. 97–25815 Filed 9–29–97; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP97–531–000]**

## Florida Gas Transmission Company; Notice of Filing

September 24, 1997.

Take notice that on September 19, 1997, Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1 the following tariff sheet:

Fourth Revised Sheet No. 131
Sixth Revised Sheet No. 132
Second Revised Sheet No. 133

FGT states that it proposes two changes in order to achieve the original purpose of the Cash-Out provisions as contained in Section 14.B of the General Terms and Conditions of FGT's tariff. First, FGT proposes that the Cash-Out indices be modified such that: (1) For imbalances due FGT the Posted Price equal the highest of the monthly average spot prices for Mustang Island (Tivoli), Vermilion Parish or St. Helena Parish, as reported in Natural Gas Week, and (2) for imbalances due the Imbalance Party the Posted Price equal the lowest of the monthly average spot prices for Mustang Island (Tivoli), Vermilion Parish or St. Helena Parish, as reported in Natural Gas Week. FGT believes that these changes may work to achieve a portion of the previous price premium of the St. Helena Parish over the Mustang Island (Tivoli). In addition, FGT proposes that the Imbalance Level Factors for imbalance levels of up to 5% be modified such that: (1) For imbalances due FGT the Imbalance Level Factor be increased from the current 1.00 to 1.05 and (2) for imbalances due the Imbalance Party, the Imbalance Level Factor be decreased from 1.00 to 0.95. FGT believes that modification of the Imbalance Level Factor is required because the differential between the high index and low index may be very small and therefore insufficient to discourage gaming. FGT believes that absent the proposed changes, FGT's Cash-Out provisions no longer provide a disincentive for shippers to swing on FGT's system line pack.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided by Section 154.210 of the Commission's Rules and 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. 97–25819 Filed 9–29–97; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP97–161–009]**

## Iroquois Gas Transmission System, L.P.; Notice of Proposed Changes in FERC Gas Tariff

September 24, 1997.

Take notice that on September 17, 1997, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective November 1, 1997:

Sixth Revised Sheet No. 47
Original Sheet No. 47A
First Revised Sheet No. 50A
Second Revised Sheet No. 57A
Second Revised Sheet No. 57B
Original Sheet No. 57C

Seventh Revised Sheet No. 59
Fifth Revised Sheet No. 60
First Revised Sheet No. 64A
First Revised Sheet No. 64B
Second Revised Sheet No. 106
Third Revised Sheet No. 120

In addition, Iroquois also tendered the following sheet to become effective June 1, 1997:

Substitute Original Revised Sheet No. 64B

Iroquois states that the primary purpose of filing all these sheets, except Substitute Original Sheet No. 64B, is to comply with the Commission's June 27, 1997 Order in this docket accepting Iroquois' pro forma tariff sheets. Substitute Original Sheet No. 64B is

being filed because Iroquois discovered that, in making tariff filings in compliance with previous Commission orders in this docket, it had inadvertently filed two Original Sheets No. 64B, each with only part of the text that should have been included on that sheet. Substitute Original Sheet No. 64B includes all of the text from those two sheets on one substitute original sheet. No other changes were made on this sheet.

Iroquois also states that copies of this filing were served upon all customers and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such 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. 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. 97–25814 Filed 9–29–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP97–116–006]**

## Koch Gateway Pipeline Company; Notice of Compliance Filing

September 24, 1997.

Take notice that on September 19, 1997, Koch Gateway Pipeline Company (''Koch'') tendered for filing the following tariff sheets in its FERC Gas Tariff, Fifth Revised Volume No. 1, to be effective January 1, 1997:

**Fifth Revised Volume No. 1**

Substitute Third Revised Sheet No. 1410
Substitute Fourth Revised Sheet No. 1411
Eighth Revised Sheet No. 1412
Substitute First Revised Sheet No. 1413
Second Revised Sheet No. 1414

Koch is submitting the above-referenced tariff sheets pursuant to the Commission's Letter Order dated September 16, 1997, regarding Docket No. RP97–116–005. As directed, Koch has revised the tariff sheets to allow Customers requesting new firm transportation thirty (30) days to execute a service agreement under certain circumstances.

Koch also states that it has served copies of this filing upon each person on the official service list complied by the Secretary in the proceeding.

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 Sections 385.214 and 385.211 of the Commission's regulations. All such motions or protest must be filed as provided in Section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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. 97–25813 Filed 9–29–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP97–530–000]**

## Koch Gateway Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

September 24, 1997.

Take notice that on September 19, 1997, Koch Gateway Pipeline Company (''Koch'') tendered for filing as part of its FERC Gas Tariff, Volume No. 1, the following tariff sheets, to become effective October 19, 1997:

**Fifth Revised Volume No. 1**

Third Revised Sheet No. 1702
Sixth Revised Sheet No. 1907
Fourth Revised Sheet No. 1908
Second Revised Sheet No. 4010
1st Rev Sixth Revised Sheet No. 5200

Koch states that the above referenced tariff sheets are being submitted to make minor miscellaneous changes to its tariff. The changes include correction of typographical errors, and revising tariff references to reflect new Section numbers.

Koch also states that copies of the instant filing have been served upon each affected customer, state commissions, and other interested parties.

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 Sections 385.214 and 385.211 of the Commission's rules and regulations. All such motions or protests must be filed as provided by Section 154.210 of the Commission's rules and 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 part 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. 97–25818 Filed 9–29–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. CP97–737–000]**

## Mississippi River Transmission Corporation; Notice of Request Under Blanket Authorization

September 24, 1997.

Take notice that on September 8, 1997, Mississippi River Transmission Corporation (MRT), 1600 Smith Street, Houston, Texas 77002, filed in Docket No. CP97–737–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate certain facilities in Sauget, Illinois, under MRT's blanket certificate issued in Docket No. CP82–489–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Specifically, MRT proposes to install and operate a 4-inch tap to serve an industrial customer, Industrial Products, Inc., (Industrial Products), in St. Clair, Illinois. MRT states that the total estimated volumes to be delivered to these facilities are 500,000 MMBtu annually and 3,500 MMBtu on a peak day. The estimated total cost of the facilities is $102,965, and Industrial Products will reimburse MRT all of the actual construction costs.

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. 97–25803 Filed 9–29–97; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. OA96–67–003]**

### Montaup Electric Company; Notice of Filing

September 24, 1997.

Take notice that on August 29, 1997, Montaup Electric Company tendered for filing Revised sheets Nos. 45, 59 and 50 to its open access transmission filing in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, 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 385.214). All such motions or protests should be filed on or before October, 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. 97–25811 Filed 9–29–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP97–757–000]**

### National Fuel Gas Supply Corporation; Notice of Request Under Blanket Authorization

September 24, 1997.

Take notice that on September 17, 1997, National Fuel Gas Supply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP97–757–000 a request pursuant to Sections 157.205, and 157.216, of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon points of delivery in Allegany County, New York under National Fuel's blanket certificate issued in Docket No. CP83–4–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Specifically, National Fuel proposes to abandon seven points of delivery which provide service to seven residential gas customers of National Fuel Gas Distribution Corporation. National Fuel states that these points of delivery are located along non-jurisdictional production pipelines that will be conveyed to Alma Gas Company, Inc who will assume service obligations to these customers following the conveyance of these facilities.

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. 97–25805 Filed 9–29–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER97–3559–000]**

### Niagara Mohawk Power Corporation; Notice of Filing

September 24, 1997.

Take notice that on August 6, 1997, Niagara Mohawk Power Corporation tendered for filing a Certificate of Concurrence in the above referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, 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 385.214). All such motions or protests should be filed on or before October 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. 97–25808 Filed 9–29–97; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP97–730–000]**

### NorAm Gas Transmission Company; Notice of Request Under Blanket Authorization

September 24, 1997.

Take notice that on September 8, 1997, NorAm Gas Transmission Company (NGT), 1600 Smith Street, Houston, Texas 77002, filed in Docket No. CP97–730–000, a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate a tap in Hughes County, Oklahoma to serve ARKLA, a division of NorAM Energy Corp. (ARKLA), under its blanket certificate issued in Docket Nos. CP82–384–000 and CP82–384–001, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the

Commission and open to public inspection.

Specifically, NGT proposes to construct and operate a 2-inch delivery tap and first-cut regulator to serve ARKLA. NGT says the tap will be installed on its Line 2–AD in Section 36, Township 5 North, Range 9 East, Hughes County, Oklahoma. NGT indicates that ARKLA will install the domestic meter setting. NGT relates that the estimated volumes to be delivered to this tap are approximately 160 MMBtu annually and 1 MMBtu on a peak day. NGT states that the tap and first-cut regulator are to be constructed at an estimated cost of $2,600.00 and that ARKLA will reimburse NGT the cost of construction.

NGT states that it will transport gas to ARKLA and provide service under its tariff; that the volumes delivered are within ARKLA's certificated entitlement; and that NGT's tariff does not prohibit the addition of new delivery points. NGT says it 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. 97–25800 Filed 9–29–97; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP97–734–000]**

### Northern Natural Gas Company; Notice of Request Under Blanket Authorization

September 24, 1997.

Take notice that on September 8, 1997, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska, 68124–1000, filed in Docket No. CP97–734–000 a request pursuant to Sections 157.205, and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, and 157.212) for approval to install and operate a new delivery point located in Clark County, South Dakota, to accommodate interruptible natural gas deliveries to Northwest Public Service Company (NWPS), under Northern's blanket certificate authority issued in Docket No. CP82–401–000, pursuant to Section 7(c) of the Natural Gas Act (NGA), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern proposes to install and operate the proposed new delivery point to accommodate natural gas deliveries to NWPS under currently effective throughput service agreements. Northern asserts that NWPS has requested the proposed facility for service to four grain dryers and three Hutterite Colonies who have not previously been served by natural gas. Northern further asserts that the estimated volumes of natural gas to be delivered to NWPS at the proposed point are 1,020 MMBtu on a peak day and 52,000 MMBtu on an annual basis. Northern states that the estimated cost to construct the new delivery point is $67,000, which NWPS will reimburse Northern.

Any person or the Commission's Staff may, within 45 days of the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), a motion to intervene 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 activities 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 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. 97–25802 Filed 9–29–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP97–759–000]**

### Northern Natural Gas Company; Notice of Request Under Blanket Authorization

September 24, 1997.

Take notice that on September 18, 1997, Northern Natural Gas Company (Northern), P.O. Box 3330, Omaha, Nebraska 68103–0330, filed in Docket No. CP97–759–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon 17 small volume measuring stations, located in Iowa and Nebraska, under Northern's blanket certificate issued in Docket No. CP82–401–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern proposes to abandon 17 small volume measuring stations due to requests from its end-users for the removal of the measuring station from their property. Northern states the facilities to be abandoned are located in Dickinson, Lyon, and O'Brien Counties, Iowa and Dakota, Gaye, and Lancaster Counties, Nebraska.

Northern asserts the facilities to be abandoned are jurisdictional facilities under the Natural Gas Act and were constructed pursuant to superseded Section 2.55 regulations, budget, or blanket authority, depending on the year the facilities were originally placed in-service.

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. 97–25806 Filed 9–29–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory System

**[Docket Nos. RP96–189–002 and TM98–1–73–002 (not consolidated)]**

## Ozark Gas Transmission System; Notice of Proposed Changes in FERC Gas Tariff

September 24, 1997.

Take notice that on September 19, 1997, Ozark Gas Transmission System (Ozark) filed to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets with respective July 1, 1997, and October 1, 1997, effective dates:

First Revised Fifteenth Revised Sheet No. 4
Second Substitute Sixteenth Revised Sheet No. 4

Ozark states that it is filing to revise this rate sheet to reflect: (1) Reduced rates effective July 1, 1997, in compliance with article I of the Stipulation and Agreement approved by the Commission in Docket No. RP96–189–000 on September 16, 1997; and (2) the new Commission-approved Annual Charge Adjustment (ACA) rate that will take effect on October 1, 1997.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such 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 the protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–25812 Filed 9–29–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. ER97–121–000, et al.]**

## Cinergy Services, Inc., et al.; Electric Rate and Corporate Regulation Filings

September 24, 1997.

Take notice that the following filings have been made with the Commission:

### 1. Cinergy Services, Inc.

[Docket No. ER97–121–000]

Take notice that on September 4, 1997, Cinergy Services, Inc., tendered for filing an amendment in the above-referenced docket.

*Comment date:* October 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

### 2. Western Resources, Inc. and Kansas City Power & Light Co.

[Docket No. EC97–56–000]

Take notice that on September 18, 1997, Western Resources, Inc. (Western Resources), and Kansas City Power & Light Co. (KCPL) (collectively, Applicants), filed, pursuant to Section 203 of the Federal Power Act, 16 U.S.C. § 824 (1988), and part 33 of the Commission's Regulations, 18 CFR part 33, an application for an order authorizing and approving a proposed merger to combine their jurisdictional facilities. After obtaining the necessary regulatory approvals, Western Resources will acquire all of the jurisdictional facilities of KCPL and KCPL's affiliated power marketer, Northwest Power Marketing Company, through a tax-free, stock-for-stock transaction between Western Resources and KCPL. KCPL will become a division of Western Resources, with its headquarters remaining in Kansas City, Missouri.

The Applicants have submitted testimony and other evidence in support of the request that the merger be approved. In a separate filing, the Applicants have submitted an open access transmission tariff which will provide comparable service on the merged system at single system rates.

*Comment date:* November 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

### 3. Wisconsin Power and Light Company

[Docket No. ER97–4044–000]

Take notice that on September 12, 1997, Wisconsin Power and Light Company (WPL) tendered for filing a request to withdraw its filing in Docket No. ER97–4044–000 and a request that the firm and non-firm point-to-point transmission service agreements filed in Docket No. ER96–614–000 be redesignated as an agreement under WPL's transmission tariff pursuant to WPL's August 15, 1997, filing in Docket No. OA96–20–000.

A copy of this filing has been served upon the Public Service Commission of Wisconsin.

*Comment date:* October 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

### 4. Public Service Company of New Mexico

[Docket No. ER97–4289–000]

Take notice that on August 20, 1997, Public Service Company of New Mexico (PNM), submitted for filing executed service agreement for point-to-point transmission service under the terms of PNM's Open Access Transmission Service Tariff with the following transmission service customers: Williams Energy Services Company (2 agreements, dated May 28, 1997 for Non-Firm Service and Short Term Firm Service), Coral Power, L.L.C. (dated May 19, 1997 for Non-Firm Service), Citizens Lehman Power Sales (dated February 18, 1997 for Short Term Firm Service), Federal Energy Sales, Inc. (dated July 11, 1997 for Non-Firm Service), Vitol Gas & Electric L.L.C. (2 agreements dated June 25, 1997 for Short Term Firm Service and Non-Firm Service), Kansas City Power & Light Co. (dated July 15, 1997 for Non-Firm Service), Constellation Power Source, Inc. (dated July 21, 1997 for Non-Firm Service), and Western Resource, Inc. (dated July 22, 1997 for Non-Firm Service). PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

*Comment date:* October 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

### 5. Cinergy Services, Inc.

[Docket No. ER97–4422–000]

Take notice that on September 9, 1997, Cinergy Services, Inc., tendered an amendment in the above-referenced docket.

*Comment date:* October 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

### 6. MidAmerican Energy Company

[Docket No. ER97–4555–000]

Take notice that on September 9, 1997, MidAmerican Energy Company (MidAmerican) tendered for filing changes to its Open Access Transmission Tariff (OATT) for the purpose of offering Market Access Service (MAS).

MidAmerican states that MAS will be an unbundled retail access service available to certain retail industrial and commercial customers of MidAmerican in Iowa. Such service will be offered through OATT changes filed in this proceeding and Price Schedule MAS which has been filed by MidAmerican with the Iowa Utilities Board (IUB) in compliance with the Settlement Agreement approved by the IUB in its Docket Nos. APP–96–1 and RPU–96–8. MidAmerican further states that Phase I of MAS, or a portion thereof, will be considered an experimental retail transmission program of short duration as described in the Commission's order in Portland General Electric Company, 78 FERC ¶61,219 (1997).

MidAmerican proposes an effective date of November 8, 1997, for the rate schedule. MidAmerican has requested the IUB to make Price Schedule MAS effective on the same date.

Copies of the filing were served on all customers having service agreements under the MidAmerican OATT, the IUB, the Illinois Commerce Commission, the South Dakota Public Utilities Commission and all parties to IUB Docket Nos. APP–96–1 and RPU–96–8.

*Comment date:* October 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

**7. Niagara Mohawk Power Corporation**

[Docket No. ER97–4568–000]

Take notice that on September 9, 1997, Niagara Mohawk Power Corporation (Niagara Mohawk) filed a Request for Approval of (1) a Form Transmission Service Agreement for service under Niagara Mohawk's Open Access Transmission Tariff, as filed with the Commission and as modified by an Offer of Settlement that is pending before the Commission in Docket No. OA96–194–000, and (2) a Form Power Sales Agreement for service under Niagara Mohawk's Market-Based Rate Power Sales Tariff, as filed with the Commission in Docket No. ER96–2585–000.

These Service Agreements are for use in a retail access pilot program that was ordered by the New York State Public Service Commission in Case No. 96–E–0948, and are necessary to implement those components of the pilot program that are subject to the jurisdiction of this Commission. Niagara Mohawk seeks waiver of certain provisions of its Open Access Transmission Tariff for the limited purposes of the pilot program.

A copy of this filing has been served on the New York State Public Service Commission and on the parties to New York Public Service Commission Case No. 96–E–0948.

*Comment date:* October 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

**8. De Pere Energy L.L.C.**

[Docket No. ER97–4586–000]

De Pere Energy L.L.C. (De Pere) petitioned the Commission on September 11, 1997, for acceptance for filing of the power purchase agreement between De Pere and Wisconsin Public Service Corporation and to accept the rates thereunder as just and reasonable under Section 205(a) of the Federal Power Act, 16 U.S.C. § 824d(a); for the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and for the waiver of certain Commission Regulations. De Pere is a limited liability company that proposes to engage in the wholesale sale of electric power in the state of Wisconsin and is headquartered in Northbrook, Illinois.

*Comment date:* October 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

**9. Western Resources, Inc. and Kansas City Power & Light Company**

[Docket No. ER97–4669–000]

Take notice that Western Resources, Inc. (Western Resources), and Kansas City Power & Light Company (KCPL) (collectively Applicants), on September 18, 1997, pursuant to Section 205 of the Federal Power Act, 16 U.S.C. § 824b (1988), and Part 35 of the Commission's Regulations, 18 CFR part 35, tendered for filing a proposed transmission tariff to provide open-access transmission service on their merged system at single-system rates. The filing was made in connection with a separate filing for authorization and approval of the proposed merger of Western Resources and KCPL. Applicants request that the proposed tariff become effective contemporaneous with the consummation of their proposed merger.

Copies of this filing were served upon the Applicants' jurisdictional customers, intervenors in proceedings involving each of the Applicants' Order Nos. 888 and 888–A compliance filings, and upon the affected state public service commissions.

*Comment date:* November 17, 1997, in accordance with Standard Paragraph E at the end of this notice.

**10. Consumers Energy Company**

[Docket No. OA97–721–000]

Take notice that on September 8, 1997, Consumers Energy Company (Consumers) tendered a compliance filing unbundling amendment to its Coordinated Operating Agreement with the City of Holland covering transactions from January 1, 1997 through August 30, 1997. A copy of the filing was served on the Michigan Public Service Commission and the City of Holland.

*Comment date*: October 8, 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. 97–25914 Filed 9–29–97; 8:45 am]

BILLING CODE 6717–01–P

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## FEDERAL ENERGY REGULATORY COMMISSION

**[Docket No. ER94–1377–000, et al.]**

## Delmarva Power & Light Company, et al.; Electric Rate and Corporate Regulation Filings

September 23, 1997.

Take notice that the following filings have been made with the Commission:

**1. Delmarva Power & Light Company**

[Docket No. ER94–1377–000]

Take notice that on August 8, 1997, Delmarva Power & Light Company, Public Service Electric and Gas Company, and Old Dominion Electric Cooperative jointly filed an offer of settlement in this proceeding. The three entities filing the offer of settlement describe it as a settlement of all issues in the proceeding.

*Comment date*: October 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

**2. Sierra Pacific Power Company**

[Docket No. ER97–4462–000]

Take notice that on September 2, 1997, Sierra Pacific Power Company

(Sierra Pacific), filed its compliance filing in the above-captioned docket pursuant to the Commission's July 31, 1997 omnibus compliance order regarding the filing of transmission service agreements.

*Comment date*: October 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

**3. Northern States Power Company (Minnesota); Northern States Power Company (Wisconsin)**

[Docket No. ER97–4463–000]

Take notice that on August 28, 1997, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (collectively referred to as NSP), hereby submits an amendment to its Electric Services Tariff.

NSP requests this amendment be made effective September 1, 1997.

*Comment date*: October 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

**4. Texas Utilities Electric Company**

[Docket No. ER97–4464–000]

Take notice that on August 29, 1997, Texas Utilities Electric Company (TU Electric), tendered for filing one transmission service agreement (TSA) under which TU Electric will provide transmission service to Tex-La Electric Cooperative of Texas, Inc. under TU Electric's Tariff for Transmission Service To, From and Over Certain HVDC Interconnections.

TU Electric requests an effective date for the TSA that will permit it to become effective on or before the service commencement date under the TSA. Accordingly, TU Electric seeks waiver of the Commission's notice requirements. Copies of the filing were served on the customer and the Public Utility Commission of Texas.

*Comment date*: October 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

**5. Wisconsin Power and Light Company**

[Docket No. ER97–4465–000]

Take notice that on September 2, 1997, Wisconsin Power and Light Company (WPL), tendered for filing Form Of Service Agreements for short-Term Firm and Non-Firm Point-to-Point Transmission Service establishing Wisconsin Power and Light Company as a point-to-point transmission customer under the terms of WPL's transmission tariff.

WPL requests effective dates of July 9, 1996, through April 13, 1997, and; accordingly, seeks waiver of the Commission's notice requirements. A copy of this filing has been served upon the Public Service Commission of Wisconsin.

*Comment date*: October 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

**6. MidAmerican Energy Company**

[Docket No. ER97–4466–000]

Take notice that on September 2, 1997, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50303 tendered for filing pursuant to the Commission's Order on Compliance Tariff Rates and Generic Clarification of Implementation Procedures in Allegheny Power Systems, Inc., et al., 80 FERC ¶ 61,143 (1997), various service agreements entered into under MidAmerican's Open Access Transmission Tariff (OATT) by MidAmerican, as transmission provider, with MidAmerican, as wholesale merchant. These service agreements cover MidAmerican's use of its transmission system under the OATT commencing on July 9, 1996.

The filing includes a Firm Transmission Service Agreement and a Non-Firm Transmission Service Agreement between MidAmerican, as transmission provider, and MidAmerican, as wholesale merchant. The filing also includes Network Integration Transmission Service Agreements between MidAmerican, as transmission provider, and MidAmerican, as wholesale merchant for the Iowa Cities of Auburn, Breda, Buffalo, Callender, Carlisle, Denver, Eldridge, Estherville, Fonda, Hudson, Indianola, Lake View, Livermore, Neola, Pocahontas and Wall Lake.

As required by the Commission's order in Allegheny Power, MidAmerican proposes an effective date of July 9, 1996 for each of the service agreements.

Copies of the filing were served on all parties in Docket No. OA96–42–000.

*Comment date:* October 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

**7. Cinergy Services, Inc.**

[Docket No. ER97–4467–000]

Take notice that on September 2, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and ENRON Power Marketing, Inc. (ENRON).

Cinergy and ENRON are requesting an effective date of July 29, 1997.

*Comment date:* October 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

**8. Consolidated Edison Company Of New York, Inc.**

[Docket No. ER97–4469–000]

Take notice that on September 2, 1997, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to the Village of Freeport (Freeport).

Con Edison states that a copy of this filing has been served by mail upon Freeport.

*Comment date:* October 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

**9. Consolidated Edison Company Of New York, Inc.**

[Docket No. ER97–4470–000]

Take notice that on September 2, 1997, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to the Village of Rockville Centre (Rockville).

Con Edison states that a copy of this filing has been served by mail upon Rockville.

*Comment date:* October 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

**10. Consolidated Edison Company Of New York, Inc.**

[Docket No. ER97–4471–000]

Take notice that on September 2, 1997, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to the Village of Greenport (Greenport).

Con Edison states that a copy of this filing has been served by mail upon Greenport.

*Comment date:* October 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

**11. Central Maine Power Company**

[Docket No. ER97–4472–000]

Take notice that on September 2, 1997, Central Maine Power Company (CMP), tendered for filing a form of service agreement for Non-Firm Local Point-to-Point Transmission Service entered into with itself. Service will be provided pursuant to CMP's Open Access Transmission Tariff, designated rate schedule CMP—FERC Electric Tariff, Original Volume No. 3, as supplemented.

*Comment date:* October 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

**12. Cinergy Services, Inc., The Cincinnati Gas & Electric Co. and PSI Energy, Inc.**

[Docket No. ER97–4473–000]

Take notice that on September 2, 1997, Cinergy Services, Inc. (Cinergy), on behalf of The Cincinnati Gas & Electric Company and PSI Energy, Inc., filed its compliance filing in the above-captioned docket.

*Comment date:* October 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

**13. The Washington Water Power Company**

[Docket No. ER97–4474–000]

Take notice that on September 2, 1997, The Washington Water Power Company, tendered for filing the 1997 Agreement For The Hourly Coordination of Projects on the Mid-Columbia River entered into as of July 1, 1997. WWP requests as effective date of November 1, 1997.

A copy of this filing has been mailed to each of the parties to the 1997 Agreement for Hourly Coordination of Projects on the Mid-Columbia River.

*Comment date:* October 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

**14. Black Hills Power & Light Company**

[Docket No. ER97–4475–000]

Take notice that on September 2, 1997, Black Hills Corporation, doing business as and operating its electric utility under the name Black Hills Power and Light Company, tendered for filing a revised tariff sheet, Attachment E, Index of Point-to-Point Transmission Service Customers, to its open access transmission tariff.

*Comment date:* October 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

**15. Interstate Power Company**

[Docket No. ER97–4476–000]

Take notice that on August 28, 1997, Interstate Power Company (IPW) hereby submits forms of service agreements by which IPW provides service to itself under IPW's compliance tariff (Docket No. OA96–213–000). Also submitted are corrected attachments previously submitted under the same Order.

*Comment date:* October 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

**16. Pacific Gas and Electric Company**

[Docket No. ER97–4477–000]

Take notice that on August 29, 1997, Pacific Gas and Electric Company (PG&E), tendered for filing a Form of Service Agreement with itself for Non-Firm Point-to-Point Transmission Service under PG&E's Open Access Tariff filed in compliance with FERC Order No. 888-A and with FERC's Order in Docket OA96–18–000, et al.

Copies of this filing have been served upon the California Public Utilities Commission and all other parties listed in the official Service List compiled by the Federal Energy Regulatory Commission (Commission) in Docket No. OA96–28–000.

*Comment date:* October 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

**17. Western Resources, Inc.**

[Docket No. ER97–4478–000]

Take notice that on August 29, 1997, Western Resources, Inc.(Western Resources), tendered for filing the required forms of service agreements for non-firm point-to-point and network transmission service. Agreements for firm point-to-point service required by the utility have been and will continue to be filed for each transaction requiring such service.

*Comment date:* October 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

**18. Central Hudson Gas & Electric Corporation**

[Docket No. ER97–4479–000]

Take notice that on September 2, 1997, Central Hudson Gas & Electric Corporation (CHG&E), tendered for filing pursuant to § 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations in 18 CFR a Service Agreement between CHG&E and Central Hudson Gas & Electric Corp. (as transmission customer). The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Open Access Schedule, Original Volume No. 1 (Transmission Tariff) filed in compliance with the Commission's Order No. 888 in Docket No. RM95–8–000 and RM97–7–001 and amended in compliance with Commission Order dated May 28, 1997. CHG&E also has requested wavier of the 60-day notice provision pursuant to 18 CFR 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

*Comment date:* October 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

**19. Ohio Edison Company and Pennsylvania Power Company**

[Docket No. ER97–4480–000]

Take notice that on September 3, 1997, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, Service Agreements with Delhi Energy Services, Inc., and NP Energy, Inc., under Ohio Edison's Power Sales Tariff. This filing is made pursuant to § 205 of the Federal Power Act.

*Comment date:* October 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

**20. Northeast Utilities Service Company**

[Docket No. ER97–4481–000]

Take notice that on September 3, 1997, Northeast Utilities Service Company (NUSCO), tendered for filing, an unexecuted Service Agreement with the Virginia Electric and Power Company under the NU System Companies' Sale for Resale, Tariff No. 7.

NUSCO states that a copy of this filing has been mailed to the Virginia Electric and Power Company.

NUSCO requests that the Service Agreement become effective September 3, 1997.

*Comment date:* October 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

**21. Northeast Utilities Service Company**

[Docket No. ER97–4482–000]

Take notice that on September 3, 1997, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with The Cleveland Electric Illuminating Company under the NU System Companies' Sale for Resale, Tariff No. 7.

NUSCO states that a copy of this filing has been mailed to The Cleveland Electric Illuminating Company.

NUSCO requests that the Service Agreement become effective August 25, 1997.

*Comment date:* October 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

**22. Northeast Utilities Service Company**

[Docket No. ER97–4483–000]

Take notice that on September 3, 1997, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with The Toledo Edison Company under the NU System Companies' Sale for Resale, Tariff No. 7.

NUSCO states that a copy of this filing has been mailed to The Toledo Edison Company.

NUSCO requests that the Service Agreement become effective August 25, 1997.

*Comment date:* October 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

**23. Northeast Utilities Service Company**

[Docket No. ER97–4484–000]

Take notice that on September 3, 1997, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with Northeast Energy Services, Inc. (NORESCO), under the NU System Companies' System Power Sales/Exchange Tariff No. 6.

NUSCO states that a copy of this filing has been mailed to NORESCO.

NUSCO requests that the Service Agreement become effective September 1, 1997.

*Comment date:* October 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

**24. Northeast Utilities Service Company**

[Docket No. ER97–4485–000]

Take notice that on September 3, 1997, Northeast Utilities Service Company (NUSCO), on behalf of its operating affiliates, The Connecticut Light and Power Company, Western Massachusetts Electric Company, Holyoke Water Power Company, Holyoke Power and Electric Company and Public Service Company of New Hampshire, tendered for filing a Service Agreement with Northeast Energy Services, Inc. (NORESCO) under the Northeast Utilities System Companies' Sale for Resale Tariff No. 7 Market Based Rates. NUSCO requests an effective date of September 1, 1997.

NUSCO states that a copy of its submission has been mailed or delivered to NORESCO.

*Comment date:* October 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

**25. Illinois Power Company**

[Docket No. ES97–49–000]

Take notice that on September 16, 1997, Illinois Power Company filed an application under § 204 of the Federal Power Act requesting authorization to issue not more than $500 million of short-term notes on or before December 31, 1999, with a final maturity date no later than December 31, 2000.

*Comment date:* October 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

**26. Golden Spread Electric Cooperative, Inc.**

[Docket No. ES97–50–000]

Take notice that on September 16, 1997, Golden Spread Electric Cooperative, Inc. (Golden Spread), filed an application under Section 204 of the Federal Power Act requesting authorization to obtain a long-term loan, in the amount of $1,250,000, for the purpose of financing the ownership of a 115/12.47 kV substation and associated equipment located southeast of Guymon, Oklahoma for one of its member cooperatives, Tri-County Electric Cooperative, Inc.

*Comment date*: October 20, 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. 97–25915 Filed 9–29–97; 8:45 am]

BILLING CODE 6717–01–P

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–5900–9]**

## Agency Information Collection Activity: Submission for OMB Review; Comment Requested; Questionnaire for Operations and Maintenance (O&M), Biosolids Use (Biosolids), Combined Sewer Overflow (CSO), and Storm Water (SW) Awards Nominees Under the Annual National Wastewater Management Excellence Awards Program (NWMEAP)

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

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Questionnaire for Operations and Maintenance (O&M), Biosolids Use (Biosolids), Combined Sewer Overflow (CSO), and Storm Water (SW) awards nominees under the annual National Wastewater Management Excellence Awards Program (NWMEAP), OMB Control No. 2040–0101, expires October 31, 1997. This ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before October 30, 1997.

**FOR FURTHER INFORMATION OR A COPY CALL:** Sandy Farmer at EPA, (202) 260-2740, and refer to EPA ICR No. 1287.05.

**SUPPLEMENTARY INFORMATION:**

*Title:* Questionnaire for Operations and Maintenance (O&M), Biosolids Use (Biosolids), Combined Sewer Overflow (CSO), and Storm Water (SW) awards nominees under the annual National Wastewater Management Excellence Awards Program (NWMEAP) (OMB Control No. 2040–0101; EPA ICR No. 1287.05) expires October 31, 1997. This is a request for extension of a currently approved collection.

*Abstract:* This ICR requests re-approval to collect information from EPA's NWMEAP nominees. The awards are for the following program categories: O&M, Biosolids, CSO and SW management. (Note: Information collection approval for the Pretreatment awards program is included in the National Pretreatment Program ICR (OMB No. 2040–0009, EPA ICR No. 0003.08), expiring October 31, 1999). The NWMEAP is managed by EPA's Office of Wastewater Management (OWM). The NWMEAP is authorized under section 501(e) of the Clean Water Act, as amended. The NWMEAP is intended to provide recognition to communities and industries which have demonstrated outstanding technological achievements, innovative processes, or other outstanding methods in their waste treatment and pollution abatement programs. Approximately 50 awards are presented annually. The achievements of these award winners are summarized in reports, news articles and national publications.

Submission of information on behalf of the respondents is voluntary. No confidential information is requested. The agency only collects information from award nominees under a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. 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 OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 7/22/97 (62 FR 39239); no comments were received.

*Burden Statement:* The annual public reporting and record keeping burden for this collection of information is estimated to average 14 hours per response. Burden means 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. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

*Respondents/Affected Entities:* Entities applying for National Wastewater Management Excellence Award.

*Estimated Number of Respondents:* 200.

*Frequency of Response:* Annually.

*Estimated Total Annual Hour Burden:* 2800.

*Estimated Total Annualized Cost Burden:* 0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1287.05 and OMB Control No. 2040–0101 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460.

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA 725 17th Street, NW, Washington, DC 20503.

Dated: September 25, 1997.

**Joseph Retzer, Director,**

*Regulatory Information Division.*

[FR Doc. 97–25877 Filed 9–29–97; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–5900–5]**

## Agency Information Collection Activities: Submission for OMB Review; Comment Request; Annual Updates of Emission Data to the Aerometric Information System (AIRS)

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

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Annual Updates of Emission Data to the Aerometric Information System (AIRS), OMB Control Number 2060-0088, which expires October 31, 1997. The ICR describes the nature of the information collection and its expected burden and cost.

**DATES:** Comments must be submitted on or before October 30, 1997.

**FOR FURTHER INFORMATION OR A COPY CALL:** Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 0916.08.

**SUPPLEMENTARY INFORMATION:**

*Title:* Annual Updates of Emission Data to the Aerometric Information System (AIRS) (OMB Control Number 2060–0088; EPA ICR No. 0916.08) expiring 10/31/97. This is a request for extension of a currently approved collection.

*Abstract:* The general authority for the collection of emission information derives from 40 CFR 51.321, 51.322, and 51.323. The respondents (States and Territories) are required to annually update information on stationary sources emitting at least prescribed threshold amounts of pollutants regulated by NAAQS. For all respondents, activities include the resolution of errors and anomalies identified through EPA edits. Over a three year period all of the respondents will also be involved in reconciling emission and compliance data stored in EPA's Aerometric Information Retrieval System (AIRS). Approximately one-third of the respondents will be involved in this reconciliation during any one year. The EPA's Office of Air Quality Planning and Standards (OAQPS) uses the annual emission reports to update the national database of emissions from stationary sources that it has maintained since 1974. The data are used in developing emission standards, applying dispersion models, and in preparing national trend assessments and other special analyses and reports.

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 OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 3/7/96 (61 FR 9160 ); no comments were received.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 212 hours per respondent. Burden means 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. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

*Respondents/Affected Entities:* States and Territories.

*Estimated Number of Respondents:* 54.

*Frequency of Response:* Annually.

*Estimated Total Annual Hour Burden:* 11,448 hours.

*Estimated Total Annualized Cost Burden:* $29,580.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 0916.08 and OMB Control No. 2060–0088 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory

Information Division (2137), 401 M Street, SW, Washington, DC 20460 and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA 725 17th Street, NW, Washington, DC 20503.

Dated: September 24, 1997.

**Joseph Retzer,**

*Director, Regulatory Information Division.*

[FR Doc. 97–25880 Filed 9–29–97; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–5900–2]**

## Request for Nominations to the National Advisory Council for Environmental Policy and Technology

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

**ACTION:** Notice of Request for Nominations.

**SUMMARY:** The Environmental Protection Agency (EPA) is inviting nominations to fill vacancies on its National Advisory Council for Environmental Policy and Technology (NACEPT). The Agency is seeking qualified senior level decision makers from diverse sectors throughout the U.S. to be considered for appointments. Nominations will be accepted until close of business October 20, 1997.

**ADDRESSES:** Submit nominations to: Mr. Gordon Schisler, Deputy Director, Office of Cooperative Environmental Management, U.S. Environmental Protection Agency, 1601–F, 401 M Street, SW, Washington, D.C. 20460.

**SUPPLEMENTARY INFORMATION:** NACEPT is a federal advisory committee under the Federal Advisory Committee Act, PL 92463. NACEPT provides advice and recommendations to the Administrator and other EPA officials on a broad range of domestic and international environmental policy issues.

NACEPT consists of a representative cross-section of EPA's partners and principle constituents who provide advice and recommendations on policy issues and serve as a sounding board for new strategies that the Agency is developing.

Maintaining a balance and diversity of experience, knowledge, and judgment is an important consideration in the selection of members.

The Administrator has asked NACEPT to concentrate on several policy and regulatory components associated with Reinvention, Information, and Capital Markets.

The following standing NACEPT committees were formed to address different aspects of these efforts.

- The Reinvention Criteria Committee (RCC) will provide advice and recommendations on criteria to measure the progress and success of improving public confidence, fostering flexibility and environmental innovation, and increasing accountability for environmental results. This committee will also provide advice on: how EPA can promote an internal culture change that goes beyond specific reinvention programs and incorporates reinvention philosophies into general EPA practices, and identify a mechanism that EPA can use to ensure management accountability for reinvention programs.
- The Environmental Information and Public Access Committee will focus on providing stakeholder input into key information management infrastructure issues, including: access to, and validation of environmental statistics; the long-term role of the Center for Environmental Information & Statistics and how it fits within the Agency's current information management model; updating of the Agency's information management strategic plan; implementation of legislation in EPA such as the Government Performance & Results (GPRA) and the Paperwork Reduction Act; the expanded role of the Chief Information Officer (CIO); and other key information management strategies.
- The Environmental Capital Markets Committee will provide stakeholder inputs on the potential utility of using Environmental Management Systems as an investment service. The ultimate goal of the committee is to identify concrete actions EPA can take, on its own or in cooperation with other Federal and State agencies could take to help the financial services industry incorporate this environmental information into its decision-making processes.

EPA is seeking nominees for representatives from all sectors, especially, state, local and tribal agencies, industry, academia, environmental, organizations, and NGOs.

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.

NACEPT also has four (4) other committees, but we are not soliciting membership to those committees at this time. The four committees include: The Toxics Data Reporting Committee (TDR), Total Maximum Daily Load Committee (TMDL), Waste Isolation Pilot Plant Committee (WIPP), and the Effluent Guidelines Committees (EGC).

**FOR FURTHER INFORMATION CONTACT:** Clarence Hardy, Designated Federal Officer for NACEPT, U.S. Environmental Protection Agency, 1601–F, Washington, D.C. 20460; telephone (292) 260–9741.

Dated: September 19, 1997.

**Gordon Schisler,**

*Designated Federal Officer.*

[FR Doc. 97–25881 Filed 9–29–97; 8:45 am]

BILLING CODE 6560–50–M

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–00492; FRL–5734–5]**

## Existing Stocks for Labeling Changes in PR Notices

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

**ACTION:** Notice.

**SUMMARY:** EPA is announcing its final policy in a Pesticide Registration (PR) Notice entitled ''Existing Stocks for Labeling Changes in PR Notices.'' EPA proposed this policy for 60 days of public comment on January 11, 1995. Interested parties may request a copy of the Agency's final policy by contacting the person listed in the ADDRESSES unit of this notice.

**ADDRESSES:** The PR Notice is available from: By mail: Melissa L. Chun, Policy and Regulatory Services Branch, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1116A, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–4027, e-mail: chun.melissa@epamail.epa.gov.

**FOR FURTHER INFORMATION CONTACT:** By mail: Melissa L. Chun, Policy and Regulatory Services Branch, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1116A, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–4027, e-mail: chun.melissa@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. Electronic Availability

*Internet*

Electronic copies of this document and the PR Notice are available from the

EPA home page at the Federal Register-Environmental Documents entry for this document under ''Regulations'' (http://www.epa.gov/fedrgstr/).

*Fax on Demand*

Using a faxphone call 202–401–0527 and select item 6103 for a copy of the PR Notice.

## II. Background

EPA is announcing its policy in a PR Notice entitled ''Existing Stocks for Labeling Changes in PR Notices.'' This PR Notice describes the Agency's policy to establish an annual date by which registrants will normally implement labeling changes specified in Pesticide Registration (PR) Notices, **Federal Register** Notices, or other documents. The policy outlined in the PR Notice will help streamline the Agency's processing of labeling changes, improve the coordination of EPA's labeling activities, and lessen the economic impact on registrants and supplemental distributors of making labeling changes throughout the year. The annual compliance date generally provides more time for registrants and supplemental distributors to distribute or sell products bearing old labeling than under EPA's current Existing Stocks Policy. The Agency has determined that generally it will not set a compliance date for persons other than registrants and supplemental distributors to comply with labeling changes specified in PR Notices and similar notices, so that ''old'' labels in channels of trade are distributed or sold until supplies are exhausted. Further, the Agency has determined that the existing stocks provisions will normally be based on the ''released for shipment'' date. EPA will generally follow these policies unless different measures are necessary to protect human health and the environment, or it is otherwise in the public interest.

## List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: September 19, 1997.

**Anne E. Lindsay,**

*Director, Field and External Affairs Division, Office of Pesticide Programs.*

[FR Doc. 97–25896 Filed 9-29-97; 8:45 am]

BILLING CODE 6560–50–F

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## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–30441; FRL–5747–2]**

## Certain Companies; Applications to Register Pesticide Products

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

**ACTION:** Notice.

**SUMMARY:** This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products and a product involving a changed use pattern pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

**DATES:** Written comments must be submitted by October 1, 1997.

**ADDRESSES:** By mail, submit written comments identified by the document control number [OPP–30441] and the file symbols to: Public Information and Records Integrity Branch (7506C), Information Resources and Services Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., S.W., Washington, D.C. 20460. In person, bring comments to: Environmental Protection Agency, Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under ''SUPPLEMENTARY INFORMATION.'' No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding holidays.

**FOR FURTHER INFORMATION CONTACT:** The contact person listed in the table below:

| Contact Person | Office location/telephone number | Address |
|---|---|---|
| Denise Greenway | 5th floor, CS1, 703–308–8263, e-mail: greenway.denise@epamail.epa.gov. | Westfield Building North Tower, 2800 Crystal Drive, Arlington, VA. |
| Willie Nelson | 5th floor, CS1, 703–308–8682, e-mail: nelson.willie@epamail.epa.gov. | Do. |
| Edward Allen | 5-W55, CS1, 703–308–8699, e-mail: allen.edward@epamail.epa.gov. | Do. |

**SUPPLEMENTARY INFORMATION:** EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products and a product involving a changed use pattern pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

## I. Products Containing New Active Ingredients Not Previously Registered

1. File Symbol: 56261–G. Applicant: Phero Tech Inc., 7572 Progress Way, Delta, B.C. V4G 1E9 Canada. Product Name: Verbenone Pouch. Pheromone Pesticide. Active ingredient: Verbenone (4,6,6-trimethylbicyclo (3.1.1) hept-3-en-2 one) at 73.4 percent. Proposed classification/Use: General. For use to control pest on forestry. (Willie Nelson)

2. File Symbol: 69129–E. Applicant: Cela Flor GmbH, c/o Biologic Inc., 115 Obtuse Hill, Brookfield, CT 06804. Product Name: Nexa Ant Stop. Insecticide. Active ingredient: Isoborneol at 15 percent. Proposed classification/Use: General. For outdoor control of ants. (Ed Allen)

## II. Product Involving a Change Use Pattern

File Symbol: 10772–U. Applicant: Church and Dwight Co., Inc., 469 N. Harrison St., Princeton, NJ 08543. Product Name: Armicarb 100. Fungicide. Active ingredient: Potassium Bicarbonate at 85 percent. Proposed classification/Use: None. To include in its presently registered use, a new use to control powdery mildew and other diseases on ornamentals and other food/feed crop plants. (Denise Greenway)

Comments received within the specified time period will be considered

before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

The official record for this notice, as well as the public version, has been established for this notice under docket number [OPP–30441] (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 notice record is located at the address in ''ADDRESSES'' at the beginning of this document.

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 number [OPP–30441]. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

Written comments filed pursuant to this notice, will be available in the Public Information and Records Integrity Branch, Information Resources and Services Division at the address provided, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding holidays. It is suggested that persons interested in reviewing the application file, telephone this office at (703-305-5805) to ensure that the file is available on the date of intended visit.

**Authority:** 7 U.S.C. 136.

## List of Subjects

Environmental protection, Pesticides and pest, Product registration.

Dated: September 23, 1997.

**Janet L. Andersen,**

*Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.*

[FR Doc. 97–25894 Filed 9-29-97; 8:45 am]

BILLING CODE 6560–50–F

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–30427A; FRL–5744–4]**

## W. Neudorff GmbH KG; Approval of a Pesticide Product Registration

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

**ACTION:** Notice.

**SUMMARY:** This notice announces Agency approval of an application to register the pesticide product NEU 1165M Slug and Snail Bait, containing an active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

**FOR FURTHER INFORMATION CONTACT:** By mail: Sheryl Reilly, Biopesticides and Pollution Prevention Division (7511W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. CS #1, 5th floor, Westfield Building North Tower, 2800 Crystal Drive, Arlington, VA 22202, (703) 308–8265; e-mail: reilly.sheryl@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:**

**Electronic Availability**: Electronic copies of this document and the Fact Sheet are available from the EPA home page at the **Federal Register**-Environmental Documents entry for this document under ''Regulations'' (http://www.epa.gov/fedrgstr/).

EPA issued a notice, published in the **Federal Register** of January 22, 1997 (62 FR 3287; FRL–5582–4), which announced that W. Neurdorff GmbH KG, Postfach 1209, and der Muhle 3, D-31860 Emmerthal, Germany, had submitted an application to register the product NEU 1165M Slug and Snail Bait (EPA File Symbol 67702–G), containing the new active ingredient iron phosphate at 1.0 percent, an active ingredient not included in any previously registered product.

The application was approved on August 14, 1997, as NEU 1165M Slug and Snail Bait for domestic/non-commercial food use on vegetable gardens, fruits (including citrus), and berries; also for outdoor ornamentals, greenhouses, and lawns (EPA Registration Number 67702–3).

The Agency has considered all required data on risks associated with the proposed use of iron phosphate, and information on social, economic, and environmental benefits to be derived from use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of iron phosphate when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects to the environment.

More detailed information on this registration is contained in an EPA Pesticide Fact Sheet on iron phosphate.

A copy of this fact sheet, which provides a summary description of the pesticides, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 1132, CM #2, Arlington, VA 22202 (703-305–5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 401 M St., SW., Washington, D.C. 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

**Authority:** 7 U.S.C. 136.

## List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: September 23, 1997.

**Janet L. Andersen,**

*Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.*

[FR Doc. 97–25895 Filed 9-29-97; 8:45 am]

BILLING CODE 6560–50–F

## ENVIRONMENTAL PROTECTION AGENCY

**[OPPTS–42107E; FRL–5744–3]**

**RIN 2070–AB94**

## Testing Consent Order for 1,6-Hexamethylene Diisocyanate (HDI)

**AGENCY**: Environmental Protection Agency (EPA).
**ACTION**: Notice of consent agreement.

**SUMMARY**: Pursuant to section 4 of the Toxic Substances Control Act (TSCA), EPA has issued a testing consent order (Order) that incorporates an enforceable consent agreement (ECA) with ARCO Chemical Company, Bayer Corporation, and Rhone-Poulenc Inc. (collectively, the Companies). The Companies have agreed to perform certain health effects tests on 1,6-hexamethylene diisocyanate (HDI) (CAS No. 822–06–0). This notice announces the ECA and Order for HDI and summarizes the terms of the ECA.

**EFFECTIVE DATES**: The effective date of the ECA and Order is September 30, 1997.

**FOR FURTHER INFORMATION CONTACT**: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Rm. ET–543B, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone: (202) 554–1404; TDD: (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov. For specific information regarding this notice, or the ECA and Order, contact Keith J. Cronin, Project Manager, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone: (202) 260–8157; fax: (202) 260–1096; e-mail: cronin.keith@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION**:

**ELECTRONIC AVAILABILITY**: Electronic copies of this document and various support documents are available from the EPA Home Page at the Federal Register - Environmental Documents entry for this document under ''Laws and Regulations'' (http://www.epa.gov/fedrgstr/).

This notice announces the ECA and Order for HDI and summarizes the terms of the ECA.

### I. Introduction

HDI is an aliphatic diisocyanate. HDI is used in the manufacture of higher molecular biuret polyisocyanate resins and trimer polyisocyanate resins used in polyurethane paint systems. The production and use of HDI in polyurethane paint systems result in potential exposures to substantial numbers of workers. The greatest potential for occupational exposure to HDI is coating application operations, with an estimated 153,000 auto body repair workers having a potential for some exposure to paints containing HDI biuret and trimer.

In the **Federal Register** of May 20, 1988 (53 FR 18196), the Interagency Testing Committee (ITC) designated HDI for health effects testing for chronic toxicity, oncogenicity, and reproductive and developmental effects. EPA responded to the ITC's designation of HDI by issuing a proposed test rule in the **Federal Register** of May 17, 1989 (54 FR 21240), requiring that HDI be tested for oncogenicity, mutagenicity, reproductive toxicity, developmental toxicity, neurotoxicity, pharmacokinetics, and hydrolysis under section 4 of TSCA. The proposed rule contains a chemical profile of HDI, a discussion of EPA's TSCA section 4(a) findings, and the proposed test standards and reporting requirements. EPA based its proposal on section 4(a)(1)(B) of TSCA, finding that HDI is produced in substantial quantities and that there is or may be substantial human exposure from its manufacture, processing, and use.

EPA has reviewed significant new scientific data developed since publication of the proposed rule in 1989. The new data—which address chronic toxicity, subchronic toxicity, mutagenicity, and hydrolysis—significantly affect the final scope of testing needs for this chemical substance. In view of the impact of these developments on the scope of needed HDI testing, EPA published a notice on June 12, 1995 (60 FR 30874) (FRL–4938–2) soliciting testing proposals for HDI.

### II. Enforceable Consent Agreement Negotiations

In response to EPA's offer to negotiate an ECA, the Chemical Manufacturers Association (CMA) HDI Panel submitted a proposal for a testing program (Ref. 1).

EPA held a public meeting to negotiate an ECA for HDI on September 25, 1996. This meeting was attended by representatives of the Companies and other interested parties. During the public meeting, consensus was reached on the ECA, and on the tests to be included in the ECA. On August 26, 1997, EPA received the ECA signed by the Companies. On September 23, 1997, EPA signed the ECA and accompanying Order.

### III. Proposed Test Rule

EPA has decided not to finalize the proposed test rule for HDI (54 FR 21240, May 17, 1989). EPA has instead reached agreement with the Companies that the testing requirements for HDI in the proposed rule will be met by implementing the ECA and Order, and that the issuance of the ECA and Order constitutes final EPA action for purposes of 5 U.S.C. 704. Should EPA decide in the future that it requires additional data on HDI, EPA will initiate a separate action.

### IV. Testing Program

The following table 1 describes the required testing, test standards, and reporting requirements under the ECA for HDI. This testing program will allow EPA to characterize further the potential health hazards resulting from exposure to HDI. The appendices referenced in this table are specific to the enforceable consent agreement and are not appendices in 40 CFR part 798.

Table 1.—Required Testing, Test Standards and Reporting Requirements for HDI

| Description of test | Test standard | Deadline for final report[1] (months) | Interim reports[2] required (number) |
|---|---|---|---|
| Genotoxicity: | | | |
| 1. Mammalian cells in culture | 798.5300 (40 CFR) | 12 | 1 |
| 2. Salmonella Typhimurium | 798.5265 (40 CFR) | 12 | 1 |

Table 1.—Required Testing, Test Standards and Reporting Requirements for HDI—Continued

| Description of test | Test standard | Deadline for final report[1] (months) | Interim reports[2] required (number) |
|---|---|---|---|
| 3. In vivo Cytogenetics | 798.5385 (40 CFR) (Appendix I) | 12 | 1 |
| Developmental Toxicity: One species (rat), inhalation | 798.4900 (40 CFR) (Appendix II) | 21 | 3 |
| Reproductive developmental screen with functional observational battery; One species (rat), via inhalation | OECD 422 (Appendix III) | 21 | 3 |
| 2-generation reproductive study[3] | 798.4700 as proposed for revision (59 FR 42272, August 17, 1994) (Appendix IV) | 24[4] | 3 |

[1] Number of months after the effective date of the testing consent order.

[2] Interim reports are required every 6 months from the effective date until the final report is submitted. This column shows the number of interim reports required for each test.

[3] This study must be conducted if the Agency determines that the results of the reproductive/developmental screening test show statistically or biologically significant adverse reproductive or developmental effects. If the results of the reproductive/developmental screening test are equivocal, the 2-generation reproductive/developmental study will not be required unless the Agency concludes that the use of HDI may present an unreasonable risk to human health or the environment in light of (1) a weight-of-the-evidence evaluation of HDI's reproductive/developmental effects, and (2) worker exposure practices and/or manufacturer product stewardship activities. The Agency shall, in any event, provide the Panel with an opportunity to meet and discuss the screening test results with the Agency before making a determination under this paragraph.

[4] Figure indicates the reporting deadline, in months, calculated from the date of notification to the test sponsor by certified letter of FEDERAL REGISTER notice that the Agency has determined this required testing must be performed.

## V. Export Notification

At a later date EPA will propose to amend 40 CFR 799.5000 by adding HDI to the list of chemicals subject to testing consent orders, thereby subjecting all persons who export or who intend to export HDI, of any purity, to the export notification requirements of section 12(b) of TSCA.

## VI. Public Record

EPA has established an official record for this ECA and Order under docket number OPPTS–42107E, which is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located in the TSCA Nonconfidential Information Center in Rm. NE–B607, 401 M St., SW., Washington, DC 20460. Information claimed as Confidential Business Information (CBI), while part of the record, is not available for public review. This record contains the basic information considered in developing this ECA and Order and includes the following information.

*A. Supporting Documentation*

(1) Testing Consent Order for HDI, with incorporated Enforceable Consent Agreement and associated testing protocols attached as appendices.

(2) **Federal Register** notices pertaining to this notice, the Testing Consent Order and the Enforceable Consent Agreement, consisting of:

(a) Notice of Proposed Rulemaking for HDI (54 FR 21240, May 17, 1989).

(b) Notice of Solicitation of Testing Proposals for 1,6-Hexamethylene Diisocyanate for Negotiation of a TSCA Section 4 Enforceable Consent Agreement (60 FR 30874, June 12, 1995).

(3) Communications consisting of:

(a) Written letters.

(b) Meeting summaries.

(4) Reports—published and unpublished factual materials.

*B. References*

1. The Hexamethylene Diisocyanate Panel of the Chemical Manufacturers Association. Letter from Langley A. Spurlock to EPA. Enforceable Testing Agreement Proposal for 1,6-Hexamethylene Diisocyanate. Washington, DC (August 11, 1995).

## List of Subjects

Environmental protection.

Dated: September 23, 1997.

**Lynn R. Goldman,**

*Assistant Administrator for Prevention, Pesticides, and Toxic Substances.*

[FR Doc. 97–25893 Filed 9-29-97; 8:45 am]

BILLING CODE 6560–50–F

## FEDERAL COMMUNICATIONS COMMISSION

### Sunshine Act Meeting; Additional Item To Be Considered at Open Meeting Thursday, September 25, 1997

The Federal Communications Commission will consider an additional item on the subject listed below at the Open Meeting scheduled for 9:30 a.m., Thursday, September 25, 1997, at 1919 M Street, N.W., Washington, D.C.

*Item No., Bureau; and Subject*

3—Wireless Telecommunications—Title: Amendment of the Commission's Rules Regarding Installment Payment Financing for C Block Personal Communications Service (PCS) Licenses. (WT Docket No. 97–82). Summary: The Commission will consider action concerning resumption of installment payments for PCS C and F Block licensees and other repayment options for C Block licensees.

The prompt and orderly conduct of the Commission business requires that less than 7-days notice be given consideration of this additional item.

Action by the Commission September 25, 1997, Chairman Hundt and Commissioners Quello, Ness and Chong voting to consider this item.

Additional information concerning this meeting may be obtained from Maureen Peratino or David Fiske, Office of Public Affairs, telephone number (202) 418–0500.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, International Transcription Services, Inc. (ITS, Inc.) at (202) 857–3800 or fax (202) 857–3805 and 857–3184. These copies are available in paper format and alternative media which includes, large print/type; digital disk; and audio tape. ITS may be reached by e-mail: its__inc@ix.netcom.com. Their Internet address is http://www.itsi.com.

This meeting can be viewed over George Mason University's Capitol Connection. For information on this service call (703) 993–3100. The audio portion of the meeting will be broadcast live on the Internet via the FCC's Internet audio broadcast page at <http://www.fcc.gov/realaudio/>. The meeting can also be heard via telephone, for a fee, from National Narrowcast Network, telephone (202) 966–2211 or fax (202) 966–1770; and from Conference Call USA (available only outside the Washington, D.C. metropolitan area), telephone 1–800–962–0044. Audio and video tapes of this meeting can be obtained from the Office of Public Affairs, Television Staff, telephone (202) 418–0460, or TTY (202) 418–1398; fax numbers (202) 418–2809 or (202) 418–7286.

Federal Communications Commission

**Shirley S. Suggs,**

*Chief, Publications Branch.*

[FR Doc. 97–26013 Filed 9–29–97; 2:41 pm]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### Public Information Collections Approved by Office of Management and Budget

September 19, 1997.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Pub. L. 104–13. 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. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

**Federal Communications Commission**

*OMB Control No.:* 3060–0292.

*Expiration Date:* 09/30/2000.

*Title:* Access Charges—Part 69.

*Form No.:* N/A.

*Respondents:* Business or other for profit.

*Estimated Annual Burden:* 1458 respondents; 23.19 hours per response (avg.); 33,825 total annual burden hours for all collections.

*Estimated Annual Reporting and Recordkeeping Cost Burden:* $0.

*Frequency of Response:* On occasion; semi-annually; monthly; one-time requirement.

*Description:* Part 69 of the Commission's rules and regulations establishes the rules for access charges for interstate or foreign access provided by telephone companies on or after January 1, 1984. Part 69 essentially consists of rules or the procedures for the computation of access charges. Section 69.3 requires the annual submission of access charge tariffs. Section 69.116(c) and 69.117(c) require local exchange carriers to file information with NECA semi-annually pertaining to the number of lines in their study areas and the interexchange carriers to which such lines are presubscribed. This information will be used by NECA to assess revenue requirements needed to fund the Universal Service Fund and Lifeline Assistance programs. (No. of respondents: 1458; hours per response: 5 hrs.; total annual hours: 14,580 hrs.). Section 69.104(k)(1) requires that a state or local telephone company wishing to implement an end user common line reduction or waiver for its subscribers file information with the Commission demonstrating that its state lifeline assistance plan meets certain criteria. This is an one-time filing requirement. (No. of respondents: 50; hours per response: 20 hrs.; total annual burden 1000 hrs.). Section 69.104(1) requires local telephone carriers to calculate for NECA their projected revenue requirements for the lifeline assistance program. (No. of respondents: 1459; hours per response: 3.5 hrs; total annual burden: 5103 hrs). Section 69.605 requires carriers who are participating in the pool to report access revenues and cost data so that NECA may compute monthly pool revenues distributions. (No. of respondents: 1548; hours per response: .75 hrs; total annual burden: 13,122 hrs). The information is used to compute charges in tariffs for access service (or origination and termination) and to compute revenue pool distributions. Neither process could be implemented without the information. You are required to respond.

*OMB Control No.:* 3060–0577.

*Expiration Date:* 09/30/2000.

*Title:* Expanded Interconnection with Local Telephone Company Facilities.

*Form No.:* N/A.

*Respondents:* Business or other for profit.

*Estimated Annual Burden:* 16 respondents; 15 hours per response (avg.); 240 total annual burden hours for all collections.

*Estimated Annual Reporting and Recordkeeping Cost Burden:* $10,000.

*Frequency of Response:* On occasion.

*Description:* In September 1992, the Commission adopted an order requiring Tier 1 local exchange carriers (LECs), excluding NECA pool members, to offer expanded interconnection for special access to all interested parties, permitting competitors and high volume users to terminate their own transmission facilities at LEC central offices. (*Special Access Order,* CC Docket No. 91–141, *Expanded Interconnection with Local Telephone Company Facilities*). Under the rules adopted in the *Special Access Order,* Tier 1 LECs (those with over $100 million in annual regulated revenues for a sustained period of time), except for NECA pool members, are required to provide physical collocation to all interconnectors that request it, with exemptions for LEC offices that do not have enough space for physical collocation, and, under certain circumstances, for states with regulatory policies favoring virtual collocation or LEC choice of the form of collocation. Interconnectors and LECs will be free to negotiate virtual collocation arrangements if both parties prefer such arrangements over physical collocation. In the *Second Memorandum Opinion and Order on Reconsideration* in CC Docket No. 91–141 (*Reconsideration Order),* the Commission reconsidered some of the particularly time-sensitive requirements of the *Special Access Order.* In particular, the *Reconsideration Order* reconsiders *de novo* the fresh look issues addressed in the *Special Access Order,* clarifies and expands the Commission's requirements concerning the application of nonrecurring charges, modifies the requirement for tariffing virtual collocation arrangements, and specifies certain standards that must be met for a connection charge rate structure to be considered reasonable. In order to comply with these requirements, Tier 1 LECs will have to make certain tariff revisions. In addition, LECs must make tariff filings to provide public notice of the start of the ''fresh look'' period at each of their

offices where expanded interconnection is implemented. Sections 201, 202, 203, 204, and 205 of the Communications Act of 1934, as amended, 47 U.S.C. 201, 202, 203, 204, and 205, require that common carriers establish just and reasonable charges, practices, and regulations for the services they provide, and prohibit any unjust or unreasonable discrimination, preference, or advantage. The LEC schedules containing these charges, practices, and regulations must be filed with the Commission. The tariff filings required by the *Reconsideration Order* are necessary to ensure the effectiveness of the fresh look opportunity that the Commission adopted in order to allow eligible customers to assess the new alternatives available in a more competitive market. The tariff filings that will be needed to comply with the Commission's rules on nonrecurring charges and connection charges are necessary to ensure that the rates charged to all LEC customers are just, reasonable, and nondiscriminatory. Without this information, the FCC would be unable to determine whether the tariffs for these services are just, reasonable, nondiscriminatory, and otherwise in accordance with the law and its rules. Obligation to respond is mandatory.

Public reporting burden for the collections of information is as noted above. Send comments regarding the burden estimate or any other aspect of the collections of information, including suggestions for reducing the burden to Performance Evaluation and Records Management, Washington, D.C. 20554.

Federal Communications Commission.

**Shirley S. Suggs,**

*Chief, Publications Branch.*

[FR Doc. 97–25787 Filed 9–29–97; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL MARITIME COMMISSION

### Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Atlantic Cargo, Inc., 5635 NW 74th Avenue, Miami, FL 33166, Officer: Allan D. Silverman, President

Boston Logistics, Inc., 186A Lee Burbank Highway, Revere, MA 02151, Officer: Anthony M. Puleio, Jr., President

Dated: September 25, 1997.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 97–25830 Filed 9–29–97; 8:45 am]

BILLING CODE 6730–01–M

## FEDERAL MARITIME COMMISSION

### Ocean Freight Forwarder License Applicants; Correction

In the **Federal Register** notice published July 14, 1997 (62 FR 37585) the reference to ''RJB Import/Export Consultants Corp.'' is corrected to read: ''R.J.G. Import/Export Consultants Corp.''

Dated: September 24, 1997.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 97–25829 Filed 9–29–97; 8:45 am]

BILLING CODE 6730–01–M

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. 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 October 15, 1997.

**A. Federal Reserve Bank of Boston** (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

*1. Charles Michael Hazard*, Boston, Massachusetts; to acquire 18.3 percent of the voting shares of Boston Private Bancorp, Inc., Boston, Massachusetts, and thereby indirectly acquire Boston Private Bank & Trust Company, Boston, Massachusetts.

**B. Federal Reserve Bank of Kansas City** (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

*1. John Francis Davis and Carman Lee Davis*, both of Concordia, Kansas; to acquire voting shares of Tri-County Bancshares, Inc., Linn, Kansas, and thereby indirectly acquire Tri-County National Bank, Washington, Kansas.

Board of Governors of the Federal Reserve System, September 25, 1997.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 97–25936 Filed 9-29-97; 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 October 24, 1997.

**A. Federal Reserve Bank of Atlanta** (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

*1. Alabama National BanCorporation*, Birmingham, Alabama; to merge with First American Bancorp, Decatur,

Alabama, and thereby indirectly acquire First American Bank, Decatur, Alabama.

*2. Hibernia Corporation*, New Orleans, Louisiana; to merge with Northwest Bancshares of Louisiana, Inc., Mansfield, Louisiana, and thereby indirectly acquire First National Bank in Mansfield, Mansfield, Louisiana.

*3. Riverside Gulf Coast Banking Company*, Cape Coral, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Riverside Bank of the Gulf Coast (in organization), Cape Coral, Florida.

**B. Federal Reserve Bank of Chicago** (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

*1. Fischer Bancorp, Inc.*, Fischer, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Fisher National Bank, Fisher, Illinois.

**C. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

*1. Security State Bancshares, Inc.*, Charleston, Missouri; to acquire 100 percent of the voting shares of Merchants and Planters Bank of Hornersville, Hornersville, Missouri.

Board of Governors of the Federal Reserve System, September 25, 1997

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 97–25935 Filed 9-29-97; 8:45 am]

BILLING CODE 6210-01-F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Toxic Substances and Disease Registry

**[ATSDR–125]**

### Availability of the Final Child Health Workgroup Report, Healthy Children—Toxic Environments

**AGENCY:** Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

**ACTION:** Notice.

**SUMMARY:** This notice announces the availability of the final report, Healthy Children-Toxic Environments, by the ATSDR Board of Scientific Counselors' Child Health Workgroup.

**ADDRESSES:** The report is accessible or available through the following three methods:

—The Internet at http://atsdr1.atsdr.cdc.gov:8080/child/chw497.html

—A request to the ATSDR Information Center, Mailstop E57, 1600 Clifton Rd., Atlanta, GA 30333, telephone 404–639–6357 or 1–800–447–1544

—A request via email to: atsdric@cdc.gov

**FOR FURTHER INFORMATION CONTACT:** The ATSDR Information Center, telephone (404) 639–6357 or 1–800–447–1544.

**SUPPLEMENTARY INFORMATION:** In 1996, the Agency for Toxic Substances and Disease Registry (ATSDR), an operating division of the U.S. Department of Health and Human Services, launched a Child Health Initiative. A Child Health Workgroup was appointed by ATSDR's external Board of Scientific Counselors. Members of the workgroup were selected for their knowledge of children's environmental health. The workgroup assessed ATSDR's activities as they pertain to individuals during prenatal life, infancy, children, and adolescence. The workgroup reviewed the four divisions of ATSDR separately. This effort included the review of published goals and objectives for each division, recent annual reports, and many other publications from each division. For each division, a meeting was held between members of the workgroup and the leadership of the division.

The workgroup members determined that, although key information gaps could be identified, the most important activity was to offer a critique of current processes and suggestions for change that would improve the quality of the data, the pediatric impact of prevention, and the future benefit of the ATSDR's activities for the children being served. The availability of draft report for public comment was announced in the **Federal Register** on June 17, 1997 (62 FR 32812). The availability of the final report documenting this effort, Healthy Children-Toxic Environments, is being announced through this **Federal Register** notice.

Dated: September 24, 1997.

**Georgi Jones,**

*Director, Office of Policy and External Affairs, Agency for Toxic Substances and Disease Registry.*

[FR Doc. 97–25836 Filed 9–29–97; 8:45 am]

BILLING CODE 4163–70–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Advisory Committee on Immunization Practices: 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 on Immunization Practices (ACIP).

*Times and Dates:*

8:30 a.m.–4:45 p.m., October 22, 1997.

8:30 a.m.–1:15 p.m., October 23, 1997.

*Place:* CDC, Auditorium B, Building 2, 1600 Clifton Road, NE, Atlanta, Georgia 30333.

*Status:* Open to the public, limited only by the space available.

*Purpose:* The Committee is charged with advising the Director, CDC, on the appropriate uses of immunizing agents. In addition, under 42 U.S.C. § 1396s, the Committee is mandated to establish and periodically review and, as appropriate, revise the list of vaccines for administration to vaccine-eligible children through the Vaccines for Children (VFC) program, along with schedules regarding the Page 2 appropriate periodicity, dosage, and contraindications applicable to the vaccines.

*Matters to be Discussed:* Under the authority of 42 U.S.C. § 1396s, the Committee will consider revision of the ACIP VFC program resolution for Adolescent Hepatitis B immunization.

Other topics include: updates on the National Vaccine Program, the Vaccine Injury Compensation Program, and the influenza pandemic preparedness plan; discussions on rabies postexposure prophylaxis, the recommendations on the use of Rotashield® (Rotavirus vaccine) as part of the routine childhood immunization schedule, ACIP guidelines on combination vaccines, the harmonized immunization schedule, public health laboratory capacity for vaccine-preventable disease surveillance, immunization of bone marrow transplant (BMT) recipients, the report from work group on algorithms for immunization registries, and the isolation of influenza type A(H5N1) in Hong Kong. There will also be presentations on the efficacy of live attenuated influenza vaccine and the Swedish acellular pertussis mass vaccination project. Other matters of relevance among the Committee's objectives may be discussed.

Agenda items are subject to change as priorities dictate.

**CONTACT PERSON FOR MORE INFORMATION:** Gloria A. Kovach, Committee

Management Specialist, CDC, 1600 Clifton Road, NE, M/S D50, Atlanta, Georgia 30333, telephone 404/639–7250.

Dated: September 24, 1997.

**Nancy C. Hirsch,**

*Acting Director, Management Analysis and Services Office Centers for Disease Control and Prevention (CDC).*

[FR Doc. 97–25834 Filed 9–29–97; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Safety and Occupational Health Study Section; NIOSH 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:* Safety and Occupational Health Study Section, National Institute for Occupational Safety and Health (NIOSH).

*Times and Dates:* 8 a.m.-5:30 p.m., October 29–30, 1997.

*Place:* National Institute for Occupational Safety and Health, 1095 Willowdale Road, Morgantown, West Virginia, 26505–2888.

*Status:* Open business session, 8 a.m.-8:30 a.m., October 29, 1997; Closed evaluation sessions 8:30 a.m.-5:30 p.m., October 29, 1997; and 8 a.m.-5:30 p.m., October 30, 1997.

*Purpose:* The Safety and Occupational Health Study Section will review, discuss, and evaluate grant application(s) in response to the Institute's standard grants review and funding cycles pertaining to research issues in occupational safety and health and allied areas. It is the intent of NIOSH to support broad-based research endeavors in keeping with the Institute's program goals which will lead to improved understanding and appreciation for the magnitude of the aggregate health burden associated with occupational injuries and illnesses, as well as to support more focused research projects which will lead to improvements in the delivery of occupational safety and health services and the prevention of work-related injury and illness. It is anticipated that research funded will promote these program goals.

*Matters To Be Discussed:* The meeting will convene in open session from 8 a.m.-8:30 a.m. on October 29, 1997, to address matters related to the conduct of Study Section business. The meeting will proceed in closed session from 8:30 a.m. until scheduled adjournment (5:30 p.m.) on October 29, 1997. The meeting will continue in closed session from 8 a.m. until scheduled adjournment (5:30 p.m.) or earlier on October 30, 1997. The purpose of the closed sessions is for the Safety and Occupational Health Study Section to consider safety and occupational health related grant applications. These portions of the meeting will be closed to the public in accordance with provisions set forth in section 552(c) (4) and (6) title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Pub. L. 92–463.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Pervis C. Major, Ph.D., Scientific Review Administrator, Office of Extramural Coordination and Special Projects, Office of the Director, NIOSH, 1095 Willowdale Road, Morgantown, West Virginia 26505–2888, telephone 304/285–5979.

Dated: September 18, 1997.

**Carolyn J. Russell,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 97–25948 Filed 9–29–97; 8:45 am]

BILLING CODE 4163–19–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 97N–0385]**

### Agency Information Collection Activities; Submission for OMB Review; Comment Request

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

**DATES:** Submit written comments on the collection of information by October 30, 1997.

**ADDRESSES:** Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

**FOR FURTHER INFORMATION CONTACT:** Margaret R. Wolff, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

**SUPPLEMENTARY INFORMATION:** In compliance with section 3507 of the PRA (44 U.S.C. 3507), FDA has submitted the following proposed collection of information to OMB for review and clearance:

**Premarket Approval of Medical Devices—Part 814 (OMB Control Number 0910–0231—Reinstatement)**

Section 515 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e) sets forth requirements for premarket approval of certain medical devices. Under section 515 of the act, an application must contain several pieces of information, including: Full reports of all information concerning investigations showing whether the device is safe and effective; a statement of components; a full description of the methods used in, and the facilities and controls used for, the manufacture and processing of the device; and labeling specimens. The implementing regulations, contained in part 814 (21 CFR part 814), further specify the contents of a premarket approval application (PMA) for a medical device and the criteria FDA will employ in approving, denying, or withdrawing approval of a PMA. The purpose of these regulations is to establish an efficient and thorough procedure for FDA's review of PMA's for class III (premarket approval) medical devices, in order to facilitate the approval of PMA's for devices that have been shown to be safe and effective and otherwise meet the statutory criteria for approval and to ensure the disapproval of PMA's for devices that have not been shown to be safe and effective and that do not otherwise meet the statutory criteria for approval.

Under § 814.15, an applicant may submit in support of a PMA studies from research conducted outside the United States, but an applicant must explain in detail any differences between standards used in a study to support the PMA's and those standards found in the Declaration of Helsinki. Section 814.20 provides a list of information required in the PMA, including: A summary of information in the application, a complete description of the device, technical and scientific information, and copies of proposed labeling. Section 814.37 provides requirements for an applicant who seeks to amend a pending PMA. Under § 814.39, an applicant must submit a supplement to the PMA before making a change affecting the safety or effectiveness of the device. Section 814.82 sets forth postapproval requirements FDA may propose, including periodic reporting on safety, effectiveness, reliability, and display in the labeling and advertising of certain warnings. Section 814.82 requires the maintenance of records to trace patients and the organizing and indexing of records into identifiable files to enable

FDA to determine whether there is reasonable assurance of the device's continued safety and effectiveness. Section 814.84 specifies the contents of periodic reports. The applicant determines what records should be maintained during product development to document and/or substantiate the device's safety and effectiveness. Records required by the current good manufacturing practices for medical devices regulation part 820 (21 CFR part 820) may be relevant to a PMA review and may be submitted as part of an application. In individual instances, records may be required to be maintained as conditions of approval to ensure the device's continuing safety and effectiveness.

Respondents to this information collection are persons filing an application for approval of a Class III medical device. Part 814 defines a person as any individual, partnership, corporation, association, scientific or academic establishment, government agency or organizational unit, or other legal entity. These respondents include manufacturers of commercial medical devices in distribution prior to May 28, 1976 (the enactment date of the Medical Device Amendments).

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN

| 21 CFR Section | No. of Respondents | Annual Frequency per Response | Total Annual Responses | Hours per Response | Total Hours |
|---|---|---|---|---|---|
| 814.15, 814.20, and 814.37 | 52 | 1 | 52 | 837.28 | 43,539 |
| 814.39 | 493 | 1 | 493 | 73.15 | 36,063 |
| 814.82 | 545 | 1 | 545 | 9.14 | 4,983 |
| 814.84 | 545 | 1 | 545 | 18.29 | 9,966 |
| Total | | | | | 94,551 |

There are no capital costs or operating and maintenance costs associated with this collection of information.

In March 1997, while completing work on the CDRH Annual Information Collection Budget, an error was discovered on this information collection's burden hours by CDRH program staff. This error was not discovered until after the publishing of this information collection's 60-day notice in the **Federal Register** of January 7, 1997 (62 FR 995), Docket No. 96N–0491. The narrative portion of the **Federal Register** notice correctly stated that 52 original PMA's and 493 PMA Supplements were processed each year. The burden chart, however, incorrectly stated that 545 original PMA's and 545 PMA Supplements were processed each year (the 545 figure was derived by adding the 52 original and 493 PMA supplements together). When the correct number of respondents was plugged into the burden hour table and the numbers recalculated, the new total burden hours equals 104,020 hours, a savings of 416,583 hours from the original 1997 figure of 520,603.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN

| 21 CFR Section | No. of Recordkeepers | Annual Frequency per Recordkeeping | Total Annual Records | Hours per Recordkeeper | Total Hours |
|---|---|---|---|---|---|
| 814.82 (a) (5) and (a) (6) | 567 | 1 | 567 | 16.7 | 9,469 |
| Total | | | | | 9,469 |

There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA estimates that the cost to device manufacturers to comply with the requirements for premarket approval of medical devices is approximately $34.95 million per year. The industry-wide cost estimate for PMA's is based on an average fiscal year annual rate of receipt of 52 PMA original applications and 493 PMA supplements, using fiscal years 1991 through 1995 data.

The cost data for PMA's is based on data provided by manufacturers in 1985 by device type and cost element. The specific cost elements for which FDA has data are as follows:

(1) Clinical investigations: 67 percent of total cost estimate,

(2) Submitting additional data or information to FDA during a PMA review: 12 percent,

(3) Additional device development cost (e.g., testing): 10 percent and,

(4) PMA and PMA supplement preparation and submissions, and development of manufacturing and controls data: 11 percent.

A weighted average calculation in 1985 produced a total cost of $280,000 for a PMA application. These cost estimates are considered to be solely attributable to PMA requirements. FDA does not have more recent data on the cost to manufacturers of collecting, analyzing, and preparing the data needed for a PMA submission. FDA has adjusted the 1985 estimate for inflation (using an average of 7.5 percent per year for the health care sector) and multiplied it by 52 (the average number of PMA's submitted annually) to yield an annual cost attributable to PMA's of $32,323,200 ($280,000 x index of 2.22 x 52).

FDA estimates that 493 PMA supplements will be submitted annually. No recent information on the cost of PMA supplements has been collected from medical device manufacturers. However, the agency has taken an earlier cost estimate for PMA supplements ($2,400 per supplement) and adjusted it for inflation. The annual cost of PMA supplements is estimated to be $2,626,704 (493 x $2,400 x 2.22 index factor).

Thus, the cost estimate for PMA's and PMA supplements is $34,949,904. This figure represents the burden on industry due to the PMA approval requirement. This cost includes both the effect of the statutory requirement and the effect of the agency's implementation of the statute.

The recordkeeping burden in this section requires the maintenance of

records to trace patients, and the organization and indexing of records into identifiable files to ensure the device's continued safety and effectiveness. These requirements are to be performed only by those manufacturers who have an approved PMA and who had original clinical research in support of that PMA. For a typical year's submissions, 70 percent of the PMA's are eventually approved and 75 percent of those have original clinical trial data. Therefore, about 27 PMA's a year would be subject to these requirements. Also, because the requirements apply to all active PMA's, all holders of active PMA applications must maintain these records. PMA's have been required since 1976, so there are around 567 active PMA's that could be subject to these requirements (21 years x 27 per year). Each study has about approximately 200 subjects, and, at an average of 5 minutes per subject, there is a total burden per study of 1,000 minutes, or 16.7 hours. The aggregate burden for all 567 holders of approved original PMA's, therefore, is 9,469 hours (567 approved PMA's with clinical data x 16.7 hours per PMA).

The applicant determines what records should be maintained during product development to document and/or substantiate the device's safety and effectiveness. Records required by the Current Good Manufacturing Practices for medical devices regulation part 820 may be relevant to a PMA review and may be submitted as part of an application. In individual instances, records may be required as conditions to approval to ensure the device's continuing safety and effectiveness.

With the additional 9,469 hours or recordkeeping, the total annual burden is 104,020 hours.

Dated: September 23, 1997.

**William K. Hubbard,**

*Associate Commissioner for Policy Coordination.*

[FR Doc. 97–25938 Filed 9-29-97; 8:45 am]

BILLING CODE 4160-01-F

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Statement of Organization, Functions, and Delegations of Authority

Part D, Chapter DE, Office of External Affairs (Food and Drug Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (35 FR 3685, February 25, 1970, and 60 FR 56605, November, 9, 1995, and in pertinent part at 56 FR 29484, June 27, 1991) is amended to reflect the title change of the Industry and Small Business Liaison Staff. The title is being changed to more accurately reflect the expanding concerns and community issues in the jurisdictions containing various FDA headquarter facilities. The Industry and Small Business Liaison Staff will be retitled as the Industry, Small Business and Community Affairs Staff. The current functions remain the same with the addition of two new functions.

Delete the **Industry and Small Business Liaison Staff** (DE–1) in its entirety and insert the following:

**Industry, Small Business and Community Affairs Staff** (DE–1). Advises and assists the Commissioner and other Agency officials on industry-related issues which have an impact on policy, directions, and goals.

Serves as the Agency focal point for overall industry liaison and communication activities within FDA, including FDA Centers, and between FDA and FDA-regulated industry, industry trade associations, and scientific associations.

Serves as liaison with other Agency components to provide advice and assistance to small manufacturers and scientific associations to promote their understandings of and compliance with FDA regulations.

Develops and maintains effective channels of communication with regulated industry, professional societies, and trade and scientific associations.

Serves as liaison with local civic organizations in jurisdictions containing or contiguous to the various FDA headquarters facilities.

Provides official contact point within the Agency for discussion and resolution of community issues and concerns arising in connection with the construction, renovation, or ongoing operation of FDA's widely dispersed physical point.

**Prior Delegations of Authority**. Pending further delegations, directives, or orders by the Commissioner of Food and Drugs, all delegations of authority to positions of the affected organizations in effect prior to this date shall continue in effect in them or their successors.

Dated: September 2, 1997.

**Michael A. Friedman,**

*Lead Deputy Commissioner for the Food and Drug Administration.*

[FR Doc. 97–25782 Filed 9–29–97; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

**[Document Identifier: HCFA–R–211]**

### Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

*Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* State Child Health Plan and Supporting Information Collection Requirements Referenced in Title XXI of the Social Security Act; *Form No.:* HCFA–R–211, OMB # 0938–0707; *Use:* This Model template will enable states to apply for funds under Title XXI of the Social Security Act, to initiate and expand the provision of child health insurance to uninsured, low income children in a effective and efficient manner that is coordinated with other sources of health coverage for children; *Affected Public:* State, Local or Tribal Government; Number of Respondents: 56; *Total Annual Responses:* 56; *Total Annual Hours:* 8,960.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, or to obtain the supporting statement and any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address:

HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Attention: John Rudolph, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: September 19, 1997.

**John P. Burke III,**

*HCFA Reports Clearance Officer, Division of HCFA Enterprise Standards, Health Care Financing Administration.*

[FR Doc. 97–25909 Filed 9–29–97; 8:45 am]

BILLING CODE 4120–03–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

**[HCFA-R–192]**

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

*Type of Information Collection Request:* New Collection; *Title of Information Collection:* Evaluation of the Oregon Medicaid Reform Demonstration: Adult Interview, Pediatric Asthma Interview, Insulin-Dependent Diabetes Interview, Low Back Pain Interview, Medical Provider Questionnaire; *Form No.:* HCFA-R–192; *Use:* The survey instruments listed above are for use in the Evaluation of the Oregon Medicaid Reform Demonstration. The Adult and Child Interviews are designed to collect information related to health status, access to care, satisfaction with care and past health insurance status for adult and child members of the Oregon Health Plan (OHP). The Pediatric Asthma Interview, Insulin-Dependent Diabetes Interview and Low Back Pain Interview collect information on quality of care, utilization of care, satisfaction with care and health status of OHP members with selected ''tracer conditions''. The Medical Provider Questionnaire is designed to collect information on how both participating and non-participating physicians view OHP; *Frequency:* Other One-Time Submission; *Affected Public:* Not-for-profit institutions, individuals and households, business or other for-profit; *Number of Respondents:* 5,533; *Total Annual Responses:* 5,533; *Total Annual Hours:* 2,242.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, or to obtain the supporting statement and any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: September 19, 1997.

**John P. Burke III,**

*HCFA Reports Clearance Officer, HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.*

[FR Doc. 97–25910 Filed 9–29–97; 8:45 am]

BILLING CODE 4120–03–P

## HEALTH RESOURCES AND SERVICES ADMINISTRATION

### Guidelines for the Use of Antiretroviral Agents in Pediatric HIV Infection

**AGENCY:** Health Resources and Services Administration, Department of Health and Human Services.

**ACTION:** Request for comments.

**SUMMARY:** The Health Resources and Services Administration (HRSA) is requesting comments from all interested parties on the following document: ''Guidelines for Use of Antiretroviral Agents in Pediatric HIV Infection''. The document was developed by specialists in the care of HIV-infected infants, children and adolescents, family members of HIV-infected children, and governmental agency representatives at a meeting on July 9 and 10, 1997, convened by the National Pediatric and Family HIV Resource Center (NPHRC) and HRSA. While the pathogenesis of HIV infection and the general virologic and immunologic principles underlying the use of antiretroviral therapy are similar for all HIV infected individuals, there are therapeutic and management considerations that are unique to HIV infected infants, children and adolescents. These include acquisition of infection through perinatal exposure for many infected children; in utero exposure to zidovudine (ZDV) and other antiretroviral medications in many perinatally-infected children; differences in diagnostic evaluation in perinatal infection; differences in immunologic markers (eg. CD4+ lymphocyte count) in young children; changes in pharmacokinetic parameters with age due to the continuing development and maturation of organ systems involved in drug metabolism and clearance; differences in the clinical and virologic manifestations of perinatal HIV infection secondary to the occurrence of primary infection in a still-developing, immunologically naive individual; and special considerations related to treatment adherence in children and adolescents. This document addresses the pediatric-specific issues related to antiretroviral treatment and provides general guidelines to physicians caring for infected children and adolescents.

**DATES:** Comments on the proposed guidelines must be received on or before October 30, 1997 in order to ensure that HRSA will be able to consider the comments in preparing the final guidelines.

**ADDRESSES:** Written comments to this notice should be submitted to: The HIV/AIDS Treatment Information Service, P.O. Box 6303, Rockville, MD 20849–6303. Only written comments will be accepted. After consideration of the comments, the final document will be published in the Centers for Disease Control and Prevention (CDC) ''Morbidity and Mortality Weekly Report'' (MMWR).

**FOR FURTHER INFORMATION CONTACT:** Copies of the ''Guidelines for the Use of Antiretroviral Agents in Pediatric HIV Infection'' are available from the National AIDS Clearinghouse (1–800–458–5231) and on the Clearinghouse Web sites (http://www.cdcnac.org) and from the HIV/AIDS Treatment Information Service (1–800–448–0440; Fax: 301–519–6616; TTY: 1–800–243–7012) and on their Web site (http://www.hivatis.org).

**SUPPLEMENTARY INFORMATION:** A Working Group on Antiretroviral Therapy and Medical Management of HIV-Infected Children composed of

specialists in the care of HIV-infected infants, children and adolescents, family members of HIV-infected children, and governmental agency representatives was convened by the National Pediatric and Family HIV Resource Center (NPHRC), sponsored by the Health Resources and Services Administration (HRSA), on July 9 and 10, 1997, to establish and finalize a new set of guidelines for the treatment of HIV-infected infants, children and adolescents. The Working Group was co-chaired by Dr. James Oleske, University of Medicine and Dentistry of New Jersey (UMDNJ)-New Jersey Medical School, Newark, NJ and Dr. Gwendolyn Scott, University of Miami, Miami, FL. The treatment recommendations provided in this document are based on published and unpublished data on HIV infection and treatment in adults and children and, when no definitive data were available, the consensus of the Working Group participants in the treatment of pediatric HIV infection. It is the intent of the Working Group that the guidelines be regarded as flexible and not supplant the clinical judgement of experienced health care providers. It is recognized that these guidelines will need to be modified as new information and experience become available.

Dated: September 24, 1997.

**Claude Earl Fox,**

*Acting Administrator.*

[FR Doc. 97–25773 Filed 9–29–97; 8:45 am]

BILLING CODE 4160–15–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Statement of Organization, Functions, and Delegations of Authority

Part N, National Institutes of Health, of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 62 FR 37587, July 14, 1997, and redesignated from Part HN as Part N at 60 FR 56605, November 9, 1995), is amended as set forth below to reflect the reorganization of the National Library of Medicine as follows: The functional statements of the Division of Extramural Programs (DEP) and the DEP's Office of the Director are updated to reflect current responsibilities.

Section N–B, Organization and Functions, under the heading National Library of Medicine (NL, formerly HNL), is amended as follows: Delete the functional statements in their entirety for the Division of Extramural Programs (NL5, formerly HNL5) and its Office of the Director (NL51, formerly HNL51) and replace them with the following:

Division of Extramural Programs (NL5, formerly HNL5) (1) Administers programs to augment and strengthen the health sciences libraries of the Nation and to improve biomedical communications and information management through grants to, or contracts with, non-Federal and private institutions; (2) analyzes and evaluates extramural programs in relation to program objectives and national needs to achieve balanced and effective support; and (3) provides grants management, grants processing, and administrative management services.

Office of the Director (NL51, formerly HNL51) (1) Plans, directs, and administers the operations of the extramural programs; (2) coordinates collaborative efforts with other NIH components and Federal agencies in the general areas of informatics, information management, networking, health library support, and publications; and (3) provides technical and management assistance to advisory and review committees.

Dated: September 19, 1997.

**Ruth Kirschstein,**

*Acting Director, National Institutes of Health.*

[FR Doc. 97–25822 Filed 9–29–97; 8:45 am]

BILLING CODE 4140–01–M

## 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.

1998 National Household Survey on Drug Abuse —Revision—The National Household Survey on Drug Abuse (NHSDA) is a survey of the civilian, noninstitutionalized population of the United States, age 12 and over. The data are used to determine the prevalence of use of cigarettes, alcohol, and illicit substances, and illicit use of prescription drugs. The results are used by SAMHSA, ONDCP, Federal government agencies, and other organizations and researchers to establish policy, direct program activities, and better allocate resources. For 1998, the core NHSDA questionnaire will remain unchanged. Special topic modules related to substance abuse prevention have been added. The total annual burden estimate is 34,662 hours as shown below:

| Instrument | No. of respondents | Responses/respondent | Hours/response | Total hour burden |
|---|---|---|---|---|
| Screening Form | 82,741 | 1 | 0.050 | 4,137 |
| Questionnaire and Verification Form | 25,089 | 1 | 1.200 | 30,107 |
| Screening Verification | 2,482 | 1 | 0.067 | 166 |
| Interview Verification | 3,763 | 1 | 0.067 | 252 |
| Total | | | | 34,662 |

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Dan Chenok, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

### Substance Abuse and Mental Health Services Administration Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork

Reduction Act of 1995 to provide the opportunity for public comment on proposed information collection activities, the Substance Abuse and Mental Health Services Administration publishes periodic summaries of proposed activities. To request more information on the proposed activities or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–0525.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

(1) Substance Abuse Prevention and Treatment Block Grant—45 CFR Part 96—Extension with no change—This interim final rule provides guidance to States regarding the Substance Abuse Prevention and Treatment Block Grant legislation. The rule implements the reporting and recordkeeping requirements of 42 U.S.C. 300x 21–35 & 51–64 by specifying the content of the States' annual report on and application for block grant funds. The reporting burden hours will be counted towards the total burden for the FY 1999 SAPT Block Grant Application Format for which separate OMB approval will be requested. The total annual reporting and recordkeeping burden estimate is shown below:

| | No. of respondents | Responses/respondent | Hours/response | Total hour burden |
|---|---|---|---|---|
| **Reporting Burden—45 CFR 96** | | | | |
| Annual Report: | | | | |
| 96.122(f) | 60 | 1 | 152 | 9120 |
| 96.134(d) | 60 | 1 | 16 | 960 |
| State Plan: | | | | |
| 96.122(g) | 60 | 1 | 162 | 9720 |
| 96.124(c)(1) | 60 | 1 | 40 | 2400 |
| 96.127(b) | 60 | 1 | 8 | 480 |
| 96.131(f) | 60 | ..... | 8 | 480 |
| 96.133(a) | 60 | 1 | 80 | 4800 |
| Waivers [1]: | | | | |
| 96.132(d) | 60 | 1 | 16 | 960 |
| 96.134(b) | 60 | 1 | 40 | 2400 |
| 96.135(d) | 60 | 1 | 8 | 480 |
| Total Reporting Burden | 60 | 1 | 530 | 31,800 |
| **Recordkeeping Burden—45 CFR 96** | | | | |
| 96.129(a)(13) | 60 | 1 | 16 | 960 |

[1] For the purpose of burden calculation, it is assumed that all States would apply for each waiver. In reality it expected that only a small number will apply.

(2) Tobacco Regulation for Substance Abuse Prevention and Treatment—45 CFR 96—Extension with no change—This final rule provides guidance to States regarding compliance with section 1926 of the Public Health Service Act related to sale and distribution of tobacco to minors. The final rule implements section 1926 by specifying annual reporting requirements to be in compliance with this section. The reporting burden shown below represents the average total hours to assemble, format, and produce the block grant provision on minors' access to tobacco, in accordance with the requirements of 45 CFR 96. These burden hours will be counted towards the total burden for the FY 1999 SAPT Block Grant Application Format for which separate approval will be requested.

| | No. of respondents | Responses/respondent | Hours/response | Total hour burden |
|---|---|---|---|---|
| Annual Report: 96.122 (f) | 59 | 1 | 0 | [1] 0 |
| 96.130(e) (1–3) | 59 | 1 | 15 | 885 |
| State Plan: | | | | |
| 96.122 (g) (21) | 0 | 0 | 0 | [2] 0 |
| 96.130 (e) (4,5) | 59 | 1 | 14 | 826 |
| 96.130 (g) | 59 | 1 | 5 | 295 |
| Total | ..... | ..... | 34 | 2,006 |

[1] This section describes requirements for the first applicable year. For seven States, FY 1995 was the first applicable year. States are required to provide a copy of the statute enacting the law and are asked to provide a description of the previous year's activities, if they so desire. For the second and subsequent fiscal years, States are to provide a copy of any amendments. No burden is associated with these requests.

[2] This section duplicates the information collection language in section 96.130(e). The burden is shown for 96.130(e).

Send comments to Deborah Trunzo, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: September 17, 1997.

**Richard Kopanda,**

*Executive Officer, SAMHSA.*

[FR Doc. 97–25849 Filed 9–29–97; 8:45 am]

BILLING CODE 4162–20–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Mandatory Guidelines for Federal Workplace Drug Testing Programs

**AGENCY:** Substance Abuse and Mental Health Services Administration, HHS

**ACTION:** Revisions to the Mandatory Guidelines

**SUMMARY:** On November 16, 1995, the Department of Health and Human Services (HHS) published a notice in the **Federal Register** at 60 FR 57587 proposing to revise the Mandatory Guidelines for Federal Workplace Drug Testing Programs, 59 FR 29916 (June 9, 1994). Specifically, the Department proposed to change the drug testing levels for opiate metabolites and to require the testing for a metabolite of heroin in urine specimens collected as part of the Federal Workplace Drug Testing Program. After considering the comments, this Department is revising the Mandatory Guidelines to add such requirements. The goals of the revised new opiate testing policy are to substantially reduce the total number of specimens laboratories report positive for opiates that Medical Review Officers verify as negative, to shift the emphasis of testing for opiates back to the proper deterrence and detection of heroin use, and to reduce any unnecessary/excessive costs to drug testing without compromising the original drug deterrent objectives.

**EFFECTIVE DATE:** May 1, 1998.

**FOR FURTHER INFORMATION CONTACT:** Dr. Donna M. Bush, Chief, Drug Testing Section, Division of Workplace Programs, SAMHSA/CSAP, Room 13A–54, 5600 Fishers Lane, Rockville, Maryland 20857, tel. (301) 443–6014.

**SUPPLEMENTARY INFORMATION:** After considering comments received from the public, the Department is revising the guidelines entitled ''Mandatory Guidelines for Federal Workplace Drug Testing Program,'' (Mandatory Guidelines) which were initially published in the **Federal Register** on April 11, 1988 (53 FR 11979) and revised on June 9, 1994 (59 FR 29908). This revision and the Mandatory Guidelines are developed in accordance with Executive Order 12564 dated September 15, 1986, and section 503 of Public Law 100–71, 5 U.S.C. section 7301 note, the Supplemental Appropriations Act for fiscal year 1987 dated July 11, 1987. This revision incorporates changes based on the comments received during the public comment period and the Department's experience in implementing and administering these Mandatory Guidelines.

### Background and Summary of Public Comments

*A. Proposed Changes to the Testing Cutoff Levels for Opiates*

The changes proposed in the notice published in the **Federal Register** on November 16, 1995, 60 FR 57587, are summarized here to facilitate the discussion of the comments received during the public comment period.

The Department proposed increasing the initial testing cutoff level for opiate metabolites and the confirmatory testing cutoff levels for morphine and codeine from 300 ng/mL to 2,000 ng/mL and establishing a new requirement to test for 6-acetylmorphine (6–AM), a metabolite that comes only from heroin, using a 10 ng/mL confirmatory level for specimens that have tested positive on the initial test.

The Department evaluated results on 1.1 million urine specimens tested for opiates in five certified laboratories and 317,500 specimens that were reviewed by three Medical Review Officer (MRO) groups. Based on the information obtained from the MROs, 87% of all opiate positives reported by the laboratories were verified as negatives by the MROs. The reasons given for reporting negative results included the use of prescription medications, poppy seed consumption, no clinical evidence of heroin use, or other unspecified reason. The reversal of most opiate positive results clearly indicates that the current opiate testing cutoff levels used by the laboratories are identifying too many individuals who are not opiate abusers. The 300 ng/mL testing levels had been selected to provide the greatest opportunity to identify anyone who may have used heroin. However, many who have not used heroin but had taken a prescribed codeine or morphine medication or eaten poppy seeds (which may contain morphine and/or codeine) have also tested positive. Since the purpose of the workplace drug testing program is to deter and detect use of illegal drugs, establishing the testing cutoff levels for opiates at these higher levels will eliminate the identification of most individuals who are legitimately taking prescription medications that contain morphine or codeine or have ingested poppy seeds.

With regard to testing for 6–AM, the laboratory results indicate that of the approximately 1.1 million specimens tested, 7294 specimens were reported positive for codeine and/or morphine. Within this group of 7294 opiate positives, 848 were also tested for 6–AM and 16 of these 848 were reported positive for 6–AM. Of particular interest, was that 14 of these 16 6–AM positives had morphine concentrations greater than 2,000 ng/mL. In light of these results, the Department proposed to establish a requirement to test for 6–AM in specimens positive for opiates on the initial test because of the increased probability of detecting 6–AM when the morphine concentration was greater than 2000 ng/mL. Since 6–AM has a very short half-life (i.e., detectable for only a few hours after heroin use), it is essential that a laboratory use a sensitive analytical procedure to test for 6–AM. From the data available, it appears 10 ng/mL is the lowest testing level that can reasonably be used to consistently and accurately identify and quantitate the presence of 6–AM.

The Department believes that raising the testing levels for opiates and establishing a requirement to test for 6–AM will not reduce the deterrent value of the Federal Workplace Drug Testing Program. Additionally, the cost to Federal agencies may be reduced since there will be fewer specimens screened positive for opiates, fewer specimens sent to confirmatory testing, and fewer opiate positive results requiring extensive MRO review.

*B. Public Comments and the Department's Response*

The Department received 22 public comments on the proposed changes to the testing levels for opiates from individuals, companies, and laboratories. More than 50% of the commenters supported all or part of the proposed changes, while five commenters disagreed with the entire proposal. The remaining commenters expressed concern only with the implementation of a new policy and did not provide any comments to either support or disagree with the proposed changes. All written comments were reviewed and taken into consideration in setting the new testing levels. The substantive concerns raised in the

public comments and the Department's responses to the comments are discussed below. Similar comments are considered together.

1. Raising the Initial Testing Cutoff Level

More than 50% of the commenters supported raising the initial testing level for opiates as proposed. They agreed that the current initial testing level was unnecessarily identifying a large number of specimens as positive for opiates that were verified negative by the Medical Review Officer (MRO). Five commenters, however, were opposed to raising the initial testing level because it would no longer identify a number of individuals that misuse prescription medications that contain morphine or codeine. The Department recognizes that a very small percentage of individuals who abuse opiates that are currently reported positive using the 300 ng/mL initial test level would no longer be reported positive. However, the Department believes that the benefits from not reporting a large number of positives that are verified as negatives by an MRO outweigh the small risk of not detecting misuse of prescription drugs.

One commenter opposed deleting the footnote that had established an initial testing level of 25 ng/mL for free morphine and suggested a new level be established by applying the same factor that was used for the proposed opiate testing level. The Department disagrees with this comment. Since heroin, codeine, and morphine are excreted as varying concentrations of unchanged drug, glucuronide conjugates, and other metabolites, the Department believes it is more appropriate to use initial test kits that have a cross-reactivity with these metabolites rather than using a test kit that only detects free morphine. Because of this cross-reactivity, the Department believes it is appropriate to continue to list the initial test level as ''opiate metabolites'' rather than as morphine.

One commenter agreed that the initial test level should be raised, but suggested that the Department specify the analyte to be used for the test kit calibrators, that is, either morphine, morphine-3-glucuronide, or codeine. The Department agrees that the specific analyte used to calibrate a test kit has a direct impact on its ability to detect the presence of a drug or metabolite in a urine specimen. Therefore, test kit manufacturers should continue using morphine to prepare the calibrators for the revised opiate test kits as they had been using for the current opiate test kits.

2. Raise the Confirmatory Test Levels for Morphine and Codeine

The majority of the commenters agreed that raising the confirmatory test levels for morphine and codeine was appropriate and that the levels should correspond to the level established for the initial test. However, two commenters suggested that the confirmatory test level for morphine be raised to 4,000 ng/mL to make the test level consistent with that established by the Department of Defense (DoD) for its testing program. The Department does not agree that the two programs must use the same confirmatory testing levels. In light of the information found in the study of 1.1 million specimens noted above, the Department believes that the 2,000 ng/mL is the cutoff level that should be used at this time for agency testing.

3. Establish a Confirmatory Test Level for 6-Acetylmorphine

A majority of the commenters supported establishing a confirmatory test level for 6-acetylmorphine (6-AM); however, there was disagreement that it should be tested for on each specimen that was positive on the initial test. There were suggestions that a laboratory only test for 6-AM when the morphine concentration exceeds 2,000 or 4,000 ng/mL, or when the MRO requests a 6-AM analysis. Several commenters stated that testing for 6-AM on all presumptive positives places an unnecessary burden on the laboratory to conduct a second separate confirmatory test which will increase the cost of testing. In addition, there were suggestions that presumptive positives be tested only for 6-AM since the focus of the opiate testing is to identify heroin use. The Department believes that since the number of presumptive positives going to confirmation testing at a 2,000 ng/mL initial test level will be reduced significantly, there will not be a significant increase in the cost associated with testing for 6-AM. However, we do agree that testing for 6-AM on each presumptive positive may be unnecessary. Based on the pharmacology of heroin metabolism, 6-AM is likely present only when morphine is present in the specimen and its concentration exceeds 2,000 ng/mL. The concentration of codeine has no bearing on the possible presence of 6-AM. Therefore, the Department agrees with the commenters that 6-AM should only be tested for after a laboratory confirms that the morphine concentration exceeds 2,000 ng/mL rather than testing for 6-AM on each specimen that was positive on the initial test as had been proposed. In other words, a positive codeine without morphine present or with morphine less than 2,000 ng/mL will not automatically require a test for 6-AM. The final revisions to the Mandatory Guidelines have been changed accordingly.

4. Implementation

Several commenters expressed concern that the new testing levels could not be implemented immediately because the test kit manufacturers will need sufficient time to reformulate their kits and to get them cleared by the Food and Drug Administration (FDA). Additionally, the laboratories will need time to validate new confirmatory test procedures using the new testing levels. The Department agrees that a sufficient time must be allowed for the new levels to be implemented and, therefore, the effective date is 180 days from the date of this publication.

*Information Collection Requirements:* There are no new paperwork requirements subject to the Office of Management and Budget approval under the Paperwork Reduction Act of 1980.

Dated: April 18, 1997.

**Nelba Chavez,**

*Administrator, Substance Abuse and Mental Health Services Administration.*

Dated: June 11, 1997.

**Donna E. Shalala,**

*Secretary.*

The following amendments are made to the Mandatory Guidelines for Federal Workplace Drug Testing Programs published on June 9, 1994 (59 FR 29916):

## Subpart B

1. Section 2.4(e)(1), the initial test level for opiate metabolites appearing in the table, is amended by changing the value of ''300'' to ''2,000'' and deleting the footnote that had specified a 25 ng/mL testing level if the immunoassay test was specific for free morphine.

2. Section 2.4(f)(1), the confirmatory test level for morphine appearing in the table, is amended by changing the value of ''300'' to ''2,000.''

3. Section 2.4(f)(1), the confirmatory test level for codeine appearing in the table, is amended by changing the value of ''300'' to ''2,000.''

4. Section 2.4(f)(1), the table of confirmatory test levels, is amended by adding a new line under opiates to read as follows:

6-Acetylmorphine [4] 10 ng/mL

5. Section 2.4(f)(1), the table of confirmatory test levels, is amended by

[4] Test for 6-AM when the morphine concentration exceeds 2,000 ng/mL.

adding a new footnote under the table to read as follows:

[FR Doc. 97–25823 Filed 9–29–97; 8:45 am]

BILLING CODE 4160–20–U

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4285–N–01]**

### Debenture Recall

**AGENCY:** Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

**ACTION:** Notice.

**SUMMARY:** This notice announces a debenture recall of certain Federal Housing Administration debentures, in accordance with authority provided in the National Housing Act.

**FOR FURTHER INFORMATION CONTACT:** Richard Keyser, Room B133, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410, telephone (202) 755–7510. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 207(j) of the National Housing Act, 12 U.S.C. 1713(j), and in accordance with HUD regulations at 24 CFR 207.259(e)(3), the Federal Housing Commissioner, with approval of the Secretary of the Treasury, announces the call of all Federal Housing Administration debentures, with a coupon rate of 6.75% or above, except for those debentures subject to ''debenture lock agreements,'' that have been registered on the books of the Federal Reserve Bank of Philadelphia, and are, therefore, ''outstanding'' as of September 30, 1997. The date of the call is January 1, 1998.

The debenture will be redeemed at par plus accrued interest. Interest will cease to accrue on the debentures as of the call date. Final interest on any called debentures will be paid with the principal at redemption. During the period from the date of this notice to the call date, debentures that are subject to the call may not be used by the mortgagee for a special redemption purchase in payment of a mortgage insurance premium.

No transfer of debentures covered by the foregoing call will be made on the books maintained by the Treasury Department on or after October 1, 1997. This does not affect the right of the holder of a debenture to sell or assign the debenture on or after this date. Payment of final principal and interest due on January 1, 1998, will be made automatically to the registered holder.

Dated: September 25, 1997.

**Nicolas P. Retsinas,**

*Assistant Secretary for Housing-Federal Housing Commissioner.*

[FR Doc. 97–25985 Filed 9–29–97; 8:45 am]

BILLING CODE 4210–27–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Endangered and Threatened Species Permit Applications

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of receipt of applications.

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

**PRT–834589**

*Applicant:* R.D. Zande & Associates, Inc., Columbus, Ohio; Robert F. Madej, principal investigator.

The applicant requests a permit to take (capture and release; survey hibernacula) gray bat *(Myotis grisescens)* and Indiana bat *(Myotis sodalis);* take (capture and release; collect one voucher specimen per site) American burying (=giant carrion) beetle *(Nicrophorus americanus);* take (capture and release) Hine's (=Ohio) emerald dragonfly *(Somatochlora hineana);* and take (survey habitat) Mitchell's satyr butterfly *(Neonympha mitchellii mitchellii)* throughout their ranges. Activities are proposed to document presence or absence of the species for the purpose of survival and enhancement of the species in the wild.

**PRT–834596**

*Applicant:* 3D/International, Inc. Environmental Group, Cincinnati, Ohio.

The applicant requests a permit to take (capture and release; collect empty shells) clubshell mussel *(Pleurobema clava)* and northern riffleshell mussel *(Epioblasma torulosa rangiana)* and to take (capture and release) American burying (=giant carrion) beetle *(Nicrophorus americanus)* and Hine's (=Ohio) emerald dragonfly *(Somatochlora hineana)* at Wright Patterson Air Force Base, Ohio. Activities are proposed to document presence or absence of the species for the purpose of survival and enhancement of the species in the wild.

Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, and must be received on or before October 30, 1997.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056. Telephone: (612/725–3536 x224); FAX: (612/725–3526).

Dated: September 26, 1997.

**John A. Blankenship,**

*Assistant Regional Director, IL, IN, MO (Ecological Services), Region 3, Fort Snelling, Minnesota.*

[FR Doc. 97–25908 Filed 9–29–97; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Availability of Draft Recovery Plan for Oahu Plants

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of document availability.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft Recovery Plan for Oahu Plants. There are 66 plant taxa included in this plan, all listed as endangered. All 66 taxa are endemic to Hawaii. Sixty are restricted to the island of Oahu and six occur on Oahu and other main Hawaiian Islands.

**DATES:** Comments on the draft recovery plan received by December 29, 1997 will be considered by the Service.

**ADDRESSES:** Copies of the draft recovery plan are available for inspection, by appointment, during normal business hours at the following locations: U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Boulevard, Room 3108, Box 50088, Honolulu, Hawaii 96850 (phone 808/541–3441); and Hawaii State Library, 478 S. King Street, Honolulu, Hawaii 96813. Requests for copies of the draft recovery plan and written comments and materials regarding this plan should be addressed to Brooks Harper, Field Supervisor, Ecological Services, at the above Honolulu address.

**FOR FURTHER INFORMATION CONTACT:** Scott Johnston, Fish and Wildlife Biologist, at the above Honolulu address.

**SUPPLEMENTARY INFORMATION:**

## Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act as amended in 1988 requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during the public comment period prior to approval of each new or revised Recovery Plan. Substantive technical comments will result in changes to the plans. Substantive comments regarding recovery plan implementation may not necessarily result in changes to the recovery plans, but will be forwarded to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions. Individualized responses to comments will not be provided.

This draft Recovery Plan for Oahu Plants covers 66 plant taxa (full species, subspecies, and varieties), all of which are listed as endangered. Fifty-six of these taxa are endemic to the island of Oahu. The following taxa also currently have populations outside of the island of Oahu: *Gouania meyenii* and *Lobelia niihauensis* on Kauai; *Hesperomannia arborescens* on Molokai and Maui; *Hesperomannia arbuscula* on West Maui; *Nototrichium humile* and *Phyllostegia mollis* on East Maui; and *Tetramolopium lepidotum* spp. *lepidotum* on Hawaii. Historically, two of the taxa were known from Molokai (*Eugenia koolauensis* and *Phyllostegia mollis*), two from Lanai (*Hesperomannia arborescens* and *Tetramolopium lepidotum* ssp. *lepidotum*), and one each from Kauai (*Phlegmariurus nutans*), West Maui (*Gouania vitifolia*), Niihau (*Lobelia niihauensis*), and Hawaii (*Gouania vitifolia*). The plants covered by the draft recovery plan are: *Abutilon sandwicense* (no common name (NCN)), *Alsinidendron obovatum* (NCN), *Alsinidendron trinerve* (NCN), *Chamaesyce celastroides* var. *kaenana* (akoko), *Chamaesyce deppeana* (akoko), *Chamaesyce herbstii* (akoko), *Chamaesyce kuwaleana* (akoko), *Chamaesyce rockii* (akoko), *Cyanea acuminata* (haha), *Cyanea crispa* (NCN), *Cyanea grimesiana* ssp. *obatae* (haha), *Cyanea humboldtiana* (haha), *Cyanea koolauensis* (haha), *Cyanea longiflora* (haha), *Cyanea pinnatifida* (haha), *Cyanea st.-johnii* (haha), *Cyanea superba* (NCN), *Cyanea truncata* (haha), *Cyrtandra crenata* (haiwale), *Cyrtandra dentata* (haiwale), *Cyrtandra polyantha* (haiwale), *Cyrtandra subumbellata* (haiwale), *Cyrtandra viridiflora* (haiwale), *Delissea subcordata* (oha), *Diellia falcata* (NCN), *Diellia unisora* (NCN), *Dubautia herbstobatae* (naenae), *Eragrostis fosbergii* (NCN), *Eugenia koolauensis* (nioi), *Gardenia mannii* (nanu), *Gouania meyenii* (NCN), *Gouania vitifolia* (NCN ), *Hedyotis degeneri* (NCN), *Hedyotis parvula* (NCN), *Hesperomannia arborescens* (NCN), *Hesperomannia arbuscula* (NCN), *Labordia cyrtandrae* (kamakahala), *Lepidium arbuscula* (anaunau), *Lipochaeta lobata* var. *leptophylla* (nehe), *Lipochaeta tenuifolia* (NCN), *Lobelia gaudichaudii* ssp. *koolauensis* (NCN), *Lobelia monostachya* (NCN), *Lobelia niihauensis* (NCN), *Lobelia oahuensis* (NCN), *Melicope lydgatei* (alani), *Melicope saint-johnii* (alani), *Myrsine juddii* (kolea), *Neraudia angulata* (NCN), *Nototrichium humile* (kului), *Phlegmariurus nutans* (wawaeiole), *Phyllostegia hirsuta* (NCN), *Phyllostegia kaalaensis* (NCN), *Phyllostegia mollis* (NCN), *Pritchardia kaalae* (loulu), *Sanicula mariversa* (NCN), *Schiedea kaalae* (NCN), *Schiedea kealiae* (NCN), *Silene perlmanii* (NCN), *Stenogyne kanehoana* (NCN), *Tetramolopium filiforme* (NCN), *Tetramolopium lepidotum* ssp. *lepidotum* (NCN), *Tetraplasandra gymnocarpa* (oheohe), *Trematolobelia singularis* (NCN), *Urera kaalae* (opuhe), *Viola chamissoniana* ssp. *chamissoniana* (pamakani), and *Viola oahuensis* (NCN).

The 66 taxa included in this draft plan grow in a variety of vegetation communities (shrublands, forests, and mixed communities), elevational zones (coastal to subalpine), and moisture regimes (dry to wet). These taxa and their habitats have been variously affected or are currently threatened by one or more of the following: competition for space, light, water, and nutrients by introduced vegetation; habitat degradation by wild, feral or domestic animals (goats, pigs, and cattle); agricultural and recreational activities; habitat loss and damage to plants from fires; predation by animals (cattle, pigs, goats, rats, slugs and snails, and insects); and natural disasters such as hurricanes. In addition, due to the small number of existing individuals and their very narrow distributions, these taxa and most of their populations are subject to an increased likelihood of extinction and/or reduced reproductive vigor from stochastic events.

The objective of the draft recovery plan is to provide a framework for the recovery of these 66 taxa so that their protection by the Endangered Species Act (ESA) is no longer necessary. The interim objective is to stabilize all existing populations of the Oahu plants. To be considered stable, each taxon must be managed to control threats (e.g., fenced) and be represented in an *ex situ* (such as a nursery or arboretum) collection. In addition, a minimum total of three populations of each taxon should be documented on islands where they now occur or occurred historically. Each of these populations must be naturally reproducing and increasing in number, with a minimum of 25 mature individuals per population for long-lived perennials (*Eugenia koolauensis, Hesperomannia arborescens, Hesperomannia arbuscula, Melicope lydgatei, Melicope saint-johnii, Pritchardia kaalae, Tetraplasandra gymnocarpa*, and *Urera kaalae*) and a minimum of 50 mature individuals per population for short-lived perennials (*Abutilon sandwicense, Alsinidendron obovatum, Alsinidendron trinerve, Chamaesyce celastroides* var. *kaenana, Chamaesyce deppeana, Chamaesyce herbstii, Chamaesyce kuwaleana, Chamaesyce rockii, Cyanea acuminata, Cyanea crispa, Cyanea grimesiana* ssp. *obatae, Cyanea humboldtiana, Cyanea koolauensis, Cyanea longiflora, Cyanea pinnatifida, Cyanea st.-johnii, Cyanea superba, Cyanea truncata, Cyrtandra crenata, Cyrtandra dentata, Cyrtandra polyantha, Cyrtandra subumbellata, Cyrtandra viridiflora, Delissea subcordata, Diellia falcata, Diellia unisora, Dubautia herbstobatae, Eragrostis fosbergii, Gardenia mannii, Gouania meyenii, Gouania vitifolia, Hedyotis degeneri, Hedyotis parvula, Labordia cyrtandrae, Lepidium arbuscula, Lipochaeta lobata* var. *leptophylla, Lipochaeta tenuifolia, Lobelia gaudichaudii* ssp. *koolauensis, Lobelia monostachya, Lobelia niihauensis, Lobelia oahuensis, Myrsine juddii, Neraudia angulata, Nototrichium humile, Phlegmariurus nutans,*

*Phyllostegia hirsuta, Phyllostegia kaalaensis, Phyllostegia mollis, Sanicula mariversa, Schiedea kaalae, Schiedea kealiae, Silene perlmanii, Stenogyne kanehoana, Tetramolopium filiforme, Tetramolopium lepidotum* ssp. *lepidotum, Trematolobelia singularis, Viola chamissoniana ssp. chamissoniana*, and *Viola oahuensis*).

For downlisting, a total of five to seven populations of each taxon should be documented on islands where they now occur or occurred historically. In certain cases, however, a particular taxon may be eligible for downlisting even if all five to seven of the populations are on only one island, provided all of the other recovery criteria have been met and the populations in question are widely distributed and secure enough that one might reasonably conclude that the taxon is not in danger of extinction throughout all or a significant part of its range.

Each of these populations must be naturally reproducing, stable or increasing in number, and secure from threats, with a minimum of 100 mature individuals per population for long-lived perennials, a minimum of 300 mature individuals per population for short-lived perennials and a minimum of 500 mature individuals per population for the annuals. Each population should persist at this level for a minimum of five consecutive years before downlisting is considered. A total of eight to ten populations of each taxon should be documented on islands where they now occur or occurred historically. As with downlisting, there may be certain cases in which a particular taxon may be eligible for delisting even if all eight to ten of the populations are on only one island, provided all of the other recovery criteria have been met and the populations in question are widely distributed and secure enough that one might reasonably conclude that the taxon is not in danger of extinction throughout all or a significant part of its range. Each of these populations must be naturally reproducing, stable or increasing in number, and secure from threats, with a minimum of 100 mature individuals per population for long-lived perennials, a minimum of 300 mature individuals per population for short-lived perennials and a minimum of 500 mature individuals per population for the annual taxon. Each population should persist at this level for a minimum of five consecutive years.

## Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of this plan.

## Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 24, 1997.

**Michael J. Spear,**

*Regional Director, Region 1, Portland, Oregon.*

[FR Doc. 97–25837 Filed 9–29–97; 8:45 am]

BILLING CODE 4310–55–P

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# DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## Availability of Draft Recovery Plan for Two Insects and Four Plants From the Santa Cruz Mountains for Review and Comment

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of document availability.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft Recovery Plan for Two Insects and Four Plants from the Santa Cruz Mountains. The two insects and four plants occur on sandy soils in the Santa Cruz Mountains, Santa Cruz County, California.

**DATES:** Comments on the draft recovery plan received by December 29, 1997 will be considered by the Service.

**ADDRESSES:** Copies of the draft recovery plan are available for inspection, by appointment, during normal business hours at the following location: U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003 (phone: 805/644–1766). Requests for copies of the draft recovery plan and written comments and materials regarding this plan should be addressed to, Ms. Diane K. Noda, Field Supervisor, at the above Ventura address.

**FOR FURTHER INFORMATION CONTACT:** Connie Rutherford, Botanist, at the above Ventura address.

**SUPPLEMENTARY INFORMATION:**

## Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during the public comment period prior to approval of each new or revised recovery plan. Substantive technical comments will result in changes to the plans. Substantive comments regarding recovery plan implementation may not necessarily result in changes to the recovery plans, but will be forwarded to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions. Individualized responses to comments will not be provided.

The two insects and three of the four plants addressed in this recovery plan are listed as endangered. The fourth plant (Scotts Valley polygonum) is a species of concern to the Service.

The Mount Hermon June beetle (*Polyphylla barbata*) is known from 28 collection sites in the area generally bounded by Ben Lomond, Mount Hermon, and Scotts Valley. Populations receiving some protection occur on Quail Hollow Ranch. The remaining populations occur on private land.

The Zayante band-winged grasshopper (*Trimerotropis infantilis*) is known from 10 collection sites in the area generally bounded by Ben Lomond, Mount Hermon, and Mission Springs. All populations occur on private land.

Ben Lomond spineflower (*Chorizanthe pungens* var. *hartwegiana*) is known from 21 populations; most occur between Ben Lomond, Mount Hermon, and Glenwood. Outlying populations are located near Bonny Doon, Boulder Creek, and Big Basin State Park. Populations receiving some protection occur on Bonny Doon Ecologic Preserve, Quail Hollow Ranch, and Big Basin State Park. The remaining populations are found on private land.

Scotts Valley spineflower (*Chorizanthe robusta* var. *hartwegii*) is known from three sites on private land north of Scotts Valley.

Ben Lomond wallflower (*Erysimum teretifolium*) is known from 15

populations; most occur between Ben Lomond, Mount Hermon, and Glenwood. Outlying populations are located near Bonny Doon. Populations receiving some protection occur on Bonny Doon Ecologic Preserve and Quail Hollow Ranch. The remaining populations are found on private land.

Scotts Valley polygonum (*Polygonum hickmanii*) is known from four colonies north of Scotts Valley, all of which occur in the same general area as *Chorizanthe robusta* var. *hartwegii*.

These taxa are variously threatened by one or more of the following: sand mining, urban development, agricultural conversion, equestrian use, recreational activities, alteration in fire cycles, and competition with nonnatives vegetation. For the two insect taxa, collection and pesticide use are recognized as potential threats. In addition, the very low numbers of individuals and populations of some of these taxa put them at great risk of extinction due to random naturally occurring events.

The objective of this plan is to provide a framework for the recovery of the two insects and the four plants so that protection by the Act is no longer necessary. Actions necessary to accomplish this objective include: protecting species habitats through acquisition, conservation easements, and Habitat Conservation Plans; managing species habitats; conducting management-oriented research on the ecology and biology of the species; reviewing and revising management and recovery guidelines; and locating additional populations.

## Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to final approval of this plan.

## Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 18, 1997.

**Thomas J. Dwyer,**

*Acting Regional Director, Region 1, Portland, Oregon.*

[FR Doc. 97–25838 Filed 9–29–97; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## Availability of Draft Recovery Plan for the Nightingale Reed-Warbler (Acrocephalus luscinia) for Review and Comment

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of document availability.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the nightingale reed-warbler (*Acrocephalus luscinia*). This species is known only from the Mariana Islands and is currently limited to essentially 2 islands, with a remnant population on a third island, in this archipelago with a total population of approximately 6,225–6,230 individuals.

**DATES:** Comments on the draft recovery plan received by December 29, 1997 will be considered by the Service.

**ADDRESSES:** Copies of the draft recovery plan are available for inspection, by appointment, during normal business hours at the following locations: U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Boulevard, Room 3108, P.O. Box 50088, Honolulu, Hawaii 96850 (phone: 808/541–3441); the Northern Marianas College Library, P.O. Box 1250, Asterlaje Campus, Saipan, MP 96950 (phone: 670/234–5498, extension 1121/2); and University of Guam, RFK Memorial Library, UOG Station, Mangilao, Guam 96923 (phone: 671/734–9412). Requests for copies of the draft recovery plan and written comments and materials regarding the plan should be addressed to Brooks Harper, Field Supervisor-Ecological Services of the Pacific Islands Office at the Honolulu address given above.

**FOR FURTHER INFORMATION CONTACT:** Karen Rosa, Assistant Field Supervisor-Endangered Species, at the Honolulu address given above.

**SUPPLEMENTARY INFORMATION:**

## Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystem is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States, its Territories and Commonwealths. Recovery plans describe actions considered necessary for conservation of the species, criteria for recognizing the recovery levels for downlisting or delisting them, and initial estimates of times and costs to implement the recovery measures needed.

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. Substantive technical comments will result in changes to the plan. Substantive comments regarding recovery plan implementation may not necessarily result in changes to the recovery plan, but will be forwarded to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions. Individualized responses to comments will not be provided.

The species being considered in this recovery plan is the nightingale reed-warbler (*Acrocephalus luscinia*). The species is historically known from five islands in the Marianas archipelago: Guam, Aguiguan, Saipan, Alamagan, and Pagan. It is now extirpated from Guam and Pagan, and near extirpation on Aguiguan. Destruction of wetland areas and predation by the introduced brown tree snake (*Boiga irregularis*) are believed to have caused the extinction on Guam. Habitat destruction due to feral ungulates and, ultimately, vulcanism, are believed to have extirpated the Pagan population. Large areas of reed-warbler habitat were converted to agriculture during the German (1899–1917) and Japanese (1917–1944) administrations and native forest was further damaged during World War II battles. Although populations of reed-warblers flourished on Saipan with the reversion of former agricultural land to scrubby habitats after World War II, this trend has reversed recently as land has been developed for agriculture, homesteads, and tourist-related facilities. Hence, the amount of suitable habitat has been declining. Habitat on Aguiguan and Alamagan has been severely degraded by the continuing presence of large feral goat populations. All of these factors have led to reduction or extirpation of reed-warbler populations from most of the Mariana Islands. A small remnant population persists on Aguiguan, while larger populations persist on Saipan and

Alamagan. Habitat loss and exotic predators, such as the brown tree snake, monitor lizard (*Varanus indicus*), rat (*Rattus* spp.), and domestic cat (*Felis catus*), continue to be the greatest threats to the survival of the nightingale reed-warbler.

The nightingale reed-warbler is currently represented by populations on three islands with a total number of individuals estimated to be 6,225–6,230 birds. The objective of this plan is to provide a framework for the recovery of this species so that protection by the Endangered Species Act (ESA) is no longer necessary. Recommended recovery actions emphasize protection of the existing populations from introduction of the brown tree snake and from existing threats, such as other predators, feral ungulates, and habitat alteration. It is recommended that populations be established on at least three additional islands in the Mariana Island chain. Further research on population dynamics is also needed.

### Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the data specified above will be considered prior to approval of this plan.

### Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 24, 1997.

**Michael J. Spear,**

*Regional Director, Region 1, Portland, Oregon.*

[FR Doc. 97–25839 Filed 9–29–97; 8:45 am]

BILLING CODE 4310–55–P

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## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## Availability of Draft Recovery Plan for the Endangered Speckled Dace of Clover and Independence Valleys (Rhinichthys osculus lethoporus and Rhinichthys osculus oligoporus) for Review and Comment

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of document availability.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the endangered speckled dace of Clover and Independence Valleys in Elko County, Nevada. This plan undertakes a multispecies approach by discussing the recovery needs of two native, endangered fish species.

**DATES:** Comments on the draft recovery plan received by December 29, 1997 will be considered by the Service.

**ADDRESSES:** Persons wishing to review the draft recovery plan may obtain a copy by contacting the State Supervisor, Nevada State Office, Fish and Wildlife Service, 4600 Kietzke Lane, Suite 125C, Reno, Nevada 89502 (telephone: 702/784–5227). Written comments and materials regarding the plan should be addressed to the State Supervisor at the above Reno, Nevada address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above Reno, Nevada address.

**FOR FURTHER INFORMATION CONTACT:** Ms. Stephanie Byers at the above Reno, Nevada address (telephone: 702/784–5227).

**SUPPLEMENTARY INFORMATION:**

### Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for the recovery levels needed to downlist or delist them, and estimate time and cost for implementing the necessary recovery measures.

The Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during the public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans. Individualized responses to comments will not be provided.

Independence Valley speckled dace inhabit the Independence Valley Warm Springs system in Elko County, Nevada, and it is the only system from which these fish are known. Clover Valley speckled dace reside in three spring systems in Clover Valley in Elko County, Nevada. These springs are Clover Valley Warm Springs, Bradish Spring, and Wright Ranch Spring. Current population distributions and abundances are unknown for either dace. Primary threats to each species at the time of listing were a limited distribution, habitat manipulation, small population size, and nonnative fish introductions. Recovery of these species will require removal and/or control of nonnative fishes and cooperative agreements with landowners to protect habitat.

The Service solicits written comments on the recovery plan. All comments received by the date specified above will be considered prior to revision and approval of this plan.

### Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 24, 1997.

**Michael J. Spear,**

*Regional Director, Region 1, Portland, Oregon.*

[FR Doc. 97–25840 Filed 9–29–97; 8:45 am]

BILLING CODE 4310–55–P

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## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## Availability of a Draft Recovery Plan for the El Segundo Blue Butterfly for Review and Comment

**AGENCY:** Fish and Wildlife, Interior.

**ACTION:** Notice of document availability.

**SUMMARY:** The Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the El Segundo blue butterfly (*Euphilotes battoides allyni*). The El Segundo blue butterfly occurs on local and private lands in southwestern Los Angeles County, California. The Service solicits review and comment from the public on this plan.

**DATES:** Comments on the draft recovery plan must be received on or before December 29, 1997 to receive consideration by the Service.

**ADDRESSES:** Persons wishing to review the draft recovery plan may obtain a copy by contacting the Field Supervisor at the following address: Carlsbad Field Office, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008. Telephone requests may be made by calling 760/431–9440. Comments and material received are available for public inspection by

appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Chris Nagano at the above address and telephone number.

**SUPPLEMENTARY INFORMATION:**

## Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species. They establish criteria for the recovery levels necessary for downlisting or delisting the species. They also provide an estimation of time and cost of implementing the recovery measures needed.

The Endangered Species Act of 1973, as Amended (U.S.C. 1531 *et seq.*) (Act) requires the development of recovery plans for listed species, unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice, to provide an opportunity for public review and comment, be given during plan development. The Service will consider all significant information presented during a public comment period, prior to the approval of each new or revised Recovery Plan. The Service and other Federal agencies also will take these comments into account in the course of implementing approved recovery plans.

The El Segundo blue butterfly has an extremely limited distribution, and there are only three known extant populations. The animal is currently known only from southwestern Los Angeles County, California. The threats to the species include habitat loss and invasive exotic species. Protection and management of its habitat and a captive breeding program are the primary goals of the recovery effort.

## Public Comments Solicited

The Service solicits written comments on the recovery plan described. All significant comments received by the date specified above will be considered prior to the approval of the plan.

## Authority

The authority for this action is section 4(f) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1533(f)).

Dated: September 24, 1997.

**Michael J. Spear,**

*Regional Director, Region 1, Portland, Oregon.*

[FR Doc. 97–25841 Filed 9–29–97; 8:45 am]

BILLING CODE 4310–55–P

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# DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## Availability of a Draft Recovery Plan for the Carbonate Endemic Plants for Review and Comment

**AGENCY:** Fish and Wildlife, Interior.

**ACTION:** Notice of document availability.

**SUMMARY:** The Fish and Wildlife Service announces the availability for public review of a draft recovery plan for five plant species endemic to carbonate substrates in montane southern California. Four of the plants, *Eriogonum ovalifolium* var. *vineum* (Cushenbury buckwheat), *Astragalus albens* (Cushenbury milk-vetch), *Lesquerella kingii* ssp. *bernardina* (San Bernardino Mountains bladderpod), and *Oxytheca parishii* var. *goodmaniana* (Cushenbury oxytheca), is endangered, and a fifth species, *Erigeron parishii* (Parish's daisy) is threatened. The five species were listed on August 24, 1994 (59 **Federal Register** 48652). The Service solicits review and comment from the public on this plan.

**DATES:** Comments on the draft recovery plan received by December 29, 1997 will be considered by the Service.

**ADDRESSES:** Persons wishing to review the draft recovery plan may obtain a copy by contacting the Field Supervisor at the following address: Carlsbad Field Office, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008. Telephone requests may be made by calling 619/431–9440. Comments and material received are available for public inspection by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Marjorie Nelson or Jon Avery at the above address and telephone number.

**SUPPLEMENTARY INFORMATION:**

## Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species. Plans also establish criteria for the recovery levels necessary for downlisting or delisting the species. They also provide an estimation of time and cost of implementing the recovery measures needed.

The Endangered Species Act of 1973, as amended (U.S.C. 1531 *et seq.*) (Act) requires the development of recovery plans for listed species, unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act as amended in 1988 requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during the public comment period prior to approval of each new or revised Recovery Plan. Substantive technical comments will result in changes to the plans. Substantive comments regarding recovery plan implementation may not necessarily result in changes to the recovery plans, but will be forwarded to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions. Individualized responses to comments will not be provided.

All five of the plant species addressed in the draft recovery plan are endemic to carbonate substrates of the San Bernardino Mountains, San Bernardino County, California. *Erigeron parishii* is also found in the Little San Bernardino Mountains, also in San Bernardino County. The five species occur on federal, state, and private lands. The plants are perennials except *Oxytheca parishii* var. *goodmaniana*, which is an annual. The five species occur in the understory of several plant communities, including Jeffrey pine-western juniper woodland, pinyon-juniper woodland, pinyon woodland, and blackbush scrub. The primary threat to the five species is limestone mining. Protection and management of the species' habitat are the primary goals of the recovery effort.

## Public Comments Solicited

The Service solicits written comments on the recovery plan described. All significant comments received by the date specified above will be considered prior to the approval of the plan.

## Authority

The authority for this action is section 4(f) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1533(f)).

Dated: September 24, 1997.

**Michael J. Spear,**

*Regional Director.*

[FR Doc. 97–25842 Filed 9–29–97; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## Availability of Draft Recovery Plan for the Morro Shoulderband Snail and Four Plants From Western San Luis Obispo County, California for Review and Comment

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of document availability.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) announces the availability for public review of the draft Recovery Plan for the Morro Shoulderband Snail and Four Plants from Western San Luis Obispo County. The snail and the four plants occur in coastal habitats between Nipomo and San Simeno Creek in Western San Luis Obispo County, California. These taxa were listed by the U.S. Fish and Wildlife Service on December 15, 1994 (59 FR 64613).

**DATES:** Comments on the draft recovery plan received by December 29, 1997, will be considered by the Service.

**ADDRESSES:** Persons wishing to review the draft recovery plan may obtain a copy by contacting the Field Supervisor at the following address: U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003 (phone: 805/644–1766). Comments and material received are available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Diane Steeck, Botanist, or Kim Touneh, Invertebrate Zoologist, at the above Ventura address.

**SUPPLEMENTARY INFORMATION:**

### Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plants for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for the recovery levels needed to downlist or delist them, and estimate time and cost for implementing the necessary recovery measures.

The Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during the public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans. Individualized responses to comments will not be provided.

This recovery plan includes one snail species that is listed as endangered, three plant taxa that are listed as endangered and one plant taxon that is listed as threatened. All are endemic to western San Luis Obispo County, California. The currently known range of the Morro shoulderband snail (*Helminthoglypta walkeriana*) includes the Morro Spit and those areas south of Morro Bay, west of Los Osos Creek and north of Hazard Canyon that still support coastal dune and sage scrub habitats. Morro manzanita (*Arctostaphylos morroeniss*) is restricted to Baywood fine sands to the south of Morro Bay in stands of varying size scattered over approximately 890 acres. Five of the six known occurrences of Indian Knob mountainbalm (*Eriodictyon altissimum*) also occur south of Morro Bay, typically at the margins of chaparral and coastal sage scrub communities; the sixth occurrence, for which the species was named, is located about 15 miles to the south, at Indian Knob. Inland, Chorro Creek bog thistle (*Cirsium fontinale* var. *obispoense*) is known from nine locations between San Simeon and Pismo Beach, where it is restricted to serpentine seeps and springs. Pismo clarkia (*Clarkia speciosa* ssp. *immaculata*) is known from about a dozen locations in the area between Pismo Beach and Nipomo Mesa, where it is restricted to grasslands.

The Morro shoulderband snail is threatened principally by habitat destruction and degradation due to increasing development, invasion of non-native plant species (i.e. veldt grass), senescence of dune vegetation, and recreational use (e.g. off-road vehicle activity). Competition with the brown garden snail (*Helix aspersa*), molluscicides, and increased likelihood of extinction due to the small size and isolation of populations are potential threats. Morro manzanita and Indian Knob mountainbalm are threatened with habitat destruction and degradation due to development, and possibly by invasion of non-native plant species, and senescence resulting from alteration in fire cycles. Threats to the Chorro Creek bog thistle include water diversion, road maintenance, excessive cattle trampling and, potentially, invasive non-native plants. The principal threat to the Pismo clarkia is habitat destruction and degradation due to development. Road maintenance activities, overgrazing, and competition with non-native grasses may also be threats.

This plan provides for the recovery of the snail, Morro manzanita, and Indian knob mountainbalm so that protection by the Act is no longer necessary. It provides for downlisting Chorro Creek bog thistle and Pismo clarkia to threatened status.

Protection and management of the species' habitat are the primary goals of the recovery effort.

### Public Comments Solicited

The Service solicits written comments on the recovery plan. All comments recovery by the data specified above will be considered prior to revision and approval of this plan.

### Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 24, 1997.

**Michael J. Spear,**

*Regional Director, Region 1, Portland, Oregon.*

[FR Doc. 97–25843 Filed 9–29–97; 8:45 am]

BILLING CODE 4310–55–M

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## Availability of Draft Recovery Plan for the Seven Coastal Plants and the Myrtle's Silverspot Butterfly

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of document availability.

**SUMMARY:** The U.S. Fish and Wildlife Service announces the availability for public review of a draft Recovery Plan for Seven Coastal Plants and the Myrtle's Silverspot Butterfly. The seven plants and the butterfly occur in coastal habitats from Humboldt County to Santa Barbara County.

**DATES:** Comments on the draft recovery plan received by December 29, 1997 will be considered by the Service.

**ADDRESSES:** Copies of the draft recovery plan are available for inspection, by appointment, during normal business hours at the following locations: U.S. Fish and Wildlife Service, 3310 El Camino Ave., Suite 130, Sacramento, California 95821–6340 (phone: 916/979–2710); U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003. Requests for copies of the draft recovery plan and written comments and materials regarding this plan should be addressed to Diane Noda, Field Supervisor, at the above Ventura address.

**FOR FURTHER INFORMATION CONTACT:** Tim Thomas, Botanist, at the above Ventura address (phone: 805/644–1766).

**SUPPLEMENTARY INFORMATION:**

## Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act as amended in 1988 requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during the public comment period prior to approval of each new or revised Recovery Plan. Substantive technical comments will result in changes to the plans. Substantive comments regarding recovery plan implementation may not necessarily result in changes to the recovery plans, but will be forwarded to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions. Individualized responses to comments will not be provided.

These species are listed as endangered except for the threatened *Chorizanthe pungens* var. *pungens*. *Chorizanthe howellii* is known from 3 populations with 23,700 individuals; *Chorizanthe pungens* var. *pungens* is known from 7 populations with 14 million individuals; *Chorizanthe valida*, one population with 30,000 individuals; *Erysimum menziesii* (three subspecies), 16 populations with 33,300 individuals; *Gilia tenuiflora* ssp. *arenaria*, 15 populations with 110,400 individuals; *Layia carnosa*, 19 populations with 300,000 individuals; *Lupinus tidestromii*, 7 populations with 433 individuals; and the Myrtle's Silverspot butterfly, 3 populations with 10,000 individuals. The plants are restricted to the foredunes and dune scrub vegetation and adjacent sandy habitats occupied by coastal scrub or coastal prairie of northern and central coastal California. The butterfly occurs in the coastal grasslands and scrub, with the larval host plant (a violet) in the immediate vicinity of Point Reyes, Marin County. All of these species are threatened by competition from non-native plants, loss of habitat from commercial and residential development, and habitat disturbance from recreation and grazing.

The objective of this plan is to conserve the seven plants and the butterfly so that protection by the Act is no longer necessary. The plant species will be recovered by restoring and protecting dune habitats on which they depend. Assuring long-term protection of public and privately-owned habitat is essential. Habitat conservation planning, as provided for listed animals by the Endangered Species Act will be helpful. Once land is protected, the primary means to accomplish recovery is by controlling non-native invasive plant species. Long-term commitment of resources by public agencies to maintain weed control and other management measures will be essential. Artificial creation of new populations is recommended only as a last resort.

The recovery strategy for the Myrtle's silverspot butterfly is to protect, manage and secure the three known population sites. Monitoring will be required for at least 10 consecutive years to determine if butterfly populations (numbers) are relatively stable and the sites adequately protected, so the Myrtle's silverspot may be considered for de-listing. Some new populations may be established in areas from which the species has been extirpated, if suitable sites are found.

## Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of this plan.

## Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 24, 1997.

**Michael J. Spear,**

*Regional Director, Region 1, Portland, Oregon.*

[FR Doc. 97–25844 Filed 9–29–97; 8:45 am]

BILLING CODE 4310–55–P

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## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## Availability of Draft Recovery Plan for the Shasta Crayfish (Pacifastacus fortis) for Review and Comment

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of document availability.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) announces the availability for public review of the draft Recovery Plan for the Shasta Crayfish (*Pacifastacus fortis*). This distribution of this crayfish is limited to the Pit River drainage in Shasta County, California. This taxa was listed as an endangered species by the U.S. Fish and Wildlife Service on September 30, 1988 (53 FR 38460).

**DATES:** Comments on the draft recovery plan received by December 29, 1997 will be considered by the Service.

**ADDRESSES:** Persons wishing to review the draft recovery plan may obtain a copy by contacting the Field Supervisor at the following address: U.S. Fish and Wildlife Service, 3310 El Camino Ave., Suite 130, Sacramento, California 95821 (phone: 916/979–2710). Comments and material received are available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Ann Chrisney, Fish and Wildlife Biologist, or Karen Miller, Recovery Coordinator, at the above Sacramento address.

**SUPPLEMENTARY INFORMATION:**

## Background

The distribution of the Shasta crayfish is limited to the midsections of the Pit River drainage, primarily the Fall River and Hat Creek subdrainages in Shasta County, California. Overall, Shasta crayfish populations have low abundance and fragmented distribution with migration and genetic exchange between populations limited by hydroelectric development and habitat loss. The limits of its geographic distribution appear to have changed little over time. Currently, there are

seven populations of Shasta crayfish ranging in size from approximately fewer than 50 to 5,000.

Shasta crayfish primarily live in cool, clear, spring-fed headwaters that are characterized by clean volcanic cobbles and boulders on top of sand or gravel. The volcanic cobble and boulders are essential habitat components because they provide protective cover for the crayfish. The main threats to Shasta crayfish include: major land reclamation, water diversion projects, and the introduction of nonnative species of crayfish and fishes.

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for the recovery levels needed to downlist or delist them, and estimate time and cost for implementing the necessary recovery measures.

The Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during the public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans. Individualized responses to comments will not be provided.

This plan provides for the recovery of the Shasta crayfish (*Pacifastacus fortis*) so that protection by the Act is no longer necessary. Protection and management of the species' habitat are the primary goals of the recovery effort.

## Public Comments Solicited

The Service solicits written comments on the recovery plan. All comments received by the date specified above will be considered prior to revision and approval of this plan.

## Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 24, 1997.

**Michael J. Spear,**

*Regional Director, Region 1, Portland, Oregon.*

[FR Doc. 97–25845 Filed 9–29–97; 8:45 am]

BILLING CODE 4310–55–P

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# DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## Notice of Availability of a Draft Recovery Plan for Upland Species of the San Joaquin Valley, CA, for Review and Comment

**AGENCY:** U.S. Fish and Wildlife Service, Interior.

**ACTION:** Notice of document availability.

**SUMMARY:** The U.S. Fish and Wildlife Service announces the availability for public review of the Draft Recovery Plan for Upland Species of the San Joaquin Valley, California. This recovery plan includes 34 species, of which 11 species are federally listed as endangered or threatened. The draft plan includes recovery criteria and measures for the plants—California jewelflower *(Caulanthus californicus),* palmate-bracted bird's-beak *(Cordylanthus palmatus),* Kern mallow *(Eremalche kernensis),* Hoover's woolly-star *(Eriastrum hooveri),* San Joaquin woolly-threads *(Lembertia congdonii),* Bakersfield cactus *(Opuntia basilaris* var. *treleasei);* and the animals—giant kangaroo rat *(Dipodomys ingens),* Fresno kangaroo rat *(Dipodomys nitratoides exilis),* Tipton kangaroo rat *(Dipodomys nitratoides nitratoides),* blunt-nosed leopard lizard *(Gambelia sila),* and San Joaquin kit fox *(Vulpes macrotis mutica).* Long-term conservation of three candidate species, the Buena Vista Lake shrew *(Sorex ornatus relictus),* the riparian brush rabbit *(Sylvilagus bachmani riparius),* and riparian woodrat *(Neotoma fuscipes riparia);* and an additional 20 species of plants and animals of concern to the Service are addressed in the draft recovery plan.

**DATES:** Comments on the draft recovery plan received by January 28, 1998 will be considered by the Service.

**ADDRESSES:** Persons wishing to review the draft recovery plan may obtain copies by contacting: U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 3310 El Camino Avenue, Suite 130, Sacramento, California (telephone 916–979–2725).

**FOR FURTHER INFORMATION CONTACT:** Karen Miller, Fish and Wildlife Biologist, at the above Sacramento address.

**SUPPLEMENTARY INFORMATION:**

## Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for downlisting or delisting listed species, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act as amended in 1988 requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during the public comment period prior to approval of each new or revised recovery plan. Appropriate Federal or other entities will take these comments into account during the course of implementing recovery actions. Individualized responses to comments will not be provided.

The 34 species of plants and animals covered in the draft recovery plan are restricted primarily to the San Joaquin Valley of California. The majority of the species occur in arid grasslands and scrublands of the San Joaquin Valley and adjacent foothills and valleys. The riparian woodrat and riparian brush rabbit inhabit forested river corridors of the eastern San Joaquin Valley. Conversion of habitat to agricultural, industrial, and urban uses has eliminated the listed, candidate, and species of concern from the majority of their historic ranges. The remaining natural communities are highly fragmented, and many are marginal habitats in which these species may not persist during catastrophic events, such as fire or drought.

The objectives of this recovery plan are two-fold: (1) to delist the plants—California jewelflower, palmate-bracted bird's-beak, Kern mallow, Hoover's woolly-star, San Joaquin woolly-threads, Bakersfield cactus; and the animals—giant kangaroo rat, Fresno kangaroo rat, Tipton kangaroo rat, blunt-nosed leopard lizard, and San Joaquin kit fox by protecting, enhancing, restoring, and

appropriately managing their habitat; and (2) to ensure the long-term conservation of the three candidates and additional 20 species of concern by protecting, enhancing, restoring, and appropriately managing their habitat.

## Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of this plan.

## Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 24, 1997.

**Michael J. Spear,**

*Regional Director, Region 1, Portland, Oregon.*

[FR Doc. 97–25846 Filed 9–29–97; 8:45 am]

BILLING CODE 4310–55–P

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## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## Notice of Availability of a Draft Big Island II: Addendum to the Recovery Plan for the Big Island Plant Cluster (USFWS 1996)

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of document availability.

**SUMMARY:** The U.S. Fish and Wildlife Service announces the availability for public review of a draft Big Island II: Addendum to the Recovery Plan for the Big Island Plant Cluster (USFWS 1996). There are 13 taxa of plants included in this plan, all are listed as endangered. All 13 are known only from the island of Hawaii (Big Island).

**DATES:** Comments on the draft recovery plan received by December 29, 1997 will be considered by the Service.

**ADDRESSES:** Copies of the draft recovery plan are available for inspection, by appointment, during normal business hours at the following locations: U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Boulevard, room 3108, P.O. Box 50088, Honolulu, Hawaii 96850 (phone 808/541–3441); Kailua-Kona Public Library 75–138 Hualalai Rd., Kailua-Kona, HI 96740; Hilo Public Library, 300 Waianuenue Ave., Hilo, HI 96720. Requests for copies of the draft recovery plan and written comments and materials regarding this plan should be addressed to, Field Supervisor, Ecological Services, at the above Honolulu address.

**FOR FURTHER INFORMATION CONTACT:** Karen ''Kitti'' Jensen, Fish and Wildlife Biologist, at the above Honolulu address.

**SUPPLEMENTARY INFORMATION:**

## Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act as amended in 1988 requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during the public comment period prior to approval of each new or revised Recovery Plan. Substantive technical comments will result in changes to the plans. Substantive comments regarding recovery plan implementation may not necessarily result in changes to the recovery plans, but will be forwarded to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions. Individualized responses to comments will not be provided.

This addendum to the Recovery Plan for the Big Island Plant Cluster covers 13 plant taxa, all are listed as endangered. All of these taxa are endemic to the island of Hawaii (Big Island), Hawaiian Islands. The plants included in the plan are: *Clermontia drepanomorpha* (oha wai), *Cyanea platyphylla* (haha), *Hibiscadelphus giffardianus* (hau kuahiwi), *Hibiscadelphus hualalaiensis* (hau kuahiwi), *Melicope zahlbruckneri* (alani), *Neraudia ovata* (no common name (NCN)), *Phyllostegia racemosa* (kiponapona), *Phyllostegia velutina* (NCN), *Phyllostegia warshaueri* (NCN), *Pleomele hawaiiensis* (hala pepe), *Pritchardia schattaueri* (loulu), *Sicyos alba* (anunu), and *Zanthoxylum dipetalum* var. *tomentosum* (ae).

The 13 taxa included in this addendum grow in a variety of vegetation communities (shrublands, forests, and mixed communities), elevational zones (lowland to montane), and moisture regimes (dry to wet). These taxa and their habitats have been variously affected or are currently threatened by one or more of the following: competition for space, light, water, and nutrients by introduced vegetation; habitat degradation by feral or domestic animals (goats, pigs, sheep and cattle); agricultural and recreational activities; habitat loss and damage to plants from fires; predation by rats and insects; and natural disasters such as volcanic activity. In addition, due to the small number of existing individuals and their very narrow distributions, these taxa are subject to an increased likelihood of extinction and/or reduced reproductive vigor from stochastic events.

The objective of the Addendum to the Recovery Plan for the Big Island Plant Cluster (USFWS 1996) is to provide a framework for the recovery of these 13 taxa so that their protection by the Endangered Species Act (ESA) is no longer necessary. The interim objective is to stabilize all existing populations of the Big Island II taxa. To be considered stable, each taxon must be managed to control threats (e.g., fenced) and be represented in an *ex situ* (such as a nursery or arboretum) collection. In addition, a minimum total of three populations of each taxon should be documented on the Big Island, where they now occur or occurred historically. Each of these populations must be naturally reproducing and increasing in number, with a minimum of 25 mature individuals per population for long-lived perennials (*Hibiscadelphus giffardianus, Hibiscadelphus hualalaiensis, Melicope zahlbreuckneri, Pritchardia schattaueri, and* Zanthoxylum tomentosum var. *dipetalum* and a minimum of 50 mature individuals per population for short-lived perennials (*Clermontia drepanomorpha, Cyanea platyphylla, Neraudia ovata, Pleomele hawaiiensis, Phyllostegia racemosa, Phyllostegia velutina, and Phyllostegia warshaueri*) and a minimum of 100 mature individuals per population for the annual taxon *Sicyos alba.* For downlisting, a total of five to seven populations of each taxon should be documented on the Big Island where they now occur or occurred historically. Each of these populations must be naturally reproducing, stable or increasing in number, and secure from

threats, with a minimum of 100 mature individuals per population for long-lived perennials, a minimum of 300 mature individuals per population for short-lived perennials, a minimum of 500 mature individuals per population for the annual taxon. Each population should persist at this level for a minimum of 5 consecutive years before downlisting is considered. For delisting, a total of 8 to 10 populations of each taxon should be documented on Kauai where they now occur or occurred historically. Each of these populations must be naturally reproducing, stable or increasing in number, and secure from threats, with a minimum of 100 mature individuals per population for long-lived perennials, a minimum of 300 mature individuals per population for short-lived perennials, and a minimum of 500 mature individuals per population for the annual taxon. Each population should persist at this level for a minimum of 5 consecutive years.

### Public Comments Solicited

The Service solicits written comments on the Addendum to the Recovery Plan described. All comments received by the date specified above will be considered prior to approval of this addendum.

### Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 24, 1997.

**Thomas J. Dwyer,**

*Regional Director, U.S. Fish and Wildlife Service, Region 1, Portland, Oregon.*

[FR Doc. 97–25847 Filed 9–29–97; 8:45 am]

BILLING CODE 4310–55–P

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## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## Availability of an Environmental Assessment and Finding of No Significant Impact, and Receipt of an Application for an Incidental Take Permit for a Residential Development Proposal called Tidewater Condominiums, in the City of Orange Beach, Baldwin County, Alabama

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice.

Tidewater Associates, L.L.C. (Applicant), seeks an incidental take permit (ITP) from the Fish and Wildlife Service (Service), pursuant to Section 10(a)(1)(B) of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), as amended (Act). The ITP would authorize for a period of 30 years the incidental take of an endangered species, the Alabama beach mouse, *Peromyscus polionotus ammobates* (ABM). While surveys did not confirm the presence of ABM on the Applicant's 4.3-acre tract, ABM have been trapped on land adjacent to the Applicant's in Orange Beach, Alabama. It was the Applicant's decision to go forward with the Section 10 process. The project would be called Tidewater Condominiums and consists of 102 residential units. The residential component will include a single, 12-story condominium complex with 102 units. Associated landscaped grounds and parking areas, recreational amenities, and a dune walkover structure would also be constructed. A more detailed description of the mitigation and minimization measures to address the effects of the Project to the protected species are outlined the Applicant's Habitat Conservation Plan (HCP) and in the **SUPPLEMENTARY INFORMATION** section below.

The Service also announces the availability of an environmental assessment (EA) and HCP for the incidental take application. Copies of the EA and/or HCP may be obtained by making a request to the Regional Office (see **ADDRESSES**). Requests must be in writing to be processed. This notice also advises the public that the Service has made a preliminary determination that issuing the ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended (NEPA). The Finding of No Significant Impact (FONSI) is based on information contained in the EA and HCP. The final determination will be made no sooner than 30 days from the date of this notice. This notice is provided pursuant to Section 10 of the Act and NEPA regulations (40 CFR 1506.6). The Service specifically requests comment on the appropriateness of the ''No Surprises'' assurances should the Service determine that an ITP will be granted and based upon the submitted HCP. Although not explicitly stated in the HCP, the Service has, since August 1994, announced its intention to honor a ''No Surprises'' Policy for applicants seeking ITPs. Copies of the Service's ''No Surprises'' Policy may be obtained by making a written request to the Regional Office (see **ADDRESSES**). The Service is soliciting public comments and review of the applicability of the ''No Surprises'' Policy to this application and HCP.

**DATES:** Written comments on the ITP application, EA, and HCP should be sent to the Service's Regional Office (see **ADDRESSES**) and should be received on or before October 30, 1997.

**ADDRESSES:** Persons wishing to review the application, HCP, and EA may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or Field Supervisor, U.S. Fish and Wildlife Service, Post Office Drawer 1190, Daphne, Alabama 36526. Written data or comments concerning the application, EA, or HCP should be submitted to the Regional Office. Requests for the documentation must be in writing to be processed. Comments must be submitted in writing to be processed. Please reference permit number PRT–832539 in such comments, or in requests of the documents discussed herein.

**FOR FURTHER INFORMATION CONTACT:** Mr. Rick G. Gooch, Regional Permit Coordinator, (see **ADDRESSES** above), telephone: 404/679–7110; or Ms. Celeste South, Fish and Wildlife Biologist, Daphne, Alabama, Field Office (see **ADDRESSES** above), telephone: 334/441–5181.

**SUPPLEMENTARY INFORMATION:** The Alabama beach mouse (ABM), *Peromyscus polionotus ammobates*, is a subspecies of the common oldfield mouse, *Peromyscus polionotus*, and is restricted to the dune systems of the Gulf Coast of Alabama. The known current range of ABM extends from Fort Morgan eastward to the western terminus of Alabama Highway 182, including the Perdue Unit on the Bon Secour National Wildlife Refuge. The sand dune systems inhabited by this species are not uniform; several habitat types are distinguishable. The species inhabits primary dunes, interdune areas, secondary dunes, and scrub dunes. The depth and area of these habitats from the beach inland varies. Population surveys indicate that this subspecies is usually more abundant in primary dunes than in secondary dunes, and usually more abundant in secondary dunes than in scrub dunes. Optimal habitat consists of dune systems with all dune types. Though fewer ABM inhabit scrub dunes, these high dunes can serve as refugia during devastating hurricanes that overwash, flood, and destroy or alter secondary and frontal dunes. ABM

surveys on the Applicant's property did not reveal habitat occupied by ABM; however, the Applicant is seeking compliance with the Act in an abundance of caution. The Applicant's property does not contain designated critical habitat for the ABM. Construction of the Project may result in the death of, or injury to, ABM. Habitat alterations due to condominium placement and subsequent human habitation of the Project may reduce available habitat for food, shelter, and reproduction.

The EA considers the environmental consequences of several alternatives. One action proposed is the issuance of the ITP based upon submittal of the HCP as proposed. This alternative provides for restrictions that include conserving almost 75 percent of the Project's dune fields (essentially primary and secondary dunes), establishment of one walkover structure across primary and secondary dune features, a prohibition against housing or keeping pet cats, ABM competitor control and monitoring measures, scavenger-proof garbage containers, restoration of dune systems, the creation of educational and information brochures on ABM conservation, and the minimization and control of outdoor lighting. Further, the HCP proposes to provide an endowment of $17,773 to acquire ABM habitat offsite or otherwise perform some other conservation measure for the ABM. The HCP provides a funding source for these mitigation measures, as well as monitoring of the HCP, should an ITP be issued by the Service. Another alternative is consideration of a different project design that might result in more impacts to the ABM and its habitat. A third alternative is no-action, or deny the request for authorization to incidentally take the ABM.

As stated above, the Service has made a preliminary determination that the issuance of the ITP is not a major Federal action significantly effecting the quality of the human environment within the meaning of Section 102(2)(C) of NEPA. This preliminary information may be revised due to public comment received in response to this notice and is based on information contained in the EA and HCP. An appropriate excerpt from the FONSI reflecting the Service's finding on the application is provided below:

Based on the analysis conducted by the Service, it has been determined that:

- Issuance of the ITP will not appreciably reduce the likelihood of survival and recovery of the effected species in the wild.
- The HCP contains provisions which sufficiently minimize and/or mitigate the impacts of issuing the ITP.
- Issuance of the ITP would not have significant effects on the human environment in the project area.
- The proposed take is incidental to an otherwise lawful activity.
- Adequate funding will be provided to implement the measures proposed in the submitted HCP and authorizing ITP.

The Service will also evaluate whether the issuance of a Section 10(a)(1)(B) ITP complies with Section 7 of the Act by conducting an intra-Service Section 7 consultation. The results of the biological opinion, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP.

Dated: September 24, 1997.

**H. Dale Hall,**

*Acting Regional Director.*

[FR Doc. 97–25835 Filed 9–29–97; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## Notice of Meeting

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Klamath River Basin Fisheries Task Force, established under the authority of the Klamath River Basin Fishery Resources Restoration Act (16 U.S.C. 460ss *et seq.*). The meeting is open to the public.

**DATES:** The Klamath River Basin Fisheries Task Force (TF) will meet from 9:00 a.m. to 5:00 p.m. on Wednesday, October 15, 1997 and from 8:00 a.m. to 4:00 p.m. on Thursday, October 16, 1997.

**PLACE:** The meeting will be held in the Windmill Ashland Hills Inn (2525 Ashland Street), Ashland, Oregon.

**FOR FURTHER INFORMATION CONTACT:** Dr. Ronald A. Iverson, Project Leader, U.S. Fish and Wildlife Service, P.O. Box 1006 (1030 South Main), Yreka, California 96097–1006, telephone (916) 842–5763.

**SUPPLEMENTARY INFORMATION:** The principal agenda items at this meeting will be (1) A decision on whether or how to proceed with the Upper Basin Amendment and assignments; (2) an update on Klamath Compact Commission water supply initiative; (3) an update on subbasin planning; (4) a report from National Marine Fisheries Service and Siskiyou County regarding the Five Counties Coho Initiative and Plan; (5) a report on the American Heritage Rivers Initiative; (6) private landowner awards; and (7) an update on scoping of the Klamath River Basin Instream Flow Incremental Methodology (IFIM) flow study.

For background information on the TF, please refer to the notice of their initial meeting that appeared in the **Federal Register** on July 8, 1987 (52 FR 25639).

Dated: September 22, 1997.

**Thomas J. Dwyer,**

*Acting Regional Director.*

[FR Doc. 97–25833 Filed 9–29–97; 8:45 am]

BILLING CODE 4310–55–M

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[OR–030–07–1120–00: GP7–0304]**

## Notice of Meetings of Southeast Oregon Resource Advisory Council

**AGENCY:** Vale District, Bureau of Land Management, Interior.

**ACTION:** Notice of meetings.

**SUMMARY:** Notice is given that there will be meetings of the Southeast Oregon Resource Advisory Council.

**DATES:** The Southeast Oregon Resource Advisory Council meetings will begin at 8:00 a.m. and run to 5:00 p.m. October 27, 1997. Public comments are scheduled from 12:00 noon to 12:15 p.m., October 27, 1997. On October 28, 1997, the meeting will run from 8:00 a.m. to 12:00 noon. At an appropriate time, the council will recess for approximately one hour for lunch. Topics to be discussed during the meeting are administrative activities of the Council, the workload for fiscal year 1998, noxious weeds, fuels and prescribed fire, water quality issues, and such other issues as to properly come before the Council.

**ADDRESSES:** The Southeast Oregon Resource Advisory Council meetings will take place at the Malheur National Forest Headquarters, Federal Building, 431 Patterson Bridge Road, John Day, Oregon 97845.

**FOR FURTHER INFORMATION CONTACT:**

Jonne Hower, Bureau of Land Management, Vale District, 100 Oregon

Street, Vale, OR 97918, (Telephone 541–473–3144).

**Edwin J. Singleton,**

*District Manager.*

[FR Doc. 97–25820 Filed 9–29–97; 8:45 am]

BILLING CODE 4310–33–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[ES–030–07–1430–01; ILES–31854]**

### Notice of Realty Action: Recreation and Public Purposes Transfer of Public Land in Kane County, Illinois

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action.

**SUMMARY:** The following land has been found suitable for sale under authority of the Recreation and Public Purposes Act of 1926. The land will not be transferred until at least 60 days after the date of this notice.

**Illinois Meridian, Kane County, Illinois**

T.10 N., R.8 E.

Sec. 10, Lots 1 and 5.

Containing 0.28 acres and 0.89 acres, respectively.

The land described is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this notice, whichever occurs first.

These parcels will be transferred to the Kane County Forest Preserve District under the Recreation and Public Purposes Act of 1926 (43 U.S.C. 869, *et seq.*). The mineral interest will not be conveyed.

The patent, when issued, will contain certain reservations to the United States. Detailed information concerning these reservations, as well as specific conditions of the sale, are available for review at the Bureau of Land Management, Milwaukee Field Office, 310 West Wisconsin Avenue, Suite 450, Milwaukee, Wisconsin.

**DATES:** Interested parties may submit comments until November 14, 1997. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

**ADDRESSES:** Comments should be sent to: Bureau of Land Management, Milwaukee Field Office, P.O. Box 631, Milwaukee, Wisconsin 53201–0631.

**FOR FURTHER INFORMATION CONTACT:** Howard Levine, Planning and Environmental Coordinator, Milwaukee Field Office, (414) 297–4463.

Dated: September 18, 1997.

**James W. Dryden,**

*Field Office Manager.*

[FR Doc. 97–25311 Filed 9–29–97; 8:45 am]

BILLING CODE 4310–GJ–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[OR–957–00–1420–00: G7–0287]**

### Filing of Plats of Survey: Oregon/Washington

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

**Willamette Meridian**

Oregon

T. 19 S., R. 1 E., accepted August 20, 1997
T. 39 S., R. 3 E., accepted September 4, 1997
T. 3 S., R. 5 E., accepted August 13, 1997
T. 3 S., R. 5 E., accepted September 4, 1997
T. 30 S., R. 6 E., accepted July 21, 1997
T. 31 S., R. 7½ E., accepted July 21, 1997
T. 17 S., R. 8 W., accepted August 4, 1997
T. 1 S., R. 9 W., accepted September 4, 1997

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1515 S.W. 5th Avenue, Portland, Oregon 97201, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

**FOR FURTHER INFORMATION CONTACT:** Bureau of Land Management (1515 S.W. 5th Avenue), P.O. Box 2965, Portland, Oregon 97208.

Dated: September 11, 1997.

**Robert D. DeViney, Jr.,**

*Chief, Branch of Realty and Records Services.*

[FR Doc. 97–25911 Filed 9–29–97; 8:45 am]

BILLING CODE 4310–33–M

## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

### Electronic Commerce in the Minerals Management Service

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice of an electronic commerce presentation.

**SUMMARY:** The Minerals Management Service (MMS) is giving an Electronic Commerce (EC) presentation in New Orleans, Louisiana, on October 31, 1997. This presentation will assist those individuals considering EC implementation or pilot testing with MMS.

**DATES:** The EC presentation is Friday, October 31, 1997.

**LOCATION:** Hyatt Regency New Orleans, 500 Poydras Plaza, New Orleans, Louisiana 70113, telephone number: (504) 561–1234.

The Hyatt Regency New Orleans is located at the intersection of Poydras and Loyola Avenue, near the Louisiana Superdome.

**FOR FURTHER INFORMATION CONTACT:** Mr. Timothy C. Allard, Systems Management Division, Royalty Management Program, Minerals Management Service, P.O. Box 25165, MS 3140, Denver, Colorado, 80225–0165, telephone numbers (800) 619–4593 and (303) 275–7007, fax number (303) 275–7099, e-mail Timothy__Allard@mms.gov or Mr. Stephen Adams, Information Technology Division, Offshore Minerals Management, Minerals Management Service, 1201 Elmwood Park Blvd., MS 4061, Jefferson, Louisiana, 70123, telephone number (504) 731–3033, fax number (504) 731–3004, e-mail Stephen__Adams@mms.gov.

**SUPPLEMENTARY INFORMATION:** MMS is offering an EC presentation at no cost to companies and interested parties that are considering EC implementation or pilot testing with the MMS. The presentation will be held in conjunction with the American Petroleum Institute (API), Petroleum Industry Data Exchange (PIDX), Electronic Commerce Conference and Trade Show in New Orleans, Louisiana. If you plan to attend

the API PIDX User Group meetings scheduled for October 26, through 30, 1997, a registration fee may apply. Instructors are MMS employees of the Royalty Management Program, Systems Management Division and the Offshore Minerals Management, Information Technology Division.

**Agenda**

*Morning Session:* 9:00 a.m.–11:30 a.m.

*Subject:* MMS EC activities, capabilities, current status, implementation planning and schedules.

*Afternoon Session:* 1:00 p.m.–4:00 p.m.

*Subject:* Electronic Data Interchange (EDI) technical issues and mapping walk-throughs for the transmittal of regulatory report data via Accredited Standards Committee (ASC) X12 EDI standards. The mapping walk-throughs will focus on the Report of Sales and Royalty Remittance, Form MMS–2014 and the Semiannual Well Test Report, Form MMS–126.

Attendees of the afternoon session will be provided copies of the new *MMS EDI Handbook for Payors and Reporters* for the following reporting forms and electronic payments:

Report of Sales and Royalty Remittance, Form MMS–2014; Monthly Report of Operations, Form MMS–3160; Oil and Gas Operations Report (OGOR), Form MMS–4054–A, B, and C;

MMS Bill for Collection, Invoice Form DI–1040; Semiannual Well Test Report, Form MMS–126; Well Potential Test Report and Request for MPR, Form MMS–128; and National Automated Clearing House Association (NACHA) Electronic Payments.

If you plan to attend the EC presentation, please leave a message for Tim Allard or Stephen Adams at the telephone and FAX numbers or the e-mail address in the information contact section of this notice no later than October 24, 1997.

Dated: September 23, 1997.

**Lucy Querques Denett,**

*Associate Director for Royalty Management.*

[FR Doc. 97–25848 Filed 9–29–97; 8:45 am]

BILLING CODE 4310–MR–P

## DEPARTMENT OF THE INTERIOR

## National Park Service

## Sixty-day Notice of Intention To Request Clearance of Collection of Information—Opportunity for Public Comment

**AGENCY:** Department of the Interior, National Park Service.

**ACTION:** Notice and request for comments.

**SUMMARY:** The National Park Service (NPS) Social Science Program is considering submitting to the Office of Management and Budget (OMB) a request for clearance of a three year program of collections of information that would conduct surveys of the public regarding park visitors and visitor services. The NPS is publishing this notice to inform the public of this proposed three year program and to request comments on the program and the proposed approach.

Under provisions of the Paperwork Reduction Act of 1995 and 5 CFR Part 1320, Reporting and Record Keeping Requirements, the National Park Service is soliciting comments on: (a) Whether the collection of information is necessary for the proper performance of the functions of the NPS, including whether the information will have practical utility; (b) the accuracy of the NPS estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (c) the quality, utility, and clarity of the information to be collected; and (d) 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.

**DATES:** Public comments will be accepted on or before December 1, 1997.

**SEND COMMENTS TO:** Dr. John G. Dennis, NPS Washington Office Social Science Program Coordinator, Natural Resources (3223 MIB), National Park Service, 1849 C Street, N.W., Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Dr. John G. Dennis. Voice: 202–208–5193, Fax: 202–208–4620, Email: < john__dennis@nps.gov >.

Proposed Request for Clearance of a Three Year Program of Collections of Information: A Proposed Process for OMB Approval of NPS-Sponsored Public Surveys.

### 1.0 Introduction

The National Park System preserves the nation's natural and cultural heritage and provides for its enjoyment by citizens and visitors from throughout the world. The management of park resources is necessarily the management of people. Visitors, employees, concessioners, nearby communities, interest groups, local governments—all affect and are affected by units of the National Park System. An accurate understanding of the relationship between people and parks is critical to achieving the dual mission of the National Park System: protecting resources unimpaired and providing for public enjoyment. Such understanding requires a sound scientific basis. Hence, social science research is a necessary and important function of the National Park Service (NPS).

NPS managers face unprecedented needs to better understand the public's values, attitudes and behaviors with respect to parks. Park visitation for recreation and other purposes is expected to rise 34% by the year 2000. Indirect use of parks via print, audio-visual, and electronic media also is expected to increase. Management of these uses of parks and of services provided by NPS and park concessioners will require state-of-the-art techniques. Interactions between park managers and government or private managers and owners of lands surrounding the parks will increase in frequency and intensity as differing management goals meet at common boundaries. The people who live and work in communities near the parks are affected by the ways park uses grow and the ways managers of park and adjacent lands interact. The increased emphasis on securing public participation in NPS decision-making requires greater knowledge about these many different publics and their needs. New laws and initiatives, such as the Government Performance and Results Act (GPRA), have created additional needs for the information that NPS social science research can provide.

The NPS has established a new social science program and is implementing a strategic program plan (Usable Knowledge: A Plan for Furthering Social Science and the National Parks, 1996). The plan calls for increased social science research related to the NPS mission. This research in turn will increase the need for efficient and effective data collection from the many different publics who may be affected by NPS efforts to carry out the mission.

This notice describes a proposed 3-year trial effort to ''reinvent'' the Paperwork Reduction Act process by which NPS secures Office of Management and Budget (OMB) approval for NPS-sponsored surveys to

collect data from one specific segment of these publics—the park visitors. The benefits of this experiment in reinvention will be significant to the NPS, Department of the Interior (DOI), OMB, NPS cooperators, and the public. In addition, such a program, if it proves fully successful, could be adopted by other federal agencies that routinely conduct studies of visitors to the nation's public lands.

*1.1 Definitions*

*Collection of Information*—obtaining information or causing information to be obtained by or for an agency by means of identical questions posed to ten or more persons.

*Data*—material serving as a basis for discussion, inference, or determination of policy, for example, individual numbers or short phrases that provide bits of information about a subject.

*DOI*—Department of the Interior.

*GPRA*—Government Performance and Results Act, enacted in 1993 to increase the quality and responsiveness to the American people of the federal government.

*Information*—facts or figures ready for use, for example, all forms of data, written analyses, and graphical presentations that together provide a body of knowledge about a subject

*Information Collection Burden*—the effort that a person must make to respond to a request for information, usually measured in minutes or hours.

*Information Collection Survey*—a generic, written or orally presented format for a collection of information that asks a person to answer a pre-established set of questions.

*Metadata*—information about information or about how to access information, such as information about the characteristics of a set of data, or a description of data collection categories, or coding instructions used to store information.

*OMB*—Office of Management and Budget.

*NPS*—National Park Service.

*National Park System*—all 375 units, totaling approximately 83 million acres, of federal land that have been assigned to the National Park Service to manage, including among other designations, parks, monuments, recreation areas, lakeshores, seashores, preserves, historic sites, and battlefields.

*NPS Visiting Chief Social Scientist*—the individual who, on a rotating basis, heads the National Park Service Social Science Program.

*Paperwork Reduction Act*—the 1995 statute that directs the Federal government to reduce the information collection burden it imposes on the public.

*Peer Review*—quality assurance review of data, documents, projects, or programs conducted by reviewers who have equal or greater levels of technical training and experience than do the preparers of the data, documents, projects, or programs being reviewed

*PI (Principal Investigator)*—the person or persons responsible for conducting a research project.

*Survey Topic*—a specific type of information needed for planning, management, operations, and evaluation of performance related to the NPS mission and responsibilities. Any given survey topic area may include several variables of interest.

*Variables of Interest*—characteristics that can be measured, including the specific kinds of information within a survey topic that would be sought through questions.

*Visitor Survey*—a structured, written or oral method for obtaining from park visitors information that is used to educate park managers and others about the views of visitors regarding park programs and resources

*83-I Package*—a form and attached statements that federal agencies must submit to OMB to request permission to present a collection of information to more than 9 members of the public.

## 2.0 Overview of This Notice

*2.1 Summary of Need for Change*

NPS needs to sponsor information collection surveys of the public to provide to park managers information for improving the quality and utility to the public of park programs. NPS finds the current process by which it secures OMB approval of proposed collections of information can be improved with respect to securing public comment and can be made more efficient for the federal government through reducing current levels of personnel and funding necessary for preparing and reviewing the proposed collections of information. NPS believes it has developed an alternative approach for processing proposed collections of information that will be both more effective and more efficient. The proposal presented in this notice is designed to test the alternative approach using one subset of NPS information collection surveys for a 3-year test period.

*2.2 Summary of this Proposal*

NPS is considering submitting to OMB this proposal to request that OMB approve an alternative set of practices and procedures by which OMB determines whether or not to approve proposed NPS information collection surveys of the public regarding topic areas relating to visitors and visitor services. Under this proposal, NPS would request that OMB review NPS procedures for these surveys as a program, rather than reviewing each and every individual survey of the public related to visitors and visitor services that NPS seeks to conduct. Under the procedures proposed here, NPS and DOI would conduct the necessary quality control through requiring peer review of appropriate program elements, maintaining an ongoing process for improving the scientific quality and efficiency of survey instruments related to visitors and visitor services, and proactively soliciting public review of this proposed alternative set of practices and procedures. NPS also would maintain an information base of public surveys conducted in parks on all topic areas to be used to increase the efficiency of future surveys. Under this proposal, NPS would request that OMB assign an OMB number, expiration date, and total number of information collection burden hours to NPS for the topic areas relating to visitors and visitor services. NPS would then allocate this OMB number, expiration date, and appropriate number of burden hours to each survey within these topic areas that NPS recommends and DOI approves. NPS would request that management oversight of its actions be maintained by having DOI be responsible for the final decision on all individual surveys that NPS proposes within the topic areas and by having OMB monitor NPS actions through its review and decision regarding this proposed NPS request, its review of NPS annual reports of actions taken under the OMB number and expiration date that NPS would request be assigned, and comments that OMB receives directly from the public.

*2.3 Summary of Benefits of this Proposal*

Adoption of the proposed program presented in this notice would benefit NPS management of its public survey process by increasing the efficiency of NPS personnel time and funding allocations, by improving NPS receipt of effective public and peer comments, and by improving NPS access to usable information while minimizing the burden on the public. DOI and OMB would benefit through greater efficiencies of their review and oversight functions and through the testing of alternative procedures for managing the information collection process. The public would benefit directly through a more effective and

less burdensome process for obtaining its review of NPS proposed information collection activities, the more efficient expenditure of NPS federal funds used to develop and approve surveys and manage their application, and a more efficient use of burden hours. The scientific community would benefit through a more efficient management review process, greater focus on use of peer review to improve the scientific quality of information collection, increased attention to methodological improvements, and better administration and wider sharing of data and information obtained from surveys of the public.

**3.0 Details of the Elements of this Proposed Process**

The following paragraphs discuss each of the elements of this proposal that NPS is considering presenting to OMB. The discussion includes: topic areas to be covered by the proposed process, techniques for ensuring appropriate and effective public involvement in the review of proposed survey purposes and activities, the approach for obtaining peer review of proposed survey methodologies, procedures for involving parks and the NPS in the administration of public surveys, the procedure by which OMB would assign and NPS would allocate OMB numbers and related expiration dates and burden hours, responsibilities and procedures for reporting results of surveys and the use of allotted OMB numbers and related expiration dates and burden hours, procedures by which DOI and OMB would maintain effective program oversight, designation of responsibilities and responsible officials, and relationship to other NPS initiatives.

*3.10 Topic Areas*

Topic areas are specific types of information needed for planning, management, operations, and evaluation of performance related to the NPS mission and responsibilities. Each topic area may include several variables of interest. This proposal would focus on topic areas related to visitors and visitor services. The topic areas and variables of interest covered in this proposal are identified in detail in Section 4.0.

*3.20 Public Involvement*

The OMB regulations regarding information collections require sponsors of such collections to seek adequate, widespread, and useful public review of proposed information collection activities. The regulations specifically require publication in the **Federal Register** of a notice of opportunity for the public to review a proposed survey at two different stages during development of the survey instrument. NPS experience to date suggests that this process does not achieve the desired public review and comment for NPS sponsored surveys.

The Visitor Services Project, for example, has conducted 100 very similar studies, has published its survey methodology in peer-reviewed scientific papers, has solicited peer review of its questionnaires and questions as they have been revised or new questions added, and has obtained individual OMB approvals study by study. Despite its following of established procedures for securing widespread review, the Visitor Services Project has received very few public and a handful of governmental inquiries, and no substantive comments, in response to the opportunities for public review. Similarly, based on limited reports from practitioners who recently have conducted other types of surveys in parks, of about 15 surveys that went through the old or new **Federal Register** review process, only 3 received any public inquiry, with the inquiries leading to no specific feedback to NPS. Beyond this required process, all of these surveys received review by the affected managers and most received peer review as well.

The individual visitor studies sponsored by the NPS thus have received little benefit from individually conducting the standard review process established in response to the Paperwork Reduction Act. They instead have experienced delays associated with the additional time periods involved in the review process. They have experienced **Federal Register** publication costs which, under the current requirement for two notices per study, will amount to approximately $500.00 per study with no return of comments from the public for this cost to the taxpayers. They have imposed potential additional burdens on the public by requesting that the public separately review each and every one of the individual study plans and questionnaires, despite the similarities in purpose, topic areas, methodology, and planned uses of results.

Using the knowledge gained from this past experience, NPS is initiating a different approach to achieving public review of its survey process that it believes will be both more comprehensive and more effective. NPS is publishing this 60 day notice of intent to submit to OMB for approval a proposed collection of information to conduct all surveys prepared under this proposed process. In publishing this notice, NPS specifically requests public, scientific, and management comments on the appropriateness, suitability, and effectiveness of each element of the proposed process. NPS asks that respondents offer specific comments on the proposed topic areas. NPS asks for reactions to the proposal's discussion of benefits for program management, for involving the public with the minimum amount of burden, and for improving the methodologies for conducting surveys in and about parks. After addressing all public, scientific, and management comments received in response to this notice, NPS proposes to submit a revised version of this proposal to OMB and to publish a 30 day **Federal Register** notice to announce to the public that it has submitted a formal collection of information proposal to OMB to seek approval for all surveys that would be conducted during the 3 year test of the revised proposal.

NPS thus in this notice is soliciting public review and comment on a proposed public survey process that would deal with a group of selected, common topic areas related to visitors and visitor services, not on individual survey instruments. NPS believes this proposed approach will reduce the burden to the public for reviewing documents and will increase the level of public participation in development of useful topics and survey approaches.

As part of this broad public review process, NPS also will directly inform public interest organizations that have a clear interest in parks, park management, and visitor uses of parks about the opportunity to comment on this **Federal Register** notice. Such organizations to be contacted directly as representatives of large segments of the public will include: National Recreation and Park Association, National Parks and Conservation Association, Conference of National Park Cooperating Associations, National Association of State Park Directors, National Association of Interpreters, National Inholders Association, National Association of Counties, National Association of Conservation Districts, National Governors Association, Appalachian Trail Conference, American Hiking Society, Partners in Parks, National Tour Foundation, and National Association of Park Concessioners. By means of this notice, NPS requests other interested organizations to identify their interest and to provide NPS with comments regarding this proposed process for NPS to use in seeking OMB approval of NPS-sponsored public surveys.

*3.30 Peer Involvement*

In accordance with standard scientific practice, peer review occurs throughout the research process for developing objectives, methods, sampling design, questionnaire design, target populations, and data analysis strategies for prospective research. This peer involvement contributes significantly to improving the quality of research and its potential to address applied problems of the national parks. Each Principal Investigator (PI) or program manager, as appropriate, would be responsible for managing the process of obtaining, documenting, responding to, and summarizing the results of peer review on the PI's or program manager's research activities. NPS proposes to monitor the peer review that is obtained during four stages in the visitor survey process: (1) determination of appropriate topic area variables, (2) problem identification for each research project, (3) development and pre-testing of research instruments, and (4) preparation of reports for individual research projects and for this test of a program of collections of information.

*3.31 Program Topic Area Variables*

As part of publication of this notice, NPS will solicit peer review of the scientific appropriateness of the topic area variables included in this proposal. Peer reviewers will be asked to comment on the appropriateness, inclusiveness, and description of the variables proposed for each identified topic area.

*3.32 Research Project Problem Identification*

Under terms of this proposal, for each proposed, NPS-sponsored public survey, the principal investigators (PIs) intending to conduct the survey would work with park staff to identify and develop the objectives, scope, and target audience for research to address the management problem identified by the park manager. For new or significantly modified existing surveys, the PIs also would be expected to consult with peer researchers to ensure that the selected objectives, scope, and target audience are scientifically valid and have a high probability of yielding results useful for addressing the identified management problem.

*3.33 Development and Pre-testing of Research Instruments*

Whenever they are developing sampling strategies, questions to ask, layout of questionnaires, or statistical techniques to be used for analyzing results for new or significantly modified surveys, the PIs would consult, as appropriate, with their research peers. In these cases, the PIs also may test drafts of their proposed survey instruments on small samples of students or colleagues, as appropriate. The PIs would use such peer review comments and test results to provide insight on probable park visitor perspectives about the research instruments. They also would use the information to identify any trouble-spots in the proposed questionnaires regarding syntax, layout, and design to guide their revising the questionnaires in ways that will minimize the burden to the public that will be asked to respond to the questionnaires. The PIs also would request comments on the planned research design and proposed questionnaires from key individuals in the park or parks under study. Following this consultation, testing, and review by peers and managers, the PIs would complete their improvements to the proposed research and questionnaire designs and prepare final versions of their research plans and questionnaires.

*3.34 Research Project and Program Report Preparation*

As they prepare their project reports, the PIs would submit a draft of each proposed report for review by NPS staff and by research scientists where appropriate. The PIs would use the review comments they receive to help them prepare final reports that are clearly articulated, scientifically sound, and have maximum applicability for addressing the identified management problem. Similarly, the NPS Social Science Program would solicit and use appropriate peer review as part of its preparation of technical reports about NPS Social Science Program findings.

*3.35 NPS Documentation of Peer Review*

NPS would document peer review in four ways. First, NPS would provide in the required 30-day **Federal Register** notice that is part of the OMB collection of information decision process an analysis of the peer review it received on the topic area variables in response to this 60-day **Federal Register** notice. Second, NPS would require, at the time each NPS sponsored PI submits a final report, that the PI either describe the nature of the peer review the PI obtained or explain why the PI did not obtain peer review. Third, NPS would encourage PIs to publish their NPS sponsored surveys in peer reviewed publications. Fourth, NPS would provide in each NPS annual report to DOI and OMB that would be required by this proposed process a summary of all the peer review activities conducted during the year being reported.

*3.40 Park or NPS Program Involvement*

To ensure that NPS-sponsored public surveys provide information of use to management decision-making, NPS park and central office managers would maintain appropriate levels of involvement throughout the survey process. NPS park or central office managers would initiate the process when they identify needs for information about visitors to parks and request that a survey be conducted. NPS social science cooperators would respond to the request by proposing specific visitor survey projects. The requesting NPS manager then would work with the cooperators to ensure that the proposed projects can be accommodated within existing park management or NPS policy constraints and that the projected results of the proposed research will provide the information and levels of precision the requesting manager needs for decision-making. Park managers would provide in-park logistic and public relations support to the research cooperators as appropriate. The requesting managers would receive the project reports from the social scientists who conduct the surveys and would apply the findings to their management decision-making as appropriate. Park and central office managers also would monitor the public's response to the survey process and report to the NPS Visiting Chief Social Scientist any concerns or suggestions about the process that warrant consideration or follow-up action.

The NPS Social Science Program would serve as the program manager for the proposed process. Its specific proposed responsibilities are described later in this proposal.

*3.50 Assignment of OMB Number, Expiration Date, and Allowed Information Collection Budget*

Under terms of this proposed collection of information that NPS is considering submitting to OMB, NPS would propose that OMB assign a single number and three year expiration date to NPS for NPS to allocate without further review from OMB to all surveys that NPS might sponsor within the topic variables and limits regarding visitors and visitor services identified in this proposal. NPS further would propose that OMB assign NPS an annual Information Collection Budget from which NPS would distribute burden hours to the approved surveys according to need. NPS would not allocate the assigned number, an expiration date,

and a specific number of burden hours to any proposed questionnaire until NPS had secured approval of the questionnaire from DOI. Once it had received that approval, NPS would allocate to the approved survey the number, a date that does not exceed three years, and an appropriate number of burden hours, and would notify the applicant that the survey is approved. NPS also would assign a unique NPS identification number to each survey NPS approves to ensure that each survey receiving the common OMB number is identifiable. Once NPS had distributed the total number of OMB authorized annual burden hours for any given year, NPS would stop using this pilot process for approving requests for surveys in these topical areas and would process all additional such requests in that year through the existing review system. Alternatively, NPS might request OMB to approve additional burden hours under terms of this proposed process.

*3.60 Annual Information Collection Budget*

NPS in recent years has used a total of between 4,000 and 7,000 burden hours per year for conducting public surveys related to visitors and visitor surveys. Under the terms of this proposal, and given that NPS expects to add some new public surveys to meet its GPRA responsibilities, NPS would propose to request that OMB approve a total annual information collection budget for the surveys that NPS would process under the terms of this proposal of 8,000 burden hours. This annual burden would be approximately 2.7% of the total burden hours NPS reported for Fiscal Year 1997 and 0.2% of the total that DOI reported for the same year.

*3.70 NPS Reporting Responsibilities*

NPS would submit annually to DOI and OMB a report that would describe for the past year: (a) NPS survey activities undertaken, (b) improvements achieved in data collection activities (including savings in NPS full time equivalent personnel (FTE) and funds), (c) results of peer evaluation of NPS planned surveys and reports of completed surveys, (d) public comments about NPS surveys and public responses to the opportunity to review this proposal provided through the two **Federal Register** Notice publications, and (e) plans for the next year. Toward the end of the three year period identified in this proposal, NPS would submit a triennial report that would summarize the entire experience of the authorized activities and make recommendations for futher action.

*3.80 DOI and OMB Oversight*

Under this proposed process, DOI would meet its statutory responsibilities by reviewing and approving or rejecting each individual NPS proposal to allocate the OMB number to an NPS sponsored survey instrument that is elligible within the terms of this proposal. DOI would review the NPS annual and triennial reports and, based on its review, forward the reports to OMB or return them to NPS for further work. DOI would review all individual survey instruments that NPS submits separately from this proposed process and would act on them in accordance with existing procedures.

OMB would review this NPS request for a 3 year pilot test to conduct public surveys and approve or reject the proposal. Should OMB approve this proposal, OMB would use the NPS annual reports to monitor NPS decisions and actions regarding the allocation of the OMB number to NPS-sponsored survey instruments. OMB would review all NPS survey instruments that do not qualify for this proposed process and act on them in accordance with existing procedures.

*3.90 Program Responsibilities and Responsible Officials*

*3.91 National Park Service*

The NPS Visiting Chief Social Scientist, working through the NPS Social Science Program, will secure public review of this program proposal through the two step **Federal Register** notification process, will obtain other forms of public review of this proposal, and will solicit peer review of the proposal prior to preparing the final proposal package that would be submitted for OMB decision.

The NPS Visiting Chief Social Scientist, working through the NPS Social Science Program, would provide guidance for and, as requested, assist the preparation, public review, and technical review as appropriate of all NPS-sponsored individual survey instruments. For those survey instruments submitted under this proposed program and for which, therefore, individual public review would not be conducted, the Visiting Chief Social Scientist would review the instruments for compliance with technical standards and programmatic guidelines. The Visiting Chief Social Scientist would reject survey instruments that do not comply with the minimum requirements, would determine appropriate burden hours and expiration dates for those that do comply, and would recommend to DOI for approval those instruments that meet the requirements. Once the Visiting Chief Social Scientist had received approval from DOI, the Visiting Chief Social Scientist would allocate the OMB number and an expiration date and number of burden hours to, and authorize the PI to use, the approved instrument. Should a PI question a decision by the Visiting Chief Social Scientist, the PI would submit an appeal to the Associate Director, Natural Resource Stewardship and Science, for a decision.

For those information collection activities that would fall outside the OMB-approved topic areas included in this proposal, the responsible park or other NPS manager would prepare and submit through the NPS Visiting Chief Social Scientist to DOI and through DOI to OMB individual standard Paperwork Reduction Act submissions. This process would include the associated two-fold opportunities for individual public review in keeping with the existing public notification and timing requirements.

*3.92 Department of the Interior*

The DOI Office responsible for oversight of DOI information collection activities, currently the Office of Policy Analysis, would provide oversight of NPS within-approved-limits activities. The DOI Office of Policy Analysis also would review, accept, and forward to OMB the NPS annual reports of information collection activities. In addition, the DOI Office of Policy Analysis would review and submit to OMB those NPS applications for proposed survey activities that would fall outside whatever topic areas would be approved by OMB should OMB approve this proposal.

*3.93 Office of Management and Budget*

The OMB Office of Information and Regulatory Affairs would review and act on DOI recommended NPS requests for approvals of information collection topic areas, requests for approvals of information collection activities that are outside existing approved limits, and NPS annual reports.

*3.100 Additional, Related NPS Initiatives*

The NPS would engage in three initiatives related to this proposed request to OMB. One is preparing a strategic plan for visitor surveys. The second is sponsoring research on survey methods. The third is developing an archive of NPS survey results. Each is briefly described below.

*3.101 A Strategic Plan for Visitor Surveys*

Currently, NPS surveys respond to park-specific requests for data to meet individual park management needs. While this approach successfully supports those parks that are able to provide funds and attract researchers, it does not necessarily also contribute to needs of other parks or of the NPS as a whole. The exception is the Visitor Services Project, which uses a common survey format for all parks surveyed and relies on an Advisory Committee that meets annually to recommend to the NPS Associate Director, Natural Resource Stewardship and Science, for final decision the approximately 10 parks that will receive visitor studies during the year. The Advisory Committee develops its decisions using an established set of criteria and a formal nomination process.

Within 12 months following approval of this proposal, NPS would develop a strategic plan for determining where, why, and when to conduct visitor surveys in units of the National Park System. The plan would be developed in consultation with park managers, social scientists, NPS and DOI officials, and OMB. While focusing on ensuring that visitor surveys meet the needs of the specific parks requesting them, the plan also would develop an approach for strategically aggregating the results from the parks selected for study. It also would explore how to identify a set of possible ''indicator parks'' and how best to use those parks to represent the National Park System. In addition, it would determine other actions that would make NPS data collection at individual parks more cost-effective, more representative of large classes of visitors, and thus more useful for both park and national levels of analysis and decision-making. The experience gained from this strategic analysis of visitor surveys would form the basis of future strategic analyses of other classes of information collection activities.

*3.102 Research on Survey Methods*

Studies conducted by NPS within the topics of visitors and visitor services offer opportunities to conduct methodological research useful to both the NPS and other agencies with similar user populations and data collection needs. Research on improving response rates, reducing non-response bias, improving survey and interview design, reducing sampling error, increasing validity of measures, and improving public review of survey instruments are all important and possible. As an integral part of this proposal, NPS would initiate a modest program of research on these and other questions regarding survey methods. At least one project would be completed in the fiscal year following OMB approval of this proposal, submitted to a scientific journal for publication, and shared with OMB and other agencies.

*3.103 Archive of NPS Survey Results*

To support its research on survey methods and to increase the efficiency and effectiveness of its use of past information surveys, NPS would build a social science data and information archival system that would incorporate the existing Visitor Services Project (VSP) data base, which currently includes all visitor surveys conducted by the VSP. This archive ultimately would include survey metadata, survey data, and written reports for all NPS sponsored surveys. This archive would be available to the public under existing guidelines.

## 4.0 Topic Areas

This proposal focuses on the general subject of visitors and visitor services. It covers the specific kinds of information needed by NPS for planning, management, operations, and evaluation of performance related to meeting needs of visitors. The specific topic areas included in this proposal are: visitor characteristics, trip/visit characteristics, visitor activities and uses of park resources, visitor expenditures, visitor evaluations of park services, visitor perceptions of their park experiences, and visitor opinions on park management. For each topic area, this proposal provides definition, scope, justification for data collection, and a few examples of typical questions that could be asked and variables that could be expected as answers. The specific questions to be prepared for any individual survey would have to relate to one or more of the approved topic areas and would have to be approved by NPS and DOI as part of the review and approval process requested in this proposal.

*4.10 Topic Area on Visitor Characteristics*

*4.11 Definition*

Visitor characteristics are attributes of individual park visitors or visitor groups. Some examples include: age, zip code or country of residence, group type, ethnicity, disabilities/impairments, language abilities, socio-economic status, and visit frequency.

*4.12 Scope*

Visitor characteristics relevant to the mission, management, and/or operations of National Park System units are included.

*4.13 Justification for Data Collection*

The diverse units of the National Park System cater to the total diversity of the U.S. population and a cross section of international visitors. Qualitative and quantitative data about the nature and breadth of this diversity of park users provide NPS managers with information they need to ensure that park visitor services, education programs, facilities, and management operations respond appropriately to the capabilities, needs, and concerns of park visitors.

*4.14 Examples of Typical Questions and Variables Expected as Answers*

A. For you and your group on this visit, please indicate:

| | Current age | U.S. Zip Code or name of foreign country | Number of visits made to this park (including this visit) |
|---|---|---|---|
| Yourself ..... | | | |
| Member #2 ..... | | | |
| Member #3 ..... | | | |
| Member #4 ..... | | | |
| Member #5 ..... | | | |
| Member #6 ..... | | | |
| Member #7 ..... | | | |

B. On this visit, what kind of group were you with? Please check only one.

Alone
Family
Friends
Family and Friends
Other (Please describe: ____)

C. What languages do you or members of your group regularly speak at home? Please check all that apply.

(Answer choices should reflect the languages most frequently spoken by visitors to the park)

D. Does anyone in your group have any physical disabilities which limited their ability to visit (park)? yes/no

If yes, what kind of disability? Please check all that apply.

Hearing
Visual
Mobility
Learning
Mental

*4.20 Topic Area on Trip/Visit Characteristics*

*4.21 Definition*

Trip/visit characteristics include travel factors which affect a trip or decisions which visitors make prior to, during, or following their trip to a park.

Examples include use of overnight accommodations, transportation, trip route, trip origin, trip destination(s), entrance/user fees, ability to obtain tickets, and length of trip.

*4.22 Scope*

Trip characteristics relevant to the mission, management, and/or operations of National Park System units are included.

*4.23 Justification for Data Collection*

Information about how visitors plan their trips, about features of their trips, and about their visits in the parks support park managers' efforts to provide park-access and park-specific information to visitors before they arrive at the parks; to work with local and regional planners dealing with transportation alternatives, facilities, and services that support visitors traveling to and from parks; to assist park concession managers in providing appropriate trip planning information to prospective visitors; and to more effectively handle visitors' trip-related needs (such as fees, tickets, permits, facilities, and services) once the visitors have arrived in the parks.

*4.24 Examples of Typical Questions and Variables Expected as Answers*

A. On this trip, how much time did you and your group spend in (park)?

If less than 24 hours:
Number of Hours: ____
If 24 hours or more:
Number of Days: ____ (Please list partial days as ¼, ½, etc.)

B. On this visit, what forms of transportation did you and your group use to get to (park)? Please check all that apply.

(Choices of answer should be appropriate for the park situation.)

C. On this visit, what were your reasons for visiting (park)? Please check all that apply.

(Choices of answer should be appropriate for the park situation.)

D. Prior to this visit, how did you and your group get information about (park)? Please check all that apply.

Received No Information Prior to Visit ____
Go on to Question ____
Friends/Relatives ____
Travel Agency ____

(Answer choices should be appropriate for the park situation.)

*4.30 Topic Area on Visitor Activities and Uses of Park Resources*

*4.31 Definition*

Visitors participate in a variety of activities during their visits to parks or related areas. While there are hundreds of activities in which visitors can engage, some important examples include: sightseeing, visiting visitor centers, day hiking, backpacking, picnicking, camping, shopping, observing wildife, attending ranger-led programs, taking photographs, boating, fishing, and many others.

Visitors also use a variety of park or related area resources including natural and cultural resources as well as infrastructure when they visit these areas. Some examples include roads, trails, restrooms, parking lots, drinking water, viewpoints/overlooks, visitor centers, gift shops, stores, lodges/motels, etc. Depending on the site, visitors may harvest berries, fish, game animals, fire wood, or sea shells; travel cross-country in roadless and trailless parts of the park; travel through historic structures or landscapes; or handle historic objects.

*4.32 Scope*

Visitor activities or uses of resources which are relevant to the mission, management, and/or operations of National Park System units are included.

*4.33 Justification for Data Collection*

Park and related area managers and planners use knowledge about visitor activities to design and operate interpretation, resource management and preservation, law enforcement, safety, and facility management activities to meet the needs of the visitors. They also use this information to support all aspects of planning, from buildings, roads, and trails, to exhibits. In addition, they must have the collected data available to track visitor use trends and project future demands for visitor uses. In conducting their management, planning, and monitoring activities, managers also use the information to effectively allocate their limited personnel and financial resources to the highest priority elements of their visitor services programs.

*4.34 Examples of Typical Questions and Variables Expected as Answers*

A. On the list below, please check all of the activities that you and your group participated in during this visit to (park).

(Answer choices should include all appropriate activities and ''other'' for write-in answers)

To gain additional information, the above question can be asked in different ways:

(a) On the list below, please check the activities that you and your group did at (park) on this visit. Please check all that apply.

(b) For your past visits to (park), please check the activities that you and your group have done. Please check all that apply.

B. Please check the services which you or your group used at (park) during this visit.

(Answer choices should include all appropriate services.)

*4.40 Topic Area on Visitor Expenditures*

*4.41 Definition*

The visitor expenditures topic area deals with the time and dollar costs that vistors experience in association with visiting parks and surrounding areas.

*4.42 Scope*

Visitor expenditures data include information related to direct visitor expenditure patterns in the park or surrounding area (direct expenditures) and to visitor expenditures associated with their travels to access the park or surrounding area (indirect expenditures).

*4.43 Justification for Data Collection*

Park and related area managers and business managers, planners, and other members of communities around the parks use visitor expenditure information to identify relationships between parks and local/regional economic development. Visitor expenditure data also provide insight to government and business managers regarding pricing issues related to entrance and user fees, costs of services in parks and related areas, concession fees, and to estimate the value of parks and park-related attributes for visitor uses.

*4.44 Examples of Typical Questions and Variables Expected as Answers*

A. We are interested in the expenditures your group made within (name of state). Please indicate the amount of dollars spent by your group in each of the following categories regarding your trip to (name of park).

a. transportation to (name of park) $____
b. equipment and supplies $____
c. lodging $____
d. raft outfitters $____
e. food and beverage $____
f. other, please specify $____

*4.50 Topic Area on Visitor Evaluation of Park Services*

*4.51 Definition*

Visitor evaluation data include quality and importance ratings of services which visitors used or

potentially could have used during their park or nearby area visit.

*4.52 Scope*

Services or facilities provided in parks by NPS, concessioners, or other cooperators that are used by visitors, available to visitors but not used, or potentially available to visitors are included.

*4.53 Justification for Data Collection*

Planners and managers of parks and related areas use data from visitor evaluations of services and facilities to improve customer service directly onsite; improve the efficiency of other park or related area operations that results in improved customer service; improve agency operations at the local, regional, and national levels to remove institutional barriers that prevent the providing of better services to visitors; develop a long-term data base to permit monitoring any changes in the provision of visitor services over time; and compile information that can satisfy reporting requirements of the Government Performance and Results Act of 1993.

*4.54 Examples of Typical Questions and Variables Expected as Answers*

Typically an evaluation asks visitors to rate services and facilities such as the courtesy of employees, the cleanliness of facilities, and quality of brochures and maps. Visitors rate these services and facilities on a scale from excellent to poor. For example:

A. Overall, how would you rate the quality of the visitor services provided to you and your group at (park) during this visit?

(a) Please check the visitor facilities or services in (park) which you or your group used during this trip.

(b) Next, for only those facilities or services which you or your group used, please rate their importance to you on a scale from 1–5, with 5 being of great importance and 1 being of no importance.

(c) Finally, for only those facilities or services which you or your group used, please rate their quality from 1–5, with 5 being of high quality and 1 being of low quality.

(a) Use facility/service in (park)

(b) If used, how important

(c) If used, what quality?

[Check If Used]

| | Not important | | | Extremely important | | Very poor | | | Very good | |
|---|---|---|---|---|---|---|---|---|---|---|
| | 1 | 2 | 3 | 4 | 5 | 1 | 2 | 3 | 4 | 5 |
| Restrooms | | | | | | | | | | |
| Trails | | | | | | | | | | |
| Etc. | | | | | | | | | | |

(Answer choices should be appropriate to the park)

*4.60 Topic Area on Visitor Perceptions of Their Park Experiences*

*4.61 Definition*

Visitor perception data deal with the visitors' awareness of elements of the natural and social environments in the parks they visit, their observations about those elements, and how their awareness and observations influence their overall park experiences.

*4.62 Scope*

Involves visitor experiences regarding park natural and cultural resources, other visitors to the park, park and other employees, and park infrastructure and services. Also includes visitors' perceptions of their experiences while in the park and surrounding areas.

*4.63 Justification for Data Collection*

Park managers use visitor perception information to guide decision-making about resource and visitor activity management to ensure that park programs both provide visitors with high quality experiences that meet the visitors' expectations and also protect the integrity of the resources and visitor activities that the visitors come to experience. Managers use visitor perception information to develop specific, measurable indicators and standards of quality for both the visitor experiences and resource conditions. Managers also may use the information to identify what personal and social norms to use for developing these indicators and standards of quality. The indicators of quality show what levels of quality of experience result from the various different levels of management effort. The standards of quality show the levels of quality that visitor experiences must equal or exceed to be considered acceptable outcomes. NPS will need visitor perception data and associated indicators and standards of quality to be able to benchmark the GPRA standards for acceptable outcomes that NPS established in 1996. Meeting these outcomes will ensure that NPS achieves its mission of providing high quality visitor experiences while protecting park natural and cultural resources.

*4.64 Examples of Typical Questions and Variables Expected as Answers*

Visitor perception questions seek to identify indicators of quality and standards of quality. For example:

A. What have you enjoyed most about your visit to (park) today?

B. Has anything detracted from the quality of your visit to (park) today? If so, what?

C. How much of a problem do you feel the following issues are at (park)? (Visitors are presented a list of potential indicators of quality and asked to judge—using a standardized response scale—the degree to which each issue is a problem.)

D. We are interested in how many people you feel could visit this place at any one time without your feeling too crowded. To help judge this, we have developed a series of photographs that show different numbers of people at this place. Please rate each of the photographs by indicating how acceptable you feel each one is based on the number of people shown. (Visitors are presented a series of photographs and asked to judge—using a standardized response scale—the acceptability of each photograph.)

*4.70 Topic Area on Visitor Opinions on Park Management*

*4.71 Definition*

Visitor opinions about park management include the ideas, beliefs, attitudes, preferences, and values that visitors express regarding all aspects of NPS park management.

*4.72 Scope*

Includes visitor opinions about how the park manages its natural and cultural resources, maintains its physical structures, guides human uses of park resources and facilities, and provides educational and other services to the visitor.

*4.73 Justification for Data Collection*

NPS manages park resources according to general and specific park plans that interpret general legislation, specific park enabling legislation, and NPS policy. Surveys that include visitor opinions on park management provide an important avenue for securing the public involvement that permits the NPS to understand what visitors know and think about park resource and other management actions. Such surveys will be necessary to evaluate fee and any other demonstration projects directed by the Congress. These surveys also help NPS to determine whether or not park educational efforts about park management actions are addressing the proper avenues of thought, are being presented effectively and in the most productive venues, are being understood by the recipients, and are useful to the recipients. Park managers use this knowledge to improve park planning, resource management, visitor education, maintenance, and visitor services.

*4.74 Examples of Typical Questions and Variables Expected as Answers*

A. The park's lake naturally contained no fish and the fish that are there now resulted from humans planting fish in the lake. How would your use of the lake area be affected if all the fish were removed from the lake? (Circle a number to indicate your response)

1 Would come to the area more often
2 No change in use of the area
3 Would come to the area less often
4 Would stop coming to the area
5 Would stop visiting the park

**5.0 Benefits**

NPS expects the procedure proposed in this notice for processing proposed collections of information related to the topic areas involving visitors and visitor services will provide substantial benefits to NPS, DOI, and OMB management of the information collection program, to public review of proposed collections of information, to the public burden related to reviewing proposed collections of information and responding to approved surveys, and to the science of conducting surveys of those members of the public who use parks.

*5.10 Benefit to Program Management*

*5.11 NPS*

By managing surveys related to visitors and visitor services as a coherent, single information collection program, NPS would increase the efficiency of its use of personnel and fiscal resources, improve the timing and focus of the public and peer review it obtains about its activities, reduce duplication of survey effort, develop improvements in procedures used to estimate the burden imposed by surveys of visitors to parks, improve the delivery of usable knowledge to park managers, and improve the archiving, use, and availability to the public of the results of past surveys.

*5.12 DOI*

In overseeing NPS management of the topic areas relating to visitors and visitor services as a coherent, single program, DOI would benefit by receiving more systematic and technically current survey instruments to review, having available to it the information contained in the NPS archive, and having available the NPS annual reports as tools for monitoring the responsiveness of the NPS program. The more efficient, effective, and independent position provided to DOI for overviewing NPS conduct of a program of surveys related to topic areas dealing with visitors and visitor services also would reduce financial costs and administrative burdens experienced by DOI.

*5.13 OMB*

OMB would benefit by having better public and peer review of a program of surveys, by having the NPS annual report available for efficient program monitoring and oversight, by testing a process for improving agency management of the review of proposed collections of information, by testing alternative procedures for conducting information collections in ways that minimize the burden to the public, and by receiving information from several NPS initiatives, including elements of research methodology and administration (see Section 5.3), related to the topic areas of visitors and visitor services. In addition, OMB would experience a reduction in its administrative burden with respect to reviewing proposed collections of information.

*5.20 Benefit to the Public*

The OMB approval process proposed in this notice would result in substantial benefits to the public. The public's opportunity and ability to assess the entire program of NPS surveys of visitors would benefit because of the general streamlining of the review process, enhanced coordination of survey research efforts, and more efficient and effective communication with the public. The public also would benefit because better coordination of the information derived from visitor surveys will contribute to more productive use of social science information in the management of the national parks, resulting in better customer service and resource protection. Additionally, both of these sets of benefits would result in more efficient use of public funds, including through reducing expenditures and government personnel time spent on preparing and publishing individual **Federal Register** notices.

*5.21 Involvement of the Public*

The public would be engaged in meaningful dialogue about the social science survey process through its opportunity to review the program proposal at two stages of proposal development and through the reports that would be provided by the proposed, coordinated annual and triennial reporting process.

This notice in itself benefits the public by providing information in a concise and comprehendable way about the purposes for which NPS conducts surveys of the public, the types of questions NPS asks of the public, and how NPS uses the responses to those questions to meet management needs for information. By focusing public review on the development and administration of a collection of information program rather than on individual, apparently unrelated survey instruments, NPS is encouraging greater public involvement in assessing the program and is making that involvement easier, more encompassing, more intelligible, and more productive.

The annual reports to be prepared as part of the proposed program would summarize the research activities conducted within the topical areas identified in this proposal. The triennial report would provide a synthesis of what has been learned during the three year cycle and, should the program perform as envisioned, describe topical study areas that NPS would propose for a subsequent three year planning cycle. These reports together would inform the public of the underlying purposes of proposed survey research and of the results of already conducted research.

*5.22 Burden Efficiency*

By shifting the timing and focus of public review of NPS sponsored public

surveys from individual surveys to a program of surveys, the process initiated with this notice is reducing the potential number of public burden hours expended on reviewing proposed public survey questionnaires and is increasing the efficiency and effectiveness of those burden hours that the public does expend. By building methodological research into its overall strategy, the proposed process would stimulate development of improved and more efficient survey questions, survey designs, and sampling approaches, thus reducing the public burden in responding to surveys while at the same time making the application of that burden have broader utility.

*5.30 Benefit to Science*

*5.31 Peer Review*

Currently, individual scientists are responsible by DOI policy to obtain peer review for social science work plans and reports associated with in-house survey research. The extent of this review varies widely by individual scientist and the type of project.

The proposed OMB approval process identified in this notice would result in a comprehensive series of survey and program reports and records that are reflective of the overall NPS program of social science research and its methodologies. Consequently, NPS would be able more easily to solicit peer review that focuses on Servicewide efforts and methodologies. This type of review would represent a significant benefit beyond that received from current individual peer review contributions. In addition, the NPS Social Science Program Office under the proposed plan would monitor individual requests for information collection and would require that requestors document the peer review they already have obtained and explain the absence of peer review where such review is lacking.

Within 12 months following approval by OMB of a proposal of the type contained in this notice, NPS would develop an expanded peer review process to ensure that all social science activities receive appropriate levels of peer review at appropriate stages in the development of the activities. NPS would involve both scientists and managers in this development and would ensure that the resulting process reflects academic, NPS, DOI, and OMB guidance regarding peer review.

*5.32 Methodological Development*

One of the significant advantages of this proposal is that it clearly establishes an incentive for methodological development and improvement. This would work in two ways. First, there would be stronger incentives for constructive peer review. Second, the proposed process would remove an unintended consequence of any reliance on a question catalog. In the past, NPS projects to conduct public surveys experienced a strong incentive to use an NPS question catalog because its use offered a somewhat reduced time for achieving OMB review. However, an unintended consequence of the use of the question catalog was the emergence of a disincentive to develop more valid and reliable measures for more complex items because of the burden of securing OMB review and approval. Because the application of survey research and social science concepts to park management is still developing, this disincentive is actually counter-productive to stimulating the methodological improvement needed in many research areas.

Under the proposed process, individual projects would receive peer review requested by individual researchers. All survey proposals would be reviewed by the Visiting Chief Social Scientist. Many projects would receive and benefit from additional peer review requested by the NPS social science program. Within this umbrella of increased professional dialogue and oversight, individual researchers would be encouraged to scientifically develop questions and other items that provide better data for NPS managers. Improvements in methodology, because they would be closely monitored by the NPS social science program, would be more quickly transmitted to all parks and researchers who could benefit.

The proposed process would lead to more competent planning and administration of survey research in the National Park System. Research would be more focused on topics which have high research and management priority. Researchers, themselves, would be more efficient because of reduced waiting time for questionnaire approvals. The more centralized research focus and repository of survey research findings would encourage a greater degree of synergy in survey research in the National Park System.

*5.33 Data Management*

The activities envisioned in this proposal would include an effort to develop and implement protocols for data management, data set documentation, and sampling methodology documentation that would benefit the exchange of data among scientists and the consolidation and assessment of data across individual research projects. The development of a data archive system and a clearly stated requirement that all publicly funded research projects must deposit a complete data set in the archive would increase the availability of data to the broad research community.

*5.34 Efficiency of the Proposed Process for Scientists and Science*

The proposed review process would increase the focus of scientists on dealing with the scientific effectiveness of their planned surveys. The proposed changes would foster the evolution of methods and questions that must occur for the survey process to become more efficient and effective. The growing availability over time of park data from the proposed archive would support comparative, longitudinal, multi-park, and National Park Systemwide analyses that would increase scientific understanding about visitors in parks. The data archive would provide baseline analyses that can make future scientific surveys and assessments more efficient at a lower overall burden cost to the public.

## 6.0 Conclusion: An Important Experiment

The approach for review and decision-making proposed in this notice regarding collections of information provides NPS, DOI, and OMB with a voluntary test of an alternative method for improving the productivity, efficiency, and effectiveness of a Federal information collection program. This test may affirm a method by which NPS can reduce the potential future information burden on the public, increase useful public review and comment, reduce duplication and increase collaboration in the information collection and analysis effort, meet shared data needs with shared resources, enhance access to information through use of electronic formats for both researchers and the public, and contribute to meeting NPS information collection and technology needs. It is an important experiment in reinventing government.

## 7.0 Contributing Authors

John Dennis, Jean Haley, Darryll Johnson, Dave Lime, Margaret Littlejohn, Gary Machlis, Bob Manning, John Peine, and Bill Stewart contributed to preparation of this proposal.

## 8.0 Selected Literature

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**SUPPLEMENTARY INFORMATION:**

*Title:* A Proposed Process for OMB Approval of NPS-Sponsored Public Surveys.

*Bureau Form Number:* None.

*OMB Number:* To be requested.

*Expiration date:* To be requested.

*Type of request:* Request for new clearance.

*Description of need:* The National Park Service needs information concerning park visitors and visitor services to provide to park managers information for improving the quality and utility to the public of park programs.

*Automated data collection:* At the present time, there is no automated way to gather this information, since the information gathering process involves asking visitors to evaluate services and facilities that they used during their park visits. The intrusion on individual visitors is minimized by rigorously designing visitor surveys to maximize the ability of the surveys to use small samples of visitors to represent large populations of visitors and by coordinating a program of surveys to maximize the ability of new surveys to build on the findings of prior surveys.

*Description of Respondents:* A sample of visitors to parks or of people who have relationships to parks.

*Estimated average number of respondents:* The proposal does not identify the number of respondents because that number will differ from individual survey to individual survey, depending on the purpose and design of each individual survey.

*Estimated average number of responses:* The proposal does not identify the average number of responses because that number will differ from individual survey to individual survey, depending on the purpose and design of each individual survey. For most surveys, each respondent will be asked to respond only one time, so in those cases the number of responses will be the same as the number of respondents.

*Estimated average burden hours per response:* The proposal does not identify the average burden hours per response because that number will differ from individual survey to individual survey, depending on the purpose and design of each individual survey.

*Frequency of response:* Most individual surveys will request only 1 response per respondent.

*Estimated annual reporting burden:* The proposal identifies the requested total number of burden hours annually for all of the surveys to be conducted under its auspices to be 8000 burden hours per year. The total annual burden per survey for most surveys conducted under the auspices of this proposal would be within the range of 100 to 300 hours.

**Diane M. Cooke,**

*Information Collection Clearance Officer, WASO Administrative Program Center, National Park Service.*

[FR Doc. 97–25850 Filed 9–29–97; 8:45 am]

BILLING CODE 4310–70–P

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## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Boundary Revision, Gulf Islands National Seashore, FL

**AGENCY:** Department of the Interior, National Park Service.

**ACTION:** Notice of Boundary Revision, Gulf Islands National Seashore, FL.

**SUMMARY:** Pub. L. 91–660 (84 Stat. 1967) dated January 8, 1971, authorized the establishment of the Gulf Islands National Seashore. Sections 7(c)(i) and 7(c)(ii) of the Land and Water Conservation Fund Act, as amended by the Act of June 10, 1977 (Pub. L. 95–42, 91 Stat. 210), the Act of March 10, 1980 (Pub. L. 96–203, 94 Stat. 81) and the Act of November 12, 1996 (Pub. L. 104–333, 110 Stat. 4194) further authorized the Secretary to make minor revisions in the boundaries whenever the Secretary of the Interior determines that it is necessary for the preservation, protection, interpretation or management of an area.

Notice is given that the boundary of Gulf Islands National Seashore has been revised pursuant to the above Acts, to encompass lands as depicted on Segment Map 05 of Gulf Islands National Seashore prepared by the National Park Service. The revisions to the boundary are along the western boundary of the Perdido Key, Florida Unit of the Seashore.

This map is on file and available for inspection in the Land Resources Division, Southeast Regional Office, 100 Alabama Street, S.W., Atlanta, Georgia 30303, and in the Offices of the National Park Service, Department of the Interior, Washington, DC 20013–7127.

Dated: September 4, 1997.

**Jerry Belson,**

*Regional Director, Southeast Region, National Park Service.*

[FR Doc. 97–25851 Filed 9–29–97; 8:45 am]

BILLING CODE 4310–70–P

## DEPARTMENT OF THE INTERIOR

### Maine Acadian Culture Preservation Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463) that the Maine Acadian Culture Preservation Commission will meet on Friday, October 17, 1997. The meeting will convene at 7:00 p.m. in the Ste-Agathe Parish Hall on Main Street, Saint Agatha, Aroostook County, Maine.

The Maine Acadian Culture Preservation Commission was appointed by the Secretary of the Interior pursuant to the Maine Acadian Culture Preservation Act (Pub. L. 101–543). The purpose of the Commission is to advise the National Park Service with respect to:

- The development and implementation of an interpretive program of Acadian culture in the state of Maine.
- The selection of sites for interpretation and preservation by means of cooperative agreements.

The Agenda for this meeting is as follows:

1. Review and approval of the summary report of the meeting held August 15, 1997
2. A talk by Charlotte Cormier of Moncton, New Brunswick, on ''Acadian Folk Songs''
3. Report of the National Park Service Maine Acadian project staff
4. Opportunity for public comment
5. Proposed agenda, place, and date of the next Commission meeting

The meeting is open to the public. Further information concerning Commission meetings may be obtained from the Superintendent, Acadia National Park. Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made at least seven days prior to the meeting to: Superintendent, Acadia National Park, P.O. Box 177, Bar Harbor, ME 04609–0177; telephone (207) 288–5472.

**Paul F. Haertel,**

*Superintendent, Acadia National Park.*

[FR Doc. 97–25852 Filed 9–29–97; 8:45 am]

BILLING CODE 4310–70–P

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Revision of National Environmental Policy Act Procedures: Extension of Time for Filing Public Comments

**AGENCY:** National Park Service, Interior.

**ACTION:** Revision of National Environmental Policy Act Procedures, Extension of Time for Filing Public Comments.

**SUMMARY:** The National Park Service (NPS) requested public comments on August 26, 1997 about its revisions to its procedures under the National Environmental Policy Act (NEPA), 62 FR 45270. In order to provide for additional time for the public to review and provide comments to the NPS the review period has been extended.

**DATES:** Comments must be submitted by November 3, 1997.

**ADDRESSES:** Documents can be requested from and comments should be sent to National Park Service Environmental Quality Division, Room 2749, 1849 C Street, N.W., Washington, D.C. 20240. Comments can also be sent electronically to the following Internet address: jacob__hoogland@nps.gov. Electronic copies of the draft document can be downloaded from the Internet at the NPS's web page at http://www.nps.gov/planning/nepa.

**FOR FURTHER INFORMATION CONTACT:** Jacob J. Hoogland, Chief, Environmental Quality Division, National Park Service Room 2749, 1849 C Street, N.W. Washington, D.C. 20240. Telephone (202) 208–5214. Internet address: jacob__hoogland@nps.gov.

**Michael Soukup,**

*Associate Director, Natural Resource Stewardship and Science.*

[FR Doc. 97–25854 Filed 9–29–97; 8:45 am]

BILLING CODE 4310–70–P

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Realty Action; California

Notice of Realty Action for Minor Boundary Revision and Proposed Exchange of Federally-owned land for Privately-owned land in Marin County, California.

In order to resolve the minor and unintentional encroachment of a private residence on Federal land, it is necessary for the National Park Service to effect a minor boundary revision and land exchange at Point Reyes National Seashore. The park boundary will be revised to include a 0.12 acre parcel of land adjacent to the boundary and delete a 0.10 acre parcel of land within the boundary. Upon approval of the boundary revision, the National Park Service will acquire the 0.12 acre parcel and convey the 0.10 acre encroachment parcel to the private landowner. The subject properties are located on Blackberry Lane, Inverness, Marin County, California.

The authority for the minor boundary revision is Section 318 (a) of Public Law 95–625, approved November 10, 1978; 16 U.S.C. 459c–*1*(a). The authority for the land exchange is Section 3 (a) of Public Law 87–657, approved September 13, 1962, 16 USC 459c–2.

The National Park Service has determined that there will be no adverse impacts as a consequence of the exchange. The value of the lands to be exchanged are of equal value. Each site was surveyed for the presence of hazardous substances and none were found. The mineral rights of both properties will be conveyed.

The land to be conveyed by the United States of America and deleted from the boundary is identified as Tract No. P13–130. Title to the land will be conveyed subject to title encumbrances of record as well as existing easements

for public roads and highways, public utilities and pipelines.

The private land to be included in the boundary and acquired for Point Reyes National Seashore is owned by Sherburne and Susan Slack and is identified as Tract No. P13–132. The land will be administered by the National Park Service as part of the Point Reyes National Seashore. The land will be acquired in fee simple with no reservations and subject only to rights of way and easements of record.

Detailed information concerning the boundary revision and land exchange including legal descriptions, map, Land Protection Plan and Categorical Exclusion are available at the National Park Service, 600 Harrison Street, Suite 600, San Francisco, California 94107. The lands which are the subject of this notice are identified on Boundary Proposal Map, Drawing No. 612/80,034, dated May 1997.

For a period of 45 calendar days from the date of this notice, interested parties may submit comments regarding the exchange proposal to the above address. Adverse comments will be evaluated and this action may be modified or vacated accordingly. In the absence of any action to modify or vacate, this realty action will become the final determination of the Department of the Interior.

Dated: July 9, 1997.

**John J. Reynolds,**

*Regional Director, Pacific West Region.*

[FR Doc. 97–25855 Filed 9–29–97; 8:45 am]

BILLING CODE 4310–70–P

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Hawaiian Cement,* Civil Action No. 97–01204 ACK was lodged on September 16, 1997 with the United States District Court for the District of Hawaii. The consent decree settles a civil judicial enforcement action brought under Section 113(b) of the Clean Air Act, 42 U.S.C. § 7413(b), for Hawaiian Cement's failure to achieve the emission limitations for particulate matter established by the Hawaii State Implementation Plan for defendant's Kapolei, Oahu, Hawaii, portland cement manufacturing plant, and for violations at that plant of applicable new source performance standards. Under the proposed settlement, Hawaiian Cement has committed to a comprehensive program of injunctive relief that will ensure that it achieves, and remains in, permanent, consistent compliance with the Clean Air Act. In addition, under the terms of the proposed settlement Hawaiian Cement has agreed to pay a civil penalty into the United States Treasury of $1,162,500.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Hawaiian Cement,* DOJ Ref. #90–5–2–1–2083. The proposed consent decree may be examined at the office of the United States Attorney, District of Hawaii, PJKK Federal Building, Room 6100, 300 Ala Moana Boulevard, Honolulu, Hawaii, 96850; the Region IX Office of the United States Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105; 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 Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $13.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

**Walker Smith,**

*Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 97–25886 Filed 9–29–97; 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 ATM Forum

Notice is hereby given that, on July 24, 1997, pursuant to § 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), the ATM 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 organizations have joined the Forum: Telstra Corporation, Clayton, Australia; Virginia Polytechnic Institute and State University (Virginia Tech), Blacksburg, VA. Additionally, the following Forum members have been involved in acquisitions: Ascend Communications Inc. acquired Cascade Communications Corporation. The following members have changed their names: CSIRO Radiophysics to CSIRO TIP; Telematics International Ltd. to ECI Telecom Ltd. The following have changed their membership from principal members to auditing members: Ipsilon Networks, Inc.; and NETWORK Programs NETWORK Machines, Inc. Ascend Communications, Inc. has upgraded from an auditing member to a principal member.

No changes have been made in the planning activities of the Forum. Membership remains open, and the Forum intends to file additional written notifications disclosing all changes in membership.

On April 19, 1993, the Forum filed its original notification pursuant to § 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to § 6(b) of the Act on June 2, 1993 (58 FR 31415). The last notification was filed on April 28, 1997 and a notice was published in the **Federal Register** on May 22, 1997 (62 FR 28065).

**Constance K. Robinson,**

*Director of Operations Antitrust Division.*

[FR Doc. 97–25884 Filed 9–29–97; 8:45 am]

BILLING CODE 4410–01–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Commercenet Consortium

Notice is hereby given that, on July 21, 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''), CommerceNet Consortium, (''CommerceNet'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing certain 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 organizations have joined CommerceNet

as Portfolio Members: Wipro, Cupertino, CA.; Netbot, Inc., Seattle, WA; Internet Mall, San Jose, CA.

No other changes have been made in either the membership or planned activities of CommerceNet. Membership remains open and CommerceNet intends to file additional written notifications disclosing all changes in membership.

On June 13, 1994, CommerceNet filed its original notification pursuant to § 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to § 6(b) of the Act on August 31, 1994 (59 FR 45012). The last notification was filed with the Department on May 15, 1997, and a notice was published in the **Federal Register** on June 13, 1997 (62 FR 32370).

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 97–25883 Filed 9–29–97; 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—Rotorcraft Industry Technology Association, Inc.

Notice is hereby given that, on March 10 and May 2, 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 Rotorcraft Industry Technology Association, Inc. (''RITA'') filed 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 universities have become Associate Members: The University of Alabama, Tuscaloosa, AL; The University of Illinois at Chicago, Chicago, IL; Rensselaer Polytechnic Institute, Troy, NY; and Naval Postgraduate School, Monterey, CA. Additionally, Allison Engine Company has become a Supporting Member.

No other changes have been made in either the membership or planned activity of the Corporation.

On September 28, 1995, RITA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on April 3, 1996 (61 FR 14817).

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 97–25885 Filed 9–29–97; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

### Agency Information Collection Activities: Proposed Collection; Comment Request

**ACTION:** Request OMB Emergency Approval; Extension of a Currently Approved Collection: Application to Pay Off or Discharge Alien Crewmen.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request (ICR) utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the section 1320.13 (a)(1)(i) and (a)(2)(i) of the Paperwork Reduction Act of 1995. The INS has determined that it cannot reasonably comply with the normal clearance procedures under this Part because normal clearance procedures are reasonably likely to prevent or disrupt the collection of information. This information collection is needed prior to the expiration of established time periods. OMB approval has been requested by October 31, 1997. If granted, the emergency approval is only valid for 90 days. All comments and/or questions pertaining to this pending request for emergency approval Must be directed to OMB, Office of Information and Regulatory Affairs, Attention: Ms. Debra Bond, 202–395–7316, Department of Justice Desk Officer, Washington, DC 20503. Comments regarding the emergency submission of this information collection may be forwarded by facsimile to Ms. Bond at 202–395–6974.

During the first 60 days of this same period, a regular review of this information collection is also being undertaken. During the regular review period, the INS requests written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Comments are encouraged and will be accepted until December 1, 1997. During the 60-day regular review ALL comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Mr. Richard A. Sloan, 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Your comments should address one or more of the following four points.

(1) 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;

(2) 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;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) 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.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Application to Payoff or Discharge Alien Crewman.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–408. Inspections Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. This information collection is required by Section 256 of the Immigration and Nationality Act for use in obtaining permission from the Attorney General by master or commanding officer for any vessel or aircraft, to pay off or discharge any alien crewman in the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent of respond:* 85,000 respondents at 25 minutes (.416) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 35,360 annual burden hours.

If additional information is required during the first 60 days of this same regular review period contact Mr. Robert B. Briggs, Clearance Officer, United

States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: September 24, 1997.

**Robert B. Briggs,**

*Department Clearance Officer, United States Department of Justice.*

[FR Doc. 97–25792 Filed 9–29–97; 8:45 am]

BILLING CODE 4410–18–M

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

### Agency Information Collection Activities: Proposed Collection; Comment Request

**ACTION:** Request OMB Emergency Approval; Extension of a Currently Approved Collection: Application for Waiver of Passport and/or Visa.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request (ICR) utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the section 1320.13 (a)(1)(i) and (a)(2)(i) of the Paperwork Reduction Act of 1995. The INS has determined that it cannot reasonably comply with the normal clearance procedures under this Part because normal clearance procedures are reasonably likely to prevent or disrupt the collection of information. This information collection is needed prior to the expiration of established time periods. OMB approval has been requested by September 30, 1997. If granted, the emergency approval is only valid for 90 days. All comments and/or questions pertaining to this pending request for emergency approval must be directed to OMB, Office of Information and Regulatory Affairs, Attention: Ms. Debra Bond, 202–395–7316, Department of Justice Desk Officer, Washington, DC 20503. Comments regarding the emergency submission of this information collection may be forwarded by facsimile to Ms. Bond at 202–395–6974.

During the first 60 days of this same period, a regular review of this information collection is also being undertaken. During the regular review period, the INS requests written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Comments are encouraged and will be accepted until December 1, 1997.

During the 60-day regular review ALL comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Mr. Richard A. Sloan, 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Your comments should address one or more of the following four points.

(1) 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;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) 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.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Application for Waiver of Passport and/or Visa.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–193. Inspections Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This information is needed to determine whether an applicant is eligible for entry into the United States under 8 CFR Parts 211.1(b)(3)–Waiver of Visas- and 212.1(g)–Unforeseen Emergency.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 25,000 respondents at 10 minutes (.166) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 4,150 annual burden hours.

If additional information is required during the first 60 days of this same regular review period contact Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: September 24, 1997.

**Robert B. Briggs,**

*Department Clearance Officer, United States Department of Justice.*

[FR Doc. 97–25793 Filed 9–29–97; 8:45 am]

BILLING CODE 4410–18–M

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

**[INS No. 1864–97]**

### Pilot Programs To Deny Driver's Licenses and Identification Cards to Aliens Who Are Not Lawfully Present in the United States

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Notice prescribing guidelines under which states may conduct pilot programs to deny driver's licenses and identification cards to aliens who are not lawfully present in the United States and inviting states to contact the Immigration and Naturalization Service (Service) to express interest in participating in such a pilot program.

**SUMMARY:** The Commissioner of the Service invites each state to contact the Service if it is interested in participating in a pilot program to deny driver's licenses and identification cards to aliens who are not lawfully present in the United States. Guidelines are prescribed for the pilot programs. This notice and pilot programs are required by section 502 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. 104–208, 110 Stat. 3009 (IIRIRA).

**DATES:** Written responses must be submitted on or before October 30, 1997.

**ADDRESSES:** Please submit your response in triplicate to: John E. Nahan, Immigration and Naturalization Service, 425 I Street, NW., ULLICO Building, 4th Floor, Washington, DC 20536, Attention: SAVE Program.

**FOR FURTHER INFORMATION CONTACT:** John E. Nahan, Immigration and Naturalization Service, 425 I Street, NW., ULLICO Building, 4th Floor, Washington, DC 20536, telephone (202) 514–2317.

**SUPPLEMENTARY INFORMATION:**

## Background and Statutory Authority

Pursuant to the authority contained in section 502 of IIRIRA, all states may conduct pilot programs, pursuant to guidelines prescribed by the Attorney General, to deny driver's licenses and identification cards to aliens who are not lawfully present in the United States. For the purpose of these pilot programs, the Service is using the definition of ''an alien who is lawfully present in the United States'' provided by 8 CFR 103.12(a) for the purposes of applying for Title II Social Security benefits. An alien who is ''not lawfully present in the United States'' is any alien not included in section 103.12(a). This definition is subject to change based upon any definition of lawful presence for the purpose of determining eligibility for public benefits and services that may be made in the future by the Attorney General. The Service construes section 502's reference to ''driver's licenses'' also to include identification cards issued by a state in a similar manner as driver's licenses, but that do not confer driving privileges. The Service is using the definition of ''state'' provided by section 101(a)(36) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(36), as including the District of Columbia, Puerto Rico, Guam, and the Virgin Islands of the United States in addition to the 50 states.

## Purpose

The purpose of these pilot programs is to determine the viability, advisability, and cost-effectiveness of states' denying driver's licenses and identification cards to aliens who are not lawfully present in the United States.

## Guidelines

The Service prescribes the following guidelines applicable to pilot programs under authority of section 502 of IIRIRA:

- The pilot program must provide for the denial of driver's licenses and identification cards to applicants who are not lawfully present in the United States, as defined by the Attorney General at 8 CFR 103.12.
- The pilot program must require the accurate verification of whether a driver's license or identification care applicant is lawfully present in the United States, as defined by the Attorney General at 8 CFR 103.12.
- The pilot program must not violate Federal law by resulting in illegal discrimination on the basis of race, national origin, gender, religion, age, or disability, or in any other way violate the Constitution and laws of the United States.
- The pilot program must not violate any provision of state law in the state in which it operates.
- The pilot program must be designed to result in a determination of the viability, advisability, and cost-effectiveness of the state's denying driver's licenses and identification cards to aliens who are not lawfully present in the United States, as defined by the Attorney General.

## Eligibility for Participation

Any state may participate in a pilot program under section 502 of IIRIRA provided it meets the guidelines stated above.

## Project Restrictions

The Service may deny or limit state participation in the pilot program depending upon available resources.

## Description of Section 502 Pilot Programs

The purposes of this notice are to provide the basic guidelines applicable to all pilot programs conducted under section 502 of IIRIRA, and to invite initial statements of interest from states. Further details of each pilot program will be determined on the basis of the specific needs, desires, and abilities of each state and the Service, and will be memorialized in a Memorandum of Understanding between the state and the Service, setting forth the terms and conditions of the pilot program. All pilot programs must comply with the basic guidelines, but the details, duration, and scope of pilot programs may differ among participating states. The Service plans to be flexible in working with states to formulate pilot programs that best meet their needs, and is open to new proposals and ideas from the states. Detailed below is one example of a section 502 pilot program approach that appears promising to the Service, but is not meant to be exclusive:

Applicants for driver's licenses or identity cards will state on the application under penalty of perjury whether they are citizens, non-citizens, or nationals of the United States, and will present documentary evidence of their identity and citizenship or immigration status to the state. Applicants who are not citizens or nationals of the United States must present alien registration documentation or other proof of immigration registration from the Service that includes the individual's alien registration number or alien admission number. The Service will make available and maintain an immigration status records system which provides information on aliens' immigration status. The system is known as the Alien Status Verification Index (ASVI) (Justice/INS 009). The ASVI data base contains information on approximately 60 million immigrant and nonimmigrant aliens and is updated on a daily basis. The ASVI data base was originally designed as an information service for agencies and institutions issuing entitlement benefits, and is used by the Systematic Alien Verification for Entitlements (SAVE) and Employment Verification Pilot (EVP) programs.

The states will have access to the information contained in the ASVI data base via a personal computer with a modem. To perform a primary query of ASVI, the user inputs the alien's identification number (registration number or admission number) and other limited information. When the user accesses the ASVI data base to perform a primary query, ASVI will respond within 3–5 seconds of the query. When the response from a primary query directs the user to institute a secondary verification because it cannot positively verify a particular alien's status, the user provides additional information, i.e., full name, date of birth, etc., to the Service to assist the Service in verifying the immigration status. The ASVI data base has proven to be an effective, secure, and economical method of verifying the immigration status of aliens.

## Information To Be Included in the Response

Each response should include the complete name of the Department of Motor Vehicles or other agency of the responding state that will be responsible for implementing the pilot program; headquarters address; listing of additional locations, if any; and the name and phone number of the contact person for this pilot. Other information that is not mandatory, but which will be of assistance to the Service in evaluating the response and which may be included is: a description of legal authority under state law for denying driver's licenses and identification cards to aliens not lawfully present in the United States; a description of any current policies or procedures regarding verification of identity or citizenship or immigration status of applicants; a description of any current policies or procedures regarding the issuance of driver's licenses or identification cards to aliens; the estimated number of alien applicants annually, and proposals or comments regarding the desired scope

and format of the pilot program within the State.

**OMB Reporting Burden**

The public reporting burden for this collection of information is estimated to be 2 hours, including gathering the information needed, and completing and reviewing the collections of information. Please send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Immigration and Naturalization Service, 425 I Street, NW., HQPDI, Room 5307, Washington, DC 20536. These requirements have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act, and are recorded as OMB Control Number 1115–0126, with an expiration date of December 31, 1997.

Dated: September 21, 1997.

**Doris Meissner,**

*Commissioner, Immigration and Naturalization Service.*

[FR Doc. 97–25786 Filed 9–29–97; 8:45 am]

BILLING CODE 4410–10–M

## DEPARTMENT OF LABOR

### Office of the Secretary

### Submission for OMB Review; Comment Request

September 25, 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), within 30 days from the date of this publication in the **Federal Register**.

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 and Training Administration.

*Title:* Guidelines for the State Employment Security Agency Program and Budget Plan for the Unemployment Insurance Program.

*OMB Number:* 1205–0132 (revision).

*Frequency:* Annual.

*Affected Public:* Federal Government; State, Local or Tribal Government.

| Activity | Respondents | Average time per respondent (hours) |
|---|---|---|
| ETA 8632A | 53 | 1 |
| ETA 8632 | 53 | 27 |
| ETA 8632 (QC) | 37 | 4 |
| ETA 5633, 8633A | 53 | 1 |

*Total Burden Hours:* 2,109.

*Total annualized capital/startup costs:* 0.

*Total annual costs (operating/maintaining systems or purchasing services):* $60,700.

*Description:* The Program Budget Plan (PBP) is the annual planning and budget instrument for the Unemployment Insurance system nationwide. It facilitates State planning and allows for the development of Corrective Action Plans for deficient performance, as well as, plans for program enhancements made possible by increased funding allocation requests. This is the 14th edition of this document.

*Agency:* Bureau of Labor Statistics.

*Title:* Survey of Occupational Injuries and Illnesses.

*OMB Number:* 1220–0045 (revision).

*Frequency:* Annual.

*Affected Public:* Business or other for-profit; Not-for-profit institutions; Farms; State, Local or Tribal Government.

| Form No. | Respondents | Average time per respondent (minutes) |
|---|---|---|
| BLS 9300 | 230,000 | 50 |
| Renotification Package | 150,000 | 9 |

*Total Burden Hours:* 207,291.

*Total annualized capital/startup costs:* 0.

*Total annual costs (operating/maintaining systems or purchasing services):* 0.

*Description:* The Survey of Occupational Injuries and Illnesses is the primary indicator of the Nation's progress in providing every working man and woman safe and healthful working conditions. Survey data are also used to evaluate the effectiveness of the Federal and State programs and to prioritize scarce resources.

*Agency:* Employment Standards Administration.

*Title:* Health Insurance Claim form.

*OMB Number:* 1215–0055 (extension).

*Frequency:* On occasion.

*Affected Public:* Individuals or households; Business or other for-profit; Not-for-profit institutions; Federal Government; State, Local or Tribal Government.

*Number of Respondents:* 763,516.

*Estimated Time Per Respondent:* 13 minutes.

*Total Burden Hours:* 167,868.

*Total annualized capital/startup costs:* 0.

*Total annual costs (operating/maintaining systems or purchasing services):* $2,800.

*Description:* This information is collected to ensure payment of appropriate benefits or charges of diagnostic and treatment services under both the Federal Employees' and Black Lung Compensation mandates, and for reporting payment information required by the Internal Revenue Service are made.

*Agency:* Occupational Safety and Health Administration.

*Title:* Telecommunications (29 CFR 1910.268(c))—Training Certifications.

*OMB Number:* 1218–0new (formerly 1218–0210) (extension).

*Frequency:* On occasion.

*Affected Public:* Business or other for-profit; Federal Government; State, Local or Tribal Government.

*Number of Respondents:* 213,980.

*Estimated Time Per Respondent:* 5 minutes.

*Total Burden Hours:* 17,118.

*Total annualized capital/startup costs:* 0.

*Total annual costs (operating/maintaining systems or purchasing services):* 0.

*Description:* The training certification required in 29 CFR 1910.268© is necessary to assure compliance with the requirement that employees have been trained in the various precautions and safe practices in telecommunications.

*Agency:* Occupational Safety and Health Administration.

*Title:* Manlifts (29 CFR 1910.68(e)(3)—Inspection Certifications.

*OMB Number:* 1218–0new (formerly 1218–0210) (extension).

*Frequency:* Weekly, Monthly.

*Affected Public:* Business or other for-profit; Federal Government; State, Local or Tribal Government.

*Number of Respondents:* 3,000.

*Estimated Time Per Respondent:* 1.15 hours.

*Total Burden Hours:* 51,005.

*Total annualized capital/startup costs:* 0.

*Total annual costs (operating/maintaining systems or purchasing services):* 0.

*Description:* The information collection requirement of this standard is necessary to assure compliance with the requirements for manlifts by a competent person. The inspection is intended to assure that the manlifts are in safe operating condition, and all safety devices, such as belt switches, are working properly. The failure of belts of switches could cause serious injury or death to an employee.

*Agency:* Occupational Safety and Health Administration.

*Title:* Construction Records for Tests and Inspections for Personnel Hoists (29 CFR 1926.552 (c)(15)).

*OMB Number:* 1218–0new (formerly 1218–0210) (extension).

*Frequency:* On occasion.

*Affected Public:* Business or other for-profit.

*Number of Respondents:* 14,400.

*Estimated Time Per Respondent:* 15 minutes (every 3 months).

*Total Burden Hours:* 15,840.

*Total annualized capital/startup costs:* 0.

*Total annual costs (operating/maintaining systems or purchasing services):* 0.

*Description:* The construction standard on personnel hoists requires employers to conduct tests and inspections for hoists that their employees use. The certification records, which attest to the safety of the hoists, are necessary to ensure compliance with the standard.

*Agency:* Occupational Safety and Health Administration.

*Title:* Aerial Lifts (29 CFR 1910.67(b)(2)—Manufacturer's Certification.

*OMB Number:* 1218–0new (formerly 1218–0120) (extension).

*Frequency:* On occasion.

*Affected Public:* Business or other for-profit; Federal Government; State, Local or Tribal Government.

*Number of Respondents:* 900.

*Estimated Time Per Respondent:* 5 minutes.

*Total Burden Hours:* 72.

*Total annualized capital/startup costs:* 0.

*Total annual costs (operating/maintaining systems or purchasing services):* 0.

*Description:* This standard requires that when aerial lifts are ''field modified'' for uses other than those intended by the manufacturer, the modification must be certified in writing by the manufacturer or by any other equivalent entity, such as a nationally recognized testing laboratory to be in conformity with all applicable provisions of ANSI A92.2–1969 and the OSHA standard, to be at least as safe as the equipment was before modification.

*Agency:* Occupational Safety and Health Administration.

*Title:* Recording and Reporting Occupational Injuries and Illnesses (29 CFR 1904).

*OMB Number:* 1218–0176 (extension).

*Frequency:* On occasion.

*Affected Public:* Business or other for-profit; Not-for-profit institutions; Farms; State, Local or Tribal Government.

*Number of Respondents:* 816,766.

*Estimated Time Per Respondent:* 1.9 hours.

*Total Burden Hours:* 1,492,710.

*Total annualized capital/startup costs:* 0.

*Total annual costs (operating/maintaining systems or purchasing services):* $31,032,694.

*Description:* The OSH Act and 29 CFR 1904 prescribe that certain employers maintain records of job related injuries and illnesses. The data are needed by OSHA to carry out intervention and enforcement activities to guarantee workers a safe and healthful workplace. The data are also needed by the Bureau of Labor Statistics to produce national statistics on occupational injuries and illnesses. Approximately 816,000 employers keep these records. Only 65 percent must record a case.

*Agency:* Occupational Safety and Health Administration.

*Title:* Access to Employee Exposure and Medical Records (29 CFR 1910–1020).

*OMB Number:* 1218–0065 (extension).

*Frequency:* On occasion.

*Affected Public:* Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government.

*Number of Respondents:* 747,874.

*Estimated Time Per Respondent:* 9 minutes.

*Total Burden Hours:* 448,886.

*Total annualized capital/startup costs:* 0.

*Total annual costs (operating/maintaining systems or purchasing services):* 0.

*Description:* The purpose of the Access to Employee Exposure and Medical Records Standard and its information collection requirements are to provide employees and their designated representatives the right to access relevant exposure and medical records, and to provide representatives of the Assistant Secretary the right of access to these records in order to fulfill responsibilities under the Occupational Safety and Health Act. Access by employees, their representatives, and the Assistant Secretary is necessary to yield both direct and indirect improvement in the detection, treatment, and prevention of occupational disease. Each employer is responsible for assuring compliance with this standard, but the activities involved in complying with the access to medical provisions can be carried out, on behalf of the employer, by the physician or other health care personnel in charge of employee medical records.

*Agency:* Occupational Safety and Health Administration.

*Title:* Formaldehyde Standard (29 CFR 1910.1048).

*OMB Number:* 1218–0145 (extension).

*Frequency:* On occasion.

*Affected Public:* Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government.

*Number of Respondents:* 112,066.

*Estimated Time Per Respondent:* Time ranges from 5 minutes to maintain records to 1 hour for medical exams.

*Total Burden Hours:* 521,110.

*Total annualized capital/startup costs:* 0.

*Total annual costs (operating/maintaining systems or purchasing services):* $54,209,103.

*Description:* The Formaldehyde Standard and its information collection is designed to provide protection for employees from the adverse effects associated with occupational exposure to formaldehyde.

The standard requires employers to monitor employee exposure to formaldehyde and provide notification to employees of their exposure to

formaldehyde. Employers are required to make available medical exams to employees who are or may be exposed to formaldehyde at or above the action level (0.5 parts per million calculated as an eight hour time-weighted average), or exceeding the short term exposure limit (two parts formaldehyde per million parts per air). Exposure monitoring and medical records are to be retained for prescribed amounts of time, and under certain circumstances such records may be transferred to the National Institute for Occupational Safety and Health. Employers are also required to communicate the hazards associated with exposure to formaldehyde through signs, labels, material safety data sheets, and training.

*Agency:* Occupational Safety and Health Administration.

*Title:* Construction Fall Protection Plans and Records (29 CFR 1926.502 and 1926.503).

*OMB Number:* 1218–0197 (extension).

*Frequency:* On occasion.

*Affected Public:* Business or other for-profit.

*Number of Respondents:* 6,000 (sites of net installation certification); 100,000 (sites using fall protection plan); and 4 million (workers trained).

*Estimated Time Per Respondent:* 5 minutes (safety net certification records); 1 hour 5 minutes (fall protection plan); 5 minutes (training certification records).

*Total Burden Hours:* 767,246.

*Total annualized capital/startup costs:* 0.

*Total annual costs (operating/maintaining systems or purchasing services):* 0.

*Description:* The construction standard for fall protection allows employers to develop alternative procedures to the use of conventional fall protection systems when the systems are infeasible or create a greater hazard. The alternative procedures (plan) must be written. Also, employers who use safety net systems may certify that the installation meets the standard's criteria in lieu of performing a drop-test on the net. In addition, employers are required to prepare training certification records for their employees. The plan and certification records ensure that employers comply with the requirements to protect workers from falls,which account for the largest number of fatalities among construction workers.

*Agency:* Occupational Safety and Health Administration.

*Title:* Forging Machines (29 CFR 1920.218(a)(2)(I) and (ii))—Inspection Certifications.

*OMB Number:* 1210-0 new (formerly 1218–1210) (extension).

*Frequency:* Bi-weekly.

*Affected Public:* Business or other for-profit; Federal Government; State, Local or Tribal Government.

*Number of Respondents:* 27,700.

*Estimated Time Per Respondent:* 10 Minutes.

*Total Burden Hours:* 244,868.

*Total annualized capital/startup costs:* 0

*Total annual costs (operating/maintaining systems or purchasing services):* 0.

*Description:* The inspection certifications required by 29 CFR 1910.218(a)(2)(I) and (ii) are necessary to assure compliance with the requirements for forging machines They are intended to assure that the forging machines have periodic and regular maintenance checks and that guards and point of operation protection devices have scheduled and record inspections.

*Agency:* Occupational Safety and Health Administration.

*Title:* Aboveground Tank Venting Devices (29 CFR 1910.106(b)(v)(I) and 29 CFR 1926.152(I)(2)(v)(I)—Withdrawal of Paperwork for Manufacturer's Certification of Test.

*OMB Number:* 1218-0 new (formerly 1218–0210) (withdrawal).

*Frequency:* On occasion.

*Affected Public:* Business or other for-profit; Federal Government; State, Local or Tribal Government.

*Number of Respondents:* 0.

*Estimated Time Per Respondent:* 0.

*Total Burden Hours:* 0.

*Total annualized capital/startup costs:* 0

*Total annual costs (operating/maintaining systems or purchasing services):* 0.

*Description:* The requirements for the testing of venting devices on aboveground flammable and combustible liquid tanks are found at 29 CFR 1910.106(b)(2)(v)(I) and 29 CFR 1926.152(I)(2)(v)(I). The requirements are for a one-time test of the flow capacity of each type and size of tank venting devices 12 inches or smaller in nominal pipe size installed on aboveground tanks. 29 CFR 1910.106(b)(2)(v)(I) and 29 CFR 1926.152(I)(2)(v)(I) are two of 33 provisions currently contained in the paperwork package entitled ''Certification Records for Tests, Inspections, Maintenance Checks and Training (OMB Control Number 1218–0210); however, OSHA has determined that there are no collections of information required by these provisions. These provisions contain no explicit requirements for the collection of information regarding that testing.

**Theresa M. O'Malley,**

*Departmental Clearance Officer.*

[FR Doc. 97–25919 Filed 9–29–97; 8:45 am]

BILLING CODE 4510–26–M

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## DEPARTMENT OF LABOR

### Employment and Training Administration

### Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of September, 1997.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

### Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

*TA–W–33,694; Gasbane Products, Inc., Dubois, PA*

*TA–W–33,742; Dana Corp., Spicer Trailer Products, Berwick, PA*

*TA–W–33,728; Rayloc, Inc., Atlanta, GA*

*TA–W–33,491; Coats American, Rossville Plant, Rossville, GA*

*TA–W–33,353; TechnoTrim, Incorporated, Greencastle, IN*

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

*TA–W–33,746; Pathmark Stores, Inc., Store* #548, Allentown, PA

*TA–W–33,711; Amax Apparel Co., El Paso, TX*

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

*TA–W–33,576; Microenergy, Inc., Memphis, MO*

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

*TA–W–33,628; Ametek, U.S. Gauge Div., Sellerville, PA*

The investigation revealed that criteria (1) and criteria (2) have not been met. A significant number or proportion of the workers did not become totally or partially separated as required for certification. Sales or production did not decline during the relevant period as required for certification.

*TA–W–33,696; Cooper Slide Sales, Inc., Genesee, PA*

*TA–W–33,727; CMS Nomeco Oil and Gas Co., Jackson, MI*

*TA–W–33,741; Bel/Kaukauna USA, Inc., Leitchfield, KY*

Increased imports did not contribute importantly to worker separations at the firm.

**Affirmative Determinations for Worker Adjustment Assistance**

The following certifications have been issued; the date following the company name & location for each determination references the impact date for all workers for such determination.

*TA–W–33,673; Lawson Mardon Wheaton, Inc., Easton, MD: June 1, 1996.*

*TA–W–33,763; SL Auburn, Inc., Auburn, NY: August 15, 1996.*

*TA–W–33,590; Maine Shoe, Inc., Lewiston, ME: June 6, 1996.*

*TA–W–33,646; Stanley Door Systems, Div. of Stanley Works, Troy, MI: June 13, 1996.*

*TA–W–33,667; August Embroideries, Fairview, NJ: June 25, 1996.*

*TA–W–33,738; Diamond Multimedia Communications Div., Albany, OR: August 4, 1996.*

*TA–W–33,662; Batesville Manufacturing, Clarkesville, GA: July 1, 1996.*

*TA–W–33,500; Trendline Home Fashions, Inc., Miami, FL: May 5, 1996.*

*TA–W–33,710; Innovative Acquisition Corp., D/B/A Innovative Textile, New York, NY: July 23, 1996.*

*TA–W–33,687; Bend Manufacturing Co., Inc., Bend, OR: July 15, 1996.*

*TA–W–33,701; J.B.J. Fabrics, Inc., New York, NY: July 22, 1996.*

*TA–W–33,494 & TA–W–33,495; Wearever Shirt Co., Inc, New York, NY and Freeburg, PA: May 7, 1996.*

*TA–W–33,745; Pro-Tech Respirators, Inc., Div., of Bacon USA, Buchanon, MI: August 5, 1996.*

*TA–W–33,620; Allegiance Healthcare, Inc., Riverside, CA: and Temporary Workers of VIP Temporary Services, Ontario, CA: June 16, 1996.*

*TA–W–33,670; Kimberly Clark Corp., Winslow Plant, Winslow, ME: June 23, 1996.*

*TA–W–33,626; Plews/Edelman Lubrimatic Div. of Stant Corp., Spencer, IA: June 23, 1996*

*TA–W–33,691; Cosco, Inc., Bremen, GA: July 16, 1996.*

*TA–W–33,704; Elberton Manufacturing, Elberton, GA: July 23, 1996.*

*TA–W–33,651; BASF Corp., Holyoke, MA: June 25, 1996.*

*TA–W–33,698; Eveready Battery Co., Inc., Fremont, OH: July 24, 1996.*

*TA–W–33,767; Fruit of the Loom, Martin Mills, Inc., St. Martinville, LA; & Operating at the Following Locations: A; Abbeville Mills, Div of Martin Mills, Inc., Abbeville, LA, B; Port Barre Mills Div of Martin Mills, Inc., Port Barre, LA, C; Fruit of The Loom Texas, Inc, Harlingen, TX, D; Fruite of The Loom, Jamestown, KY and E; Fruit of The Loom, Sherman, MS: August 14, 1996.*

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of September, 1997.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

**Negative Determinations NAFTA–TAA**

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

*NAFTA–TAA–01749; Glades H & P, Belle Glade, FL*

*NAFTA–TAA–01716; Domi AGR, Inc., (Workers Leased to Untied States Sugar Corp), Clewiston, FL*

*NAFTA–TAA–01710; Black Gold Farms, Inc., Belle Glade, FL*

*NAFTA–TAA–01837; Varity Dayton Walther, Portsmouth, OH*

*NAFTA–TAA–01829; Gasbarre Products, Inc., DubBois, PA*

*NAFTA–TAA–01866; Dana Corp., Spicer Trailer Products, Berwick, PA*

*NAFTA–TAA–01645; Coats American Rossville Plant, Rossville, GA*

*NAFTA–TAA–01853; Rayloc, Inc., Atlanta, GA*

*NAFTA–TAA–01745; Morrison Farms, Inc., McAlpin, FL*

*NAFTA–TAA–01725; Trendline Home Fashions, Inc., Miami, FL*

*NAFTA–TAA–01840; Brandon Apparel Group, Inc., Columbus, WI*

*NAFTA–TAA–01863; U.S. Can Co., Racine, WI*

*NAFTA–TAA–01871; Hasser Enterprises, Inc., Lafayette, IN*

*NAFTA–TAA–01773; Fresh Picks Farms, Inc., Princeton, FL*

*NAFTA–TAA–01712; Osceola Farms, Pahokee, FL*

*NAFTA–TAA–01648; Honeywell, Inc., Arlington Heights Operation, Arlington Heights, IL*

*NAFTA–TAA–01736; Okeelanta Corp., Palm Beach, FL*

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

*NAFTA–TAA–01880; Amex Apparel Co., El Paso, TX*

*NAFTA–TAA–01847; Northwest Agricultural Cooperative*

*Association, Inc., Finished Fleet Div., Ontario, OR*

The investigation revealed that the workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

*NAFTA–TAA–01816; United Steering System, Inc., Grabill, IN*

The investigation revealed that criteria (1) has not been met. A significant number or proportion of the workers in such workers' firm or an appropriate subdivision (including workers in any agricultural firm or appropriate subdivision) have not become totally or partially separated from employment.

*NAFTA–TAA–01703; Microenergy, Inc., Memphis, MO*

The investigation revealed that criteria (2) has not been met. Sales or production or both did not decline during the relevant period for certification.

**Affirmative Determinations NAFTA–TAA**

The following certifications have been issued; the date following the company name & location for each determination references the impact date for all workers for such determinations.

*NAFTA–TAA–01833; Port Clyde Canning Co., Rockland, ME: July 17, 1996.*

*NAFTA–TAA–01848; Greco Manufacturing, Inc., Puyallup, WA: July 21, 1996.*

*NAFTA–TAA–01806; Scotch Maid, Inc., Sara Lee Bodywear, Allentown, PA: July 1, 1996.*

*NAFTA–TAA–01822: Bausch and Lomb, Frame Center, Rochester, NY: July 9, 1996.*

*NAFTA–TAA–01843; Eveready Battery Co., Inc., Fremont, OH: July 8, 1996.*

*NAFTA–TAA–01889; Shure Electronics, Douglas, AZ: August 22, 1996.*

*NAFTA–TAA–01886; SL Auburn, Inc., Auburn, NY: August 15, 1996.*

*NAFTA–TAA–01827; Bend Manufacturing Co., Inc., Bend, OR: July 15, 1996.*

*NAFTA–TAA–01890; Noma Appliance and Electronics, Nogales, AZ: August 13, 1996.*

*NAFTA–TAA–01860; Diamond Multimedia, Communications Div., Albany OR: August 4, 1996.*

*NAFTA–TAA–01777; Stanley Door Systems, Div. of Stanley Works, Troy, MI: June 18, 1996.*

*NAFTA–TAA–01802; Batesville Manufacturing, Clarkesville, GA: July 1, 1996.*

*NAFTA–TAA–01744; Lear Corp., Fair Haven Plant, Fair Haven, MI: June 12, 1996.*

*NAFTA–TAA–01850; Stuffed Shirt, Inc., Slidell, LA: July 24, 1996.*

*NAFTA–TAA–01851; Alliant Techsystems, Inc., Radford Army Ammunition Plant, Radford, VA: June 23, 1996.*

*NAFTA–TAA–01780; Arkady Industries, Inc., Malern, AR: June 20, 1996.*

*NAFTA–TAA–01893; Conaway-Winter, Inc., Compo Shoes Div., Birch Tree, MO: August 17, 1996.*

*NAFTA–TAA–01601; Desert Clearners, Inc., El Paso, TX: March 26, 1996.*

*NAFTA–TAA–01771; Zenith Goldline Pharmaceuticals, Inc., Fort Lauderdale, FL: May 27,1996.*

I hereby certify that the aforementioned determinations were issued during the month of September, 1997. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: September 18, 1997.

**Grant D. Beale,**

*Acting Director, Office of Trade Adjustment Assistance.*

[FR Doc. 97–25868 Filed 9–29–97; 8:45 am]

BILLING CODE 4510–30–M

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## DEPARTMENT OF LABOR

### Employment and Training Administration

### Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determined whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioner or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address show below, not later than October 10, 1997.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address show below, not later than October 10, 1997.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, DC, this 15th day of September, 1997.

**Grant D. Beale,**

*Acting Director, Office of Trade Adjustment Assistance.*

APPENDIX—PETITIONS INSTITUTED ON 09/15/97

| TA–W | Subject firm (petitioners) | Location | Date of petition | Product(s) |
|---|---|---|---|---|
| 33,815 | Amity Dying and Finishing (UNITE) | Augusta, GA | 09/02/97 | Dyeing and Finishing of Greige Goods. |
| 33,816 | Seymour Housewares (Wkrs) | Mooresville, NY | 08/28/97 | Sorts and Hold Laundry Housewares. |
| 33,817 | Amex Manufacturing (Co.) | El Paso, TX | 08/18/97 | Sew Curtains and Baby Products. |
| 33,818 | Sew More, Inc (Co.) | Albemarle, NC | 08/25/97 | T-shirts. |
| 33,819 | Collegiate Sportswear (Wkrs) | Kingston, TN | 08/27/87 | NBA & NFL Replica Jerseys. |
| 33,820 | Fisher Rosemount Petro. (Co.) | Statesboro, GA | 08/20/97 | Magnetic Flow Meters. |
| 33,821 | Universal Friction (Co.) | Manheim, PA | 09/03/97 | Clutch Facings & Brake Linings. |

APPENDIX—PETITIONS INSTITUTED ON 09/15/97—Continued

| TA–W | Subject firm (petitioners) | Location | Date of petition | Product(s) |
|---|---|---|---|---|
| 33,822 | Dana Design (Co.) | Bozeman, MT | 08/26/97 | Backpacks. |
| 33,823 | Princeton Carpets (Wkrs) | Adairsville, GA | 08/28/97 | Woven Area Rugs. |
| 33,824 | Wolverine World Wide (Wkrs) | Jonesboro, AR | 08/21/97 | Women's Shoes. |
| 33,825 | Solomon Company (The) (Co.) | Leeds, AL | 08/28/97 | Men's Dress Slacks. |

[FR Doc. 97–25864 Filed 9–29–97; 8:45 am]

BILLING CODE 4310–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–33,690]**

### Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance Bemis Company, Incorporated, Memphis, Tennessee

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 21, 1997, applicable to all workers of Bemis Company, Incorporated located in Cordova, Tennessee. The notice will be published soon in the **Federal Register**.

At the request of the Company, the Department reviewed the certification for workers of the subject firm. New findings show that the Department incorrectly identified the subject firm location. The investigation conducted for the subject firm was conducted on behalf of the workers at the paper bags for produce and paper industrial bags production facility located in Memphis, Tennessee. Cordova, Tennessee in the Division office of the subject firm and is not the subject of the investigation. The Department is amending the certification determination to correctly identify the city to read Memphis, Tennessee.

The amended notice applicable to TA–W–33,690 is hereby issued as follows:

''All workers of Bemis Company, Incorporated, Memphis, Tennessee who became totally or partially separated from employment on or after July 11, 1996 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, D.C. this 12th day of September 1997.

**Grant D. Beale,**

*Acting Director, Office of Trade Adjustment Assistance.*

[FR Doc. 96–25871 Filed 9–29–97; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 10, 1997.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 10, 1997.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 8th day of September, 1997.

**Grant D. Beale,**

*Acting Director, Office of Trade Adjustment Assistance.*

APPENDIX.—PETITIONS INSTITUTED ON 09/08/97

| TA–W | Subject firm (petitioners) | Location | Date of petition | Product(s) |
|---|---|---|---|---|
| 33,791 | Ergodyne Corp (Wrks) | Pence, WI | 08/22/97 | Ergodynamic Products. |
| 33,792 | Label Art/Short Run Label (UNITE) | Linthicum Hgts, MD | 08/27/97 | Diecut Self-Adhesive Printed Labels. |
| 33,793 | Thomas and Betts (Wkrs) | Sanford, ME | 08/07/97 | Electronic Connectors. |
| 33,794 | Remington Apparel Co. (Comp) | Graham, TX | 08/21/97 | Men's Neck Ties. |
| 33,795 | Patrilda Sportswear (Comp) | Montgomery, PA | 08/25/97 | Children's Sportswear. |
| 33,796 | Drummond Co., Inc. (UMWA) | Graysville, AL | 08/20/97 | Coal Mining. |
| 33,797 | SMS Textile Mills (Wkrs) | Allentown, PA | 08/21/97 | Elastic Fabrics. |
| 33,798 | Concept Apparel 2000, Inc (Comp) | El Paso, TX | 08/16/97 | Women's Denim Jeans, Shorts. |
| 33,799 | West Virginia Shoe Co (Comp) | Marlinton, WV | 08/25/97 | Handsewn Shoes—Casual, Dress. |
| 33,800 | Milco Industries, Inc. (TGWA) | Bloomsburg, PA | 08/25/97 | Women's Intimate Apparel and Sleepwear. |
| 33,801 | Louisville Manufacturing (Wkrs) | Louisville, GA | 08/26/97 | Fleece Shirt, Jersey Shirts. |
| 33,802 | ACER TI Corp. USA (Wkrs) | Temple, TX | 08/25/97 | Provide Info on Tex. Instrument Computers. |
| 33,803 | Precise Polestar, Inc (Wkrs) | Phillipsburg, PA | 08/15/97 | Medical Components for Endo Surgery. |
| 33,804 | Prewash and Pressing (Comp) | El Paso, TX | 08/20/97 | Industrial Laundry Service. |

APPENDIX.—PETITIONS INSTITUTED ON 09/08/97—Continued

| TA–W | Subject firm (petitioners) | Location | Date of petition | Product(s) |
|---|---|---|---|---|
| 33,805 | Marsey Lace (Wkrs) | Guttenberg, NJ | 08/18/97 | Embroidery for Garment Industry. |
| 33,806 | Creative Embroidery Corp (Comp) | Bloomfield, NJ | 08/25/97 | Infant's Garments. |
| 33,807 | Superior Farms, Inc (UFCW) | Ellensburg, WA | 08/20/97 | Lamb Meat Products |
| 33,808 | MagneTek (Wkrs) | Huntington, IN | 07/07/97 | Converters and Transformers. |
| 33,809 | 3C Alliance, L.L.P. (Comp) | Mebane, NC | 08/21/97 | Rechargeable Batteries. |
| 33,810 | Lenzing Fibers Corp (Wkrs) | Lowland, TN | 08/25/97 | Rayon Staple Fiber. |
| 33,811 | Philips Technologies (Wkrs) | Cambridge, MD | 08/27/97 | Circuit Breakers—Protective Devices. |
| 33,812 | Cumberland Apparel (Wkrs) | Monticello, KY | 08/27/97 | Childrens Sleepwear, Sportswear. |
| 33,813 | BASF Coatings & Colorants (Wkrs) | Morganton, NC | 08/29/97 | Materials for Auto Paint. |
| 33,814 | Bourns, Inc (Comp) | Riverside, CA | 08/20/97 | Pressure Transducers. |

[FR Doc. 97–25865 Filed 9–29–97; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–33,767]**

### Fruit of the Loom; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

Martin Mills, Inc., D/B/A St. Martinville Mills, Including Former Employees of Jeanerette Mills, St. Martinville, Louisiana
TA–W–33,767A, Abbeville Mills, Division of Martin Mills, Inc., Including Former Employees of Jeanerette Mills, Abbeville, Louisiana
TA–W–33,767B, Port Barre Mills, Division of Martin Mills, Inc., Including Former Employees of Jeanerette Mills, Port Barre, Louisiana
and
TA–W–33,767D, Fruit of the Loom, Jamestown, Kentucky

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on August 29, 1997, applicable to workers of Fruit of the Loom, Martin Mills, Inc., located in St. Martinville, Abbeville, and Port Barre, Louisiana, and Jamestown, Kentucky. The notice will soon be published in the **Federal Register**.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in employment related to the production of T-shirts, briefs, boxers and layette. Findings on review show that some of the workers at the subject firm locations in Louisiana have had their wages reported to the separate Unemployment Insurance tax account for Jeanerette Mills, a subsidiary of Fruit of the Loom. Other new findings show that Martin Mills, Inc. in St. Martinville, Louisiana is doing business as St. Martinville Mills. Based on this new information, the Department is amending the certification to reflect these matters.

Further review of the Jamestown, Kentucky certification for workers of Fruit of the Loom shows that workers were covered under a previous TAA certification, TA–W–31,144, which expired on July 31, 1997. To avoid overlap in worker coverage, the Department is amending the new TAA certification for workers of Fruit of the Loom located in Jamestown, Kentucky to reflect the new impact date of August 1, 1997.

The amended notice applicable to TA–W–33,767 is hereby issued as follows:

''All workers of Fruit of the Loom, Martin Mills, Inc., doing business as St. Martinville Mills, including former employees of Jeanerette Mills, St. Martinville, Louisiana (TA–W–33,767), Abbeville Mills, Division of Martin Mills, Inc., including former employees of Jeanerette Mills, Abbeville, Louisiana (TA–W–33,767A), Port Barre Mills, Division of Martin Mills Inc., including former employees of Jeanerette Mills, Port Barre, Louisiana (TA–W–33,767B), who became totally or partially separated from employment on or after August 14, 1996; and all workers of Fruit of the Loom, Jamestown, Kentucky (TA–W–33,767D) who became totally or partially separated from employment on or after August 1, 1997, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed in Washington. D.C. this 14th day of September 1997.

**Grant D. Beale,**

*Acting Director, Office of Trade Adjustment Assistance.*

[FR Doc. 97–25860 Filed 9–29–97; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

Levi Strauss and Company;
TA–W–33,513; Goodyear Cutting Facility and El Paso Field Headquarters; 1440 Goodyear, El Paso, Texas;
TA–W–33,513W; Kastrin Street Plant; 1000 Kastrin Street, El Paso, Texas

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 7, 1997, applicable to workers of Levi Strauss and Company, located in El Paso, Texas. The notice will be published soon in the **Federal Register**.

At the request of the company, the Department reviewed the certification for workers of the subject firm. New information received by the company shows that worker separations have occurred at the Kastrin Street Plant and the El Paso Field Headquarters, El Paso, Texas locations of Levi Strauss and Company. The Kastrin Street Plant is a sewing facility for Levi's manufacturing facilities. The El Paso Field Headquarters at 1440 Goodyear in El Paso, Texas is an administrative office servicing the western regional manufacturing facilities of Levi Strauss. The 1440 Goodyear location is also a cutting facility. The workers are engaged in employment related to the production of men's, women's and youth's denim jeans and jackets. Based on this new information, the Department is amending the certification to cover the subject firm's Kastrin Street Plant and the El Paso Field Headquarters, El Paso, Texas.

The intent of the Department's certification is to include all workers of Levi Strauss and Company who were adversely affected by increased imports

of men's, women's and youth's denim jeans and jackets.

The amended notice applicable to TA–W–33,513 is hereby issued as follows:

''All workers of Levi Strauss and Company, Goodyear Cutting Facility and El Paso Field Headquarters, El Paso, Texas (TA–W–33,513) and Kastrin Street Plant, El Paso Texas (TA–W–33,513W) engaged in employment related to the production of men's, women's and youth's denim jeans and jackets who became totally or partially separated from employment on or after May 13, 1996 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, DC this 14th day of September, 1997.

**Grant D. Beale,**

*Acting Director, Office of Trade Adjustment Assistance.*

[FR Doc. 97–25874 Filed 9–29–97; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–33,487 Corporate Office, Medford OR; TA–W–33,487A MDF Plant, Medford OR; TA–W–33,487B Veneer Division, Rogue River, OR and NAFTA 01649 Corporate Office, Medford OR; NAFTA 01649A MDF Plant, Medford OR; NAFTA 01649B Veneer Division, Rogue River, OR]**

### Medite Corporation; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of August 11, 1997, the State of Oregon transmitted the subject firm's request for administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to petition number TA–W–33,487 and NAFTA petition number 01649. The denial notice was signed on July 16, 1997 and published in the **Federal Register** on August 1, 1997 (62 FR 41423).

The subject firm asserts that there are imports of like and directly competitive articles from foreign sources which caused the employment separations and provided additional information to substantiate the claim.

### Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, D.C. this 22nd day of September 1997.

**Grant D. Beale,**

*Acting Director, Office of Trade Adjustment Assistance.*

[FR Doc. 97–25864 Filed 9–29–97; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 10, 1997.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 10, 1997.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 2nd day of September, 1997.

**Grant D. Beale,**

*Acting Director, Office of Trade Adjustment Assistance.*

APPENDIX.—PETITIONS INSTITUTED ON 09/02/97

| TA–W | Subject firm (petitioners) | Location | Date of petition | Product(s) |
|---|---|---|---|---|
| 33,768 | Mr. Casuals (Co.) | Independence, VA | 08/12/97 | Trousers, Shorts, Skirts. |
| 33,769 | Colorforms (Wkrs) | Ramsey, NJ | 08/15/97 | Toys. |
| 33,770 | Appleton Papers (UPIU) | Newton Falls, NY | 09/07/97 | Coated Papers. |
| 33,771 | Tara Lee Sportswear (Co.) | New Berlin, PA | 08/18/97 | Sew Knit Tops and Sweatshirts. |
| 33,772 | CW Sportswear, Inc (Co.) | Tellico Plains, TN | 08/14/97 | M–65 Field Jackets. |
| 33,773 | Banner Pharmacaps (Wkrs) | Elizabeth, NJ | 07/11/97 | Pharmaceutical Gelatin Capsules. |
| 33,774 | Noma Appliance and Elect (Co.) | Nogales, AZ | 08/20/97 | Appliance Harnesses. |
| 33,775 | CTS Corporation (Wkrs) | Baldwin, WI | 08/19/97 | Electronic Connectors and Back Panels. |
| 33,776 | Appalachian Finishing (Co). | Knoxville, TN | 08/18/97 | Dyeing & Finishing Tubular Knits. |
| 33,777 | U.S. Ring Binder Corp (Wkrs) | New Bedford, MA | 08/15/97 | Off. & Warehouse of 3-Ring BInder Mech. |
| 33,778 | Oneita Industries (Co.) | Cullman, AL | 08/14/97 | Administrative & Mgnt Duties. |
| 33,779 | True Form Intimate (UNITE) | Sharon Hill, PA | 08/21/97 | Intimate Apparel for Women. |
| 33,780 | Coleman Company, Inc (Wkrs) | Hastings, NE | 08/22/97 | Cold Water Pressure Washers. |
| 33,781 | Mitsubishi Consumer Elec. (Co). | Santa Ana, CA | 08/21/97 | Projection Televisions. |
| 33,782 | General Motors Corp. (Co.) | Livonia, MI | 08/13/97 | Leaf Springs for Trucks. |
| 33,783 | General Electric Co. (IUE) | Ft. Wayne, IN | 08/19/97 | Permanent Magnetic & AC Motors. |
| 33,784 | Pridecraft Enterprises (Co.) | Forsyth, GA | 08/18/97 | Hospital and Medical Textiles. |
| 33,785 | Pridecraft Enterprises (Co.) | Georgiana, AL | 08/18/97 | Hospital and Medical Textiles. |
| 33,786 | Strauss Underwear Corp. (Wkrs) | Jersey City, NJ | 07/16/97 | Intimate Apparel. |
| 33,787 | Stanley Hardware (IAM) | New Britain, CT | 08/19/97 | Household Hardware. |
| 33,788 | Conaway Winter, Inc. (Wkrs) | Birch Tree, MD | 08/17/97 | Children's Shoes. |

APPENDIX.—PETITIONS INSTITUTED ON 09/02/97—Continued

| TA–W | Subject firm (petitioners) | Location | Date of petition | Product(s) |
|---|---|---|---|---|
| 33,789 ..... | Indian Valley Industries (Wkrs) ..... | Johnson City, NY ..... | 08/06/97 | Mesh and Burlap Bags. |
| 33,790 ..... | Bassett Walker, Inc (Co.) ..... | No. Wilkesboro, NC .... | 08/20/97 | Tree Shirts and Sweat Suits. |

[FR Doc. 97–25862 Filed 9–29–97; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–33,522]**

### North Safety Products, Cranston, Rhode Island; Including Leased Workers of Kelly Services, Incorporated, Warwick, Rhode Island; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 18, 1997, applicable to all workers of North Safety Products, located in Cranston, Rhode Island. The notice was published in the **Federal Register** on September 4, 1997 (62 46775).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information provided by the State shows that some workers of North Safety Products were leased from Kelly Services, Incorporated to produce respiratory and eye and face protective devices. Based on these findings, the Department is amending the certification to include leased workers from Kelly Services, Incorporated, Warwick, Rhode Island.

The intent of the Department's certification is to include all workers of North Safety Products adversely affected by imports.

The amended notice applicable to TA–W–33,522 is hereby issued as follows:

All workers of North Safety Products, Cranston, Rhode Island, and leased workers of Kelly Services, Incorporated, Warwick, Rhode Island engaged in employment related to the production of respiratory and eye and face protection devices for North Safety Products, Cranston, Rhode Island who became totally or partially separated from employment on or after May 14, 1996, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 14th day of September 1997.

**Grant D. Beale,**

*Acting Director, Office of Trade Adjustment Assistance.*

[FR Doc. 97–25875 Filed 9–29–97; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–33,326]**

### Owens-Illinois Closure, Inc., Erie, PA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on June 5, 1997, applicable to workers of Owens-Illinois Closure, Inc., located in Erie, Pennsylvania. The notice was published in the **Federal Register** on June 27, 1997 (62 FR 34710).

At the request of the State agency the Department reviewed the certification for workers of the subject firm. Findings show that the petition investigation was conducted on behalf of workers at Owens-Illinois Closure Inc., producing metal cans and lids. The TAA certification, however, covered all workers of Owens-Illinois Closure, Inc., in Erie, Pennsylvania.

Other findings of the investigation review show that the decision document inadvertently reported that the plant closed on December 31, 1996. The plant, however, continues in operation. There is another worker group at the subject plant that produce plastic products.

Since the workers are separately identifiable by product line, the Department is amending the worker group certification to limit coverage to only those workers of Owens-Illinois Closure, Inc., in Erie, Pennsylvania producing metal cans and lids.

The intent of the Department's certification is to include only those workers of Owens-Illinois Closure, Inc., who were affected by increased imports.

The amended notice applicable to TA–W–33,326 is hereby issued as follows:

All workers of Owens-Illinois Closure, Inc., Erie, Pennsylvania, engaged in employment related to the production of metal cans and lids, who became totally or partially separated from employment on or after February 28, 1996, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 12th day of September 1997.

**Grant D. Beale,**

*Acting Director, Office of Trade Adjustment Assistance.*

[FR Doc. 97–25869 Filed 9–29–97; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

TA–W–32,487; Savannah Manufacturing Corporation, Savannah, Tennessee;
TA–W–32,487C; Hickory Hills Industries, Incorporated, New York, New York

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 3, 1996, applicable to all workers of Savannah Manufacturing Corporation, Savannah, Tennessee. The notice was published in the **Federal Register** on August 2, 1996 (61 FR 40454).

At the request of a petitioner, the Department reviewed the certification for workers of the subject firm. New findings show that worker separations occurred at Hickory Hills Industries, Incorporated, New York, New York when it closed in October, 1996. The workers at the New York, New York location provided sales office functions and designing to support production of children's sportswear at Hickory Hills Industries, Incorporated, also known as Savannah Manufacturing. Accordingly, the Department is amending the certification to cover workers at Hickory Hills Industries, Incorporated, New York, New York.

The intent of the Department's certification is to include all workers of Savannah Manufacturing Corporation adversely affected by increased imports.

The amended notice applicable to TA–W–32,487 is hereby issued as follows:

''All workers of Savannah Manufacturing Corporation, Savannah, Tennessee (TA–W–32,487), and Hickory Hills Industries, Incorporated, New York, New York (TA–W–32,487C) who became totally or partially separated from employment on or after June 7, 1995 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, D.C. this 12th day of September, 1997.

**Grant D. Beale,**

*Acting Director, Office of Trade Adjustment Assistance.*

[FR Doc. 97–25872 Filed 9–29–97; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–33,740]**

### Stein Steel Mill Services, Inc., Cleveland, OH; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on August 18, 1997 in response to a worker petition which was filed on behalf of workers at Stein Steel Mill Services, Inc., Cleveland, Ohio.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 14th day of September 1997.

**Grant D. Beale,**

*Acting Director, Office of Trade Adjustment Assistance.*

[FR Doc. 97–25861 Filed 9–29–97; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''The Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address show below, not later than October 10, 1997.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 10, 1997.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 25th day of August, 1997.

**Grant D. Beale,**

*Acting Director, Office of Trade Adjustment Assistance.*

APPENDIX—PETITIONS INSTITUTED ON 08/25/97

| TA–W | Subject Firm (petitioners) | Location | Date of petition | Product)s) |
|---|---|---|---|---|
| 33,754 | Unique Finishing, Inc (Wkrs) | Wrightsville, GA | 08/08/97 | Men's and Boy's Slacks. |
| 33,755 | Sealed Power Div. of Dana (Wkrs) | Rochester, IN | 08/06/97 | Cylinder Liners. |
| 33,756 | Gurney Industries (Wkrs) | Prattville, AL | 08/09/97 | T-Shirts. |
| 33,757 | International Titanium (USWA) | Cedar town, GA | 08/11/97 | Grinding of Steel Bars. |
| 33,758 | Guess, Inc (Wkrs) | Los Angeles, GA | 07/24/97 | Jeans, Casualwear. |
| 33,759 | Dyna-Craft Industries (Wkrs) | Murrys ville, PA | 08/09/97 | Lead Frames for Computers. |
| 33,760 | Brandt, Inc (IAM) | Watertown, WI | 07/30/97 | Currency Counting Machines. |
| 33,761 | CNG Transmission Corp (Comp) | Clarksburg, WV | 08/13/97 | Natural Gas Sales. |
| 33,762 | Eddie Mowad Manufacturing (Wkrs) | El Paso, TX | 08/11/97 | Jean Jackets, Hunting Jackets. |
| 33,763 | SL Auburn, Inc (UPIU) | Auburn, NY | 08/15/97 | Industrial Products. |
| 33,764 | Kaiser Aluminum (Wkrs) | Erie, PA | 08/14/97 | Aluminum Forging for Autos. |
| 33,765 | Landis and Gyr (Wkrs) | Lafayette, IN | 08/12/97 | Electricity Meters. |
| 33,766 | Versa Technologies, Inc (Comp) | Wausau, WI | 08/15/97 | Silcone Rubber Products. |
| 33,767 | Fruit of the Loom (Comp) | St. Mar tinville, LA | 08/14/97 | T-Shirts, and Underwear. |

[FR Doc. 97–25863 Filed 9–29–97; 8:45 am]
BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Proposed Information Collection Request Submitted for Public Comment

**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) [44U.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 new collection of the Lifelong Learning Demonstration Follow-Up Survey. A copy of the proposed information collection request can be obtained by contacting the individual listed below in the Addresses section of this notice.

**DATES;** Written comments must be submitted on or before December 1, 1997.

The Employment and Training Administration is particularly interested in comments which: (1) 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; (2) 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; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) 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.

**ADDRESSES:** Send comments to Jon Messenger, Office of Policy and Research, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N–5631, Washington, D.C. 20210—(202) 219–8680, Extension 113 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** The Employment and Training Administration (ETA) of the U.S. Department of Labor (DOL) is conducting a pilot project, the Lifelong Learning Demonstration, to encourage investment in education and training by currently employed workers. This pilot project addresses demands created by increasingly volatile global labor markets, in which workers must move with greater frequency to new jobs and new careers that require more knowledge and job-related skills. The project will make it easier for currently employed adults with substantial work experience to explore new career directions, plan for potential skill needs, and take action to pursue the education and training that will help them prosper in an increasingly competitive global labor market.

A public information campaign undertaken by DOL with the assistance of the U.S. Department of Education (ED) targeted currently-employed adults with substantial work experience as a group likely to benefit from more information on its education and career options. The project will examine whether comprehensive information on educational opportunities—plus the availability of affordable financing through new and expanded Federal financial aid programs—prompts incumbent workers to seek additional education to upgrade their job-related skills and improve their careers. The promotion of post-secondary education and student financial aid is thus a means of increasing the skills and improving the labor market outcomes of these workers.

The Lifelong Learning Demonstration provided targeted workers with comprehensive information about post-secondary education and training opportunities, and streamlined referrals of interested workers to participating educational institutions. This demonstration project is a controlled experiment, with random assignment of adult workers to a treatment group that received brochures promoting education and training and offering further information about local schools and opportunities for student financial aid, and a control group that does not receive this information. Public information campaigns aimed at targeted workers were conducted in the Greater Baltimore, Maryland, area in the summer and fall of 1996.

The Lifelong Learning Demonstration Follow-Up Survey will be a telephone survey of 5,000 individuals in the Greater Baltimore area (2,500 treatment group members and 2,500 control group members). With an estimated 80 percent response rate, 4,000 individuals will complete the survey. Those individuals who have recently obtained additional schooling will be over sampled to allow more detailed analysis of their experiences.

The first objective of the proposed survey is to determine the impact of the Lifelong Learning Demonstration on sample group members. Questions in the survey ask about the respondent's education, employment experiences, and use of student financial aid since June 1996, the start of the demonstration in Baltimore. Background questions on the person's age, gender, race/ethnicity, household composition, and pre-demonstration level of education and use of student financial aid are also asked so that the impacts can be separately determined for various subgroups.

The second objective of the survey is to collect information needed for a cost-benefit analysis of the demonstration. Questions ask about the respondent's earnings and income including benefits from government programs. For respondents who participated in education or training programs since the start of the demonstration, the survey also contains questions on the costs of schooling, sources of funds for schooling, and time spent doing course work outside of class.

The third objective of the survey is to learn about financial and non-financial barriers for adult workers in getting additional education and training to inform any future public information campaigns and for other ETA and ED programs affecting the education and training of adults in the U.S. work force. Questions ask about the value of additional education and training for the respondent, and the financial and non-financial barriers people who have enrolled or applied to school have encountered, as well as barriers other adults think they will encounter if they decided to participate in education or training programs.

*Type of Review:* New.

*Agency:* Employment and Training Administration.

*Title:* Lifelong Learning Demonstration Follow-Up Survey.

*Affected Public:* Individuals.

*Total Respondents:* 4,000.

*Frequency:* One-time.

*Total Responses:*

*Average Time per Response:* 35 minutes.

*Estimated Total Burden Hours:* 2,333 hours.

*Total Burden Cost to Respondents (capital/startup)*: $0.

*Total Burden Cost to Respondents (operating/maintaining)*: $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget Approval of the information collection request: they also will become a matter of public record.

Dated at Washington, D.C. this 23rd day of September 1997.

**Gerard F. Fiala,**

*Adminstrator, Office of Policy and Research, Employment and Training Administration.*

[FR Doc. 97–25783 Filed 9–29–97; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Job Training Partnership Act; Native American Employment and Training Council; Notice of Open Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and Section 401(h)(1) of the Job Training Partnership Act, as amended (29 U.S.C. 1671(h)(1)), notice is hereby given of an open meeting of the Native American Employment and Training Council.

*Time and Date:* The meeting will begin at 9:00 a.m. on October 23, 1997, and continue until approximately 5:00 p.m.; and will reconvene at 9:00 a.m. on October 24, 1997, and adjourn at approximately 5:00 p.m. From 3:00 p.m. to 5:00 p.m. on October 23 will be reserved for participation and presentations by members of the public. Interested persons may send comments, views, statements or data for consideration by the Council, preferably with twenty copies to: Mr. Thomas M. Dowd, at the address presented below.

*Place:* U.S. Department of Labor, Washington, D.C., Frances Perkins Building, 200 Constitution Avenue, N.W., Room N–3437 A–D.

*Status:* The meeting will be open to the public.

*Matters To Be Considered:* The agenda will focus on the following topics: (1) Welfare-to-Work; (2) New Performance Measures; (3) Evaluation progress of the Section 401 program; (4) Partnership update; and (5) One Stop Shops.

*FOR FURTHER INFORMATION CONTACT:* Mr. Thomas M. Dowd, Chief, Division of Indian and Native American Programs. Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N–4641, Washington, D.C. 20210. Telephone: (202) 219–8502 (this is not a toll-free number).

Persons with disabilities, who need special accommodations, should call Mr. Dowd before October 16, 1997.

Signed at Washington, D.C., this 23rd day of Sept., 1997.

**Raymond J. Uhalde,**

*Acting Assistant Secretary of Labor.*

[FR Doc. 97–25876 Filed 9–29–97; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[NAFTA–01881]**

### Fruit of the Loom; Amended Certification Regarding Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Martin Mills, Inc., D/B/A St. Martinville Mills, Including Former Employees of Jeanerette Mills, St. Martinville, Louisiana

NAFTA–01881A, Abbeville Mills, Division of Martin Mills, Inc., Including Former Employees of Jeanerette Mills, Abbeville, Louisiana

and

NAFTA–01881B, Port Barre Mills, Division of Martin Mills, Inc., Including Former Employees of Jeanerette Mills, Port Barre, Louisiana

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor issued a Certification of Eligibility to Apply for NAFTA Transitional Adjustment Assistance on August 29, 1997, applicable to workers of Fruit of the Loom, Martin Mills, Inc., located in St. Martinville, Abbeville, and Port Barre, Louisiana. The notice will soon be published in the **Federal Register**.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in employment related to the production of T-shirts, briefs, boxers and layette. Findings on review show that some of the workers at the subject firm locations in Louisiana have had their wages reported to the separate Unemployment Insurance tax account for Jeanerette Mills, a subsidiary of Fruit of the Loom. Other new findings show that Martin Mills, Inc., in St. Martinville, Louisiana is doing business as St. Martinville Mills. Based on this new information, the Department is amending the certification to reflect these matters.

The amended notice applicable to NAFTA–01881 is hereby issued as follows:

''All workers of Fruit of the Loom, Martin Mills, Inc., doing business as St. Martinville Mills, including former employees of Jeanerette Mills, St. Martinville, Louisiana (NAFTA–01881), Abbeville Mills, Division of Martin Mills, Inc., including former employees of Jeanerette Mills, Abbeville, Louisiana (NAFTA–01881A), and Port Barre Mills, Division of Martin Mills Inc., including former employees of Jeanerette Mills, Port Barre, Louisiana (NAFTA–01881B), who became totally or partially separated from employment on or after August 14, 1996, are eligible to apply for adjustment assistance under Section 250 of the Trade Act of 1974.''

Signed in Washington, D.C. this 14th day of September 1997.

**Grant D. Beale,**

*Acting Director, Office of Trade Adjustment Assistance.*

[FR Doc. 97–25859 Filed 9–29–97; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Amended Certification Regarding Eligibility To Apply for NAFTA Transitional Adjustment Assistance

NAFTA–01068; Hickory Hills Industries, Incorporated; Savannah Manufacturing Company, Savannah, Tennessee;

NAFTA–01068C; Hickory Hills Industries, Incorporated, New York, New York

In accordance with Section 250(a), Subchapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor issued a Certification of Eligibility to Apply for NAFTA Transitional Adjustment Assistance on July 22, 1996, applicable to all workers of Hickory Hills Industries, Incorporated, Savannah Manufacturing Company, Savannah, Tennessee. The notice was published in the **Federal Register** on August 6, 1996 (61 FR 40853).

At the request of a petitioner, the Department reviewed the certification for workers of the subject firm. New findings show that worker separations occurred at Hickory Hills Industries, Incorporated, New York, New York when it closed in October, 1996. The workers at New York, New York location provided sales office functions and designing to support production of children's sportswear at Savannah Manufacturing. Accordingly, the Department is amending the certification to cover workers at the Hickory Hills Industries, Incorporated, New York, New York.

The intent of the Department's certification is to include all workers of Hickory Industries, Incorporated

adversely affected by imports from Mexico.

The amended notice applicable to NAFTA–01068 is hereby issued as follows:

All workers of Hickory Hills Industries, Incorporated, Savannah Manufacturing Company, Savannah, Tennessee (NAFTA–01068) and Hickory Hills Industries, Incorporated, New York, New York (NAFTA–01068C) who became totally or partially separated from employment on or after June 7, 1995 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, D.C. this 12th day of September 1997.

**Grant D. Beale,**

*Acting Director, Office of Trade Adjustment Assistance.*

[FR Doc. 97–25873 Filed 9–29–97; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[NAFTA–01548 and TA–W–33,336]**

### Inland Paperboard and Packaging, Erie, PA; Notice of Negative Determination on Reconsideration

On July 31, 1997, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The United Paperworkers International Union (UPIU) asserted that production of boxes in Mexico will increase when the Erie plant closes. The notice was published in the **Federal Register** on August 13, 1997 (62 FR 43354).

The Department initially denied NAFTA–TAA to workers of Inland Paperboard and Packaging, Inc. because criteria (3) and (4) of the group eligibility requirements in paragraph (a)(1) of Section 250 of the Trade Act, as amended, were not met. There were no company imports of corrugated shipping boxes from Mexico or Canada, nor was there a shift in production from the workers' firm to Mexico or Canada. The layoffs were attributable to company's decision to close the Erie plant and open a new production facility in Ohio.

The Department initially denied TAA to workers of Inland Paperboard and Packaging, Inc. because the ''contributed importantly'' group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended, was not met. The investigation revealed that the company decided to close the Erie plant and open a new production facility in Ohio. The parent company retained the Erie customer base.

The UPIU request for reconsideration asserts that Inland is exporting boxes to Mexico where they are loaded with Mexican products and returned to the United States. Inland's exports of corrugated shipping containers to Mexico or any other country is not a basis for a worker group certification. The Department is required examine import impact of articles like or directly competitive with the product produced at the worker's firm. Shipping containers filled with articles produced in foreign countries and shipped to the United States cannot be considered like or directly competitive with the articles produced at the Erie plant.

The UPIU also asserts that Inland Paperboard and Packaging, Inc. is increasing production at their Mexican corrugated box factory, and is building production capacity abroad. The Erie workers could be certified only if the company or customers of the subject firm were increasing imports of corrugated shipping containers. The company reported no imports of shipping containers.

Investigation on reconsideration shows that there was no corporate-wide decline in sales or production of corrugated shipping containers at Inland Paperboard and Packaging. New information provided by the company reveals that production at the Erie plant served a regional market. Customer accounts serviced by Erie are being handled by other Inland facilities in the region. Since there was no decline in sales, a customer survey was not conducted.

### Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of Inland Paperboard and Packaging, Erie, Pennsylvania, under Section 250 and Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 22nd day of September 1997.

**Grant D. Beale,**

*Acting Director, Office of Trade Adjustment Assistance.*

[FR Doc. 97–25878 Filed 9–29–97; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Amended Certification Regarding Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Levi Strauss and Company;
NAFTA—01807; Goodyear Cutting Facility and El Paso Field Headquarters; 1440 Goodyear El Paso, Texas;
NAFTA—01807W; Kastrin Street Plant 1000 Kastrin Street El Paso, Texas

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor issued a Certification of Eligibility to Apply for NAFTA Transitional Adjustment Assistance of August 7, 1997, applicable to workers of Levi Strauss and Company, in El Paso, Texas. The notice will be published soon in the **Federal Register.**

At the request of the company, the Department reviewed the certification for workers of the subject firm. The findings show that worker separations have occurred at the Kastrin street Plant and at the El Paso Field Headquarters, El Paso, Texas locations of Levi Strauss and Company. The Kastrin Street Plant is a sewing facility for Levi's manufacturing plants. The El Paso Filed Headquarters at 1440 Goodyear, in El Paso, Texas, is an administrative office servicing the western regional manufacturing facilities of Levi Strauss. The 1440 Goodyear location is also a cutting facility. The workers are engaged in employment related to the production of men's, women's and youth's denim jeans and jackets. Based on this new information, the Department is amending the certification to cover workers at the subject firm's Kastrin Street Plant and the El Paso Field Headquarters, El Paso, Texas.

The intent of the Department's certification is to include all workers of Levi Strauss and Company who were adversely affected by imparts from Mexico.

The amended notice applicable to NAFTA–01807 is hereby issued as follows:

''All workers of Levi Strauss and Company, Goodyear Cutting Facility and El Paso Field Headquarters, El Paso, Texas (NAFTA–01807) and Kastrin Street Plant, El Paso, Texas (NAFTA–01807) who were engaged in employment related to cutting, sewing, or finishing or men's, women's and/or youth's denim jeans or jackets who became totally or partially separated from employment on or after July 9, 1996 are eligible to apply for

NAFTA–TAA under Section 250 of the Trade Act of 1974.''

Signed at Washington, D.C. this 14th day of September, 1997.

**Grant D. Beale,**

*Acting Director, Office of Trade Adjustment Assistance.*

[FR Doc. 97–25866 Filed 9–29–97; 8:45 am]

BILLING CODE 4510–30–M

## LIBRARY OF CONGRESS

### Copyright Office

**[Docket No. 94–3 CARP CD 90–92]**

### Determination of the Distribution of the 1991 Cable Royalties in the Music Claimants Category

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Announcement of the schedule for the proceeding.

**SUMMARY:** The Copyright Office of the Library of Congress is announcing the schedule for the 180 day arbitration period for the Copyright Arbitration Royalty Panel (CARP) proceeding that shall determine the distribution of the cable royalty fees in the Music Claimants category which were collected for secondary transmissions of broadcast signals during 1991 pursuant to a compulsory license.

**DATES:** Filings must be submitted according to the announced schedule, except as otherwise provided by order of the Copyright Arbitration Royalty Panel.

**ADDRESSES:** Parties shall deliver an original and five copies of all written filings concerning this proceeding to: Office of the Copyright General Counsel, James Madison Memorial Building, Room 403, First and Independence Avenue, S.E., Washington, D.C. 20540.

**FOR FURTHER INFORMATION CONTACT:** William Roberts, Senior Attorney, or Tanya Sandros, Attorney Advisor, at: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

**SUPPLEMENTARY INFORMATION:**

### A. Background

On February 15, 1996, the Library of Congress published a notice requesting interested parties to comment on the existence of Phase II controversies for the distribution of the 1990, 1991, and 1992 cable royalty funds. 61 FR 6040 (February 15, 1996). The parties who filed comments and Notices of Intent to Participate identified two unsettled categories that would require resolution before a CARP. The first controversy, between James Cannings and Broadcast Music, Inc., the American Society of Composers, Authors and Publishers, and SESAC, Inc. (collectively, ''the Music Claimants''), concerns the distribution of the 1991 royalty funds in the Music Claimants category and is the subject of the current proceeding. The second controversy, however, between the National Association of Broadcasters (NAB) and the Public Broadcasting Service (PBS), has been resolved through further negotiation. On June 3, 1997, NAB and PBS notified the Copyright Office that they had reached settlement concerning all matters related to their Phase II dispute over the distribution of the 1990–1992 royalty funds, leaving a single dispute for resolution by a CARP.

The parties in the remaining controversy conducted precontroversy discovery according to the schedule which the Register of Copyrights established by order for this 45-day period. *See* Order in Docket No. 94–3 CRP CD 90–92 (February 14, 1997), vacated and reset at the request of the Music Claimants, Order in Docket No. 94–3 CARP CD 90–92 (May 21, 1997). Then, on August 28, 1997, the Copyright Office published a notice initiating the 180 day period for this proceeding. 62 FR 45687 (August 28, 1997). In this notice, the Office also announced September 4, 1997, as the date of the first meeting between the arbitration panel and the parties. However, due to scheduling conflicts, the parties agreed to reschedule the meeting for September 10, 1997. The Office further announced that it would publish a schedule of the proceedings, as required by 37 CFR 251.11(b), when it became available.

Section 251.11(b) of the regulations governing the Copyright Arbitration Royalty Panels, 37 CFR subchapter B, provides that:

> At the beginning of each proceeding, the CARP shall develop the original schedule of the proceeding which shall be published in the **Federal Register** at least seven calendar days in advance of the first meeting. Such announcement shall state the times, dates, and places of the meetings, the testimony to be heard, whether any of the meetings, or any portion of a meeting, is to be closed, and if so, which ones, and the name and telephone number of the person to contact for further information.

This notice fulfills those requirements of § 251.11(b) for the proceeding to determine the distribution of the 1991 cable royalty fees in the Music Claimants category.

### B. The Schedule

On September 10, 1997, the parties to this proceeding met with the arbitrators for the purpose of setting a schedule and discussing the procedural aspects of this proceeding. A key procedural issue before the panel which required action by the panel at the outset of the proceeding was consideration of the issue designated to the CARP by the Register of Copyrights of whether to suspend formal hearings and make the determination as to the distribution of the 1991 cable royalty fees on the written pleadings. *See* Order in Docket No. CARP CD 90–92 (August 15, 1997). After hearing argument from all parties, the panel announced its decision to waive the requirement of oral evidentiary hearings and proceed upon the written record alone. The panel stated its reasons for this decision and the specifics of the agreed upon schedule for the proceeding in a written order, as follows:

> Upon consideration of the issue designated to the CARP by the Register of Copyrights of whether to suspend formal hearings and decide the controversy as to the Phase II distribution of the 1991 cable royalty fund on the written pleadings, and after hearing the arguments of all parties, the Panel has determined that for good cause shown it is in the public interest to waive the requirement of an oral evidentiary hearing and to proceed on the written pleadings along, provided that those pleadings are supplemented by written rebuttal cases, proposed findings of fact and conclusions of law, and reply findings of fact and conclusions of law.
>
> Accordingly, and with the consent of all parties, the following procedural schedule is hereby established:
>
> 1. Mr. Cannings will provide to BMI by September 17, 1997, his request for a sample of WWOR–TV music cue sheets for 1991, as granted by Ruling No. 3 in the Register's Order dated August 15, 1997.
> 2. BMI will make such sample cue sheets available to Mr. Cannings for inspection and copying on or before October 1, 1997.
> 3. Written rebuttal cases are to be filed on October 30, 1997. Any study or analysis shall be accompanied by the information specified in Rule § 251.48 (e) and (f), and all underlying data and tabulations shall be made available as discovery that same date to opposing parties. No other discovery will be allowed.
> 4. Any motions addressed to rebuttal cases shall be filed on November 7, 1997. Responses shall be filed on November 19, 1997, and any replies on November 26, 1997.
> 5. Proposed findings of fact and conclusions of law are to be filed December 5, 1997.
> 6. Reply findings of fact and conclusions of law are to be filed December 19, 1997.

Order, Docket No 94–3 CARP CD 90–92 (September 16, 1997).

At this time, the parties have not moved to close any portion of the proceeding to the public. Further refinements to the schedule will be announced in open meetings and issued as orders to the parties participating in the proceeding. All changes will be noted in the docket file of the proceeding, as required by the Copyright Office regulations governing the administration of CARP proceedings. 37 CFR 251.11(c).

Dated: September 25, 1997.

**Nanette Petruzzelli,**

*Acting General Counsel.*

[FR Doc. 97–25890 Filed 9–29–97; 8:45 am]

BILLING CODE 1410–33–M

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### National Endowment for the Arts; Submission for OMB Review; Comment Request

September 24, 1997.

The National Endowment for the Arts (NEA) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (P.L. 104–13, 44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the National Endowment for the Arts' Director of Administration, Laurence M. Baden [(202) 682–5408]. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 682–5496 between 10:00 a.m. and 4:00 p.m. Eastern time, Monday through Friday.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the National Endowment for the Arts, Office of Management and Budget, Room 10235, Washington, DC 20503 [(202) 395–7316], within 30 days from the date of this publication in the **Federal Register.**

The Office of Management and Budget (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 submissions of responses.

**SUPPLEMENTARY INFORMATION:** The Endowment requests the review of all of its funding application guidelines and grantee reporting requirements. This entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

*Agency:* National Endowment for the Arts.

*Title:* Blanket Justification for NEA Funding Application Guidelines FY 1998–FY 2001.

*OMB Number:* 3135–0112.

*Frequency:* Annually.

*Affected Public:* Nonprofit organizations, state & local arts agencies, and individuals.

*Estimated Number of Respondents:* 5,000.

*Estimated Time Per Respondent:* 19.29 hours (plus 8 hours reporting if a grant is awarded).

*Total Burden Hours:* 105,250.

*Total Annualized Capital/Startup Costs:* 0.

*Total Annual Costs (Operating/Maintaining Systems or Purchasing Services):* 0

*Description:* Guideline instructions and applications elicit relevant information from individuals, nonprofit organizations, and state and local arts agencies that apply for funding from the NEA. Current Endowment categories include, but are not limited to: Grants to Organizations, Partnership Agreements, Literature Fellowships, American Jazz Masters, National Heritage Fellowships in the Folk & Traditional Arts, and Leadership Initiatives (including Millennium). This information is necessary for the accurate, fair and thorough consideration of competing proposals in the review process. According to OMB Circulars A–102 and A–110, recipients of Federal funds are required to report on project activities and expenditures.

**ADDRESSES:** Laurence M. Baden, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Room 628, Washington, DC 20506–0001, telephone (202) 682–5408 (this is not a toll-free number), fax (202) 682–5798.

**Murray R. Welsh,**

*Director, Administrative Services, National Endowment for the Arts.*

[FR Doc. 97–25916 Filed 9–29–97; 8:45 am]

BILLING CODE 7536–01–M

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### National Endowment for the Arts

### Combined Arts Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Combined Arts Advisory Panel, Theater Section A (Creation & Presentation category) to the National Council on the Arts will be held on October 20–24, 1997. The panel will meet from 9:30 a.m. to 6:00 p.m. on October 20–22, from 10:00 a.m. to 6:00 p.m. on October 23, and from 9:30 a.m. to 5:30 p.m. on October 24, in Room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506. A portion of this meeting, from 10:00 a.m. to 12:00 p.m. on Thursday, October 23, will be open to the public for a policy discussion of guidelines, planning, Leadership Initiatives, and field needs and trends.

The remaining portions of this meeting, from 9:30 a.m. to 6:00 p.m. on October 20–22; from 12:00 p.m. to 6:00 p.m. on October 23, and from 9:30 a.m. to 5:30 p.m. on October 24, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of March 31, 1997, these sessions will be closed to the public pursuant to subsection c4, and 6 and 9B of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the

Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call 202/682–5691.

Dated: September 24, 1997.

**Kathy Plowitz-Worden,**

*Panel Coordinator, Panel Operations, National Endowment for the Arts.*

[FR Doc. 97–25922 Filed 9–29–97; 8:45 am]

BILLING CODE 7537–01–M

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### National Endowment for the Arts

### Combined Arts Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Combined Arts Advisory Panel, Dance Section (Planning & Stabilization category) to the National Council on the Arts will be held on October 23–24, 1997. The panel will meet from 10:00 a.m. to 6:00 p.m. on October 23 and from 9:00 a.m. to 1:00 p.m. on October 24, in Room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506. A portion of this meeting, from 9:00 a.m. to 10:30 a.m. on October 24, will be open to the public for a policy discussion of guidelines, planning, Leadership Initiatives, and field needs and trends.

The remaining portions of this meeting, from 10:00 a.m. to 6:00 p.m. on October 23 and 10:30 a.m. to 1:00 p.m. on October 24, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of March 31, 1997, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call 202/682–5691.

Dated: September 24, 1997.

**Kathy Plowitz-Worden,**

*Panel Coordinator, Panel Operations, National Endowment for the Arts.*

[FR Doc. 97–25923 Filed 9–29–97; 8:45 am]

BILLING CODE 7537–01–M

## NATIONAL SCIENCE FOUNDATION

### DOE/NSF Nuclear Science Advisory Committee; Committee Management; Renewal

The Assistant Director for Mathematical and Physical Science has determined that renewal of the DOE/NSF Nuclear Science Advisory Committee is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NFS), by 42 U.S.C. 1861 et seq. This determination follows consultation with the Committee Management Secretariat, General Services Administration. Authority for the Advisory Committees will expire on October 1, 1999, unless renewed.

The purpose of the committee is to provide advice on a continuing basis to both the Department of Energy and the National Science Foundation on priorities for basic nuclear science research in the United States.

For more information, please contact Dr. Bradley Keister, Program Director, Nuclear Physics, Room 1015, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230 (703) 306–1891.

Dated: September 24, 1997.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 97–25797 Filed 9–29–97; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meeting:

*Name:* Special Emphasis Panel in Materials Research #1203.

*Date and Time:* 14 October 1997, 8:00 a.m.–5:00 p.m.

*Place:* Room 1060, National Science Foundation; 4201 Wilson Blvd., Arlington, VA 22230.

*Type of Meeting:* Closed.

*Contact Person:* Dr. Liselotte J. Schioler, Program Director, Ceramics Program, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone (703) 306–1836, (703) 306–0515.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* Review and evaluate proposals as part of the selection process to determine finalists considered for Ceramic Program awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary of confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b.(c)(4) and (6) of the Government in the Sunshine Act.

Dated: September 24, 1997.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 97–25798 Filed 9–29–97; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL TRANSPORTATION SAFETY BOARD

### Sunshine Act Meeting

*Time:* 9:30 a.m., Tuesday, October 7, 1997.

*Place:* The Board Room, 5th Floor, 490 L'Enfant Plaza, S.W., Washington, D.C. 20594.

*Status:* Open.

*Matters to be Discussed:*

6813A—*Railroad Special Investigation Report:* Derailment of Amtrak Train No. 12 and Sideswipe of Amtrak Train No. 79 on Portal Bridge Near Secaucus, New Jersey, November 23, 1996.

*News Media Contact: Telephone: (202) 314–6100.*

**FOR MORE INFORMATION CONTACT:** Bea Hardesty, (202) 314–6065.

Dated: September 26, 1997.

**Bea Hardesty,**

*Federal Register Liaison Officer.*

[FR Doc. 97–26056 Filed 9–26–97; 2:57 pm]

BILLING CODE 7533–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–302]**

## Florida Power Corporation; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR 72, issued to the Florida Power Corporation, (FPC or the licensee), for operation of the Crystal River Nuclear generating Unit 3 (CR3) located in Citrus County, Florida.

The proposed amendment involves a revision to the Emergency Diesel Generator (EDG) protective relaying scheme at CR3, as described in the Final Safety Analysis Report (FSAR) Chapter 8. FPC has evaluated the proposed modifications pursuant to 10 CFR 50.59 and has determined that these modifications constitute an unreviewed safety question (USQ) based on a resulting increase in the probability of a malfunction of equipment important to safety. Therefore, FPC is requesting amendment of the CR3 license to resolve that USQ. The proposed modification will add new protective relays to each EDG generator output breaker to provide additional protection for a potential electrical fault or overpower condition.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The EDGs perform a support function for Design Basis Accident mitigation by providing a source of emergency AC electrical power for the Engineered Safeguards loads. For most Design Basis Accidents, a coincident Loss-of-Offsite-Power is postulated to occur and any single random electrical failure is considered credible including complete failure for one EDG to energize the associated 4160V ES bus. The failure of an EDG to energize the associated 4160V ES bus is not a precursor for any postulated Design Basis Accident except Station Blackout (SBO). The failure of both EDGs concurrent with a Loss-of-Offsite-Power causes a Station Blackout. Therefore, any increase in the probability that an EDG will not energize the associated 4160V ES bus will increase the probability of a Station Blackout.

The new relaying added to each EDG has a small probability of spuriously actuating, resulting in a small increase in the probability of an EDG failing to energize the associated 4160V ES bus. Spurious actuation of the overcurrent relaying for the load carrying 4160V ES bus offsite power source breaker will cause a loss of power on the 4160V ES bus and prevent the EDG from re-energizing the bus. In addition, a spurious actuation of the device-32X directional power auxiliary relay can cause a loss of offsite power for the associated 4160V ES bus. This spurious actuation also increases the probability of a Station Blackout. The only new system interfaces are between the EDG and 4160V ES bus systems. The modified relaying will not directly affect the fuel cladding, the Reactor Coolant System (RCS) pressure boundary, or the containment building.

The increase in the probability of a Station Blackout is negligible. Although EDG availability is a contributor to the risk of Station Blackout, the CR–3 licensing basis assumes this event without regard to EDG reliability. Therefore, the probability of previously evaluated accidents is not significantly increased. The new protective relaying could shorten the duration of an actual Station Blackout if a 4160V ES bus fault or other similar problem was a contributor to the event by limiting the damage to the station power systems.

The modified relaying will not increase the consequences of a Station Blackout since both EDGs and offsite power are assumed to be unavailable. The new protective relaying will not create any new timing or sequencing impact to the ES loads supplied from the 4160V ES bus. The small increase in probability that an EDG will not energize the associated 4160V ES bus does not invalidate the Design Basis Accident assumption that one EDG successfully energizes the associated 4160V ES bus (single failure proof). Therefore, the conclusions concerning fission product releases in the FSAR will not be changed.

2. Does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The modified relaying will not directly affect the fuel cladding, the Reactor Coolant System (RCS) pressure boundary, or the containment building. The modifications only impact the EDGs and 4160V ES buses.

The failure of one of the EDGs to energize the associated 4160V ES bus during a Design Basis Accident is a standard ''single failure'' for determining the acceptability of an accident mitigation system. A standby EDG and the associated 4160V ES bus are not capable of creating an accident such as a Loss-of-Coolant Accident (LOCA) or Main Steam Line Break (MSLB).

There is a small increase in the probability that an EDG will not successfully energize the associated 4160V ES bus. However, the Design Basis Accident assumption that one EDG does successfully energize the bus remains valid. Therefore, no new accident involving the failure of both EDGs other than a Station Blackout needs to be postulated. The proposed modifications to the EDG relaying and the small increase in the probability that an EDG will not energize the associated 4160V ES bus do not introduce any new interfaces or mechanisms that could challenge any fluid system or fission product barrier in a different way than previously evaluated. Therefore, the modifications cannot create the possibility of an accident of a different type than previously evaluated in the FSAR.

3. Does not involve a significant reduction in the margin of safety.

The Bases of the CR–3 technical specifications do not identify a ''margin of safety'' for the EDGs or 4160V ES buses that is applicable to the proposed EDG relaying modifications. Therefore, the plant response to Design Basis Accidents was evaluated. The accident analysis assumptions remain valid with the existing and proposed changes to the EDG and 4160V ES bus protective relaying. Plant response will remain as evaluated in the accident analysis and the calculated primary and secondary pressures and temperatures during evaluated accidents will not be increased by the changes. The reliability of each EDG and associated 4160V ES bus is being insignificantly reduced in order to increase the availability of the EDG and associated 4160V ES bus after a fault or overcurrent condition occurs. A spurious actuation of one of the added relays might cause one EDG to fail to energize one 4160V ES bus but would not result in failure of the other EDG to perform its function. Therefore, the changes do not reduce the margin of safety in the bases for any Improved Technical Specification.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received

within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 30, 1997, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 34428.

If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to R. Alexander Glenn, General Counsel, Florida Power Corporation, MAC—A5A, P. O. Box 14042, St. Petersburg, Florida 33733–4042, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated September 12, 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 Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 34428.

Dated at Rockville, Maryland, this 23rd day of September 1997.

For The Nuclear Regulatory Commission.

**L. Raghavan, Sr.,**

*Project Manager, Project Directorate II–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 97–25899 Filed 9–29–97; 8:45 am]

BILLING CODE 2590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–338]**

### In the Matter of Virginia Electric and Power Company North Anna Power Station, Unit Nos. 1 and 2; Exemption and 50–339

**I**

The Virginia Electric and Power Company (the licensee) is the holder of Facility Operating License Nos. NPF–4 and NPF–7, which authorize operation of the North Anna Power Station (NAPS), Unit Nos. 1 and 2. The licenses provide, among other things, that the licensee be subject to all rules, regulations, and Orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility consists of two pressurized-water reactors at the licensee's site located in Louisa County, Virginia.

**II**

The Code of Federal Regulations at 10 CFR 70.24, ''Criticality Accident Requirements,'' requires that each licensee authorized to possess special nuclear material (SNM) shall maintain a criticality accident monitoring system in each area where such material is handled, used, or stored. Subsections (a)(1) and (a)(2) of 10 CFR 70.24 specify detection, sensitivity and coverage capabilities of the monitors required by 10 CFR 70.24(a). Subsection (a)(3) requires licensees to maintain emergency procedures for each area in which this licensed SNM is handled, used, or stored.

Subsection (d) of 10 CFR 70.24 states that any licensee who believes that there is good cause why it should be granted an exemption from all or part of 10 CFR 70.24 may apply to the Commission for such an exemption and shall specify the reasons for the relief requested.

**III**

By letter dated January 28, 1997, as supplemented March 24, 1997, Virginia Electric and Power Company requested an exemption from 10 CFR 70.24(a). The Commission technical staff has reviewed the licensee's submittal and has determined that inadvertent criticality is not likely to occur in SNM handling or storage areas at NAPS, Units 1 and 2.

At North Anna, SNM is present principally as nuclear fuel. Other small quantities of SNM are used on site. However, the total amount used in non-fuel applications is significantly less than the quantity specified in 10 CFR 70.24(a). The small quantity of non-fuel SNM present, and the form in which it is stored and used, precludes an inadvertent criticality. Therefore, SNM used as nuclear fuel is the only material on site subject to the requirements of 10 CFR 70.24(a).

Nuclear fuel is stored in the new fuel storage area and the spent fuel pool. New fuel is stored dry (in air) in the new fuel storage area. The spent fuel pool is used to store irradiated fuel under water after its discharge from the reactor, and new fuel prior to loading into the reactor.

The new fuel storage area is used to receive and store new fuel in a dry condition upon arrival on site and prior to loading in the reactor or spent fuel pool. The spacing between new fuel assemblies in the storage racks is sufficient to maintain the array in a subcritical condition even under accident conditions assuming the presence of moderator. The maximum nominal enrichment of 4.3 wt% U–235 for the new fuel assemblies results in a maximum $k_{eff}$ of less than 0.95 under conditions of accidental flooding by unborated water and $k_{eff}$ less than 0.98 under conditions of low-density optimum moderation. The staff has found the design of the licensee's new fuel storage racks to be adequate to store fuel enriched to 4.3 wt% U–235.

Consistent with Technical Specification Section 5.6.1.1, the spent fuel pool is designed to store the fuel in a geometric array that precludes criticality. The spent fuel racks are designed such that the effective neutron multiplication factor, $k_{eff}$, will remain less than or equal to 0.95 under all normal and accident conditions for fuel of maximum nominal enrichment of 4.3 wt% U–235.

Nuclear fuel is moved between the shipping container, the new fuel storage racks, the reactor vessel, and the spent fuel pool to accommodate refueling operations. In all cases, fuel movements are procedurally controlled and designed to preclude conditions involving criticality concerns.

The purpose of the criticality monitors required by 10 CFR 70.24 is to ensure that if a criticality were to occur during the handling of nuclear material, personnel would be alerted to that fact and would take appropriate action. Although the staff has determined that such an accident is not likely to occur, the licensee has radiation monitors, as required by General Design Criterion 63, in fuel storage and handling areas. These monitors have associated area alarms and control room annunciators and would detect excessive radiation levels and will alert personnel to allow them to initiate appropriate emergency procedures and safety actions. The low probability of an inadvertent criticality together with the licensee's adherence to General Design Criterion 63 constitute good cause for granting an exemption to the requirements of 10 CFR 70.24(a).

**IV**

The Commission has determined that, pursuant to 10 CFR 70.14, this exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest; therefore, the Commission hereby grants Virginia Electric and Power Company the exemption from the requirements of 10 CFR 70.24(a) for North Anna Power Station, Unit Nos. 1 and 2, relating to criticality accident monitoring requirements.

**V**

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant adverse environmental impact (62 FR 49540).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 23rd day of September 1997.

For The Nuclear Regulatory Commission.

**Frank J. Miraglia,**

*Acting Director, Office of Nuclear Reactor Regulation.*

[FR Doc. 97–25900 Filed 9–29–97; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

### Video-Conferencing Locations for Public Workshop: Demonstrating Compliance With the Radiological Criteria for License Termination—License Termination Under Restricted Conditions

**AGENCY:** Nuclear Regulatory Commission (NRC).

**ACTION:** Additional information regarding notice of meeting.

**SUMMARY:** NRC previously announced in the **Federal Register** (62 FR 49264, September 19, 1997) that it is holding a public workshop in Rockville, Maryland to receive input from licensees and the public on a working paper on ''License Termination Under Restricted Conditions'' being developed as a section of an upcoming Regulatory Guide. NRC also announced in that FR that the workshop would be video-conferenced at other locations and indicated that further information on those locations would be made available. The locations that will be used for the video-conferencing are NRC's Region II Offices in Atlanta Georgia, and NRC's Region III Offices in Lisle, Illinois. All interested licensees and members of the public are invited to attend the workshop at the Rockville location or either of the two video-conferencing locations.

**DATES:** The workshop will be held in Rockville, Maryland on October 15, 1997, beginning at 9 a.m. and ending at about 5 p.m (EDT).

Video-conferencing of the workshop will be available in NRC's Region II Office in Atlanta, Georgia from 9 a.m. through 12 noon (EDT); audio capabilities will be available from 1 p.m. through 5 p.m.

Video-conferencing of the workshop will be available in NRC's Region III Office in Lisle, Illinois from 12 noon through 4 p.m. (CDT); audio capabilities will be available from 8 a.m. through 11 a.m. (CDT).

Interested parties, unable to attend the workshop location or the video-conferencing locations, are encouraged to provide written comments by November 30, 1997.

**ADDRESSES:** The public workshop will be held in the NRC's ACRS meeting room at Two White Flint North, 11545 Rockville Pike, Rockville, Maryland. The two video-conferencing locations are NRC's Region II office at the Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta Georgia, and NRC's Region III Office at 801 Warrenville Road, Lisle, Illinois.

A copy of the working paper to be discussed can be obtained electronically at the NRC Technical Conference Forum Website under the topic ''Final Rule for License Termination'' at http: // techconf.llnl.gov/cgi-bin/topics or from the NRC's Public Document Room, 2120 L Street, NW., (Lower Level), Washington, DC 20555; telephone 202–634–3273; fax 202–634–3343.

Comments may be posted electronically on the NRC Technical Conference Forum Website mentioned above. Comments submitted electronically can also be viewed at that website.

Comments may also be mailed to the Chief, Rules and Directives Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

**FOR FURTHER INFORMATION:** For general information on the meeting, contact Jayne McCausland, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington DC 20555, telephone 301–415–6219, fax 301–415–5385, E-mail: JMM2@NRC.GOV. Information on the Region II and III locations can be obtained from Cynde Albee, telephone 404–562–4825, fax 404–562–4900, E-mail: CMA1@NRC.GOV, and Cheryl Hausman, telephone 630–829–9551, fax 630–515–1078, E-mail: CAH3@NRC.GOV, respectively. For technical information or questions, contact Stephen A. McGuire, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone 301–415–6204, fax 301–415–5385, E-mail: SAM2@NRC.GOV.

Directions to each of the locations can be obtained by fax by calling toll-free 1–888–415-2627. Directions can also be obtained on the NRC Website at the Location ''Getting to NRC Facilities'' located at http://www.nrc.gov/NRC/WHATIS/directio.html.

**SUPPLEMENTARY INFORMATION:** This workshop is one of a series of interactions with the Agreement States, licensees, and the public to gather suggestions and ideas to ensure the success in developing a Regulatory Guide on ''Demonstrating Compliance With the Radiological Criteria for License Termination.'' The workshop will begin with a brief introduction on some of the more important questions that were considered in developing the Regulatory Guide working paper on ''License Termination under Restricted Conditions.'' After the introduction, the Working Paper will be reviewed section-by-section. Attendees will be asked for questions and comments on each section. The NRC will ask questions on the approach that it has developed. Written comments that have been received from the public will be discussed.

Participants at the two regional locations will be able to ask questions and provide comments through a moderator both during the periods that the workshop is available through video-conferencing and through audio connection.

There is no visitor parking at Region II in the Atlanta Federal Center (AFC) building. There are several hourly parking lots located near the AFC (behind the AFC tower and on the corner of Forsyth Street and Martin Luther King, Jr. Drive). The AFC is located near the Five Point Station on the MARTA train line. There are two locations for visitor parking at Region III. A visitor parking lot is located on the north end of the building (between the office building and Warrenville Road), and a parking garage is located on the west side of the building (visitors can park on the street level or upper level). Seating for the public at each location will be on a first-come, first-served basis.

A transcript of this workshop will be available for inspection, and copying for a fee at the NRC Public Document Room, 2120 L Street, NW., Lower Level, Washington, DC 20555, on or about October 31, 1997.

Dated at Rockville, Maryland this 24th day of September, 1997.

For the Nuclear Regulatory Commission.

**Cheryl A. Trottier,**

*Chief, Radiation Protection and Health Effects Branch, Division of Regulatory Applications, Office of Nuclear Regulatory Research.*

[FR Doc. 97–25898 Filed 9–29–97; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Nuclear Regulatory Commission.

**DATE:** Weeks of September 29, October 6, 13, and 20, 1997.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and Closed.

**MATTERS TO BE CONSIDERED:**

There are no meetings scheduled for the week of September 29.

**Week of October 6—Tentative**

*Wednesday, October 8*

3:30 p.m. Affirmation Session (Public Meeting) (if needed)

**Week of October 13—Tentative**

*Tuesday, October 14*

10:00 a.m. Briefing on EEO Program (Public Meeting) (Contact: Ed Tucker, 301–415–7382)

1:00 p.m. Briefing on Severe Accident Master Integration Plan (Public Meeting)

*Wednesday, October 15*

10:00 a.m. Briefing on PRA Implementation Plan (Public Meeting) (Contact: Gary Holahan, 301–415–2884)

11:30 a.m. Affirmation Session (Public Meeting) (if needed)

**Week of October 20**

*Tuesday, October 21—Tentative*

10:30 a.m. Affirmation Session (Public Meeting) (if needed)

**ADDITIONAL INFORMATION:** By a vote of 4–0 on September 19, the Commission determined pursuant to U.S.C. 552b(e) and 10 CFR Sec. 9.107(a) of the Commission's rules that ''Affirmation of Louisiana Energy Services (Claiborne Enrichment Center): Citizens Against Nuclear Trash's Motion for Reconsideration of CLI–97–11'' be held on September 19, and on less than one week's notice to the public.

Affirmation of ''Sequoyah Fuels Corp. & General Atomic: Docket No. 40–8027—EA; LBP–95–18 and LBP–96–24, Memoranda and Orders (Approving Settlement)'' was postponed from Friday, September 19. No new date has been set.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292.

**CONTACT PERSON FOR MORE INFORMATION:** Bill Hill, (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at:

http://www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, DC 20555 (301–415–1661).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: September 26, 1997.

**William M. Hill, Jr.,**

*SECY Tracking Officer, Office of the Secretary.*

[FR Doc. 97–26051 Filed 2–14–97; 8:45 pm]

BILLING CODE 7590–01–M

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–361 and 50–362]**

### Southern California Edison Company, et al. San Onofre Nuclear Generating Station; Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that by letter dated June 23, 1997, Patricia Borchmann (Petitioner) requested that in accordance with 10 CFR 2.206, the U.S. Nuclear Regulatory Commission (Commission or NRC) not allow San Onofre Nuclear Generating Station (SONGS) Unit 3 to restart from its current refueling outage until her concerns were fully resolved. This letter was supplemented by letters dated June 28 and July 11, 1997, in which the Petitioner requested the staff to take the same action for SONGS Unit 2. On July 8, 1997, the NRC verbally notified the petitioner that the issues discussed in the submittals did not contain enough information to warrant the NRC taking action to prevent the SONGS units from restarting. By NRC letter dated September 22, 1997, the NRC denied the Petitioner's requests that the NRC take immediate action to not allow SONGS Units 2 and 3 to restart.

The Petitioner's letters contained a variety of issues in support of the requested actions, which the staff grouped into three categories for the purpose of evaluating the request for immediate action. These categories are fully described in the NRC's letter of September 22, 1997, denying the Petitioner's request.

As a result of its evaluation detailed in its letter of September 22, 1997, the NRC staff found that there was insufficient basis to warrant the immediate action requested to prevent SONGS Units 2 and 3 from restarting. Therefore, the request for immediate action was denied. As provided by 10 CFR 2.206, appropriate action will be taken with regard to the concerns raised by the Petitioner within a reasonable time.

A copy of the Petition is available for inspection in the Commission's Public Document Room at 2120 L Street, NW, Washington, DC 20555–0001, and the Local Public Document Room at the Main Library, University of California, P.O. Box 19557, Irvine, CA 92713.

Dated at Rockville, Maryland, this 22nd day of September 1997.

For The Nuclear Regulatory Commission.

**Samuel J. Collins,**

*Director, Office of Nuclear Reactor Regulation.*

[FR Doc. 97–25897 Filed 9–29–97; 8:45 am]

BILLING CODE 7590–01–P

## POSTAL SERVICE

### Postal Service Board of Governors; Sunshine Act Meeting

**TIMES AND DATES:** 12:30 p.m., Monday, October 6, 1997; 8:30 a.m., Tuesday, October 7, 1997.

**PLACE:** Norman, Oklahoma, at the University of Oklahoma, 900 Asp Avenue, in the Oklahoma Memorial Union Ballroom.

**STATUS:** October 6 (Closed); October 7 (Open).

**MATTERS TO BE CONSIDERED:**

Monday, October 6—12:30 p.m. (Closed)

1. Status Report on the Tray Management System.
2. Postal Rate Commission Opinion and Recommended Decision in Docket No. MC97–4, Bulk Parcel Return Service and Shipper Paid Forwarding.
3. Budget Outlook.

Tuesday, October 7—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, September 8–9, 1997.
2. Remarks of the Postmaster General/Chief Executive Office.
3. Board of Governors 1998 Meeting Schedule.
4. Office of the Governors FY 1998 Budget.
5. Consideration of Postal Square Development Project.
6. Fiscal Year 1998 Operating Budget.
7. Review of the Five-Year Capital Investment Plan.
8. Tentative Agenda for the November 3–4, 1997, meeting in Washington, D.C.

**CONTACT PERSON FOR MORE INFORMATION:** Thomas J. Koerber, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, S.W., Washington, D.C. 20260–100. Telephone (202) 268–4800.

**Thomas J. Koerber,**

*Secretary.*

[FR Doc. 97–26038 Filed 9–26–97; 1:04 p.m.]

BILLING CODE 7710–12–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–39120; File No. SR–NSAD–97–70]**

## Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to an Extension of the Effectiveness of the NASD's Excess Spread Rule Until October 13, 1997

September 23, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act''), 15 U.S.C.. 78s(b)(1), notice is hereby given that on September 15, 1997, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which items have been prepared by The Nasdaq Stock Market, Inc. (''Nasdaq''). The Commission is publishing this notice to solicit comments from interested persons and to grant accelerated approval of the proposed rule change.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD proposes to amend NASD Rule 4613(d) to extend the effectiveness of its current excess spread rule through October 13, 1997. The excess spread rule is applicable to Nasdaq National Market (''NNM'') securities and provides that a registered market maker in a security listed on Nasdaq shall be precluded from being a registered market maker in that issue for twenty (20) business days if its average spread in the security over the course of any full calendar month exceeds 150 percent of the average of all dealer spreads in such issue for the month. The text of the proposed rule change is as follows. Additions are italicized and deletions bracketed.

NSAD Rule 4613

(d) Reasonably Competitive Quotations.

A registered market maker in a Nasdaq National Market security will be withdrawn as a registered market maker and precluded from re-registering as a market maker in such issue for 20 business days if its average spread in the security over the course of any full calendar month exceeds 150 percent of the average of all dealer spreads in such issue for the month. This subparagraph shall not apply to market makers in Nasdaq SmallCap securities.

(1) If a registered market maker has not satisfied the average spread requirement set forth in this subparagraph (d) for a particular Nasdaq National Market security, its registration in such issue shall be withdrawn commencing on the next business day following the business day on which the market maker was sent notice of its failure to comply with the requirement. A market maker may request reconsideration of the withdrawal notification. Requests for reconsideration will be reviewed by the Market Operations Review Committee, whose decisions are final and binding on the members. A request for reconsideration shall not operate as a stay of the withdrawal or toll the twenty business day period noted in subparagraph (d) above.

(2) Grounds for requests for reconsideration shall be limited to claims that Nasdaq's calculation of the market maker's average spread for the month was in error.

(3) This subparagraph (d) shall be in effect until *October 13, 1997* (September 30, 1997).

### Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. Nasdaq 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.*

Prior to January 20, 1997, the NASD's excess spread rule (the ''Rule'' or the ''Excess Spread Rule'') provided that registered market makers in Nasdaq securities could not enter quotations that exceeded 125 percent of the average of the three narrowest market maker spreads in that issue, provided, however, that the maximum allowable spread could never be less than ¼ of a point (''125% Rule''). The Rule was originally designed to bring a measure of quality to the Nasdaq market by preventing firms from holding themselves out as market makers without having a meaningful quote in the system. Despite the regulatory objectives underlying the rule, however, many market participants believed the rule produced a variety of unintended consequences that undermined the integrity of Nasdaq. Most notably, the SEC found in its 21(a) Report on the NASD and Nasdaq that ''the interdependence of quotes mandated by the rule may deter market makers from narrowing their dealer spreads, because, once the spread is tightened, the rule in some instances precludes a market maker from widening the spread to earlier levels.'' [1] As a result, the SEC found that the Excess Spread Rule created an economic incentive for market makers to discourage one another from narrowing their quotes, thereby interfering with the ''free flow of prices in the market and imped[ing] attempts by the market to reach the optimal competitive spread.'' [2] Accordingly, the SEC requested that the NASD ''modify the rule to eliminate its undesirable effects, or to repeal it.'' [3]

In response to the SEC's 21(a) Report, the NASD submitted a proposal, which was approved by the SEC and which amended the Excess Spread Rule on a pilot basis through July 1, 1997.[4] Under the revised Excess Spread Rule, a registered market marker in a Nasdaq security is precluded from being a registered market maker in that issue for twenty business days if its average spread in the security over the course of any full calendar month exceeded 150 percent of the average of all dealer spreads in such issue for the month (''150% Rule).[5]

In formulating the 150% Rule, Nasdaq Committees and Nasdaq staff felt that it was important to strike a reasonable balance between the need to eliminate any constraints that the Excess Spread

[1] *See* ''Appendix to Report Pursuant to Section 21(a) of the Securities Exchange Act of 1934 Regarding the NASD and The Nasdaq Stock Market,'' at p. 98 (''21(a) Report'') (S.E.C., Aug. 8, 1996).

[2] *Id.* at p. 99.

[3] *Id.*

[4] *See* Securities Exchange Act Rel. No. 38180 (January 16, 1997), 62 FR 3725 (''Pilot Program Approval Order''). The pilot originally was set to expire on July 1, 1997, but was extended through September 30, 1997. *See* Securities Exchange Act Rel. No. 38804 (July 1, 1997), 62 FR 36588.

[5] On February 28, 1997, the SEC approved the NASD's proposal to exclude Nasdaq Small-Cap Securities from the Excess Spread Rule. This rule change was necessary because, unlike the manner in which Nasdaq National Market securities are handled for purposes of the rule, Nasdaq does not presently calculate and display through the Nasdaq system the average spread of all market makers in a particular SmallCap issue or a comparison of the size of an individual market maker's quoted spread relative to the average spread of all market makers. Thus, Nasdaq does not presently afford market makers in SmallCap securities with any indication as to whether they are satisfying the requirements of the 150% Rule.

Rule places on firms to adjust their quotations and the need to avoid fostering a market environment where registered market makers can maintain inordinately wide spreads and still receive the benefits of being a market maker (*e.g.*, affirmative determination exemption and preferential margin treatment). Nasdaq also believed it was critical to transform the Excess Spread Rule into a performance standard used to determine market maker eligibility, instead of a strict regulatory requirement applicable to every quote update in a Nasdaq security, violations of which were punishable by disciplinary action. Based on its experience with the Rule, the Nasdaq Board of Directors in June 1997 approved a resolution to seek permanent approval of the 150% Rule ''as is,'' without modifications. In addition, the NASD ratified the Nasdaq Board resolution in July of 1997 and Nasdaq planned to seek permanent approval shortly thereafter.

However, the Commission has expressed, and continues to express, serious concerns about the effects of the Rule on market maker activity. More specifically, in its approval order of the 150% Rule, the SEC stated that ''[a]lthough the amended excess spread rule may reduce some of the anticompetitive concerns outlined in the 21(a) Report, the Commission believes that the amendment * * * may not completely satisfy the NASD'S obligations under the Commission's Order with regard to the excess spread rule. Specifically, it may not remove completely the anticompetitive incentives for market makers to refrain from narrowing quotes because the market makers' quotation obligation continues to be dependent to some extent upon quotations of other market makers in the stock.'' [6]

Additionally, in recent discussions, SEC staff has indicated that it believes that the 150% Rule may not have completely eliminated the concerns outlined in the 21(a) Report and may not completely satisfy the NASD's obligations under the Commission's Order. SEC staff further has stated that it believes that the Rule should be completely eliminated, or at the very least, be eliminated for stocks with a small number of market makers.

In light of the foregoing, the NASD is proposing to extend the Excess Spread Rule only until October 13, 1997. Additionally, Nasdaq staff will ask the Nasdaq Board of Directors (''Board'') at its September 23, 1997 board meeting to reconsider its previous decision to seek permanent approval of the Rule, in light of the Commission's concerns that the Rule does not remove completely incentives for market makers to refrain from narrowing quotes. Nasdaq will inform the Commission by letter of the final disposition of the Board's reconsideration of this matter as soon as possible.

The NASD and Nasdaq believe that the proposed rule change is consistent with Sections 15A(b)(6), 15A(b)(9), 15A(b)(11) and 11A(a)(1)(C) of the Exchange Act. Among other things, Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and in general to protect investors and the public interest. Section 15A(b)(9) provides that the rules of the Association may not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Section 15A(b)(11) empowers the NASD to adopt rules governing the form and content of quotations relating to securities in the Nasdaq market. Such rules much be designed to produce fair and informative quotations, prevent fictitious and misleading quotations, and promote orderly procedures for collecting and distributing quotations. Section 11A(a)(1)(C) provides that it is in the public interest to, among other things, assure the economically efficient execution of securities transactions and the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.

Specifically, the NASD and Nasdaq believe that the 150% Rule has promoted the integrity of quotations on the Nasdaq market and has enhanced competition among market makers, thereby contributing to greater market liquidity, improved price discovery, and the best execution of customer orders. The Rule has helped to ensure that all registered market makers are providing some threshold level of market making support in their issues, and has helped to avoid a market environment where registered market makers can maintain inordinately wide spreads and still receive the benefits of being a market maker. Thus, a continuation of the Rule until October 13, 1997, will address the Commission's aforementioned concerns while preserving the Rule's benefits (such as ensuring meaningful market maker quotes) until the Nasdaq Board reconsiders its previous position on the Rule. Additionally, the proposed to extend the pilot program for a limited period is consistent with the Exchange Act and will ensure continuity of regulation until the Nasdaq Board reconsiders its previous position on the Rule.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Comments were neither solicited nor received.

## 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 submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–97–70 and should be submitted by October 21, 1997.

## IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission has determined to approve the extension of the 150% Rule pilot until October 13, 1997. As noted previously, the Commission has identified anticompetitive concerns associated with the 125% Rule in place prior to January 20, 1997. Further, in the Pilot Program Approval Order, the Commission recognized that while the

[6] Pilot Program Approval Order, *supra* note 4.

150% Rule could reduce, to some degree, the Commission's concerns regarding the 125% Rule, the Commission was not convinced that permanent approval of the 150% rule would sufficiently address those concerns. The Commission believes that the pilot should continue to operate on a temporary basis through October 13, 1997, while the Nasdaq Board reconsiders its position on permanent approval. Consequently an extension will ensure that the Rule remains in effect on an uninterrupted basis until the Nasdaq Board has had an opportunity to fully evaluate the most appropriate permanent solution regarding the excess spread rule.

In addition, the Commission believes that the temporary rule can remain limited to National Market securities. Due to Nasdaq's current systems limitations, market makers in Nasdaq SmallCap securities are unable to monitor compliance with the Rule. However, the NASD has stated that it anticipates that market makers in Nasdaq SmallCap securities will be subject to the same excess spread requirements, if any, as market makers in Nasdaq National Market securities when a permanent resolution is reached.

Accordingly, the Commission finds that the NASD's proposal is consistent with Sections 11A and 15A of the Exchange Act and the rules and regulations thereunder applicable to the NASD and, in particular, Sections 11A(a)(1)(C), 15A(b)(6), 15A(b)(9), and 15A(b)(11). Further, the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication in the **Federal Register**. In addition to the reasons discussed above, the Commission believes that accelerated approval of the NASD's proposal is appropriate given the fact that the proposal is a temporary extension of the 150% Rule that has been in effect since January 1997. An uninterrupted application of the 150% Rule for a short period of time should be less disruptive to market makers while the Nasdaq Board reconsiders its permanent approach to the concerns raised by the Commission regarding the excess spread rule.[7]

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Exchange Act, that the proposed rule change (SR–NASD–97–70) is approved through October 13, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 97–25794 Filed 9–29–97; 8:45 am]

BILLING CODE 8010–01–M

[7] The Commission notes that a failure to extend the 150% Rule past the October 13, 1997 date would result in no excess spread standard for Nasdaq market makers.

[8] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–39106; File No. SR–PCX–97–32]**

## Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Pacific Exchange, Inc. Relating to an Extension of its LMM Book Pilot Program for One Year

September 22, 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 August 5, 1997, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule change

The Exchange is proposing to extend its LMM Book Pilot Program for one year. The text of the proposed rule change is available at the Office of the Secretary, PCX and at the Commission.

### 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, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. § 78s(b)(1).

[2] 17 CFR 240.19b–4.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

On October 11, 1996, the Commission approved an Exchange proposal to establish its LMM Book Pilot Program, under which a limited number of Lead Market Makers (''LMMs''.) are able to assume operational responsibility for the options limit order book (''Book'') in certain options issues.[3] Subsequently, on October 28, 1996, the Commission approved an Exchange proposal to adopt a new change applicable to LMMs who participate in the program.[4] In addition on April 1, 1997, the Commission approved an Exchange proposal to expand the scope of the pilot program to allow up to nine LMMs to participate and up to 150 symbols to be used.[5] The Exchange is now proposing to extend the pilot program for one year, to October 12, 1998.

Under the pilot program, the approved LMMs manage the Book function, take responsibility for trading disputes and errors, set rates for Book execution, and pay the Exchange a fee for systems and services. The program allows LMMs to have greater control over their operations on the Exchange floor by allowing them, among other things, to set their own rates for execution services provided to customers. The LMMs who participate during the pilot program are selected by the Options Floor Trading Committee based on certain designated factors. Approved LMMs must maintain ''minimum net capital,'' as provided in SEC Rule 15c–1,[6] and must also maintain a cash or liquid asset position of at least $500,000, plus $25,000 for each issue over 5 issues for which they perform the function of an Order Book Official. Only multiply-traded option issues are eligible during the pilot phase.

The Exchange is requesting a one-year extension to the pilot program so that it

[3] *See* Exchange Act Release No. 37810 (October 10, 1997), 61 FR 54481 (October 18, 1996) (''Pilot Program Approval Order'').

[4] *See* Exchange Act Release No. 37874 (October 28, 1996), 61 FR 213 (November 1, 1996).

[5] *See* Exchange Act Release No. 38462 (April 1, 1997), 62 FR 16886 (April 8, 1997). Each option issue typically has only one symbol associated with it, unless LEAPs are traded on that issue, in which case there would usually be two additional symbols related to the issue, or unless a contract adjustment is necessary due, for example, to a merger or stock split, in which case one additional symbol would usually be added. Previously, the pilot program was limited to allow up to 3 LMMs to participate and up to 40 option symbols to be used.

[6] 17 CFR 240.15c–1.

will have an opportunity to continue reviewing and evaluating the program before seeking permanent approval. In that regard, on May 29, 1997, the Exchange submitted a report to the Commission responding to particular questions set forth in the Pilot Approval Order. The Exchange believes that the program is operating successfully and without any problems, and on that basis, the Exchange believes that a one-year extension of the program is warranted. At this time, the Exchange is not seeking to modify the pilot program.

Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,[7] in general, and Section 6(b)(5),[8] in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, and to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments on the proposed rule change were neither solicited nor received.

## III. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission has closely reviewed the proposed LMM Book Pilot program and has concluded that it should be extended for another year. The Commission believes that the pilot program, whereby the approved LLMs manager the Book function, take responsibility for trading disputes and errors, set rates for Book execution, and pay the Exchange a fee for systems and services, is consistent with the Act and the rules and regulations thereunder. In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act[9] in that it is designed to promote just and equitable principles of trade, to facilitate transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

As noted above, the LLM Book Pilot Program allows LMMs to have greater control over their operations on the Exchange floor, and the Commission agrees with the Exchange that a one-year extension of the program is warranted to allow the Exchange to continue its evaluation of the program.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in order to ensure that PCX officials have a continuous period to review and evaluate the program before seeking permanent approval. The LLM Book Pilot Program was first established on October 11, 1996 and, with a few modest changes, has been operating continuously since that date. Based on the representations made by the Exchange in its 1997 LLM Book Pilot Program report, the Commission concludes that the pilot program has contributed to the Exchange's ability to provide fair and orderly markets. Based on these findings, the Commission concurs that a one-year extension of the program is warranted. Because the pilot program is scheduled to expire October 12, 1997, the Commission believes it is appropriate to extend the pilot program before that date to allow the uninterrupted continuation of the program.

## IV. Solicitation of Comments

Interested person 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 change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–97–32 and should be submitted by October 21, 1997.

*It is therefore ordered,* pursuant to Section 19(b)(2)[10] of the act, that the proposed rule change is approved and, accordingly, the Lead Market Maker Book Pilot Program is extended until October 12, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 97–25795 Filed 9–29–97; 8:45 am]

BILLING CODE 8010–01–M

[7] 15 U.S.C. § 78f(b).

[8] 15 U.S.C. § 78f(b)(5).

[9] *Id.*

[10] 15 U.S.C. § 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

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## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Technical Corrections to the Harmonized Tariff Schedule of the United States

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Technical corrections to the Harmonized Tariff Schedule of the United States (HTSUS); effective date.

**SUMMARY:** The United States Trade Representative (USTR) is making technical corrections to the HTSUS, pursuant to authority granted to the President in section 604 of the Trade Act of 1974 and delegated by the President to the USTR in Proclamation 6969 (62 FR 4415). These modifications will correct errors in prior proclamations, so that the intended tariff treatment is accorded.

**ADDRESSES:** Office of the United States Trade Representative, 600 17th Street, NW, Washington, D.C. 20508.

**FOR FURTHER INFORMATION CONTACT:** Barbara Chattin, Director For Tariff Affairs, (202) 395–5097, or Catherine Field, Senior Counsel For Multilateral Affairs, (202) 395–3432.

**CORRECTION:** The HTS is modified as set forth below with respect to goods entered, or withdrawn from warehouse for consumption, on or after the effective dates specified for the enumerated actions.

BILLING CODE 3190–01–M

1. Effective on January 1, 1994, the HTS is modified as follows:

   (a) the article description for subheading 2208.90.72 is modified by deleting "Mescal" and by inserting in lieu thereof "Mezcal"

2. Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after July 1, 1997, the following new provision is inserted in numerical sequence in subchapter II of chapter 99 of the HTS, with the new material inserted in the collumns headed "Heading/Subheading", "Article Description", "Rates of Duty 1-General", "Rates of Duty 1-Special", "Rates of Duty 2", and "Effective Period", respectively:

| | | | | |
|---|---|---|---|---|
| "9902.84.77 | Automated multi-plunger transfer presses, suitable for use in the encapsulation with thermosetting materials of diodes,transistors, and similar semiconductor devices or electronic integrated circuits (provided for in subheading 8477.10.70)..... | Free | No change | No change | On or before 12/31/2000" |

BILLING CODE 3190–01–C

Explanation of Correction: The action designated in section 1, would correct the misspelling in the article description of a tariff category created to implement a concession under the NAFTA, effective as of the date of entry into force of that agreement. The new tariff provision created in section 2 would correct the inadvertent deletion by Pres. Proclamation 7011 of a pre-existing temporary duty suspension on particular semiconductor machinery. Proclamation 7011 implemented the Information Technology Agreement (ITA) for the United States. Annex B to that Proclamation failed to continue a pre-existing duty suspension provision, since the goods covered by the duty suspension now fall in another provision of chapter 84. The duty suspension provision of chapter 99 must be amended accordingly to reflect the tariff subheading now applicable to these goods. The continuation of the duty suspension (which is scheduled to continue through the close of 2000) allows the subject products to continue to enter the customs territory free of duty, rather than to enter at the rates of duty (being reduced in stages) provided under the ITA.

**Frederick L. Montgomery,**

*Executive Secretary.*

[FR Doc. 97–25824 Filed 9–29–97; 8:45 am]

BILLING CODE 3190–01–M

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Foreign Air Carriers; Unfair and Deceptive Advertising; Enforcement Policy

**AGENCY:** Office of the Secretary (DOT).

**ACTION:** Notice.

**SUMMARY:** The Department's Office of Aviation Enforcement and Proceedings issues this notice to clarify its enforcement policy with regard to the advertising of service to or from the U.S. by foreign carriers. The notice advises foreign carriers that advertising service for which they lack the requisite economic authority from the Department violates the authority provisions of 49 U.S.C. § 41301 and is an unfair and deceptive practice under 49 U.S.C. § 41712 that may warrant enforcement action, even if the carrier has an application for such authority pending before the Department.

**FOR FURTHER INFORMATION CONTACT:** Nicholas Lowry, Office of Aviation Enforcement and Proceedings, U.S. Department of Transportation, 400 7th St. SW., Washington, DC 20590. Tel. No. (202) 366–9349.

**United States of America, Department of Transportation, Office of the Secretary, Washington, D.C.**

*Advertising of Scheduled Service in Foreign Air Transportation—Use of the Notation ''Subject to Government Approval''*

Notice

During a recent investigation, it came to the attention of the Office of Aviation Enforcement and Proceedings (AEP) that some foreign air carriers may be holding out service from the U.S. to foreign points for which they lack U.S. economic authority under 49 U.S.C. § 41301. The issue arose in connection with listings by a foreign carrier on the internet and in the Official Airline Guide (OAG) which related to service that was the subject of its application for authority. The application was pending at the time the advertisements appeared. The carrier included with the listings in question a statement that the service was ''subject to government approval,'' to indicate that the service was contingent on receiving Department approval and might not be provided. It also stated to AEP that it accepted no reservations for the service in the U.S. We asked the carrier to remove the listings in question and it agreed. Since similar practices may be widespread, we believe it appropriate to disseminate AEP's policy on matters of this kind to all foreign carriers operating or planning to operate from the U.S.

AEP has in the past applied and will continue to apply the same standards to the advertisement of proposed service by foreign carriers as it currently applies under Department regulations to U.S. applicants for certificate authority. Section 201.5 of the Department's rules (14 CFR 201.5) provides that U.S. applicants for certificate authority may not ''advertise, list schedules or accept reservations'' or ''accept payment or issue tickets'' for their proposed service until the relevant application has been approved by the Department.[1] Although section 201.5 is specifically limited to U.S. applicants for air carrier authority, we will continue our practice of following a consistent policy in evaluating the advertisements and schedule listings of foreign air carriers. We will therefore consider it an unfair and deceptive practice and an unfair method of competition within the meaning of 49 U.S.C. § 41712, as well as a violation of the authority provisions of 49 U.S.C. § 41301, for a foreign air carrier to hold out service in the U.S. for which it does not have all requisite authorizations from the Department at the time of the holding out.

By the term ''*holding out,*'' we refer to listing or advertising service in any medium reasonably likely to reach the U.S. public, such as computer reservations systems (CRSs), the internet, or published media, such as the Official Airline Guide. Clearly, if the appropriate authority is the subject of an application pending with the Department, the service may not be listed or advertised. A note stating that the listed service is ''subject to government approval'' where an application is pending within the Department is not sufficient to avoid a violation of 49 U.S.C. § 41712 and § 41301. Moreover, a violation is not avoided by refusing to take reservations or accept payment for tickets. On the other hand, a carrier may hold out service with a notation that service is ''subject to government approval'' if the carrier has the requisite U.S. authority but is awaiting *approvals from foreign governments only* for the service advertised.

Questions regarding this notice may be addressed to the Office of Aviation Enforcement and Proceedings, C–70, 400 7th St., S.W., Washington, D.C. 20590. A copy of this notice will be published in the **Federal Register**.

Dated: September 24, 1997.

By:

**Samuel Podberesky,**

*Assistant General Counsel for Aviation Enforcement and Proceedings.*

An electronic version of this document is available on the World Wide Web at http://www.dot.gov.

[FR Doc. 97–25903 Filed 9–29–97; 8:45 am]

BILLING CODE 4910–62–P

[1] Section 201.5 further prohibits issuance of tickets or acceptance of payment for a carrier's proposed service until its authority has become effective or the Department specifically authorizes sales. Under the rule, after Department approval but prior to receipt of effective authority, a carrier may advertise, take reservations and publish schedules (but not accept payment), provided such advertising or schedules prominently state the following: ''This service is subject to receipt of government operating authority.''

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent To Request Renewal From the Office of Management and Budget (OMB) of Current Public Collections of Information

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

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), the FAA invites public comment on six currently approved public information collections which will be submitted to OMB for renewal.

**DATES:** Comments must be received on or before December 1, 1997.

**ADDRESSES:** Comments on any of these collections may be mailed or delivered to the FAA at the following address: Ms. Judith Street, Room 612, Federal Aviation Administration, Corporate Information Division, ABC–100, 800 Independence Ave., SW., Washington, DC 20591.

**FOR FURTHER INFORMATION CONTACT:** Ms. Judith Street at the above address or on (202) 267–9895.

**SUPPLEMENTARY INFORMATION:** The FAA solicits comments on any of the current collections of information in order to evaluate the necessity of the collection, the accuracy of the agency's estimate of the burden, the quality, utility, and clarity of the information to be collected, and possible ways to minimize the burden of the collection. Following are short synopses of the six, currently approved public information collection activities, which will be submitted to OMB for review and renewal:

1. 2120–0021, Certification: Pilots and Flight Instructors. The FAA is empowered to issue airmen certificates to properly qualified persons. This clearance request covers the burden imposed on airmen directly responsible for the control of aircraft. 14 CFR part 61 prescribes requirements for pilot and flight instructor certificates. 14 CFR part 143 prescribes requirements for ground instructors. The current burden for this collection is estimated to be 8020 hours reporting and 248,675 hours in recordkeeping. Information collected is used to determine compliance and applicant eligibility. The number of respondents is estimated to be 709,540.

2. 2120–0022, Certification: Mechanics. Repairmen, Parachute Riggers—14 CFR part 65. The regulation prescribes requirements for mechanics, repairmen, parachute riggers, and inspection authorizations. Information collected shows applicant eligibility. Certification is required to perform these job functions. The current burden associated with this collection is 31,559 hours of reporting burden, and 26,250 hours of recordkeeping burden. The number of respondents is estimated to be 39,639.

3. 2120–0036, Notice of Landing Area Proposal. 14 CFR part 157 requires that each person who intends to construct, activate, deactivate, or change the status of an airport, runway, or taxiway shall notify the FAA. FAA Form 7480–1, Notice of Landing Area Proposal, is used to collect the required information on an as needed basis. The current burden is estimated to be 2,989 hours with 3,986 respondents.

4. 2120–0075, Airport Security—part 107 of the Federal Aviation Regulations (14 CFR Ch. I, part 107). Airport security programs, training records and screening, bomb threats, and arrest reports are needed to ensure protection of persons and property in air transportation against acts of criminal violence, ensure passenger screening procedures are effective and that information is available to comply with Congressional reporting requirements. The current burden is estimated at 15,268 hours of reporting and 59,546 hours of recordkeeping on 465 respondents.

5. 2120–0085, Certification and Operations, 14 CFR part 125. The FAA is authorized to issue Air Carrier Operation Certificates. 14 CFR part 125 prescribes requirements for leased aircraft, Aviation Service Firms and Air Travel Clubs. Information collected shows compliance and applicant's eligibility. The current burden is estimated at 11,683 reporting hours annually and 17,762 recordkeeping hours annually by 57 respondents.

6. 2120–00573, Special Federal Aviation regulation—SFAR–64 was effective on June 3, 1993, and permitted certain operations of noise-restricted aircraft without a formal grant of exemption under 14 CFR part 11. Absent this SFAR, there is no regulatory basis for approval of limited special flight authorization for noncomplying aircraft under 14 CFR part 91, subpart I. Operators of these aircraft would need to petition for and receive a grant of exemption under 14 CFR part 11, which is costly and time consuming for both the petitioner and the FAA. The FAA believes that it is in the public interest to allow limited operations of certain airplanes that do not meet the noise standards of 14 CFR part 91, subpart I, for the purpose of delivering the airplane to a foreign purchaser or flying it to the site of a modifier in the United States who will bring it into compliance with 14 CFR 91.805. Under this SFAR, operators would be able to apply for a special flight authorization to allow limited nonrevenue operations at specific U.S. airports. The information will be used by the FAA to issue special flight authorizations for operations of Stage 1 or Stage 2 airplanes at U.S. airports. The current number of respondents is estimated at 25 for a total annual burden of 38 hours.

Issued in Washington, DC., on September 24, 1997.

**Steve Hopkins,**

*Manager, Corporate Information Division, ABC–100.*

[FR Doc. 97–25827 Filed 9–29–97; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Commercial Space Transportation Advisory Committee; Open Meeting

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

**ACTION:** Notice of Commercial Space Transportation Advisory Committee open meeting.

**SUMMARY:** Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 2), notice is hereby given of a meeting of the Commercial Space Transportation Advisory Committee (COMSTAC). The meeting will take place on Thursday, October 23, 1997, from 8:00 a.m. to 1:15 p.m. in Room 2230 of the Department of Transportation's Headquarters building at 400 Seventh Street, SW, in Washington, DC. This will be the twenty-sixth meeting of the COMSTAC.

The agenda for the meeting will include reports from the respective COMSTAC Working Groups; a legislative update on Congressional activities involving commercial space transportation; an activities report from FAA's Acting Associate Administrator for Commercial Space Transportation (formerly the Office of Commercial Space Transportation [60 FR 62762, December 7, 1995]); and other related topics. The meeting is open to the public; however, space is limited.

Meetings of the Technology and Innovation, Risk Management, and Launch Operations and Support Working Groups will be held on Wednesday, October 22, 1997. For specific information concerning the times and locations of these meetings, contact the Contact Person listed below.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should inform the Contact Person listed below in advance of the meeting.

**FOR FURTHER INFORMATION CONTACT:** Brenda Parker (AST-200), Office of the Associate Administrator for Commercial Space Transportation (AST), 400 7th Street SW, Room 5415, Washington, DC 20590, telephone (202) 366–2932.

Dated: September 19, 1997.

**Patricia G. Smith,**

*Acting Associate Administrator for Commercial Space Transportation.*

[FR Doc. 97–25904 Filed 9–29–97; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### RTCA, Inc.; Special Committee 169; Aeronautical Data Link Applications

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee (SC)–169 meeting to be held October 14–16, 1997, starting at 9 a.m. The meeting will be held at RTCA, Inc., 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

The agenda will include: October 14–15, Working Group (WG)–2, Required Communications Performance; October 16–17, WG–4, Data Communication Coordination Plan. (WG–4 will meet after the Plenary Session on October 16 and, if necessary, on October 17.) October 16, Plenary Session: (1) Plenary Administration: Chairman's Introductory Remarks; Review and Approval of Meeting Agenda; Review and Approval of Minutes from the Previous Meeting; Review of Outstanding Action Items; (2) WG Progress: WG–1, Air Traffic Services Data Link Communications; WG–2, Required Communications Performance; WG–3, Flight Information Services Communications; WG–4, Coordination of Communications Capability Implementation; WG–5, Ground/Ground Traffic Flow Management Applications; WG–6, Human Factors Guidelines; (3) Plenary Business: Review of SARP Compliant Documents; Discussion of Future of SC–169 Work Efforts; (4) Other Business; (5) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 24, 1997.

**Janice L. Peters,**

*Designated Official.*

[FR Doc. 97–25825 Filed 9–29–97; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### RTCA, Inc.; Special Committee 192; National Airspace Review Planning and Analysis

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for the Special Committee 192 meeting to be held October 15–16, 1997, starting at 9:00 a.m. The meeting will be held at MITRE Corporation, 1820 Dolley Madison Boulevard, Westgate Building, McLean, VA 22102.

The agenda will be as follows: (1) Chairman's Introductory Remarks; (2) Approval of Proposed Meeting Agenda; (3) Review and Approval of Summary of the Previous Meeting; (4) Information Briefings; (5) Report from Design and Infrastructure Work Group; (6) Report from Modeling and Measurement Work Group; (7) Other Business; (8) Set Agenda for Next Meeting; (9) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 24, 1997.

**Janice L. Peters,**

*Designated Official.*

[FR Doc. 97–25826 Filed 9–29–97; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### [Docket No. 97–064; Notice 1]

### Notice of Receipt of Petition for Decision That Nonconforming 1990–1993 BMW K1 Motorcycles Are Eligible for Importation

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Notice of receipt of petition for decision that nonconforming 1990–1993 BMW K1 motorcycles are eligible for importation.

**SUMMARY:** This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1990–1993 BMW K1 motorcycles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

**DATES:** The closing date for comments on the petition is October 30, 1997

**ADDRESSES:** Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9:30 a.m. to 4 p.m.]

**FOR FURTHER INFORMATION CONTACT:** George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

**SUPPLEMENTARY INFORMATION:**

#### Background

Under 49 U.S.C. § 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports, Inc. of Lansdale, Pennsylvania (''Champagne'') (Registered Importer 90–009) has petitioned NHTSA to decide whether 1990–1993 BMW K1 motorcycles are eligible for importation into the United States. The vehicles which Champagne believes are substantially similar are 1990–1993 BMW K1 motorcycles that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1990–1993 BMW K1 motorcycles to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that non-U.S. certified 1990–1993 BMW K1 motorcycles, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1990–1993 BMW K1 motorcycles are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 106 *Brake Hoses*, 111 *Rearview Mirrors*, 116 *Brake Fluid*, 119 *New Pneumatic Tires for Vehicles other than Passenger Cars*, and 122 *Motorcycle Brake Systems*.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* installation of U.S.—model headlamp assemblies.

Standard No. 120 *Tire Selection and Rims for Vehicles other than Passenger Cars:* installation of a tire information placard.

Standard No. 123 *Motorcycle Controls and Displays:* installation of a U.S. model speedometer calibrated in miles per hour.

The petitioner also states that vehicle identification number plates meeting the requirements of 49 CFR Part 565 will be affixed to non-U.S. certified 1990–1993 BMW K1 motorcycles.

Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

**Authority:** 49 U.S.C. 30141 (a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: September 24, 1997.

**Marilynne Jacobs,**

*Director, Office of Vehicle Safety Compliance*

[FR Doc. 97–25901 Filed 9–29–97; 8:45 am]

BILLING CODE 4910–59–P

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. 97–065; Notice 1]**

### Notice of Receipt of Petition for Decision That Nonconforming 1986–1997 Suzuki GSXR 1100 Motorcycles Are Eligible for Importation

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Notice of receipt of petition for decision that nonconforming 1986–1997 Suzuki GSXR 1100 motorcycles are eligible for importation.

**SUMMARY:** This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1986–1997 Suzuki GSXR 1100 motorcycles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

**DATES:** The closing date for comments on the petition is October 30, 1997.

**ADDRESSES:** Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm]

**FOR FURTHER INFORMATION CONTACT:** George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

**SUPPLEMENTARY INFORMATION:**

### Background

Under 49 U.S.C. § 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports, Inc. of Lansdale, Pennsylvania (''Champagne'') (Registered Importer 90–009) has petitioned NHTSA to decide whether 1986–1997 Suzuki GSXR 1100 motorcycles are eligible for importation into the United States. The vehicles which Champagne believes are substantially similar are 1986–1997 Suzuki GSXR 1100 motorcycles that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1986–1997 Suzuki GSXR 1100 motorcycles to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that non-U.S. certified 1986–1997 Suzuki GSXR 1100 motorcycles, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1986–1997 Suzuki GSXR 1100 motorcycles are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 106 *Brake Hoses*, 111 *Rearview Mirrors*, 116 *Brake Fluid*, 119 *New Pneumatic Tires for Vehicles other than Passenger Cars*, and 122 *Motorcycle Brake Systems*.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* installation of U.S.-model headlamp assemblies.

Standard No. 120 *Tire Selection and Rims for Vehicles other than Passenger Cars:* installation of a tire information placard.

Standard No. 123 *Motorcycle Controls and Displays:* installation of a U.S. model speedometer calibrated in miles per hour.

The petitioner also states that vehicle identification number plates meeting the requirements of 49 CFR Part 565 will be affixed to non-U.S. certified 1986–1997 Suzuki GSXR 1100 motorcycles.

Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

**Authority:** 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: September 24, 1997.

**Marilynne Jacobs,**

*Director, Office of Vehicle Safety Compliance.*

[FR Doc. 97–25902 Filed 9–29–97; 8:45 am]

BILLING CODE 4910–59–P

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## DEPARTMENT OF TRANSPORTATION

## National Highway Traffic Safety Administration

**[Docket No. 97–066; Notice 1]**

## Notice of Receipt of Petition for Decision That Nonconforming 1972–1979 Volkswagen Beetle Convertibles and 1972–1977 Volkswagen Beetle Sedans Are Eligible for Importation

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Notice of receipt of petition for decision that nonconforming 1972–1979 Volkswagen Beetle convertibles and 1972–1977 Volkswagen Beetle sedans are eligible for importation.

**SUMMARY:** This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1972–1979 Volkswagen Beetle Convertibles and 1972–1977 Volkswagen Beetle Sedans that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

**DATES:** The closing date for comments on the petition is October 30, 1997.

**ADDRESSES:** Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm]

**FOR FURTHER INFORMATION CONTACT:** George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

**SUPPLEMENTARY INFORMATION:**

### Background

Under 49 U.S.C. § 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports, Inc. of Lansdale, Pennsylvania (''champagne'') (Registered Importer 90–009) has petitioned NHTSA to decide whether 1972–1979 Volkswagen Beetle Convertibles and 1972–1977 Volkswagen Beetle Sedans are eligible for importation into the United States. The vehicles which Champagne believes are substantially similar are the 1972–1979 Volkswagen Beetle Convertible and 1972–1977 Volkswagen Beetle Sedan that were manufactured for importation into, and sale in, the United States and certified by their manufacturer, Volkswagenwerke, A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1972–1979 Volkswagen Beetle Convertibles and 1972–1977 Volkswagen Beetle Sedans to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that non-U.S. certified 1972–1979 Volkswagen Beetle Convertibles and 1972–1977 Volkswagen Beetle Sedans, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1972–1979

Volkswagen Beetle Convertibles and 1972–1977 Volkswagen Beetle Sedans are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence * * *.*, 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 109 *New Pneumatic Tires,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 203 *Impact Protection for the Driver from the Steering Control System,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Retention,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* and 302 *Flammability of Interior Materials.*

Petitioner also contends that non-U.S. certified 1972–1979 Volkswagen Beetle Convertibles and 1972–1977 Volkswagen Beetle Sedans are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked ''Brake'' for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the appropriate symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamp assemblies; (b) installation of U.S.-model front and rear sidemarker/reflector assemblies; (c) installation of U.S.-model taillamp assemblies.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* installation of a warning buzzer microswitch and a warning buzzer in the steering lock assembly.

Standard No. 208 *Occupant Crash Protection:* (a) Installation of a U.S.-model seat belt in the driver's seating position, or a belt webbing actuated microswitch inside the driver's seat belt retractor; (b) installation of an ignition switch actuated seat belt warning lamp and buzzer. The petitioner also states that the vehicles are equipped with combination lap and shoulder restraints that adjust by means of an automatic retractor and release by means of a single push button in the front designated seating positions, and with combination lap and shoulder restraints that release by means of a single push button in the rear outboard designated seating positions.

Standard No. 214 *Side Impact Protection:* installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity:* installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

Additionally, the petitioner states that the bumpers on non-U.S. certified 1972–1979 Volkswagen Beetle Convertibles and 1972–1977 Volkswagen Beetle Sedans must be reinforced, or U.S.-model bumper components must be installed, to comply with the Bumper Standard found in 49 CFR Part 581.

Additionally, the petitioner states that a vehicle identification number plate must be affixed to non-U.S. certified 1972–1979 Volkswagen Beetle Convertibles and 1972–1977 Volkswagen Sedans to comply with the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

**Authority:** 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: September 24, 1997.

**Marilynne Jacobs,**

*Director, Office of Vehicle Safety Compliance.*

[FR Doc. 97–25905 Filed 9–29–97; 8:45 am]

BILLING CODE 4910–59–P

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

### Release of Waybill Data

The Surface Transportation Board has received requests from Canadian National Railway Company (WB525—9/22/97), and from the Alliance for Rail Competition (WB527—9/19/97) for permission to use certain data from the Board's Carload Waybill Samples. A copy of these requests may be obtained from the Office of Economics, Environmental Analysis, and Administration.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics, Environmental Analysis, and Administration within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.8.

Contact: James A. Nash, (202) 565–1542.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 97–25926 Filed 9–29–97; 8:45 am]

BILLING CODE 4915–00–P

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Docket No. AB–290 (Sub-No. 190X)]**

### Norfolk Southern Railway Company—Abandonment Exemption—in Fayette County, AL

On September 10, 1997, Norfolk Southern Railway Company (NSR) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a line of railroad known as the Berry-Belk Line, extending from railroad milepost 862.8 at Berry, AL to railroad milepost 884.9 at or near Belk, (Covin), AL, a distance of 22.1 miles in Fayette County, AL. The line traverses U.S. Postal Service ZIP Code 35545 and includes the stations of Berry (milepost 862.8), Fayette (milepost 878.6), and Covin (Belk) (milepost 884.9).

The line does not contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it. The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—*

*Abandonment—Goshen,* 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by December 29, 1997.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $900 filing fee. See 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use.[1] Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than October 20, 1997. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–290 (Sub-No. 190X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001; and (2) James R. Paschall, General Attorney, Norfolk Southern Railway Company, Three Commercial Place, Norfolk, VA 23510–2191.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at (202) 565–1695.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary), prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact SEA. EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Decided: September 24, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 97–25925 Filed 9–29–97; 8:45 am]

BILLING CODE 4915–00–P

[1] Although NSR believes that the line is not suitable for public use, we will nevertheless entertain public use/trail use requests.

## DEPARTMENT OF THE TREASURY

## Customs Service

## Modification of National Customs Automation Program Test Regarding Reconciliation

**AGENCY:** Customs Service, Treasury.

**ACTION:** General notice.

**SUMMARY:** A notice published in the **Federal Register** on February 6, 1997, announced Customs plan to conduct a prototype test of reconciliation. This document is a replacement for that notice. This document notifies the trade community of changes to the prototype test and sets forth the policy which makes this prototype the exclusive means to reconcile entries, pursuant to 19 U.S.C. 1484(b). The prototype will henceforth be referred to as the Automated Commercial System (ACS) Reconciliation Prototype.

This document invites public comments concerning any aspect of the planned test, informs interested members of the public of the requirements for voluntary participation, and establishes the process for developing evaluation criteria. To participate in this prototype, certain information, as outlined in this notice, must be filed with Customs prior to filing Reconciliations. It is important to note that resources expended by the trade and Customs on these prototypes may not carry forward to the final program.

**EFFECTIVE DATE:** The testing period of this prototype will commence no earlier than October 1, 1998, will run for approximately two years, and may be extended. The prototype will be limited to consumption entries filed on or after October 1, 1998, through September 30, 2000. Comments concerning the test are requested by November 14, 1997. A subsequent notice will be published in the **Federal Register** to announce the opening date of the application period, and specify any changes made to this prototype as a result of the comments received from the public.

**ADDRESSES:** Written comments regarding this notice should be addressed to Ms. Shari McCann, Reconciliation Team, U.S. Customs Service, 1301 Constitution Ave, NW, Room 1315, Washington, DC, 20229–0001.

**FOR FURTHER INFORMATION CONTACT:** Ms. Shari McCann, at (202) 927–1106, or Mr. Don Luther at (202) 927–0915.

**SUPPLEMENTARY INFORMATION:**

### Background

Title VI of the North American Free Trade Agreement Implementation Act (the Act), Pub.L. 103–182, 107 Stat. 2057 (December 8, 1993), contains provisions pertaining to Customs Modernization (107 Stat. 2170). Subtitle B of Title VI establishes the National Customs Automation Program (NCAP)—an automated and electronic system for the processing of commercial importations. Section 637 of the Act amended Section 484 of the Tariff Act of 1930 to establish a new subsection (b), entitled ''Reconciliation'', a planned component of the NCAP. Section 101.9(b) of the Customs Regulations (19 CFR 101.9(b)) provides for the testing of NCAP components. *See,* TD 95–21. This test is established pursuant to those regulations. This document modifies the prototype test of reconciliation that was announced in the **Federal Register** (62 FR 5673) on February 6, 1997, and replaces that document.

*In General*

Concurrent with this Automated Commercial System (ACS) Reconciliation Prototype, Customs is designing a reconciliation component under the National Customs Automation Program Prototype (NCAP/P) in the Automated Commercial Environment (*see,* 62 FR 14731, dated March 27, 1997).

Thus, except for participation in the NCAP/P and upon implementation of this prototype, any party who elects to reconcile entries pursuant to 19 U.S.C. 1484(b) may only do so through this prototype. This prototype will serve as the exclusive means to reconcile entries for (1) value, (2) classification, (3) merchandise entered under Harmonized Tariff Schedule of the United States (HTSUS) heading 9802 or (4) merchandise entered under the North American Free Trade Agreement (NAFTA). All practices with respect to block liquidation/block appraisement (liquidating one entry summary or some entry summaries for a periodic adjustment affecting many entry summaries) will cease and such post-entry adjustments will take place via the ACS Reconciliation Prototype. All importers may apply for this prototype. Details on the application process are explained below.

**The Concept of Reconciliation**

When certain information (other than that related to the admissibility of merchandise) is not determinable at the time of entry summary, an importer may later provide Customs with that information on a Reconciliation. A Reconciliation is treated as an entry for purposes of liquidation, reliquidation, and protest.

A notice of intention to file a reconciliation (''Notice of Intent'') identifies an undeterminable issue, transfers that issue to a Reconciliation and permits the liquidation of the underlying entry as to all issues other than those which are transferred to the Reconciliation. During this prototype, the importer will ''flag'' the underlying entries with an electronic indicator, which will serve as the Notice of Intent. By providing a Notice of Intent, an importer is requesting that a certain issue or group of issues be separated from the entry summary. The importer voluntarily requests and accepts that the issue(s) identified in the notice of intent remain open and outstanding. The importer remains responsible for filing a Reconciliation, and liable for any duties, fees, and taxes resulting from the filing and/or liquidation of the Reconciliation. The Notice of Intent creates an obligation on the importer to file the Reconciliation. Importers participating in this prototype will recognize that the liquidation of the underlying entries pertains only to those issues not identified by the importer on the notice of intent.

Upon liquidation of any underlying entry summary, any decision by Customs entering into that liquidation, *e.g.*, classification, may be protested pursuant to 19 U.S.C. 1514. When the outstanding issue, *e.g.*, value as determined by the actual costs, is later furnished in the Reconciliation, the Reconciliation will be liquidated. The liquidation of the Reconciliation will be posted to the Bulletin Notice of Liquidation, and may be protested pursuant to 19 U.S.C. 1514, but the protest may only pertain to the issue(s) flagged for reconciliation (*i.e.*, the protest may not re-visit issues previously liquidated on the underlying entry summary).

Under the statutory mandate of 19 U.S.C. 1484, the importer is responsible for using reasonable care in declaring at entry the proper value, classification and rate of duty applicable to imported merchandise. The public is reminded that the obligation to use reasonable care applies to all aspects of this prototype, including the filing and flagging of the underlying entries and the filing of the Reconciliation.

Inherent in the concept of reconciliation is the fact that, because certain issues are kept open pending filing of the Reconciliation, the information regarding these issues and the resulting liability for the duties, taxes and fees previously asserted by the importer may change when the Reconciliation is filed. Therefore, for the duration of this prototype, Customs will not accept drawback claims or drawback certificates on underlying entries flagged for reconciliation until the Reconciliation is filed with all duties, taxes and fees paid. In the case of a drawback claim and a reconciliation refund against the same underlying entries, the importer is responsible for ensuring that claims for refunds in excess of the duties paid are not filed with Customs and for substantiating how the separate refund requests apply to different merchandise.

**Prototype Objectives**

The Reconciliation team's objectives for this prototype are to:

1. Work with the trade community, other agencies, and other parties affected by this program in the design, conduct, and evaluation of the prototype;

2. Obtain experience through the prototype for use in the design of operational procedures, automated systems, and regulations; and

3. Implement reconciliation on a national level in conjunction with the Trade Compliance Redesign.

*Description of the ACS Reconciliation Prototype*

1. Issues To Be Reconciled

The ACS Reconciliation Prototype will allow the following issues to be flagged for reconciliation: value, HTSUS heading 9802, NAFTA, and classification on a limited basis.

a. *Value*—The ACS Reconciliation Prototype is open to reconciliation of all value issues.

b. *9802*—The issue of 9802 includes only the value aspect involved with this HTSUS provision, *e.g.*, reconciling the estimated to actual costs.

c. *NAFTA*—Reconciliation may be used as a vehicle to file post-importation refund claims under 19 U.S.C. 1520(d). NAFTA Reconciliations are subject to the obligations under 19 CFR part 181, subpart D. Presentation of the NAFTA Certificate of Origin to Customs is waived for the purposes of this prototype, but the filer must retain these documents, which shall be provided to Customs upon request. Filers are reminded that interest shall accrue from the date on which the claim for NAFTA eligibility is made (the date of the Reconciliation) to the date of liquidation or reliquidation of the Reconciliation.

The obligation opened by the Notice of Intent applies to all Reconciliations, including NAFTA, even if the participant finally concludes it cannot file a valid 520(d) claim, in which instance the NAFTA Reconciliation would be filed with no change.

d. *Classification*—Classification issues will be eligible for reconciliation only when such issues have been formally established as the subject of a pending administrative ruling, protest or court action.

A Reconciliation of value, 9802 and/or classification shall be filed within 15 months of the date of the oldest entry summary flagged for and grouped on that Reconciliation. A Reconciliation may cover any combination of value, 9802 and classification. Should the issues of value, 9802 and/or classification on one entry summary be flagged for reconciliation, one Reconciliation covering all three issues will be filed.

A NAFTA Reconciliation must be filed within 12 months of the date of importation of the oldest entry summary flagged for and grouped on that Reconciliation. NAFTA Reconciliations will not be combined with other issues, because of NAFTA's unique nature and different due dates, and so that Customs may expedite the processing of such refunds.

2. Chain of Events

a. *Initial application*—As part of an importer's application to participate in the ACS Reconciliation Prototype, the importer will provide information including descriptions of the specific issues to be reconciled, the merchandise and Harmonized Tariff Schedule (HTSUS) classification, and which ports the importer uses or intends to use.

b. *Entries flagged for reconciliation*—

i. Any entry summary (see below for eligible entry types) that is flagged for reconciliation must be filed via the Automated Broker Interface (ABI). An electronic indicator, or ''flag,'' signifying that these entries are to be reconciled, must be provided at the header level. The flag designates that the indicated issue(s) for the entire entry summary (not just a specific line) is subject to reconciliation.

ii. For purposes of this prototype, the ''flag'' serves as the importer's Notice of Intent to file a Reconciliation.

iii. The importer must use reasonable care in filing the entry summary,

including but not limited to declaring the proper value, classification and rate of duty on the underlying entry summary. The importer must provide a good faith value estimate, and deposit the appropriate duties, taxes, and fees at time of entry summary.

iv. Entry summaries flagged for reconciliation will require a continuous bond, which must be accompanied by a rider. The rider shall read as follows:

By this rider to the Customs Form 301, No. _____, executed on _____, by _____, as principal, importer No. _____, an _____, as surety, code No. _____, which is effective on _____, the principal and surety agree that this bond covers all Reconciliations pursuant to 19 U.S.C. 1484(b) that are elected on any entries secured by this bond, and that all conditions set out in Section 113.62, Customs Regulations, are applicable thereto.

The continuous bond obligated on the underlying entries, along with the rider, will be used to cover the Reconciliation.

v. All entries subject to one Reconciliation must be covered by one surety. Each Reconciliation must be covered by one surety, i.e., two sureties cannot cover the same Reconciliation.

vi. Entry summaries may be flagged for reconciliation until the close of the test period. Reconciliations may be filed after the close of the test period.

c. *Liquidation of underlying entry summaries*—Liquidation of the underlying entry summary will occur as with any entry summary. Importers who choose to participate in this prototype will recognize that the liquidation of the underlying entries pertains only to those issues not identified by the importer as reconcilable. Upon liquidation of the underlying entries, any decisions of the Customs Service entering into that liquidation can be protested pursuant to 19 U.S.C. 1514. The liquidation of the Reconciliation will be posted to the Bulletin Notice of Liquidation, and any decision of the Customs Service pertaining to that liquidation may also be protested (pursuant to 19 U.S.C. 1514).

d. *Importer Electronically Transmits the Reconciliation via ABI*—

i. When the importer has finalized the outstanding information, and has the answer to the issue in question, the filer will electronically (via ABI) transmit the Reconciliation to Customs. The Reconciliation will be a new entry type 09.

ii. Transmission of a Reconciliation for value, 9802 and/or classification must occur within 15 months of the date of the oldest entry summary flagged for and grouped on that Reconciliation. Transmission of a NAFTA Reconciliation must occur within 12 months of the date of importation of the oldest entry summary flagged for and grouped on that Reconciliation.

iii. Each Reconciliation will be limited to one importer of record, *i.e.*, the underlying entries and the Reconciliation must have the same importer of record.

iv. This prototype will allow up to 9,999 underlying entries per Reconciliation.

v. The importer must clearly document how the information in the Reconciliation was derived, and provide all supporting documentation to Customs when the Reconciliation is filed. The Reconciliation must include complete supporting documentation for the information provided, to substantiate the importer's claim. The supporting documentation must include details at the entry line level. Supporting documents may include, but are not limited to:

(a) CF 247—Cost Submission
(b) detailed line-level spreadsheets
(c) landed cost analysis sheets
(d) invoices, purchase orders, and contracts.

vi. While entry summaries may be flagged until the close of the test period, Reconciliations may be filed and liquidated after the closing date of the test.

vii. The structure of the Reconciliation will include a header, association file, and line item data:

(a) Header—The Reconciliation header will include the following data elements:

(i) Reconciliation entry number
(ii) Reconciliation entry type (09)
(iii) Reconciliation date (date of filing)
(iv) Issue(s) being reconciled
(v) IRS number
(vi) Surety code
(vii)Port of entry code (= processing port)
(viii) Summary date of oldest underlying entry (if the reconciliation issue is value, 9802 or classification)
(ix) Date of import of oldest underlying entry (if the reconciliation issue is NAFTA)
(x) The total of the original duties, taxes, and fees (fees broken out by ''class code'') which were deposited on the underlying entries
(xi) The total of the reconciled duties, taxes, and fees (fees broken out by ''class code'') which should have been paid for the underlying entries, had the complete information been available to the importer at the time of filing the underlying entries
(xii) The total amount of interest deposited on filing of the Reconciliation, if the filer elects to do so
(xiii) Comment field: This field is to be used to explain any details of the Reconciliation, *e.g.*, Assist declaration on part XYZ for the period 10/1/98 –9/30/99.

(b) Association file—The association file will include the list of underlying entry numbers and the Reconciliation revenue adjustment, broken out by entry. The association file will consist of the following data elements:

(i) The underlying entry numbers and ports of entry which were previously flagged and grouped on this Reconciliation
(ii) The original amount of duties, taxes and fees (fees broken out by ''class code'') per underlying entry which were deposited at entry summary
(iii) The reconciled amount of duty, taxes and fees (fees broken out by ''class code'') which should have been paid for each of the underlying entries, had the complete information been available to the importer at the time of filing the underlying entry summary
(iv) If the Reconciliation results in additional duties due Customs, the filer may deposit interest at time of filing the Reconciliation. Interest must be calculated by and broken out to each underlying entry.

(c) Line item data—Aggregate line item data will be manually submitted via hard copy CF 7501. Each reconciliation line item will be consolidated for all of the underlying entries listed in the association file. Each combination of HTSUS, country of origin, SPI and month of release will require a separate line. The Reconciliation line data elements will include:

(i) HTS
(ii) SPI (if changed)
(iii) Country of origin
(iv) Quantity (if changed)
(v) Value
(vi) Month of release

The reconciled line information will be provided below the original information, as follows:

(Original) HTS SPI C/O Quantity Value Release month
(Reconciled) HTS SPI C/O Quantity Value Release month

e. *Payment*—If the Reconciliation results in a revenue change, Customs will issue one bill or refund per Reconciliation. If the Reconciliation results in additional duties due Customs, payment must be made via check, statement or Automated Clearing House at the time of filing the Reconciliation. The filer may deposit interest at time of Reconciliation filing. If the Reconciliation results in additional duties due the importer,

Customs will issue a refund within 30 days of liquidation of the Reconciliation. Final interest will be assessed or refunded as appropriate.

f. *Liquidation of Reconciliation*—

i. The Reconciliation will be reviewed and liquidated, and one bill or refund issued if a revenue change is appropriate. Bill/refund amounts will be calculated against the duty as shown in the association file upon liquidation of the Reconciliation. Importers will recognize that there may be instances where no bill or refund is necessary. Interest will be calculated in accordance with 19 U.S.C. 1505.

ii. On a matter of dispute, the importer may follow normal protest procedures (pursuant to 19 U.S.C. 1514) with regard to the Reconciliation.

II. Eligibility Criteria

1. Reconciliation is to be used to group entries together for a common, outstanding issue. Entries flagged for reconciliation which have the same outstanding information should all be grouped on one Reconciliation, *e.g.*, entries flagged for reconciliation over a one year period awaiting finalization of assist information should be grouped on one Reconciliation where the assist information is provided.

2. Adequate bond coverage must exist for the Reconciliation.

3. Participants must be capable of filing the underlying entry and Reconciliation information electronically, via the Automated Broker Interface (ABI).

4. The following entries types are eligible for reconciliation under this prototype:

a. Entry type 01: Free and dutiable consumption entries

b. Entry type 02*: Quota/visa consumption entries

c. Entry type 03*: Antidumping/Countervailing duty (AD/CVD) consumption entries

d. Entry type 06: Foreign Trade Zone consumption entries

e. Entry type 07*: Quota/visa and AD/CVD combination consumption entries

*Quota and AD/CVD entries may be reconciled for value, classification, 9802 and/or NAFTA. The issues of AD/CVD final rate and scope determination, quota category or any admissibility issue are not eligible reconciliation issues under this prototype.

5. The underlying entries flagged for a Reconciliation may be filed at any port, including any combination of ports.

6. The Reconciliation and supporting documentation may be filed at any port location. Certain ports will be established as reconciliation processing ports. The ABI transmission of the Reconciliation must reflect one of the Customs-identified processing ports in the port code field. Customs will identify and announce the reconciliation processing ports in the **Federal Register**.

Utilizing the logic of the Remote Location Filing programming, participant profiles will be established in ACS. Participants must identify those locations from where the ABI transmissions will be filed.

7. Participants must agree to participate in the evaluation of this test.

**Application to Participate in the ACS Reconciliation Prototype**

This prototype is open to all importers. As stated above, this prototype will serve as the exclusive authority to reconcile entries, outside of any other Customs-designated prototypes. This notice requests importers to apply for participation in this prototype by submitting the following information:

1. Importer name and IRS number
2. Broker name(s) and filer code(s)
3. Surety name(s) and surety code(s)
4. Bond coverage (reconciliation rider mentioned above)

A copy of the rider and identification of the port in which the continuous bond and rider are filed must be included in the application.

5. Commodities covered under the Reconciliation
6. Processing port which will be used
7. Port(s) at which underlying entries and Reconciliation will be filed
8. Port location from where ABI transmission is sent (may be same as #7)
9. Number of entries anticipated to be covered by the Reconciliation
10. Description of specific issue(s) which will be reconciled
11. Point of contact and telephone number
12. Any comments on prototype participation

The application may be submitted by the importer's broker and/or attorney, if duly authorized. This information should be submitted to Ms. Shari McCann, Reconciliation Team, U.S. Customs Service, 1301 Constitution Ave, NW, Room 1315, Washington, DC, 20229. A subsequent notice will be published in the **Federal Register** to announce the opening date of the application period. By applying to participate in this test, the importer is agreeing to participate pursuant to the terms of the test as defined in this notice.

Applications may be submitted throughout the duration of the prototype. Applicants will be notified in writing of their acceptance or denial into the prototype. An applicant who has been denied participation in the prototype may re-apply after 30 days of the notice of denial.

Interested candidates should note that participation in this test will not constitute confidential information, and that lists of participants will be made available on the Customs Electronic Bulletin Board.

**Misconduct Under Prototype**

If a filer attempts to submit data relating to prohibited merchandise, abuses reconciliation by using it when the reconciliation issue is not truly undeterminable at time of entry summary; submits entry types not authorized for reconciliation; is consistently late in filing the Reconciliation or depositing the duties, fees and taxes; fails to supply Customs with sufficient supporting documentation for the Reconciliation; is habitually delinquent in the payment of bills from Customs; or otherwise fails to follow the procedures outlined herein, or applicable laws and regulations, then the filer may be subject to liquidated damages, penalties and/or other administrative sanctions and/or prevented from participation in future prototypes.

**Regulatory Provisions Suspended**

Certain requirements of § 113.62 of the Customs Regulations (19 CFR 113.62), pertaining to basic importation and entry bond conditions, will be suspended during this prototype. Certain provisions in parts 141 and 142 of the Customs Regulations (19 CFR 141 and 19 CFR 142), pertaining to entry, and of part 159 of the Customs Regulations (19 CFR part 159), pertaining to liquidation of duties, will also be suspended during this prototype.

Absent any specified alternate procedure, the current regulations apply.

III. Test Evaluation Criteria

Once the initial comment period has closed, Customs will review all public comments received concerning any aspect of the test program or procedures, answer any questions in light of those comments, and establish baseline measures and evaluation methods and criteria. Interim evaluations of the prototype will be published on the Customs Electronic Bulletin Board, and the results of the final prototype evaluation will be published in the **Federal Register** as required by 19 CFR 101.9(b). The following evaluation

methods and criteria have been suggested:

1. Baseline measurements to be established through dataqueries and questionnaires
2. Reports to be run through use of dataquery throughout the prototype
3. Questionnaires from both trade participants and Customs to be used before, during and after the prototype period.

Customs may assess any or all of the following evaluation criteria from both Customs and the trade participants:

1. Workload impact (workload shifts/volume, cycle times, etc.)
2. Cost savings (staff, interest, issuance of fewer checks or bills, tracking refunds/bills, reduction in contingent liabilities, etc.)
3. Policy and procedure accommodation
4. Trade compliance impact
5. Problem resolution
6. System efficiency
7. Operational efficiency
8. Other issues identified by the participant group.

Customs will request that test participants be active in the evaluation, identifying costs and savings experienced in this prototype.

Dated: September 25, 1997.

**Albert W. Tennant,**

*Acting Assistant Commissioner, Office of Field Operations*

[FR Doc. 97–25930 Filed 9–29–97; 8:45 am]

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Tuesday
September 30, 1997

# Part II

# Department of Transportation

## Coast Guard

**33 CFR Parts 155 and 159**
**46 CFR Part 2, et al.**
**Harmonization With International Safety Standards; Final Rule**

**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**33 CFR Parts 155 and 159**

**46 CFR Parts 2, 3, 4, 6, 7, 10, 12, 15, 16, 24, 25, 26, 28, 30, 31, 32, 34, 35, 39, 50, 56, 58, 61, 63, 68, 69, 70, 71, 72, 76, 77, 78, 80, 90, 91, 92, 93, 95, 96, 97, 105, 108, 109, 147A, 148, 150, 151, 153, 154, 160, 164, 166, 167, 168, 170, 172, 188, 189, 193, 195, 196, and 197**

**[CGD 95–028]**

**RIN 2115–AF10**

## Harmonization With International Safety Standards

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** As part of its ongoing response to the President's Regulatory Reinvention Initiative, the Coast Guard amends its regulations for both inspected and uninspected vessels by removing obsolete, unnecessary or excessive provisions, and harmonizing regulations with international safety standards. These amendments will reduce the regulatory burden to industry by removing differences between requirements that apply to U.S. vessels in international trade and those that apply to similar vessels in international trade that fly the flag of responsible foreign nations.

**DATES:** This rule is effective October 30, 1997. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register on October 30, 1997.

**ADDRESSES:** Documents as indicated in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G–LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street SW., room 3406, Washington, DC 20593–0001, between 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:** Mr. Wayne Lundy, project manager, Office of Design and Engineering Standards (G–MSE), U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593–0001, telephone 202–267–0024.

**SUPPLEMENTARY INFORMATION:**

### Regulatory History

On November 19, 1996, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled Harmonization with International Safety Standards in the **Federal Register** (61 FR 58804). The Coast Guard received 12 letters commenting on the proposed rulemaking. No public hearing was requested, and none was held.

### Background and Purpose

This rule was sparked by several calls for regulatory review and reform. For example, on March 4, 1995, the President issued a memorandum calling on executive agencies to review regulations with the goals of: (1) Cutting obsolete regulations; (2) focusing on results instead of process and punishment; (3) convening meetings with the regulated community; and (4) expanding efforts to promote consensual rulemaking. The President's memorandum coincided with U.S. maritime industry requests for greater alignment of Coast Guard regulations with internationally accepted standards to reduce cost disadvantages and thereby improve the competitiveness of the U.S. industry.

The ongoing National Performance Review effort, which stresses reducing red tape and maximizing results, provides an impetus for the harmonization of regulations with appropriate, successful international safety standards. Additionally, the Coast Guard recognizes the need to eliminate outdated regulations and to increase available compliance options for the regulated community. In the May 31, 1995 **Federal Register** (60 FR 28376), the Coast Guard reiterated its intention to harmonize Coast Guard regulations with international safety standards.

To accomplish these goals and respond to calls for regulatory reform, the Coast Guard expanded its ongoing Coast Guard Regulatory Reform (CGRR) initiative. Under CGRR, the Coast Guard is examining ways to remove disincentives for ship owners to fly the American flag, while also ensuring maritime safety and the protection of the marine environment. The Coast Guard is doing this principally by making existing regulations more efficient and, wherever possible, aligning U.S. marine safety regulations with internationally accepted standards.

As part of the CGRR initiative, the Coast Guard initiated three regulatory projects to remove unnecessary and excessive provisions from Coast Guard regulations. The first of these projects, ''Inspected and Uninspected Commercial Vessels; Removal of Obsolete and Unnecessary Regulations,'' had a final rule published in the September 18, 1995 **Federal Register** (60 FR 48044). That rulemaking focused on regulations for which no adverse public comment was expected, such as requirements for nuclear vessels, ocean incinerator ships, and ocean thermal energy conversion plantships. The second project, ''Adoption of Industry Standards,'' had a final rule published in the May 23, 1996 **Federal Register** (61 FR 25984). That rule made substantial changes, removed or amended unnecessary provisions, and adopted appropriate industry standards and practices in place of Coast Guard specific requirements.

This rulemaking, the third project, continued the Coast Guard's effort to reform its regulations. These changes removed superfluous and outdated requirements and aligned the regulations more closely with international standards.

### Discussion of Comments and Changes

Comments were received which recommended the adoption of class rules as a means of compliance with certain sections and subparts. These comments focused on areas not covered in this rulemaking. On December 27, 1996, the Coast Guard published, in the **Federal Register** (61 FR 68510), an interim rule entitled, Alternative Compliance via Recognized Classification Society and U.S. Supplement to Rules (CGD 95–010). The Alternative Compliance Program (ACP) allows for the inspection of a vessel by a recognized classification society that has been authorized to participate in the ACP. The American Bureau of Shipping (ABS) is currently the only recognized classification society authorized to participate in the ACP.

Under the ACP, vessels receive Coast Guard certification based on compliance with classification society rules, international conventions, and the U.S. Supplement which represents Coast Guard requirements not embodied by either classification society rules or international conventions. All requirements of the interim rule, which became effective July 31, 1997, reduce the burden on the vessel owner by requiring compliance with only those Coast Guard regulations which are not embodied by either classification society rules or international conventions.

The Coast Guard, in its continuing effort to harmonize its regulations with industry and international standards, is evaluating the issues raised by these comments, which are outside the scope of this rulemaking, and will take appropriate future action based on its review. However, in the interim, vessels owners can receive the benefit of inspection in accordance with ABS classification rules and international standards by choosing to participate in the ACP.

Comments to 46 CFR parts 50–59, concerning marine engineering, which were outside the scope of this rulemaking, recommended allowing rules or surveys from the ABS or another recognized classification society. The ACP program allows for rules or surveys from a recognized class society for 46 CFR parts 50–59. No changes were made to the regulatory text.

One comment to 46 CFR subpart 91.01, concerning inspection and certification, indicated an inability to obtain early commencement of a biennial inspection in a particular Officer in Charge, Marine Inspection (OCMI) office, or the continuation of the inspection by another OCMI office. Inspection for certification may be requested at any time during the period of validity of the current certificate. Further, the ACP allows a vessel the opportunity to obtain an abbreviated annual exam which is capable of being conducted at one port call, by one OCMI. No changes were made to the regulatory text.

One comment to 46 CFR 91.40, concerning drydocking, recommended that regulations be revised to conform with recognized classification society rules. A regulatory change is not needed because drydocking intervals remain twice in a five year period, and not more than three years between each exam whether or not the vessel is enrolled in the ACP. Drydocking/Internal Structural Exam (ISEs) intervals may be extended 90 days by an ACP classification society for ships enrolled in the ACP. Additionally, the ACP allows the recognized classification society to make recommendations to Commandant (G–MOC) on Underwater Inspection in Lieu of Dry-docking (UWILDs), even for vessels over 15 years old. No changes were made to the regulatory text.

One comment to 46 CFR part 94, concerning lifesaving equipment, recommended allowing ABS or other approved classification society rules for approval. 46 CFR part 94 was removed by the interim rule concerning Lifesaving Equipment (84–069), published in the **Federal Register** on May 20, 1996 (61 FR 25272). Because there are no classification society rules for this equipment, the ACP is not applicable.

One comment to 46 CFR 91.27, concerning reinspection, recommended that the Coast Guard initiate a program of mid-period self-inspection which rewards companies that take a pro-active approach to regulatory compliance and vessel safety in general. There is a proposal for a Streamlined Inspection Program (CGD 96–055) for which an NPRM was published on April 8, 1997 (62 FR 17022). No changes were made to this section.

One comment to 46 CFR 98.30, concerning portable tanks, recommended that these regulations be revised for ocean going vessels with the ''incorporation by reference'' of the International Maritime Dangerous Goods (IMDG) Code requirements for carriage of hazardous liquids or materials in portable tanks. These regulations, among other things, concern the transfer of certain hazardous materials to or from portable tanks. The IMDG Code has provisions for the design and carriage of portable tanks, but does not have equivalent provisions governing the transfer of certain hazardous materials to or from portable tanks, and assumes that no transfer of cargo occurs on board vessel. Consequently, the proposed incorporation by reference is not appropriate. However, the acceptability of International Maritime Organization (IMO) type portable tanks and other bulk packagings, specified by the IMDG Code, are being reviewed and the Coast Guard may take future action based on its review.

One comment recommended that 46 CFR 50.05–5(c) be revised to permit replacement of existing boiler equipment and piping systems with similar equipment. The Coast Guard has generally accepted replacement in kind for general repairs and maintenance work. This section addresses reboilering. Reboilering is not considered as a repair. Reboilering constitutes a major replacement equivalent to installing a new boiler. This section recognizes the extreme hazards of high pressure steam and the necessity for proper boiler piping. Failure of boiler piping means immediate release of steam. The requirement to use more modern materials, welding techniques/requirements is in keeping with industry standards and is consistent with classification society rules. No changes were made to this section.

One comment to 46 CFR 61.05–15, concerning boiler mountings and attachments, recommended that regulations be revised to clearly state that boiler mountings and studs do not have to be removed when an external examination is possible. No revision to this section is necessary because the section is clear that the mountings and studs are not required to be removed, but allows the inspector the option to have them removed if the inspector believes removal is needed during the course of the inspection.

One comment to the proposed 46 CFR 56.20–15(b) stated that this paragraph was confusing as to whether or not it pertained to all valves or just valves employing resiliently seated material. It is not the Coast Guard's intention to restrict the use of valves with metal to metal seats. This paragraph is meant to pertain only to valves employing resiliently seated material, and the Coast Guard has revised this section to clarify that those valves which employ resilient seats are divided into the three listed categories.

One comment recommended that the proposed 46 CFR 56.50–103, concerning fixed oxygen-acetylene piping systems, be revised to include copper alloys containing less that 65% copper for certain components in acetylene distribution systems. This recommendation is consistent with industry practice. The Coast Guard agrees, and a new paragraph (c) allows for this industry practice. Further, this section has been reorganized from the presentation in the NPRM in order to be more clearly understood. Old paragraph (f) in the NPRM, which required all fittings to be welded, has been re-written as a new paragraph (g) which requires all fittings on the low pressure side of the regulator to be welded. This change recognizes that the regulator will be physically located next to the pressure vessel and that all piping will be downstream of the regulator.

Three comments were received opposing proposed modifications to 46 CFR 34.20–5 to harmonize deck foam regulations with the applicable International Convention for the Safety of Life at Sea (SOLAS) provisions. One comment mentioned an incident in which a tanker, which did not have USCG-approved foam fire fighting system, was severely damaged and sank. There is no indication, however, as to whether the vessel's foam system met the SOLAS arrangement and application rates or that some other system would have been effective. Additionally, there has been no casualty data to suggest that the current SOLAS provisions are inadequate. Current Coast Guard regulations require a slightly greater minimum foam application rate for tanker deck foam systems than SOLAS requirements, based on total cargo area. Therefore, consistent with the Coast Guard's intention to harmonize its regulations with international safety standards, this section is harmonized with the applicable SOLAS foam application rates. No changes were made to this proposed section. Currently, the Coast Guard is working with the National Fire Protection Association to develop a new industry

standard. It is the Coast Guard's intention that this new standard will be taken to the IMO.

One comment suggested that the Coast Guard should fully articulate the preemptive effect of its regulations. In *Ray* v. *ARCO,* 435 U.S. 151 (1978), the Supreme Court recognized that design, construction, equipment, and manning standards are matters of national attention, and recognized a decided congressional preference for arriving at international standards for building vessels. Consistent with *Ray* v. *ARCO,* it is the Coast Guard's position that vessel design, construction, equipment, and manning standards fall within the exclusive province of the Federal Government.

This rulemaking concerned the removal of obsolete, unnecessary or excessive provisions; and harmonizing regulations with international standards. To the extent this rulemaking revised regulations to incorporate national industry and international standards, these revised regulations concerned subject matter that, as determined under *Ray* v. *ARCO,* are within the exclusive province of the Federal Government. The ability of the states to regulate in these areas was preempted when the regulations were initially promulgated. The revision of these regulations does not alter their preemptive effect.

One comment suggested that the Coast Guard extend the opportunity to participate in the UWILD program to passenger vessels operating exclusively in fresh water that have not had a grounding since their last drydock. The ability of these vessels to participate in the UWILD program is being reviewed. The Coast Guard may take further action based on its review.

One comment requested that the Coast Guard justify the option of allowing tank vessels to comply with SOLAS vent height and distance requirements, which reduces the height from 4 meters to 2 meters. By permitting the option of SOLAS vent height requirements, the Coast Guard reduced the allowable height of vents from the 4 meters, required in 46 CFR 32.55–20, to 2 meters only when high velocity vents are used. The Coast Guard finds that allowing such a reduction will not degrade safety. The Coast Guard has accepted chemical carriers certified under international rules which permit similar reductions in vent height requirements when high velocity vents are used, and there has not been a reduction in safety. No changes were made to the proposed regulatory text.

One comment recommended retaining the provision in 46 CFR 32.57–10(d)(4) for kickout panels because of a concern that fire doors could warp and trap occupants. The Coast Guard is not aware of a casualty history of doors warping in a fire and trapping occupants. Additionally, section 32.02–1 requires two means of escape from all passageways leading to living quarters, and places where a crew member may be employed, so that in the event that one means of escape became unusable, a second means of escape would be available. The proposed change only removed the requirement for a kickout panel; vessel owners may install them if they so desire. No changes were made to this proposed section.

One comment questioned the ability to use the fire control symbols contained within ASTM Adjunct F 1626, as the American Society for Testing and Materials (ASTM) publication is copyright protected. ASTM was contacted and the copyright protects against the unauthorized copying of the ASTM publication rather than the use of the symbols to identify the details of a fire control plan.

One comment stated that there is an IMO standard set of symbols which should be utilized instead of the ASTM standard to implement uniform symbols for fire control plans. ASTM Adjunct F 1626 adopts the symbols contained in IMO Assembly resolution A.654(16). The Coast Guard agrees that the IMO resolution should also be incorporated, and has revised the incorporation sections accordingly.

Two comments concerned the application date and use of the ASTM Adjunct F 1626 standardized symbols for fire control plans. The use of the standard symbols applies to new construction and existing vessels which have the master plan redrawn. Editorial revisions to regulatory text have been made to clarify the application of ASTM Adjunct F 1626. The comments also recommended a change to the material incorporated by reference. ASTM Adjunct F 1626 contains the symbols, and the incorporation by reference has been changed to reflect the correct cite.

One comment objected to the removal of sentinel valves. The Coast Guard recognizes that boilers on older vessels require sentinel valves. Technology, however, has rendered the use of sentinel valves on new boilers obsolete. Recognizing that removal of § 56.50–30(b)(6) would eliminate the requirement for sentinel valves for older boiler systems, this paragraph has been redrafted. Sentinel valves will not be required for new construction, or for existing vessels which have shown to the satisfaction of the cognizant OCMI, or the Coast Guard Marine Safety Center, that a sentinel valve is not necessary.

One comment expressed concern over the Coast Guard's proposal to remove the requirements for Coast Guard inspectors to set and seal boiler safety valves. The Coast Guard disagrees. With present day boiler automation and built in safety factors, the Coast Guard has not experienced a problem of tampering with safety valves. Based upon the lack of a tampering problem, as well as the reliability of current steam propulsion systems, the Coast Guard has determined the sealing of boiler safety valves to be of little value. Therefore, § 35.25–15 will be removed as originally proposed.

One comment suggested that the Coast Guard extend the interval for inspection of sea valves to every 10 years for those vessels operating in freshwater. The Coast Guard disagrees. Sea valves are subject to mechanical damage. An extension of the interval means, that, during a 20 year period, sea valves would only be opened once at the midpoint. If additional data supports that valves can last 10 years in freshwater with no operational difficulties, the Coast Guard will reconsider revising this requirement.

One comment noted that an applicability date should be specified in 46 CFR 63.25–9 for incinerators to meet the requirements of IMO resolution MEPC.59(33). The Coast Guard agrees and the regulatory text is changed.

Two comments were received on the proposal to replace current Coast Guard regulations concerning design of automatic sprinkler systems by incorporating National Fire Protection Association Standard No. 13 by reference. One comment supported this proposal, and one comment voiced concern with the Coast Guard's policy of incorporating industry standards by reference. The Coast Guard's incorporation of industry standards directly supports the President's goals on revitalizing the American shipping industry and the Regulatory Reinvention Initiative. Benefits include increased input from subject matter experts into Coast Guard regulations, greater industry access into development of regulations, and regular updating of standards which facilitates regulations keeping pace with technology. Although there is an added responsibility for members of industry to stay abreast of changes to standards which are referenced in the Code of Federal Regulations (CFR), the Coast Guard finds that the benefits far outweigh the disadvantages. No changes were made to this section.

One comment opposed the proposed replacement of prescriptive requirements for fire hose coupling threads with a performance requirement that a uniform hose coupling be provided for each hose diameter throughout the vessel. The comment further stated that the basis of the comment was a concern that a vessel owner or operator could purchase fire hose or nozzles with the wrong thread style, and not realize the discrepancy until after the vessel has left port. Current Coast Guard regulations which require a minimum of one fire hose per hydrant, and that a fire hose be connected to hydrants at all times mitigate concerns about incompatibility of fire fighting equipment. However, these sections have been revised to their original text, with a new option added to indicate that couplings other than National Standard couplings may be used if all of the couplings are identical. Additionally, the Coast Guard will revise its inspection guidance to advise vessel inspectors to check compatibility of fire fighting equipment.

Another comment noted that the Coast Guard has proposed removing prescriptive requirements for hose coupling threads from 46 CFR 34.10–10, 76.10–10, and 95.10–10, but a similar proposal was not made with respect to 46 CFR 108.425(b). The Coast Guard agrees and the revision has been added to § 108.425(b).

There was an error in the proposed rule text for 46 CFR 164.013–6. In the last sentence of ''Production tests, inspections, and marking,'' it directed manufacturers to provide markings in accordance with the requirements in 46 CFR 164.023–15. The correct cite for markings is 46 CFR 164.013–7. However, because the sentence was extraneous, it was deleted.

One comment suggested that the Coast Guard add the American Bureau of Shipping's (ABS) Houston address to 46 CFR 170.100 under addresses for submittal of plans and calculations. The Coast Guard agrees and the regulations are revised.

One comment suggested that that 46 CFR 170.110(b), which directs stability booklets to be approved by the Coast Guard Marine Safety Center or the ABS, be removed because it is redundant with § 170.085. The Coast Guard disagrees. Section 170.085 refers to stability test plans which is separate from approval of stability booklets, thus there is no redundancy. No changes were made to this section.

The NPRM proposed removal or revision of several sections which were or are being addressed by other rulemakings. These sections will not be addressed by this rulemaking. The sections and corresponding dockets are: 46 CFR 16.207(b) is being addressed in CGD 95–011, Programs for Chemical Drug and Alcohol Testing of Commercial Vessel Personnel for which an interim rule was published on December 18, 1996 (61 FR 66612); 46 CFR 2.50 and subpart 26.10 were addressed in the final rule for CGD 96–052, Civil Monetary Penalties Inflation Adjustment, published April 8, 1997 (62 FR 16695); 46 CFR 2.75–19 and 2.75–50 were addressed in the final rule for CGD 93–055, Approval of Inflatable Personnel Flotation Devices for Recreational Boaters, published March 28, 1996 (61 FR 13920); 46 CFR 28.12 was addressed in the interim rule for CGD 90–046, Commercial Fishing Industry Vessel Regulations, published November 5, 1996 (61 FR 57268); and 46 CFR 159.007 was addressed in the final rule for CGD 85–205, Inflatable Personnel Flotation Devices, published May 9, 1997 (62 FR 25525).

In addition to the above changes, minor editorial revisions have been made to clarify the regulatory text. The Coast Guard is also removing the incorporation by reference contained in 46 CFR 159.2 which was inadvertently added to the NPRM. The revision to 46 CFR 160.035–3 was set out in full for clarity. 46 CFR 160.050–5 was revised for clarity by adding the requirements of the footnote to a new paragraph (b)(1)(iv) and by deleting paragraph (g)(4).

## Incorporation by Reference

The Director of the Federal Register has approved the material in 33 CFR 155.140, and 46 CFR 34.01–15, 35.01–3, 56.01–2, 63.05–1, 76.01–2, 78.01–2, 95.01–2, 97.01–2, 108.101, 109.105, 164.013–2, 172.020, and 193.01–3 for incorporation by reference under 5 U.S.C. 552 and 1 CFR part 51. Copies of the material are available from the sources listed in those sections.

## Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, l979).

The economic impact of this rule is so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This regulation removes obsolete, unnecessary or excessive provisions, and harmonizes existing regulations with current international and national safety standards, which have already been adopted as industry practices, therefore, the economic impact of this regulation is minimal.

Vessel owners or operators are not required to purchase the international and national standards incorporated by reference in this final rule. If purchased, the total one-time cost of all the reference materials included in this rule is estimated to be $250. The Coast Guard did not itemize the cost of reference materials by vessel type. However, the cost of purchasing these materials is estimated to be significantly less than $250 per vessel because the vessel owner or operator will only need to reference materials for standards that apply to their vessel type(s). Vessels owners or operators needing to reference these publications can choose to purchase them. However, most of the reference materials are available in the public forum at no cost.

A portion of the tank vessel industry may be affected by the cost of fitting additional emergency towing equipment. These vessels were required under 33 CFR part 155 to install emergency towing equipment on either the bow or stern by 1997. This rule makes the arrangement required on both ends of a vessel at an estimated one-time cost per vessel of $47,175 by 1999 as required currently in SOLAS. This rule affects oil tankships between 20,000 to 50,000 deadweight tons that are not presently subject to SOLAS. In some cases, the Coast Guard has allowed delayed compliance of 33 CFR part 155 for existing oil tankships until 1999. This rule changes the existing 33 CFR part 155 implementation date of 1997 to 1999 for all tankships including those ships that may require an additional towing arrangement installation. This delay will allow tank vessel owners or operators the flexibility to comply without additional drydocking expense and provides them the time to research and compare installation costs.

Furthermore, harmonizing Coast Guard regulations to international and national standards will benefit the maritime industry by simplifying the requirements to which their vessels are subject.

## Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this rule will have a significant economic impact on a substantial number of small entities.

''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This rule will have no significant economic impact on small entities because it amends portions of regulations that: (1) Are purely administrative; (2) do not reflect common marine industry practice; (3) do not have general applicability; or (4) are repeated in other sections (see Regulation Evaluation section of this document for cost estimates). In cases where small entities may need to use publications, referred to in this rule, they are available in the public forum at no cost or can be purchased at minimal cost. In addition, the requirement to install an emergency towing arrangement only affects oil tankships between 20,000 and 50,000 deadweight tons not presently subject to SOLAS. The Coast Guard is not aware of any vessels in this category owned or operated by a small entity.

Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities.

**Assistance for Small Entities**

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Assistance with provisions of this final rule can be obtained by contacting Commandant (G–MSE), Office of Design and Engineering Standards, 2100 Second Street, SW., Washington, DC 20593–0001, telephone 202–267–2967.

**Collection of Information**

This final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**Federalism**

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**Environment**

The Coast Guard considered the environmental impact of this rule and concluded that, under paragraph 2.B.2 of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. This rule concerns the ''manning, documentation, admeasurement, inspection, and equipping of vessels'' as well as, ''equipment approval and carriage requirements'' within the meaning of subparagraphs 2.B.2.e(34) (d) and (e) of the above instruction. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

**List of Subjects**

*33 CFR 155*

Hazardous substances, Incorporation by reference, Oil pollution, Reporting and recordkeeping requirements.

*33 CFR 159*

Incorporation by reference, Sewage disposal, Vessels.

*46 CFR 2*

Marine safety, Reporting and recordkeeping requirements, Vessels.

*46 CFR 3*

Oceanographic research vessels, Reporting and recordkeeping requirements, Research.

*46 CFR 4*

Administrative practice and procedure, Alcohol abuse, Drug abuse, Drug testing, Investigations, Marine safety, National Transportation Safety Board, Nuclear vessels, Radiation protection, Reporting and recordkeeping requirements, Safety, Transportation.

*46 CFR 6*

Navigation (water), Reporting and recordkeeping requirements, Vessels.

*46 CFR 7*

Law enforcement, Vessels.

*46 CFR 10*

Reporting and recordkeeping requirements, Schools, Seamen.

*46 CFR 12*

Reporting and recordkeeping requirements, Seamen.

*46 CFR 15*

Reporting and recordkeeping requirements, Seamen, Vessels.

*46 CFR 16*

Drug testing, Marine safety, Reporting and recordkeeping requirements, Safety, Transportation.

*46 CFR 24*

Marine safety.

*46 CFR 25*

Fire prevention, Marine safety, Reporting and recordkeeping requirements.

*46 CFR 26*

Marine safety, Penalties, Reporting and recordkeeping requirements.

*46 CFR 28*

Fire prevention, Fishing vessels, Marine safety, Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

*46 CFR 30*

Cargo vessels, Foreign relations, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements, Seamen.

*46 CFR 31*

Cargo vessels, Marine safety, Reporting and recordkeeping requirements.

*46 CFR 32*

Cargo vessels, Fire prevention, Marine safety, Navigation (water), Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

*46 CFR 34*

Cargo vessels, Fire prevention, Incorporation by reference, Marine safety.

*46 CFR 35*

Cargo vessels, Incorporation by reference, Marine safety, Navigation (water), Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

*46 CFR 39*

Cargo vessels, Fire prevention, Hazardous materials transportation, Marine safety, Occupational safety and health, Reporting and recordkeeping requirements.

*46 CFR 50*

Reporting and recordkeeping requirements, Vessels.

*46 CFR 56*

Incorporation by reference, Reporting and recordkeeping requirements, Vessels.

*46 CFR 58*

Reporting and recordkeeping requirements, Vessels.

*46 CFR 61*

Reporting and recordkeeping requirements, Vessels.

*46 CFR 63*

Incorporation by reference, Reporting and recordkeeping requirements, Vessels.

*46 CFR 68*

Vessels.

*46 CFR 69*

Measurement standards, Penalties, Reporting and recordkeeping requirements, Vessels.

*46 CFR 70*

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

*46 CFR 71*

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

*46 CFR 72*

Fire prevention, Marine safety, Occupational safety and health, Passenger vessels, Seamen.

*46 CFR 76*

Fire prevention, Incorporation by reference, Marine safety, Passenger vessels.

*46 CFR 77*

Marine safety, Navigation (water), Passenger vessels.

*46 CFR 78*

Incorporation by reference, Marine safety, Navigation (water), Passenger vessels, Penalties, Reporting and recordkeeping requirements.

*46 CFR 80*

Advertising, Marine safety, Passenger vessels, Penalties, Travel.

*46 CFR 90*

Cargo vessels, Marine safety.

*46 CFR 91*

Cargo vessels, Marine safety, Reporting and recordkeeping requirements.

*46 CFR 92*

Cargo vessels, Fire prevention, Marine safety, Occupational safety and health, Seamen.

*46 CFR 93*

Cargo vessels, Marine safety, Reporting and recordkeeping requirements.

*46 CFR 95*

Cargo vessels, Fire prevention, Incorporation by reference, Marine safety.

*46 CFR 96*

Cargo vessels, Marine safety, Navigation (water).

*46 CFR 97*

Cargo vessels, Incorporation by reference, Marine safety, Navigation (water), Reporting and recordkeeping requirements.

*46 CFR 105*

Cargo vessels, Fishing vessels, Hazardous materials transportation, Marine safety, Petroleum, Seamen.

*46 CFR 108*

Fire prevention, Incorporation by reference, Marine safety, Occupational safety and health, Oil and gas exploration, Vessels.

*46 CFR 109*

Incorporation by reference, Marine safety, Occupational safety and health, Oil and gas exploration, Reporting and recordkeeping requirements, Vessels.

*46 CFR 147A*

Fire prevention, Hazardous substances, Occupational safety and health, Pesticides and pests, Seamen, Vessels.

*46 CFR 148*

Cargo vessels, Hazardous materials transportation, Marine safety.

*46 CFR 150*

Hazardous materials transportation, Marine safety, Occupational safety and health, Reporting and recordkeeping requirements.

*46 CFR 151*

Cargo vessels, Hazardous materials transportation, Marine safety, Reporting and recordkeeping requirements, Water pollution control.

*46 CFR 153*

Administrative practice and procedure, Cargo vessels, Hazardous materials transportation, Marine safety, Reporting and recordkeeping requirements, Water pollution control.

*46 CFR 154*

Cargo vessels, Gases, Hazardous materials transportation, Marine safety, Reporting and recordkeeping requirements.

*46 CFR 160*

Marine safety, Reporting and recordkeeping requirements.

*46 CFR 164*

Fire prevention, Incorporation by reference, Marine safety, Reporting and recordkeeping requirements.

*46 CFR 166*

Schools, Seamen, Vessels.

*46 CFR 167*

Fire prevention, Marine safety, Reporting and recordkeeping requirements, Schools, Seamen, Vessels.

*46 CFR 168*

Occupational safety and health, Schools, Seamen, Vessels.

*46 CFR 170*

Marine safety, Reporting and recordkeeping requirements, Vessels.

*46 CFR 172*

Cargo vessels, Hazardous materials transportation, Incorporation by reference, Marine safety.

*46 CFR 188*

Marine safety, Oceanographic research vessels.

*46 CFR 189*

Marine safety, Oceanographic research vessels, Reporting and recordkeeping requirements.

*46 CFR 193*

Fire prevention, Incorporation by reference, Marine safety, Oceanographic research vessels.

*46 CFR 195*

Marine safety, Navigation (water), Oceanographic research vessels.

*46 CFR 196*

Marine safety, Oceanographic research vessels, Reporting and recordkeeping requirements.

*46 CFR 197*

Benzene, Diving, Marine safety, Occupational safety and health, Reporting and recordkeeping requirements, Vessels.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR parts 155 and 159; and 46 CFR parts 2, 3, 4, 6, 7, 10, 12, 15, 16, 24, 25, 26, 28, 30, 31, 32, 34, 35, 39, 50, 56, 58, 61, 63, 68, 69, 70, 71, 72, 76, 77, 78, 80, 90, 91, 92, 93, 95, 96, 97, 105, 108, 109, 147A, 148, 150, 151, 153, 154, 160, 164, 166, 167, 168, 170, 172, 188, 189, 193, 195, 196, and 197 as follows:

## 33 CFR

## PART 155—OIL OR HAZARDOUS MATERIAL POLLUTION PREVENTION REGULATIONS FOR VESSELS

1. The authority citation for part 155 continues to read as follows:

**Authority:** 33 U.S.C. 1231, 1321(j); 46 U.S.C. 3715; sec. 2, E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

§§ 155.100–155.130, 155.350–155.400, 155.430, 155.440, 155.470, 155.1030 (j) and (k), and 155.1065(g) also issued under 33 U.S.C. 1903(b); and §§ 155.1110–155.1150 also issued under 33 U.S.C. 2735.

**Note:** Additional requirements for vessels carrying oil or hazardous materials are contained in 46 CFR parts 30 through 36, 150, 151, and 153.

2. In § 155.140(b), add, in alphabetical order to the organizations referenced, the following standards:

**§ 155.140 Incorporation by reference.**

* * * * *

(b) * * *

*International Maritime Organization (IMO)*

* * * * *

Resolution MSC.35(63), Adoption of Guidelines for Emergency Towing Arrangement on Tankers, May 20, 1994—155.235

* * * * *

3. Revise § 155.235 to read as follows:

**§ 155.235 Emergency towing capability for oil tankers.**

An emergency towing arrangement shall be fitted at both ends on board all oil tankers of not less than 20,000 deadweight tons (dwt), constructed on or after September 30, 1997. For oil tankers constructed before September 30, 1997, such an arrangement shall be fitted at the first scheduled dry-docking, but not later than January 1, 1999. The design and construction of the towing arrangement shall be in accordance with IMO resolution MSC.35(63).

## PART 159—MARINE SANITATION DEVICES

4. The authority citation for part 159 continues to read as follows:

**Authority:** Sec. 312(b)(1), 86 Stat. 871 (33 U.S.C. 1322(b)(1)); 49 CFR 1.45(b) and 1.46 (l) and (m).

5. In § 159.3, add the definition, in alphabetical order, to read as follows:

**§ 159.3 Definitions.**

* * * * *

*Length* means a straight line measurement of the overall length from the foremost part of the vessel to the aftermost part of the vessel, measured parallel to the centerline. Bow sprits, bumpkins, rudders, outboard motor brackets, and similar fittings or attachments are not to be included in the measurement.

* * * * *

6. Revise § 159.5 to read as follows:

**§ 159.5 Requirements for vessel manufacturers.**

No manufacturer may manufacture for sale, sell, offer for sale, or distribute for sale or resale any vessel equipped with installed toilet facilities unless it is equipped with:

(a) An operable Type II or III device that has a label on it under § 159.16 or that is certified under § 159.12 or § 159.12a; or

(b) An operable Type I device that has a label on it under § 159.16 or that is certified under § 159.12, if the vessel is 19.7 meters (65 feet) or less in length.

**§ 159.7 [Amended]**

7. In § 159.7, remove the note and revise the section to read as follows:

**§ 159.7 Requirements for vessel operators.**

(a) No person may operate any vessel equipped with installed toilet facilities unless it is equipped with:

(1) An operable Type II or III device that has a label on it under § 159.16 or that is certified under § 159.12 or § 159.12a; or

(2) An operable Type I device that has a label on it under § 159.16 or that is certified under § 159.12, if the vessel is 19.7 meters (65 feet) or less in length.

(b) When operating a vessel on a body of water where the discharge of treated or untreated sewage is prohibited by the Environmental Protection Agency under 40 CFR 140.3 or 140.4, the operator must secure each Type I or Type II device in a manner which prevents discharge of treated or untreated sewage. Acceptable methods of securing the device include—

(1) Closing the seacock and removing the handle;

(2) Padlocking the seacock in the closed position;

(3) Using a non-releasable wire-tie to hold the seacock in the closed position; or

(4) Locking the door to the space enclosing the toilets with a padlock or door handle key lock.

(c) When operating a vessel on a body of water where the discharge of untreated sewage is prohibited by the Environmental Protection Agency under 40 CFR 140.3, the operator must secure each Type III device in a manner which prevents discharge of sewage. Acceptable methods of securing the device include—

(1) Closing each valve leading to an overboard discharge and removing the handle;

(2) Padlocking each valve leading to an overboard discharge in the closed position; or

(3) Using a non-releasable wire-tie to hold each valve leading to an overboard discharge in the closed position.

8. Revise § 159.201 to read as follows:

**§ 159.201 Recognition of facilities.**

A recognized facility is an independent laboratory accepted by the Coast Guard under 46 CFR 159.010 to perform the tests and inspections required under this part. A list of accepted laboratories is available from the Commandant (G–MSE–4).

**§ 159.205 [Removed]**

9. Remove § 159.205.

## 46 CFR

## PART 2—VESSEL INSPECTIONS

10. The authority citation for part 2 continues to read as follows:

**Authority:** 14 U.S.C. 664; 31 U.S.C. 9701; 33 U.S.C. 1903; 43 U.S.C. 1333, 1356; 46 U.S.C. 2110, 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR 1980 Comp., p. 277; 49 CFR 1.46; Subpart 2.45 also issued under the authority of Act, Dec. 27, 1950, Ch. 1155, secs. 1, 2, 64 Stat. 1120 (see 46 U.S.C. App. note prec. 1).

11. In § 2.01–1, revise paragraphs (a)(1) and (d)(2) to read as follows:

**§ 2.01–1 Applications for inspections.**

(a) * * *

(1) Applications for inspections of vessels required to be inspected under Subtitle II, Title 46 of the U.S. Code, Title 46 and Title 33 U.S. Code, or under 50 U.S.C. 198 shall be made by the master, owner or agent on the following Coast Guard forms which are obtainable from the Officer in Charge, Marine Inspection, at any local U.S. Coast Guard Marine Safety Office.

* * * * *

(d) * * *

(2) Foreign-built vessels are not permitted to engage in the U.S. coastwise trade (domestic trade) unless specifically authorized by law. Therefore, when foreign-built vessels are intended for use in the coastwise trade as defined by the U.S. Customs Service, such vessels will not be inspected and certificated unless specifically authorized by law to engage in the coastwise trade.

12. In § 2.01–10, revise the first sentence of paragraph (b) to read as follows:

**§ 2.01–10 Inspection requirements—domestic vessels.**

* * * * *

(b) The Coast Guard on its own initiative may examine or inspect or reinspect at any time any vessel subject to inspection under Subtitle II, Title 46 of the U.S. Code, Title 46 and Title 33 U.S. Code. * * *

* * * * *

13. Revise § 2.01–20 to read as follows:

**§ 2.01–20 Revocation of certificates of inspection.**

Under the authority of 46 U.S.C. 3313 and 46 U.S.C. 3710, a certificate of inspection issued to a vessel may be suspended or revoked if a vessel is found not to comply with the terms of its certificate or fails to meet a standard required by this chapter.

14. Revise § 2.01–40(a) to read as follows:

**§ 2.01–40 Passengers or persons in addition to crew on cargo or tank vessels.**

(a) Under the authority of 46 U.S.C. 3304, a documented vessel transporting cargo may be allowed by its certificate of inspection to carry not more than 12 individuals in addition to the crew on international voyages and not more than 16 individuals in addition to the crew on other voyages.

* * * * *

15. Revise § 2.01–45(a) to read as follows:

**§ 2.01–45 Excursion permit.**

(a) Under the authority of 46 U.S.C. 2113, a passenger vessel may be permitted to engage in excursions and carry additional numbers of passengers. For details see part 71 of subchapter H (Passenger Vessels) of this chapter.

* * * * *

16. Revise § 2.01–50(a) to read as follows:

**§ 2.01–50 Persons other than crew on towing, oyster, or fishing steam vessels.**

(a) A steam vessel engaged in towing, oyster dredging and planting, and fishing may be permitted to carry persons in addition to its crew.

* * * * *

## Subpart 2.45—[Removed]

17. Remove subpart 2.45, consisting of §§ 2.45–1 through 2.45–20.

18. Revise § 2.85–1 to read as follows:

**§ 2.85–1 Assignment of load lines.**

Most U.S. vessels, and foreign vessels in U.S. waters are required to have load line assignments in accordance with 46 U.S.C. Chapter 51. The load lines marks when placed on a vessel indicate the maximum draft to which such vessel can be lawfully submerged, in the various circumstances and seasons applicable to such vessel. See subchapter E (Load Lines) of this chapter for applicable details governing assignment and marking of load lines.

## PART 3—DESIGNATION OF OCEANOGRAPHIC RESEARCH VESSELS

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

**Authority:** 46 U.S.C. 2113, 3306; 49 CFR 1.46.

**§ 3.01–1 [Amended]**

20. In § 3.01–1, remove the words ''46 U.S.C. 441'' and add, in their place, the words ''46 U.S.C. 2101 (18)''.

**§ 3.01–3 [Removed]**

21. Remove § 3.01–3.

**§ 3.03–1 [Amended]**

22. In § 3.03–1, remove the words ''46 U.S.C. 441'' and add, in their place, the words ''46 U.S.C. 2101(18)''.

**§ 3.10–1 [Amended]**

23. In § 3.10–1(a), remove the words ''under the provisions of 46 U.S.C. 441''.

## PART 4—MARINE CASUALTIES AND INVESTIGATIONS

24. The authority citation for part 4 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 43 U.S.C. 1333; 46 U.S.C. 2103, 2306, 6101, 6301, 6305; 50 U.S.C. 198; 49 CFR 1.46. Authority for subpart 4.40: 49 U.S.C. 1903(a)(1)(E); 49 CFR 1.46.

25. Add § 4.01–3(d) to read as follows:

**§ 4.01–3 Reporting exclusion.**

* * * * *

(d) Except as provided in subpart 4.40, public vessels are excluded from the requirements of this part.

26. Revise § 4.03–40 to read as follows:

**§ 4.03–40 Public vessels.**

Public vessel means a vessel that—

(a) Is owned, or demise chartered, and operated by the U.S. Government or a government of a foreign country, except a vessel owned or operated by the Department of Transportation or any corporation organized or controlled by the Department (except a vessel operated by the Coast Guard or Saint Lawrence Seaway Development Corporation); and

(b) Is not engaged in commercial service.

**§ 4.40–3 [Amended]**

27. In § 4.40–3(b), remove the words ''R.S. 4450 (46 U.S.C. 239)'' and add, in their place, the words ''46 U.S.C. Chapter 63''.

28. Revise § 4.40–5(a) to read as follows:

**§ 4.40–5 Definitions.**

* * * * *

(a) *Act* means title III of Public Law 93–633, the Independent Safety Board Act of 1974 (49 U.S.C. 1131).

* * * * *

**§ 4.40–30 [Amended]**

29. In § 4.40–30(f), remove the words ''R.S. 4450 (46 U.S.C. 239)'' and add, in their place, the words ''46 U.S.C. Chapter 63''.

## PART 6—WAIVERS OF NAVIGATION AND VESSEL INSPECTION LAWS AND REGULATIONS

30. The authority citation for part 6 continues to read as follows:

**Authority:** Act Dec. 27, 1950, Ch. 1155, secs. 1, 2, 64 Stat. 1120 (see 46 U.S.C. App. note prec. 1); 49 CFR 1.46.

**§ 6.07 [Amended]**

31. In § 6.07(a), remove the words ''subsection (h) of R.S. 4551, as amended (46 U.S.C. 643)'' and add, in their place, the words ''46 U.S.C. 10311 (c)'' and, in paragraph (b), remove the words ''R.S. 4551(h), as amended (46 U.S.C. 643)'' and add, in their place, the words ''46 U.S.C. 10311 (c)''.

**§ 6.15 [Removed]**

32. Remove § 6.15.

## PART 7—BOUNDARY LINES

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

**Authority:** 14 U.S.C. 633; 33 U.S.C. 151; 49 CFR 1.46.

**§ 7.1 [Amended]**

34. In § 7.1, remove the words ''46 U.S.C. 88, the Coastwise Loadline Act;'' and add, in their place, the words ''46 U.S.C. 5102(b)(6), which exempts from load line requirements certain vessels on domestic voyages;''.

## PART 10—LICENSING OF MARITIME PERSONNEL

35. The authority citation for part 10 continues to read as follows:

**Authority:** 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, 2110; 46 U.S.C. Chapter 71; 46 U.S.C. 7502, 7505, 7701; 49 CFR 1.45, 1.46; Sec. 10.107 also issued under the authority of 44 U.S.C. 3507.

**§ 10.202 [Amended]**

36. In § 10.202(e), remove the last sentence.

**§ 10.470 [Amended]**

37. In § 10.470, in paragraphs (b)(2)(ii), (d)(2)(ii), (f)(2)(ii), (h)(2)(i), and (j)(2)(ii), remove the last two sentences.

**§ 10.472 [Amended]**

38. In § 10.472(a)(2)(ii), remove the last two sentences.

**§ 10.474 [Amended]**

39. In § 10.474(a)(2)(ii), remove the last two sentences.

## PART 12—CERTIFICATION OF SEAMEN

40. The authority citation for part 12 continues to read as follows:

**Authority:** 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, 2110, 7301, 7302, 7503, 7505, 7701; 49 CFR 1.46.

**§ 12.01–5 [Removed]**

41. Remove § 12.01–5.

**§ 12.02–19 [Amended]**

42. In § 12.02–19, remove the words ''R.S. 4450, as amended (46 U.S.C. 239)'' and add, in their place, the words ''46 U.S.C. Chapter 77''.

### Subpart 12.07—[Removed]

43. Remove subpart 12.07 consisting of §§ 12.07–1 through 12.07–20.

**§ 12.15–13 [Amended]**

44. In § 12.15–13, remove paragraph (a)(1) and redesignate paragraphs (a)(2) through (a)(4) as paragraphs (a)(1) through (a)(3), respectively.

**§ 12.15–15 [Amended]**

45. In § 12.15–15, remove paragraph (a)(1) and redesignate paragraphs (a)(2) through (a)(4) as paragraphs (a)(1) through (a)(3), respectively.

### Subpart 12.17—[Removed]

46. Remove subpart 12.17 consisting of §§ 12.17–1 through 12.17–20.

47. Revise § 12.25–1 to read as follows:

**§ 12.25–1 Certification required.**

Every person employed in a rating other than able seaman or qualified member of the engine department of U.S. merchant vessels requiring such certificated persons shall produce a merchant mariner's document to the master, or person in charge if appropriate, before signing a shipping articles agreement.

**§ 12.25–35 [Amended]**

48. In § 12.25–35(b), remove the words ''under the provisions of title 53 of the Revised Statutes and the regulations in this subchapter''.

## PART 15—MANNING REQUIREMENTS

49. The authority citation for part 15 continues to read as follows:

**Authority:** 46 U.S.C. 2101, 2103, 3306, 3703, 8101, 8102, 8104, 8105, 8301, 8304, 8502, 8503, 8701, 8702, 8901, 8902, 8903, 8904, 8905(b), 9102; 49 CFR 1.45 and 1.46.

**§ 15.815 [Amended]**

50. In § 15.815(c), remove the words ''On or after June 1, 1995,'' and capitalize the ''e'' in the word ''each''.

## PART 16—CHEMICAL TESTING

51. The authority citation for part 16 continues to read as follows:

**Authority:** 46 U.S.C. 2103, 3306, 7101, 7301, and 7701; 49 CFR 1.46.

**§ 16.205 [Amended]**

52. In § 16.205, remove paragraphs (a) through (e); and redesignate paragraphs (f) and (g) as paragraphs (a) and (b), respectively.

## PART 24—GENERAL PROVISIONS

53. The authority citation for part 24 continues to read as follows:

**Authority:** 46 U.S.C. 2113, 3306, 4104, 4302; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

54. In subpart 24.01, revise the title to read as follows:

### Subpart 24.01—Purpose

55. Revise § 24.01–1 to read as follows:

**§ 24.01–1 Purpose of regulations.**

The purpose of the regulations in this subchapter is to set forth uniform minimum requirements for uninspected commercial vessels, certain motor vessels, vessels propelled by sail carrying passengers for hire, and barges carrying passengers for hire.

**§ 24.01–5 [Removed]**

56. Remove § 24.01–5.

**§ 24.10–9 [Amended]**

57. In § 24.10–9, remove the words ''title 52, Revised Statutes, and acts amendatory thereof or supplemental thereto, and rules and regulations thereunder'' and add, in their place, the words ''Subtitle II, Title 46 U.S. Code, Title 46 and Title 33 U.S. Code, and regulations issued under these statutes''.

**§ 24.10–15 [Amended]**

58. In § 24.10–15, remove the words ''title 52, Revised Statutes, and acts amendatory thereof or supplemental thereto, and rules and regulations thereunder'' and add, in their place, the words ''Subtitle II, Title 46 U.S. Code, Title 46 and Title 33 U.S. Code, and regulations issued under these statutes''.

**§ 24.10–17 [Amended]**

59. In § 24.10–17(a), remove the words '', since such a boat is also subject to the Act of April 25, 1940, as amended (46 U.S.C. 526–526u), and the regulations promulgated thereunder''.

**§ 24.10–21 [Amended]**

60. In § 24.10–21, remove the words ''title 52, Revised Statutes, and acts amendatory thereof or supplemental thereto, and rules and regulations thereunder'' and add, in their place, the words ''Subtitle II, Title 46 U.S. Code, Title 46 and Title 33 U.S. Code, and regulations issued under these statutes''.

**§ 24.15–5 [Amended]**

61. In § 24.15–5, remove the paragraph designation (a) and remove the words ''the Motor Boat Act of 1940 (46 U.S.C. 526–526u) and the regulations in''.

## PART 25—REQUIREMENTS

62. The authority citation for part 25 continues to read as follows:

**Authority:** 33 U.S.C. 1903 (b); 46 U.S.C. 3306, 4302; 49 CFR 1.46.

**§ 25.26–5 [Amended]**

63. In § 25.26–5, in paragraphs (b) introductory text and (c) introductory text, remove the words ''After March 10, 1994,'' and capitalize the letter ''t'' in the word ''the''.

**§ 25.26–20 [Amended]**

64. In § 25.26–20, in paragraphs (a) introductory text and (b) introductory text, remove the words ''After March 10, 1994,'' and capitalize the letter ''t'' in the word ''the''.

65. In § 25.40–1, revise paragraph (c) and (d) introductory text to read as follows:

**§ 25.40–1 Tanks and engine spaces.**

* * * * *

(c) Boats built after July 31, 1980, which are manufactured or used primarily for noncommercial use; which are leased, rented or chartered to another for the latter's noncommercial use; which are engaged in the carriage of six or fewer passengers; or which are in compliance with the requirements of 33 CFR part 183 are exempted from these requirements.

(d) Boats built after July 31, 1978, which are manufactured or used primarily for noncommercial use; which are rented, leased or chartered to another for the latter's noncommercial use; or which are engaged in conveying six or fewer passengers are exempted from the requirements of paragraph (a) for fuel tank compartments that:

* * * * *

## PART 26—OPERATIONS

66. The authority citation for part 26 continues to read as follows:

**Authority:** 46 U.S.C. 3306, 4104, 6101, 8105; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

67. Revise § 26.03–5 to read as follows:

**§ 26.03–5 Action required after accident.**

(a) Whenever an undocumented vessel is involved in a marine casualty, the master or individual in charge shall—

(1) Render necessary assistance to each individual affected to save that affected individual from danger caused by a marine casualty, so far as the master or individual in charge can do so without serious danger to the master's or the individual's vessel or to individuals on board; and

(2) Give the master's or individual's name and address and identification of the vessel to the master or individual in charge of any other vessel involved in the casualty, to any individual injured, and to the owner of any property damaged.

(b) Undocumented vessels involved in marine casualties shall report the casualty in accordance with the requirements of 33 CFR part 173, subpart C.

## Subpart 26.10 [Removed]

68. Remove subpart 26.10 consisting of §§ 26.10–1 and 26.10–5.

## PART 28—REQUIREMENTS FOR COMMERCIAL FISHING INDUSTRY VESSELS

69. The authority citation for part 28 continues to read as follows:

**Authority:** 46 U.S.C. 3316, 4502, 4505, 4506, 6104, 10603; 49 CFR 1.46.

70. In § 28.380(b), insert the words ''electrical heating tape,'' between the words ''galley uptake,'' and ''or similar source of ignition.''

## PART 30—GENERAL PROVISIONS

71. The authority citation for part 30 continues to read as follows:

**Authority:** 46 U.S.C. 2103, 3306, 3703; 49 U.S.C. 5103, 5106; 49 CFR 1.45, 1.46; Section 30.01–2 also issued under the authority of 44 U.S.C. 3507; Section 30.01–5 also issued under the authority of Sec. 4109, Pub. L. 101–380, 104 Stat. 515.

**§ 30.01–3 [Removed]**

72. Remove § 30.01–3.

**§ 30.01–15 [Amended]**

73. In § 30.01–15, remove paragraph (a) and the paragraph designation (b).

**§ 30.01–20 [Removed]**

74. Remove § 30.01–20.

**§ 30.10–19 [Amended]**

75. In § 30.10–19, remove the words ''title 52, R.S., acts amendatory thereof or supplemental thereto, rules and regulations thereunder and the inspections required thereby'' and add, in their place, the words ''Subtitle II, Title 46, U.S. Code, Title 46 and Title 33 U.S. Code, and regulations issued under these statutes''.

**§ 30.10–43 [Amended]**

76. In § 30.10–43, remove the words ''title 52, R.S., acts amendatory thereof or supplemental thereto, rules and regulations thereunder, and the inspections required thereby'' and add, in their place, the words ''Subtitle II, Title 46, U.S. Code, Title 46 and Title 33 U.S. Code, and regulations issued under these statutes''.

**§ 30.10–47 [Amended]**

77. In § 30.10–47, remove the words ''title 52, R.S., acts amendatory thereof or supplemental thereto, rules and regulations thereunder and the inspections required thereby'' and add, in their place, the words ''Subtitle II, Title 46, U.S. Code, Title 46 and Title 33 U.S. Code, and regulations issued under these statutes''.

## Subpart 30.20 [Removed]

78. Remove subpart 30.20 consisting of §§ 30.20–1 through 30.20–50.

## PART 31—INSPECTION AND CERTIFICATION

79. The authority citation for part 31 continues to read as follows:

**Authority:** 33 U.S.C. 1321(j); 46 U.S.C. 3306; 46 U.S.C. 3316, as amended by Sec. 607, Pub. L. 104–324, 110 Stat. 3901; 46 U.S.C. 3703, 5115, 8105; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.46.

80. Revise § 31.10–5(a)(1) to read as follows:

**§ 31.10–5 Inspection of new tank vessels—TB/ALL.**

(a) * * *

(1) The plans and specifications shall include the arrangement of the cargo gear. Plans and specifications for cargo gear shall be approved by either a recognized classification society or the International Cargo Gear Bureau, Inc., whose home office is located at 90 West Street, Suite 1612, New York, NY 10006, prior to submission to the Officer in Charge, Marine Inspection.

* * * * *

81. In § 31.10–16, revise paragraphs (a), (b)(3), (c), and (e) to read as follows:

**§ 31.10–16 Inspection and certification of cargo gear—TB/ALL.**

(a) The owner, operator or master shall provide the Officer in Charge, Marine Inspection with all current valid certificates and registers of cargo gear issued by competent persons or a recognized organization or nonprofit association approved by the Commandant to certify the suitability of the cargo gear.

(b) * * *

(3) Indicate that the cargo gear described in the certificate or register complies with the standards of the organization or association authorized to issue the certificate or register.

(c) Competent persons for the purposes of this section are defined as—

(1) Surveyors of a classification society recognized by the Commandant under 46 U.S.C. 3316;

(2) Surveyors of a recognized cargo gear organization; or

(3) Responsible officials or employees of the testing laboratories, companies, or organizations who conduct tests of pieces of loose cargo gear, wire rope, or the annealing of gear as may be required by the standards of the organization or association authorized to issue the certificate or register.

* * * * *

(e) The authorization for an organization to perform the required inspection is granted at the discretion of the Commandant (G–MOC), and will continue until suspended, canceled, or modified. The following organization is currently recognized, by the Commandant (G–MOC), as having the technical competence to handle the required inspection:

The International Cargo Gear Bureau, Inc., with home office at 90 West Street, Suite 1612, New York, NY 10006.

82. In § 31.10–20, revise paragraphs (a) and (d) to read as follows:

**§ 31.10–20 Definitions relating to hull examinations—TB/ALL.**

* * * * *

(a) *Drydock examination* means hauling out of a vessel or placing a vessel in a drydock or slipway for an examination of all accessible parts of the vessel's underwater body and all through-hull fittings.

* * * * *

(d) *Underwater survey* means the examination, while the vessel is afloat, of all accessible parts of the vessel's underwater body and all through-hull fittings.

83. In § 31.10–21, revise paragraphs (d)(4), (e) introductory text, and (e)(1) to read as follows:

**§ 31.10–21 Drydock examination, internal structural examination, cargo tank internal examination, and underwater survey intervals—TB/ALL.**

* * * * *

(d) * * *

(4) The means that will be provided for examining through-hull fittings.

* * * * *

(e) Vessels otherwise qualifying under paragraph (d) of this section, that are 15 years of age or older, may be considered for continued participation in or entry into the underwater survey program on a case-by-case basis if—

(1) Before the vessel's next scheduled drydocking, the owner or operator submits a request for participation or continued participation to Commandant (G–MOC);

* * * * *

**§ 31.10–33 [Removed]**

84. Remove § 31.10–33.

## Subpart 31.37—[Removed]

85. Remove subpart 31.37 consisting of §§ 31.37–1 through 31.37–85.

## PART 32—SPECIAL EQUIPMENT, MACHINERY, AND HULL REQUIREMENTS

86. The authority citation for part 32 continues to read as follows:

**Authority:** 46 U.S.C. 2103, 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46; Subpart 32.59 also issued under the authority of Sect. 4109, Pub. L. 101–380, 104 Stat. 515.

87. Revise § 32.53–1(c) to read as follows:

**§ 32.53–1 Application—T/ALL.**

* * * * *

(c) This part does not apply to vessels as stated in 46 U.S.C. 3702.

**§ 32.53–10 [Amended]**

88. In § 32.53–10, remove paragraphs (c) through (f) and revise paragraph (b) to read as follows:

**§ 32.53–10 General—T/ALL.**

* * * * *

(b) Each inert gas system must be designed, constructed and installed in accordance with the provisions of SOLAS II–2, regulation 62, with the following provisions:

(1) Acceptable types of water seals include the wet and semiwet type. Other types of seals may be accepted on a case by case basis if approval is given by the Coast Guard Marine Safety Center.

(2) If a vapor collection system required to meet part 39 of this subchapter is connected to the inert gas system, the instruction manual required by SOLAS II–2, regulation 62.21 must include procedures relating to vapor collection operations.

**§ 32.53–15 [Removed]**

89. Remove § 32.53–15.

**§ 32.53–20 [Removed]**

90. Remove § 32.53–20.

**§ 32.53–25 [Removed]**

91. Remove § 32.53–25.

**§ 32.53–30 [Removed]**

92. Remove § 32.53–30.

**§ 32.53–35 [Removed]**

93. Remove § 32.53–35.

**§ 32.53–40 [Removed]**

94. Remove § 32.53–40.

**§ 32.53–45 [Removed]**

95. Remove § 32.53–45.

**§ 32.53–50 [Removed]**

96. Remove § 32.53–50.

**§ 32.53–55 [Removed]**

97. Remove § 32.53–55.

**§ 32.53–60 [Removed]**

98. Remove § 32.53–60.

**§ 32.53–65 [Removed]**

99. Remove § 32.53–65.

**§ 32.53–70 [Removed]**

100. Remove § 32.53–70.

**§ 32.53–75 [Removed]**

101. Remove § 32.53–75.

**§ 32.53–80 [Removed]**

102. Remove § 32.53–80.

**§ 32.53–85 [Removed]**

103. Remove § 32.53–85.

104. Add § 32.55–20(e) to read as follows:

**§ 32.55–20 Venting of cargo tanks of tankships constructed on or after July 1, 1951—T/ALL.**

* * * * *

(e) Tank vents which meet the requirements of SOLAS will be considered equivalent to the provisions of this section.

**§ 32.55–40 [Removed]**

105. Remove § 32.55–40.

106. In § 32.56–1, redesignate the text as paragraph (a) and add paragraph (b) to read as follows:

**§ 32.56–1 Application—T/ALL.**

* * * * *

(b) SOLAS-certificated vessels may be considered equivalent to the provisions of this subpart.

107. Add § 32.57–1(b) to read as follows:

**§ 32.57–1 Application—TB/ALL.**

* * * * *

(b) SOLAS-certificated vessels may be considered equivalent to the provisions of this subpart.

108. Revise § 32.57–10(d)(4) to read as follows:

**§ 32.57–10 Construction —TB/ALL.**

* * * * *

(d) * * *

(4) The integrity of any deck in way of a stairway opening, other than a staircase, shall be maintained by means of ''A'' or ''B'' Class divisions or bulkheads and doors at one level. The integrity of a staircase shall be maintained by ''A'' Class doors at every level. The doors shall be of the self-closing type. No means shall be provided for locking such doors, except that crash doors or locking devices capable of being easily forced in an emergency may be employed provided a permanent and conspicuous notice to this effect is attached to both sides of the door. Holdback hooks or other means of permanently holding the door open will not be permitted. However, magnetic holdbacks operated from the bridge or from other suitable remote control positions are acceptable.

* * * * *

**§ 32.60–25 [Amended]**

109. In § 32.60–25, remove paragraph (b) and remove the designation of paragraph (a).

## PART 34—FIREFIGHTING EQUIPMENT

110. The authority citation for part 34 continues to read as follows:

**Authority:** 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

111. In § 34.01–15(b), add in alphabetical order to the organization referenced, the following standard:

**§ 34.01–15 Incorporation by reference.**

* * * * *

(b) * * *

*National Fire Protection Association (NFPA)*

Batterymarch Park, Quincy, MA 02269–9101.

NFPA 13–1996, Standard for the Installation of Sprinkler Systems—34.30–1

**§ 34.10–5 [Amended]**

112. Revise § 34.10–5(f) to read as follows:

**§ 34.10–5 Fire pumps—T/ALL.**

* * * * *

(f) Fire pumps may be used for other purposes provided at least one of the

required pumps is kept available for use on the fire system at all times. In no case shall a pump having connection to an oil line be used as a fire pump. Branch lines connected to the fire main for purposes other than fire and deck wash shall be arranged so that the requirements of paragraph (b) of this section and any other services installed on the fire main can be met simultaneously.

* * * * *

**§ 34.10–10 [Amended]**

113. Revise § 34.10–10(i) to read as follows:

**§ 34.10–10 Fire station hydrants, hose and nozzles—T/ALL.**

* * * * *

(i) Fire station hydrant connections shall be brass, bronze, or other equivalent metal. Couplings shall either:

(1) Use National Standard fire hose coupling threads for the 1½ inch (38 millimeter) and 2½ inch (64 millimeter) hose sizes, i.e., 9 threads per inch for 1½ inch hose, and 7½ threads per inch for 2½ inch hose; or

(2) Be a uniform design for each hose diameter throughout the vessel.

* * * * *

**§ 34.15 [Amended]**

114. In § 34.15–5, remove paragraph (d) and redesignate paragraph (e) as paragraph (d).

114a. Revise § 34.20–5(b)(1) to read as follows:

**§ 34.20–5 Quantity of foam required—T/ALL.**

* * * * *

(b) * * *

(1) For usual petroleum products the rate of supply of foam solution shall be not less than the greatest of the following:

(i) 0.6 liters/min per square meter of cargo tanks deck area, where cargo tanks deck area means the maximum breadth of the ship multiplied by the total longitudinal extent of the cargo tank spaces;

(ii) 6 liters/min per square meter of the horizontal sectional area of the single tank having the largest such area; or

(iii) 3 liters/min per square meter of the area protected by the largest monitor, such area being entirely forward of the monitor, but not less than 1,250 liters/min.

* * * * *

115. Add subpart 34.30, consisting of § 34.30–1, to read as follows:

## Subpart 34.30—Automatic Sprinkler Systems, Details

**§ 34.30–1 Application—TB/ALL.**

Automatic sprinkler systems shall comply with NFPA 13–1996.

## PART 35—OPERATIONS

116. The authority citation for part 35 continues to read as follows:

**Authority:** 33 U.S.C. 1321(j); 46 U.S.C. 3306, 3703, 6101; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

**§ 35.01–3 [Amended]**

117. In § 35.01–3(b), remove the Philadelphia address for ASTM and add, in its place, a new address and add in numerical order of the incorporated standards the following standard:

**§ 35.01–3 Incorporation by reference.**

* * * * *

(b) * * *

*American Society for Testing and Materials (ASTM)*

ASTM International Headquarters, 100 Barr Harbor Dr., West Conshohocken, PA 19248–2959.

* * * * *

ASTM Adjunct F 1626, Symbols for Use in Accordance with Regulation II–2/20 of the 1974 SOLAS Convention, PCN 12–616260–01, © 1996—35.10–3

International Maritime Organization (IMO)

Publications Section, 4 Albert Embankment, London, SE1 7SR United Kingdom. Resolution A.654(16), Graphical Symbols for Fire Control Plans—35.10–3

* * * * *

**§ 35.01–40 [Removed]**

118. Remove § 35.01–40.

**§ 35.07–10 [Amended]**

119. In § 35.07–10, in paragraph (b)(2), remove the words ''46 U.S.C., sections 85e and 88e, and'' and in paragraph (c)(2), remove the words ''See 46 U.S.C. 85e and 88e.''

120. Revise § 35.10–3 to read as follows:

**§ 35.10–3 Display of plans—TB/ALL.**

Barges with sleeping accommodations for more than six persons and all self-propelled vessels shall have permanently exhibited for the guidance of the officer in charge of the vessel the following plans:

(a) General arrangement plans showing for each deck the fire control stations, the various sections enclosed by fire-resisting bulkheads, together with particulars of the fire alarms, detecting systems, the sprinkler installation (if any), the fire extinguishing appliances, means of access to different compartments, decks, etc., and the ventilating systems including particulars of the master fan controls, the positions of dampers, the location of the remote means of stopping fans, and identification numbers of the ventilating fans serving each section. If cargo compartments are ''specially suitable for vehicles,'' they shall be so indicated on the plan. Alternatively, at the discretion of the Commandant, the aforementioned details may be set out in any other medium, such as a booklet or on computer software, provided that the aforementioned details are available to each officer and a copy is retained on board at all times and is accessible during emergencies. For vessels constructed on or after September 30, 1997 or for existing vessels which have their plans redrawn, the symbols used to identify the aforementioned details shall be in accordance with IMO Assembly resolution A.654(16). These identical symbols can also be found in ASTM Adjunct F 1626.

(b) Plans showing clearly for each deck the boundaries of the watertight compartments, the openings therein with the means of closure and position of any controls thereof, and the arrangements for the correction of any list due to flooding.

(c) The information contained in the plans shall be kept up-to-date, and any changes shall be recorded as soon as possible.

## Subpart 35.12 [Removed]

121. Remove subpart 35.12 consisting of §§ 35.12–1 through 35.12–5.

122. Revise § 35.25–15 to read as follows:

**§ 35.25–15 Carrying of excess steam—TB/ALL.**

It shall be the duty of the chief engineer of any tank vessel to see that a steam pressure is not carried in excess of that allowed by the certificate of inspection, and to see that the safety valves, once set by the inspector, are in no way tampered with or made inoperative.

**§ 35.25–20 [Removed]**

123. Remove § 35.25–20.

**§ 35.30–20 [Amended]**

124. In § 35.30–20(d), remove the first sentence.

**§ 35.30–40 [Amended]**

125. In § 35.30–40, remove paragraph (b), redesignate paragraph (a) as introductory text, and redesignate old

paragraphs (a)(1) through (a)(3) as paragraphs (a) through (c), respectively.

126. Revise § 35.35–85 to read as follows:

**§ 35.35–85 Air compressors—TB/ALL.**

No person may operate, install, or reinstall an air compressor in a cargo area described in § 32.35–15 of this subchapter.

## PART 39—VAPOR CONTROL SYSTEMS

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

**Authority:** 33 U.S.C. 1231; 46 U.S.C. 3306, 3703, 3715(b); 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

**§ 39.10–13 [Amended]**

128. In § 39.10–13, remove paragraph (b) and redesignate paragraphs (c), (d), and (e) as paragraphs (b), (c), and (d), respectively.

## PART 50—GENERAL PROVISIONS

129. The authority citation for part 50 continues to read as follows:

**Authority:** 43 U.S.C 1333; 46 U.S.C 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.45, 1.46; Section 50.01–20 also issued under the authority of 44 U.S.C 3507.

**§ 50.01–5 [Removed]**

130. Remove § 50.01–5.

**§ 50.10–5 [Amended]**

131. In § 50.10–5, remove the words ''title 52, Revised Statutes, and acts amendatory thereof or supplemental thereto, and rules and regulations thereunder'' and add, in their place, the words ''Subtitle II, Title 46, U.S. Code, Title 46 and Title 33 U.S. Code, and regulations under these statutes''.

**§ 50.10–10 [Amended]**

132. In § 50.10–10, remove the words ''title 52, Revised Statutes, and acts amendatory thereof or supplemental thereto, and rules and regulations thereunder,'' and add, in their place, the words ''Subtitle II, Title 46, U.S. Code, Title 46 and Title 33 U.S. Code, and regulations under these statutes''.

**§ 50.10–15 [Amended]**

133. In § 50.10–15, remove the words ''title 52, Revised Statutes, and acts amendatory thereof or supplemental thereto, and rules and regulations thereunder,'' and add, in their place, the words ''Subtitle II, Title 46, U.S. Code, Title 46 and Title 33 U.S. Code, and regulations under these statutes''.

## PART 56—PIPING SYSTEMS AND APPURTENANCES

134. The authority citation for part 56 continues to read as follows:

**Authority:** 33 U.S.C. 1321(j), 1509; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

**§ 56.01–2 [Amended]**

135. Amend § 56.01–2(b) as follows:

a. Remove the words ''ASTM B 154–82, Mercurous Nitrate Test for Copper and Copper Alloy, 56.60–2'';

b. Remove the words ''ASTM F 1173–88'' and add, in their place, the words ''ASTM F 1173–95'';

c. Remove the Philadelphia address for ASTM and add, in its place, a new address; and

d. Add, in alphabetical order to the organizations whose standards are incorporated by reference, the following additional standards:

**§ 56.01–2 Incorporation by reference.**

* * * * *

(b) * * *

*American Society for Testing and Materials (ASTM)*

ASTM International Headquarters, 100 Barr Harbor Dr., West Conshohocken, PA 19248–2959.

* * * * *

ASTM B 858M–95 Standard Test Method for Determination of Susceptibility to Stress Corrosion Cracking in Copper Alloys Using an Ammonia Vapor Test—Table 56.60–2(a)

* * * * *

*International Maritime Organization (IMO)*

Publications Section, 4 Albert Embankment, London, SE1 7SR United Kingdom. Resolution A.753(18) Guidelines for the Application of Plastic Pipes on Ships—56.60–25

* * * * *

136. In § 56.07–10, revise paragraphs (c) and (e) to read as follows:

**§ 56.07–10 Design conditions and criteria (modifies 101–104.7).**

* * * * *

(c) *Ship motion dynamic effects (replaces 101.5.3).* Piping system designs shall account for the effects of ship motion and flexure, including weight, yaw, sway, roll, pitch, heave, and vibration.

* * * * *

(e) *Pressure design (modifies 102.3, 104.1.2 and 104.4).*

(1) Materials for use in piping must be selected as described in § 56.60–1(a) of this part. Tabulated allowable stress values for these materials shall be measured as indicated in 102.3.1 of ANSI–B–31.1, Tables 56.60–1(a) and 56.60–2(a).

(2) Allowable stress values, as found in the ASME Code, which are restricted in application by footnote or are italicized shall not be used. Where multiple stresses are listed for a material, the lowest value of the listing shall be used unless otherwise approved by the Commandant. In all cases the temperature is understood to be the actual temperature of the component.

(3) Where the operator desires to use a material not listed, permission must be obtained from the Commandant. Requirements for testing found in § 56.97–40(a)(2) and § 56.97–40(a)(4) may affect design and should be considered. Special design limitations may be found for specific systems. Refer to subpart 56.50 for specific requirements.

* * * * *

137. Revise § 56.10–5(d) to read as follows:

**§ 56.10–5 Pipe.**

* * * * *

(d) *Nonmetallic pipe.* Plastic pipe may be used subject to the conditions described in § 56.60–25.

138. Revise § 56.20–15 to read as follows:

**§ 56.20–15 Valves employing resilient material.**

(a) A valve in which the closure is accomplished by resilient nonmetallic material instead of a metal to metal seat shall comply with the design, material, construction and testing for valves specified in this part.

(b) Valves employing resilient material shall be divided into three categories, Positive shutoff, Category A, and Category B, and shall be tested and used as follows:

(1) *Positive shutoff valves.* The closed valve must pass less than 10 ml/hr (0.34 fluid oz/hr) of liquid or less than 3 l/hr (0.11 cubic ft/hr) of gas per inch nominal pipe size through the line after removal of all resilient material and testing at full rated pressure. Packing material must be fire resistant. Piping subject to internal head pressure from a tank containing oil must be fitted with positive shutoff valves located at the tank in accordance with § 56.50–60(d). Otherwise positive shutoff valves may be used in any location in lieu of a required Category A or Category B valve.

(2) *Category A valves.* The closed valve must pass less than the greater of

5 percent of its fully open flow rate or 15 percent divided by the square root of the nominal pipe size (NPS) of its fully open flow rate through the line after complete removal of all resilient seating material and testing at full rated pressure; as represented by the formula: (15% / √ NPS) (Fully open flow rate). Category A valves may be used in any location except where positive shutoff valves are required by § 56.50–60(d). Category A valves are required in the following locations:

(i) Valves at vital piping system manifolds;

(ii) Isolation valves in cross-connects between two piping systems, at least one of which is a vital system, where failure of the valve in a fire would prevent the vital system(s) from functioning as designed.

(iii) Valves providing closure for any opening in the shell of the vessel.

(3) *Category B valves.* The closed valve will not provide effective closure of the line or will permit appreciable leakage from the valve after the resilient material is damaged or destroyed. Category B valves are not required to be tested and may be used in any location except where a Category A or positive shutoff valve is required.

(c) If a valve designer elects to use either calculations or actual fire testing in lieu of material removal and pressure testing, the proposed calculation method or test plan must be accepted by the Commandant (G–MSE).

139. Revise § 56.50–30(b)(6) to read as follows:

**§ 56.50–30 Boiler feed piping.**

* * * * *

(b) * * *

(6) A sentinel valve is not required for vessels constructed after September 30, 1997, and for other vessels to which it has been shown to the satisfaction of the cognizant Officer in Charge, Marine Inspection or the Coast Guard Marine Safety Center, that a sentinel valve is not necessary for the safe operation of the particular boiler.

* * * * *

**§ 56.50–50 [Amended]**

140. In § 56.50–50, remove paragraph (c)(3); redesignate paragraph (c)(4) as paragraph (c)(3); and revise paragraph (c)(2) to read as follows:

**§ 56.50–50 Bilge and ballast piping.**

* * * * *

(c) * * *

(2) Each passenger vessel on an international voyage must comply with the provisions of SOLAS II–1/21.

* * * * *

**§ 56.50–90 [Amended]**

141. In § 56.50–90(e), remove the sentence ''No perforations or openings will be permitted throughout the length of a sounding pipe where fitted to oil tanks.''

142. Add § 56.50–103 to read as follows:

**§ 56.50–103 Fixed oxygen-acetylene distribution piping.**

(a) This section applies to fixed piping installed for the distribution of oxygen and acetylene carried in cylinders as vessels stores.

(b) The distribution piping shall be of at least standard wall thickness and shall include a means, located as close to the supply cylinders as possible, of regulating the pressure from the supply cylinders to the suitable pressure at the outlet stations.

(c) Acetylene distribution piping and pipe fittings must be seamless steel. Copper alloys containing less than 65 percent copper may be used in connection with valves, regulators, gages, and other equipment used with acetylene.

(d) Oxygen distribution piping and pipe fittings must be seamless steel or copper.

(e) When more than two cylinders are connected to a manifold, the supply pipe between each cylinder and manifold shall be fitted with a non-return valve.

(f) Except for the cylinder manifolds, acetylene is not to be piped at a pressure in excess of 100 kPa (14.7 psi).

(g) Pipe joints on the low pressure side of the regulators shall be welded.

(h) Branch lines shall not run through unventilated spaces or accommodation spaces.

(i) Relief valves or rupture discs shall be installed as relief devices in the piping system if the maximum design pressure of the piping system can be exceeded. The relief device set pressure shall not exceed the maximum design pressure of the piping system. Relief devices shall discharge to a location in the weather at least 3 m (10 ft) from sources of ignition or openings to spaces or tanks.

(j) Outlet stations are to be provided with suitable protective devices which will prevent the back flow of gas into the supply lines and prevent the passage of flame into the supply lines.

(k) Shutoff valves shall be fitted at each outlet.

**§ 56.60–2 [Amended]**

143. In § 56.60–2, remove paragraph (a). Redesignate paragraph (b) introductory text as introductory text to the section. Redesignate paragraphs (b)(1), (b)(2), (b)(3), (b)(3)(i), (b)(3)(i)(A), and (b)(3)(i)(B) as paragraphs (a), (b), (c), (c)(1), (c)(1)(i), and (c)(1)(ii), respectively. Redesignate the text of paragraph (b)(3)(ii) as paragraph (c)(2) and revise (c)(2), and in table 56.60–2(a), revise footnotes 7 and 9 to read as follows:

**§ 56.60–2 Limitations on materials.**

* * * * *

(c) * * *

(2) For those specifications in which no filler material is used in the welding process, the ultrasonic examination as required by item S–6 in ASTM A–376 shall be certified as having been met for service above 800 °F.

**Table 56.60–2(a)—Adopted Specifications not Listed in the ASME Code**

* * * * *

7 An ammonia vapor test, in accordance with ASTM B 858M–95, shall be performed on a representative model of each finished product design.

* * * * *

9 An ammonia vapor test, in accordance with ASTM B 858M–95, shall be performed on a representative model for each finished product design. Tension tests shall be performed to determine tensile strength, yield strength, and elongation. Minimum values shall be those listed in table 3 of ASTM B283.

**§ 56.60–25 [Amended]**

144. In § 56.60–25, remove paragraph (b); redesignate paragraphs (c), (d), and (e) as paragraphs (b), (c), and (d), respectively; and revise paragraph (a) to read as follows:

**§ 56.60–25 Nonmetallic materials.**

(a) Plastic pipe installations shall be in accordance with the International Maritime Organization (IMO) resolution A.753(18), Guidelines for the Application of Plastic Pipes on Ships and the following supplemental requirements:

(1) Materials used in the fabrication of plastic pipe shall comply with the appropriate standards listed in § 56.01–2 of this chapter.

(2) Plastic pipe is not permitted in a concealed space in an accommodation or service area, such as behind ceilings or linings or between double bulkheads, unless—

(i) Each trunk or duct containing such piping is completely surrounded by ''A'' class divisions; or

(ii) An approved smoke-detection system is fitted in the concealed space and each penetration of a bulkhead or deck and each installation of a draft stop is made in accordance with IMO resolution A.753(18) to maintain the integrity of fire divisions.

(3) Plastic pipe used outboard of the required metallic shell valve in any piping system penetrating the vessel's shell (see § 56.50–95(f)) shall have the same fire endurance as the metallic shell valve. Where the shell valve and the plastic pipe are in the same unmanned space, the valve shall be operable from above the freeboard deck.

(4) Pipe that is to be used for potable water shall bear the seal of approval or NSF mark of the National Sanitation Foundation Testing Laboratory, Incorporated, School of Public Health, University of Michigan, Ann Arbor, MI 48103.

* * * * *

145. Revise § 56.95–10(a)(1) and footnote 1 to read as follows:

**§ 56.95–10 Type and extent of examination required.**

(a) * * *

(1) 100 percent radiography [1] is required for all Class I, I–L, and II–L piping with wall thickness equal to or greater than 10 mm (.375 in.).

* * * * *

146. Add § 56.97–40(a)(10) to read as follows:

**§ 56.97–40 Installation tests.**

(a) * * *

(10) Fixed oxygen-acetylene system piping.

* * * * *

## PART 58—MAIN AND AUXILIARY MACHINERY AND RELATED SYSTEMS

147. The authority citation for part 58 continues to read as follows:

**Authority:** 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

**§ 58.10–10 [Amended]**

148. In § 58.10–10, remove paragraph (b) and redesignate paragraphs (c) and (d) as paragraphs (b) and (c), respectively.

## PART 61—PERIODIC TESTS AND INSPECTIONS

149. The authority citation for part 61 continues to read as follows:

**Authority:** 43 U.S.C. 1333; 46 U.S.C. 2103, 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

150. Revise § 61.05–20 to read as follows:

**§ 61.05–20 Boiler safety valves.**

Each safety valve for a drum, superheater, or reheater of a boiler shall be tested at the interval specified by table 61.05–10.

151. In § 61.10–5, revise paragraphs (a) and (b) to read as follows:

**§ 61.10–5 Pressure vessels in service.**

(a) *Basic requirements.* Each pressure vessel must be examined or tested every 5 years. The extent of the test or examination should be that necessary to determine that the pressure vessel's condition is satisfactory and that the pressure vessel is fit for the service intended.

(b) *Internal and external tests and inspections.* (1) Each pressure vessel listed on the Certificate of Inspection must be thoroughly examined externally every 5 years.

(2) In addition, each pressure vessel listed on the Certificate of Inspection that is fitted with a manhole or other inspection opening so it can be satisfactorily examined internally, must be opened for internal examination every 5 years.

(3) No pressure vessel need be hydrostatically tested except when a defect is found that, in the marine inspector's opinion, may affect the safety of the pressure vessel. In this case, the pressure vessel should be hydrostatically tested at a pressure of 1 ½ times the maximum allowable working pressure.

* * * * *

152. Revise § 61.15–12(b) to read as follows:

**§ 61.15–12 Nonmetallic expansion joints.**

* * * * *

(b) A nonmetallic expansion joint must be replaced 10 years after it has been placed into service if it is located in a system which penetrates the side of the vessel and both the penetration and the nonmetallic expansion joint are located below the deepest load waterline. The Officer in Charge, Marine Inspection may grant an extension of the ten year replacement to coincide with the vessel's next drydocking.

153. Revise § 61.20–5(b) to read as follows:

**§ 61.20–5 Drydock examination.**

* * * * *

(b) Sea chests, sea valves, sea strainers, and valves for the emergency bilge suction shall be opened up for examination every 5 years at the time of drydocking.

## PART 63—AUTOMATIC AUXILIARY BOILERS

154. The authority citation for part 63 continues to read as follows:

**Authority:** 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

155. In § 63.05–1(b), add, in alphabetical order to the organizations referenced, the following standards:

**§ 63.05–1 Incorporation by reference.**

* * * * *

(b) * * *

* * * * *

*American Society for Testing and Materials (ASTM)*

ASTM International Headquarters, 100 Barr Harbor Dr., West Conshohocken, PA 19248–2959.

Standard Specifications for Shipboard Incinerators, ASTM F 1323–90—63.25–9

*International Maritime Organization (IMO)*

Publications Section, 4 Albert Embankment, London, SE1 7SR United Kingdom.

Resolution MEPC.59(33), Revised Guidelines for the Implementation of Annex V of MARPOL 73/78—63.25–9

*International Organization for Standardization*

Case postale 56, CH–1211, Geneve 2009.

Shipbuilding-Shipboard Incinerators-Requirements, 13617 (1995)—63.25–9

* * * * *

**§ 63.25–3 [Amended]**

156. In § 63.25–3(j), remove the last sentence.

157. Revise § 63.25–9 to read as follows:

**§ 63.25–9 Incinerators.**

Incinerators installed on or after March 26, 1998 must meet the requirements of IMO resolution MEPC.59(33). Incinerators in compliance with ISO standard 13617 (1995), ''Shipbuilding-Shipboard Incinerators-Requirements'' are considered to meet the requirements of IMO resolution MEPC.59(33). Incinerators in compliance with both ASTM F–1323–90, ''Standard Specifications for Shipboard Incinerators'' and Annexes A1–A3 of IMO resolution MEPC.59(33) are considered to meet the requirements of IMO resolution MEPC.59(33).

## PART 68—DOCUMENTATION OF VESSELS PURSUANT TO EXTRAORDINARY LEGISLATIVE GRANTS

158. The authority citation for part 68 continues to read as follows:

**Authority:** 46 U.S.C. 2103; 49 CFR 1.46. Subpart 68.01 also issued under 46 U.S.C. App. 876; subpart 68.05 also issued under 46 U.S.C. 12106(d).

[1] Where for some reason, such as a joint configuration, radiography is not applicable, another approved examination may be utilized.

## Subpart 68.01—[Amended]

159. In Subpart 68.01, revise the heading to read as follows:

## Subpart 68.01—Regulations Implementing Provisions for 46 U.S.C. App. 833–1

### § 68.01–1 [Amended]

160. In § 68.01–1, in the definition of ''*Act*'' and the definition of ''*883–1 citizen*'' or ''*883–1 corporation*'' remove the words ''(46 U.S.C. 883–1)'' and add, in their place, the words ''(46 U.S.C. App. 883–1)''.

### § 68.01–3 [Amended]

161. In § 68.01–3, in the introductory paragraph, remove the words ''(46 U.S.C. 883–1)'' and add, in their place, the words ''(46 U.S.C. App. 883–1)'' and revise the section heading to read as follows:

### § 68.01–3 Requirements for citizenship under 46 U.S.C. App. 883–1.

162. In § 68.01–15(c), revise the introductory text to read as follows:

### § 68.01–15 Restrictions.

* * * * *

(c) A vessel owned by an 883–1 corporation may be operated under demise or bareboat charter to a common or a contract carrier subject to 49 U.S.C. Chapter 101 if the corporation is a U.S. citizen as defined in 46 U.S.C. App. 802.

* * * * *

## PART 69—MEASUREMENT OF VESSELS

163. The authority citation for part 69 continues to read as follows:

**Authority:** 46 U.S.C. 2301, 14103; 49 CFR 1.46.

### § 69.11 [Amended]

164. In § 69.11, remove paragraph (a)(2)(iv), and redesignate paragraphs (a)(2)(v) and (a)(2)(vi) as paragraphs (a)(2)(iv) and (a)(2)(v), respectively. In paragraph (a)(5), remove the words ''After July 18, 1994,'' and capitalize the word ''A'' directly following.

165. In § 69.117(f)(4), revise the introductory text to read as follows:

### § 69.117 Spaces exempt from inclusion in gross tonnage.

* * * * *

(f) * * *

(4) If the total of all water ballast spaces to be exempted from gross tonnage exceeds 30 percent of the vessel's gross tonnage (as calculated under this subpart without any allowance for water ballast), a justification of the operating conditions that require the water ballast must be submitted to the measuring organization for approval. Although a single condition may justify all water ballast spaces, several conditions may be necessary in other cases. However, a particular tank is not justified by a condition if another tank already justified by another condition could be used as effectively. The justification must—

* * * * *

## PART 70—GENERAL PROVISIONS

166. The authority citation for part 70 continues to read as follows:

**Authority:** 46 U.S.C. 3306, 3703; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.45, 1.46; Section 70.01–15 also issued under the authority of 44 U.S.C. 3507.

### § 70.01–1 [Amended]

167. In § 70.01–1(a), remove the paragraph designation (a) and remove the words ''in accordance with the intent of title 52 of the Revised Statutes and acts amendatory thereof or supplemental thereto, as well as to implement various International Conventions for Safety of affect the merchant marine''.

### § 70.01–5 [Removed]

168. Remove § 70.01–5.

### § 70.05–15 [Removed]

169. Remove § 70.05–15.

### § 70.05–25 [Removed]

170. Remove § 70.05–25.

### § 70.10–11 [Amended]

171. In § 70.10–11, remove the words ''title 52, Revised Statutes, and acts amendatory thereof or supplemental thereto, and rules and regulations thereunder'' and add, in their place, the words ''Subtitle II of Title 46, U.S. Code, Title 46 and Title 33 U.S. Code, and regulations issued under these statutes''.

### § 70.10–25 [Amended]

172. In § 70.10–25, remove the words ''title 52, Revised Statutes, and acts amendatory thereof or supplemental thereto, and rules and regulations thereunder'' and add, in their place, the words ''Subtitle II of Title 46, U.S. Code, Title 46 and Title 33 U.S. Code, and regulations issued under these statutes''.

### § 70.10–33 [Amended]

173. In § 70.10–33, remove the words ''title 52, Revised Statutes, and acts amendatory thereof or supplemental thereto, and rules and regulations thereunder'' and add, in their place, the words ''Subtitle II of Title 46, U.S. Code, Title 46 and Title 33 U.S. Code, and regulations issued under these statutes''.

## Subpart 70.30 [Removed]

174. Remove subpart 70.30 consisting of §§ 70.30–1 through 70.30–5.

## PART 71—INSPECTION AND CERTIFICATION

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

**Authority:** 33 U.S.C. 1321(j); 46 U.S.C. 2113, 3306; 46 U.S.C. 3316, as amended by Sec. 607, Pub. L. 104–324, 110 Stat. 3901; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

### § 71.01–10 [Amended]

176. In § 71.01–10(a), remove the words ''except for those vessels subject only to the Act of May 10, 1956 (46 U.S.C. 390–390g), when the certificates will be issued for a period of 3 years''.

### § 71.25–25 [Amended]

177. In § 71.25–25, revise paragraphs (a)(5), (b)(3), and (c) to read as follows and remove paragraph (e):

### § 71.25–25 Hull equipment.

(a) * * *

(5) The owner, operator or master shall provide the Officer in Charge, Marine Inspection with all current valid certificates and registers of cargo gear issued by an organization recognized by the Commandant under § 31.10–16.

(b) * * *

(3) Indicate that the cargo gear described in the certificate or register complies with the standards of the organization or association authorized to issue the certificate or register.

(c) Competent persons for the purposes of this section are defined as—

(1) Surveyors of a classification society recognized by the Commandant under 46 U.S.C. 3316.

(2) Surveyors of a cargo gear organization recognized by the Commandant under § 31.10–16.

(3) Responsible officials or employees of the testing laboratories, companies, or organizations who conduct tests of pieces of loose cargo gear, wire rope, or the annealing of gear as may be required by the standards of the organization or association authorized to issue the certificate or register.

* * * * *

### § 71.30–1 [Amended]

178. In § 71.30–1, remove paragraph (b) and remove the paragraph designation (a).

## Subpart 71.47 [Removed]

179. Remove subpart 71.47 consisting of §§ 71.47–1 through 71.47–85.

180. Revise § 71.50–1(a) to read as follows:

**§ 71.50–1 Definitions relating to hull examinations.**

* * * * *

(a) *Drydock examination* means hauling out a vessel or placing a vessel in a drydock or slipway for an examination of all accessible parts of the vessel's underwater body and all through-hull fittings.

* * * * *

181. Add § 71.65–1(c) to read as follows:

**§ 71.65–1 General.**

* * * * *

(c) Plans and specifications for cargo gear shall be approved by either a recognized classification society or a recognized cargo gear organization as defined in § 71.25–25.

## PART 72—CONSTRUCTION AND ARRANGEMENT

182. The authority citation for part 72 continues to read as follows:

**Authority:** 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

183. Revise § 72.01–1 to read as follows:

**§ 72.01–1 Application.**

The provisions of this subpart, with the exception of § 72.01–90, shall apply to all vessels contracted for on or after November 19, 1952. Vessels contracted for prior to November 19, 1952, shall meet the requirements of § 72.01–90.

**§ 72.05–10 [Amended]**

184. In § 72.05–10, remove paragraph (m). Redesignate paragraphs (n) through (q) as paragraphs (m) through (p), respectively.

**§ 72.30–5 [Removed]**

185. Remove § 72.30–5.

## PART 76—FIRE PROTECTION EQUIPMENT

186. The authority citation for part 76 continues to read as follows:

**Authority:** 46 U.S.C. 3306, E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

187. In § 76.01–2(b), add, in alphabetical order to the organizations referenced, the following standard:

**§ 76.01–2 Incorporation by reference.**

* * * * *

(b) * * *

*National Fire Protection Association (NFPA)*

1 Batterymarch Park, Quincy, MA 02269–9101.

NFPA 13–1996, Standard for the Installation of Sprinkler Systems—76.25–1

188. Revise § 76.10–5(f) to read as follows:

**§ 76.10–5 Fire pumps.**

* * * * *

(f) Fire pumps may be used for other purposes provided at least one of the required pumps is kept available for use on the fire system at all times. In no case shall a pump having connection to an oil line be used as a fire pump. Branch lines connected to the fire main for purposes other than fire and deck wash shall be arranged so that the requirements of paragraphs (b) and (c) of this section and any other services installed on the fire main can be met simultaneously.

* * * * *

189. In § 76.10–10, revise the heading and paragraph (n)(1) to read as follows:

**§ 76.10–10 Fire station hydrants, hose and nozzles—T/ALL.**

* * * * *

(n) * * *

(1) Fire station hydrant connections shall be brass, bronze, or other equivalent metal. Couplings shall either—

(i) Use National Standard fire hose coupling threads for the 1½ inch (38 millimeter) and 2½ inch (64 millimeter) hose sizes, i.e., 9 threads per inch for 1½ inch hose, and 7½ threads per inch for 2½ inch hose; or

(ii) Be a uniform design for each hose diameter throughout the vessel.

* * * * *

**§ 76.15–5 [Remove and Reserve]**

190. Remove and reserve § 76.15–5(d).

191. Revise § 76.25–1 to read as follows:

**§ 76.25–1 Application.**

Where an automatic sprinkling system is installed, the systems shall comply with NFPA 13–1996.

192. Revise § 76.25–90 to read as follows:

**§ 76.25–90 Installations contracted for prior to September 30, 1997.**

(a) Existing arrangements, materials, and facilities previously approved shall be considered satisfactory so long as they meet the minimum requirements of this paragraph, and they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection. Minor repairs and replacements may be made to the same standards as the original installation.

(b) The details of the system shall be in general agreement with NFPA 13–1996 insofar as is reasonable and practicable. Existing piping, pumping facilities, sprinkler heads, and operating devices may be retained provided a reasonable coverage of the spaces protected is assured.

## PART 77—VESSEL CONTROL AND MISCELLANEOUS SYSTEMS AND EQUIPMENT

193. The authority citation for part 77 continues to read as follows:

**Authority:** 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

194. In § 77.35–10(a), add the following sentence to the end of the paragraph: ''In lieu of the flame safety lamp, vessels may carry an oxygen depletion meter which is listed by a Coast Guard recognized independent laboratory as intrinsically safe.''

## PART 78—OPERATIONS

195. The authority citation for part 78 continues to read as follows:

**Authority:** 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3306, 6101; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

196. Add § 78.01–2 to read as follows:

**§ 78.01–2 Incorporation by reference.**

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the **Federal Register**; and the material must be available to the public. All approved material is available for inspection at the Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC 20002, and at the U.S. Coast Guard, Lifesaving and Fire Safety Division (G–MSE–4), 2100 Second Street SW., Washington, DC 20593–0001, and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the sections affected are as follows:

*American Society for Testing and Materials (ASTM)*

ASTM International Headquarters, 100 Barr Harbor Dr., West Conshohocken, PA 19248–2959.

ASTM Adjunct F 1626, Symbols for Use in Accordance with Regulation 11–2/20 of the 1974 SOLAS Convention, PCN 12–616260–01, • 1996—78.45–1

*International Maritime Organization (IMO)*

Publications Section, 4 Albert Embankment, London, SE1 7SR United Kingdom.

Resolution A.654(16), Graphical Symbols for Fire Control Plans—78.45–1

197. Revise § 78.17–30 to read as follows:

**§ 78.17–30 Examination of boilers and machinery.**

It shall be the duty of the chief engineer when assuming charge of the boilers and machinery of a vessel to examine them thoroughly. If any parts thereof are in bad condition, the fact shall immediately be reported to the master, owner or agent, and the Officer in Charge, Marine Inspection.

**§ 78.33–20 [Removed]**

198. Remove § 78.33–20.

**§ 78.37–10 [Amended]**

199. In § 78.37–10(b) introductory text, remove the words ''(R.S. 4467, as amended, 46 U.S.C. 460)''.

## Subpart 78.43—[Removed]

200. Remove subpart 78.43 consisting of § 78.43–1.

201. Revise § 78.45–1 to read as follows:

**§ 78.45–1 When required.**

(a) Vessels of 1,000 gross tons and over, and vessels of any tonnage on an international voyage shall have permanently exhibited for the guidance of the officer in charge of the vessel the following plans:

(1) General arrangement plans showing for each deck the fire control stations, the various sections enclosed by fire-resisting bulkheads, together with particulars of the fire alarms, detecting systems, the sprinkler installation (if any), the fire extinguishing appliances, means of access to different compartments, decks, etc., and the ventilating systems including particulars of the master fan controls, the positions of dampers, the location of the remote means of stopping fans, and identification numbers of the ventilating fans serving each section. If cargo compartments are ''specially suitable for vehicles,'' they shall be so indicated on the plan. Alternatively, at the discretion of the Commandant, the listed details may be set out in a different medium, such as a booklet or on computer software, provided that the details are available to each officer and a written copy is retained on board at all times and is accessible during emergencies.

(2) For vessels constructed on or after September 30, 1997, and for existing vessels which have their plans redrawn, the symbols used to identify the aforementioned details shall be in accordance with IMO Assembly resolution A.654(16). The identical symbols can be found in ASTM Adjunct F 1626.

(3) Plans showing clearly for each deck and hold the boundaries of the watertight compartments, the openings therein with the means of closure and position of any controls thereof, and the arrangements for the correction of any list due to flooding.

(4) The aforementioned information required for this section shall be kept up-to-date, any alteration being recorded in the applicable medium as soon as practicable.

202. Revise § 78.47–27 to read as follows:

**§ 78.47–27 Self-contained breathing apparatus.**

Lockers or spaces containing self-contained breathing apparatus shall be marked ''SELF-CONTAINED BREATHING APPARATUS.''

## Subpart 78.53 [Removed]

203. Remove subpart 78.53 consisting of §§ 78.53–1 through 78.53–5.

204. Revise § 78.55–1 to read as follows:

**§ 78.55–1 Master and chief engineer responsible.**

It shall be the duty of the master and the engineer in charge of the boilers of any vessel to require that a steam pressure is not carried in excess of that allowed by the certificate of inspection, and to require that the safety valves, once set by the inspector, are in no way tampered with or made inoperative.

205. Revise § 78.65–1 to read as follows:

**§ 78.65–1 Licensed officers.**

All licensed officers on a vessel shall have their licenses conspicuously displayed.

## PART 80—DISCLOSURE OF SAFETY STANDARDS AND COUNTRY OF REGISTRY

206. The authority citation for part 80 continues to read as follows:

**Authority:** 46 U.S.C. 3306; 49 CFR 1.46.

207. Revise § 80.01 to read as follows:

**§ 80.01 Purpose.**

The purpose of the regulations in this part is to implement 46 U.S.C. 3504.

**§ 80.40 [Amended]**

208. In § 80.40, remove the words ''46 U.S.C. 362(b)'' and add, in their place, the words ''46 U.S.C. 3504''.

## PART 90—GENERAL PROVISIONS

209. The authority citation for part 90 continues to read as follows:

**Authority:** 46 U.S.C. 3306, 3703; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

210. Revise § 90.01–1 to read as follows:

**§ 90.01–1 Purpose of regulations.**

The purpose of the regulations in this subchapter is to set forth uniform minimum requirements for cargo and miscellaneous vessels, as listed in Column 5 of table 90.05–1(a).

**§ 90.01–5 [Removed]**

211. Remove § 90.01–5.

**§ 90.05–30 [Removed]**

212. Remove § 90.05–30.

213. Revise § 90.10–9 to read as follows:

**§ 90.10–9 Coast Guard District Commander.**

This term means an officer of the Coast Guard designated as such by the Commandant to command all Coast Guard activities within the officer's district, which include the inspection, enforcement, and administration of Subtitle II of Title 46, U.S. Code, Title 46 and Title 33 U.S. Code, and regulations issued under these statutes.

214. Revise § 90.10–21 to read as follows:

**§ 90.10–21 Marine inspector or inspector.**

These terms mean any person from the civilian or military branch of the Coast Guard assigned under the superintendence and direction of an Officer in Charge, Marine Inspection, or any other person as may be designated for the performance of duties with respect to inspection, enforcement, and administration of Subtitle II of Title 46, U.S. Code, Title 46 and Title 33 U.S. Code, and regulations issued under these statutes.

215. Revise § 90.10–23 introductory text to read as follows:

**§ 90.10–23 Motorboat.**

This term means any vessel indicated in Column 5 of table 90.05–1(a) 65 feet in length or less which is propelled by machinery (including steam). The length shall be measured from end to end over the deck excluding sheer. This term includes a boat temporarily or permanently equipped with a detachable motor. For the purpose of this subchapter, motorboats are included under the term ''vessel'' unless specifically noted otherwise. The various classes of motorboats are as follows:

* * * * *

216. Revise § 90.10–27 to read as follows:

**§ 90.10–27 Officer in Charge, Marine Inspection (OCMI).**

This term means any person from the civilian or military branch of the Coast

Guard designated as such by the Commandant and who, under the superintendence and direction of the Coast Guard District Commander, is in charge of an inspection zone for the performance of duties with respect to the inspections, enforcement, and administration of Subtitle II of Title 46, U.S. Code, Title 46 and Title 33 U.S. Code, and regulations issued under these statutes.

217. In § 90.10–36, revise the first sentence to read as follows:

**§ 90.10–36 Seagoing barge.**

A seagoing barge is a nonself-propelled vessel of at least 100 gross tons making voyages beyond the Boundary Line (as defined in 46 CFR part 7). * * *

## Subpart 90.30–1 [Removed]

218. Remove subpart 90.30–1 consisting of §§ 90.30–1 through 90.30–5.

## PART 91—INSPECTION AND CERTIFICATION

219. The authority citation for part 91 continues to read as follows:

**Authority:** 33 U.S.C. 1321(j); 46 U.S.C. 3306; 46 U.S.C. 3316, as amended by Sec. 607, Pub. L. 104–324, 110 Stat. 3901; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.46.

**§ 91.25–25 [Amended]**

220. In § 91.25–25, revise paragraphs (a)(3), (b)(3), and (c) to read as follows and remove paragraph (e):

**§ 91.25–25 Hull equipment.**

(a) * * *

(3) The owner, operator or master shall provide the Officer in Charge, Marine Inspection with all current valid certificates and registers of cargo gear issued by an organization recognized by the Commandant under § 31.10–16.

(b) * * *

(3) Indicate that the cargo gear described in the certificate or register complies with the standards of the organization or association authorized to issue the certificate or register.

(c) Competent persons for the purposes of this section are defined as—

(1) Surveyors of a classification society recognized by the Commandant under 46 U.S.C. 3316.

(2) Surveyors of a cargo gear organization recognized by the Commandant under § 31.10–16.

(3) Responsible officials or employees of the testing laboratories, companies, or organizations who conduct tests of pieces of loose cargo gear, wire rope, or the annealing of gear as may be required by the standards of the organization or association authorized to issue the certificate or register.

* * * * *

## Subpart 91.37 [Removed]

221. Remove subpart 91.37 consisting of §§ 91.37–1 through 91.37–85.

222. In § 91.40–1, revise paragraphs (a) and (d) to read as follows:

**§ 91.40–1 Definitions relating to hull examinations.**

* * * * *

(a) *Drydock examination* means hauling out a vessel or placing a vessel in a drydock or slipway for an examination of all accessible parts of the vessel's underwater body and all through-hull fittings.

* * * * *

(d) *Underwater survey* means the examination, while the vessel is afloat, of all accessible parts of the vessel's underwater body and all through-hull fittings.

223. In § 91.40–3, revise paragraphs (d)(4), (e) introductory text, and (e)(1) to read as follows:

**§ 91.40–3 Drydock examination, internal structural examination, cargo tank internal examination, and underwater survey intervals.**

* * * * *

(d) * * *

(4) The means that will be provided for examining through-hull fittings.

* * * * *

(e) Vessels otherwise qualifying under paragraph (d) of this section, that are 15 years of age or older, may be considered for continued participation in or entry into the underwater survey program on a case-by-case basis if—

(1) Before the vessel's next scheduled drydocking, the owner or operator submits a request for participation or continued participation to Commandant (G–MOC);

* * * * *

224. Add § 91.55–1(c) to read as follows:

**§ 91.55–1 General.**

* * * * *

(c) Plans and specifications for cargo gear shall be approved by either a recognized classification society or a recognized cargo gear organization, as specified in § 91.25–25.

## PART 92—CONSTRUCTION AND ARRANGEMENT

225. The authority citation for part 92 continues to read as follows:

**Authority:** 46 U.S.C. 3306; 5115; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

226. Add § 92.07–1(c) to read as follows:

**§ 92.07–1 Application.**

* * * * *

(c) SOLAS-certificated vessels complying with method IC, as described in SOLAS 74, regulation II–2/42, may be considered equivalent to the provisions of this subpart.

## PART 93—STABILITY

227. The authority citation for part 93 continues to read as follows:

**Authority:** 46 U.S.C. 3306; 5115; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

## Subpart 93.20 [Removed]

228. Remove subpart 93.20 consisting of §§ 93.20–1 through 93.20–20, including table 93.17–15.

## PART 95—FIRE PROTECTION EQUIPMENT

229. The authority citation for part 95 continues to read as follows:

**Authority:** 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

230. In § 95.01–2(b), add, in alphabetical order of the organizations referenced, the following standard:

**§ 95.01–2 Incorporation by reference.**

* * * * *

(b) * * *

*National Fire Protection Association (NFPA)*

1 Batterymarch Park, Quincy, MA 02269–9101.

NFPA 13–1996, Standard for the Installation of Sprinkler Systems—95.30–1

231. Revise § 95.10–5(f) to read as follows:

**§ 95.10–5 Fire pumps.**

* * * * *

(f) Fire pumps may be used for other purposes provided at least one of the required pumps is kept available for use on the fire system at all times. In no case shall a pump having connection to an oil line be used as a fire pump. Branch lines connected to the fire main for purposes other than fire and deck wash shall be so arranged that adequate water can be made continuously available for firefighting purposes.

* * * * *

232. Revise § 95.10–10(n)(1) to read as follows:

**§ 95.10–10 Fire hydrants and hose.**

* * * * *

(n) * * *

(1) Fire station hydrant connections shall be brass, bronze, or other equivalent metal. Couplings shall either:

(i) Use National Standard fire hose coupling threads for the 1½ inch (38 millimeter) and 2½ inch (64 millimeter) hose sizes, i.e., 9 threads per inch for 1½ inch hose, and 7½ threads per inch for 2½ inch hose; or

(ii) Be a uniform design for each hose diameter throughout the vessel.

* * * * *

**§ 95.15–5 [Amended]**

233. In § 95.15–5, remove paragraph (d) and redesignate paragraphs (e) and (f) as paragraphs (d) and (e), respectively.

234. Add subpart 95.30 to read as follows:

## Subpart 95.30—Automatic Sprinkler Systems, Details

**§ 95.30–1 Application.**

Automatic sprinkler systems shall comply with NFPA 13–1996.

## PART 96—VESSEL CONTROL AND MISCELLANEOUS SYSTEMS AND EQUIPMENT

235. The authority citation for part 96 continues to read as follows:

**Authority:** 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

236. In § 96.35–10(a), add the following sentence to the end of the paragraph: ''In lieu of the flame safety lamp, vessels may carry an oxygen depletion meter which is listed by a Coast Guard recognized independent laboratory as intrinsically safe.''

## PART 97—OPERATIONS

237. The authority citation for part 97 continues to read as follows:

**Authority:** 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3306, 6101; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

238. Add § 97.01–2 to read as follows:

**§ 97.01–2 Incorporation by reference.**

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the **Federal Register**; and the material must be available to the public. All approved material is available for inspection at the Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC 20002, and at the U.S. Coast Guard, Lifesaving and Fire Safety Division (G–MSE–4), 2100 Second Street SW., Washington, DC 20593–0001, and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the sections affected are as follows:

*American Society for Testing and Materials (ASTM)*

ASTM International Headquarters, 100 Barr Harbor Dr., West Conshohocken, PA 19248–2959.

ASTM Adjunct F 1626, Symbols for Use in Accordance with Regulation 11–2/20 of the 1974 SOLAS Convention, PCN 12–616260–01, © 1996—97.36–1

*International Maritime Organization (IMO)*

Publications Section, 4 Albert Embankment, London, SE1 7SR United Kingdom.

Resolution A.654(16), Graphical Symbols for Fire Control Plans—97.36–1

239. Revise § 97.15–15 to read as follows:

**§ 97.15–15 Examination of boilers and machinery.**

It shall be the duty of the chief engineer when assuming charge of the boilers and machinery of a vessel to examine them thoroughly. If any parts thereof are in bad condition, the fact shall immediately be reported to the master, owner or agent, and the Officer in Charge, Marine Inspection.

**§ 97.30–20 [Removed]**

240. Remove § 97.30–20.

241. Revise § 97.36–1 to read as follows:

**§ 97.36–1 When required.**

Barges with sleeping accommodations for more than six persons and all self-propelled vessels shall have permanently exhibited for the guidance of the officer in charge of the vessel the following plans:

(a) General arrangement plans showing for each deck the fire control stations, the various sections enclosed by fire-resisting bulkheads, together with particulars of the fire alarms, detecting systems, the sprinkler installation (if any), the fire extinguishing appliances, means of access to different compartments, decks, etc., and the ventilating systems including particulars of the master fan controls, the positions of dampers, the location of the remote means of stopping fans, and identification numbers of the ventilating fans serving each section. If cargo compartments are ''specially suitable for vehicles,'' they shall be so indicated on the plan. Alternatively, at the discretion of the Commandant, the aforementioned details may be set out in any other medium, such as a booklet or on computer software, provided that the aforementioned details are available to each officer and a copy is retained on board at all times and is accessible during emergencies. For vessels constructed on or after September 30, 1997 or for existing vessels which have their plans redrawn, the symbols used to identify the aforementioned details shall be in accordance with IMO Assembly resolution A.654(16). These identical symbols can also be found in ASTM Adjunct F 1626.

(b) Plans showing clearly for each deck and hold the boundaries of the watertight compartments, the openings therein with the means of closure and position of any controls thereof, and the arrangements for the correction of any list due to flooding.

(c) The aforementioned information shall be kept up-to-date, any alteration being recorded in the applicable medium as soon as practicable.

242. In § 97.37–20, revise the heading to read as follows:

**§ 97.37–20 Self-contained breathing apparatus.**

* * * * *

## Subpart 97.43—[Removed]

243. Remove subpart 97.43 consisting of §§ 97.43–1 to 97.43–5.

244. Revise § 97.45–1 to read as follows:

**§ 97.45–1 Master and chief engineer responsible.**

It shall be the duty of the master and the chief engineer of any vessel to require that a steam pressure is not carried in excess of that allowed by the certificate of inspection, and to require that the safety valves, once set by the inspector, are in no way tampered with or made inoperable.

245. Revise § 97.53–1 to read as follows:

**§ 97.53–1 Licensed officers.**

All licensed officers on a vessel shall have their licenses conspicuously displayed.

## PART 105—COMMERCIAL FISHING VESSELS DISPENSING PETROLEUM PRODUCTS

246. The authority citation for part 105 continues to read as follows:

**Authority:** 33 U.S.C. 1321(j); 46 U.S.C. 3306, 3703, 4502; 49 U.S.C. App.1804; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.46.

247. Revise § 105.01–1 to read as follows:

**§ 105.01–1 Purpose.**

The purpose of the regulations in this part is to provide adequate safety in the transporting and handling of inflammable or combustible cargo in bulk on board certain commercial fishing vessels and tenders.

**§ 105.10–1 [Removed]**

248. Remove § 105.10–1.

249. Revise § 105.35–1(a) to read as follows:

**§ 105.35–1 General.**

(a) In addition to the requirements in § 28.160 of subchapter C of this chapter, at least two B–II dry chemical or foam portable fire extinguishers bearing the marine type label of the Underwriter's Laboratories, Inc., shall be located at or near each dispensing area.

* * * * *

## PART 108—DESIGN AND EQUIPMENT

250. The authority citation for part 108 continues to read as follows:

**Authority:** 43 U.S.C. 1333; 46 U.S.C. 3102, 3306; 49 CFR 1.46.

251. In § 108.101(b), add, in alphabetical order of the organizations referenced, the following standard:

**§ 108.101 Incorporation by reference.**

* * * * *

(b) * * *

*National Fire Protection Association (NFPA)*

1 Batterymarch Park, Quincy, MA 02269–9101.

NFPA 13–1996, Standard for the Installation of Sprinkler Systems—108.430

252. Revise § 108.417(e) to read as follows:

**§ 108.417 Fire pump components and associated equipment.**

* * * * *

(e) An oil line must not be connected to a fire pump.

253. Revise § 108.425(b) to read as follows:

**§ 108.425 Fire hoses and associated equipment.**

* * * * *

(b) Fire station hydrant connections shall be brass, bronze, or other equivalent metal. Couplings shall either:

(1) Use National Standard fire hose coupling threads for the 1½ inch (38 millimeter) and 2½ inch (64 millimeter) hose sizes, i.e., 9 threads per inch for 1½ inch hose, and 7½ threads per inch for 2½ inch hose; or

(2) Be a uniform design for each hose diameter throughout the vessel.

* * * * *

254. In Subpart D, after § 108.429, add an undesignated centerhead and § 108.430 to read as follows:

Automatic Sprinkling Systems

**§ 108.430 General.**

Automatic Sprinkler Systems shall comply with NFPA 13–1996.

**§ 108.435 [Removed]**

255. Remove § 108.435.

## PART 109—OPERATIONS

256. The authority citation for part 109 continues to read as follows:

**Authority:** 43 U.S.C. 1333; 46 U.S.C. 3306, 5115, 6101, 10104; 49 CFR 1.46.

257. Add § 109.105 to read as follows:

**§ 109.105 Incorporation by reference.**

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the **Federal Register** and make the material available to the public. All approved material is on file at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC 20002, and at the U.S. Coast Guard, Office of Design and Engineering Standards (G–MSE), 2100 Second Street SW., Washington, DC 20593–0001 and is available from the sources indicated in paragraph (b) of this section.

(b) The material for incorporation by reference in this part and the sections affected are:

*American Society for Testing and Materials (ASTM)*

ASTM International Headquarters, 100 Barr Harbor Dr., West Conshohocken, PA 19248–2959.

ASTM Adjunct F 1626, Symbols for Use in Accordance with Regulation 11–2/20 of the 1974 SOLAS Convention, PCN 12–616260–01, © 1996—109.563

*International Maritime Organization (IMO)*

Publications Section, 4 Albert Embankment, London, SE1 7SR United Kingdom.

Resolution A.654.(16), Graphical Symbols for Fire Control Plans—109.563

**§ 109.121 [Amended]**

258. In § 109.121, remove paragraph (b) and redesignate paragraph (c) as paragraph (b).

**§ 109.423 [Removed]**

259. Remove § 109.423.

260. Revise § 109.431(a) to read as follows:

**§ 109.431 Logbook.**

(a) The master or person in charge of a unit, that is required by 46 U.S.C. 11301 to have an official logbook, shall maintain the logbook on Form CG–706. When the voyage is completed, the master or person in charge shall file the logbook with the Officer in Charge, Marine Inspection.

* * * * *

261. Revise § 109.555(b) to read as follows:

**§ 109.555 Propulsion boilers.**

* * * * *

(b) The safety valves, once set, are not tampered with or made inoperative.

262. Add § 109.563(a)(6) to read as follows:

**§ 109.563 Posting of documents.**

* * * * *

(a) * * *

(6) For units constructed on or after September 30, 1997, and for existing units which have their plans redrawn, the symbols used to identify the aforementioned details shall be in accordance with IMO Assembly resolution A.654(16). The identical symbols can be found in ASTM Adjunct F 1626.

* * * * *

## PART 147A—INTERIM REGULATIONS FOR SHIPBOARD FUMIGATION

263. The authority citation for part 147A is revised to read as follows:

**Authority:** 46 U.S.C. 5103; 49 CFR 1.46.

## PART 148—CARRIAGE OF SOLID HAZARDOUS MATERIALS IN BULK

264. The authority citation for part 148 is revised to read as follows:

**Authority:** 49 U.S.C. 5103; 49 CFR 1.46.

265. Revise § 148.01–1(c) to read as follows:

**§ 148.01–1 Purpose and applicability.**

* * * * *

(c) For purposes of this part, the term *vessel* means a ''cargo vessel or barge'' which is not exempted under 49 U.S.C. 5107(d).

* * * * *

SUBCHAPTER O—CERTAIN BULK DANGEROUS CARGOES

Subchapter O [Amended]

266. In Subchapter O, remove the Note which precedes part 150.

## PART 150—COMPATIBILITY OF CARGOES

267. The authority citation for part 150 continues to read as follows:

**Authority:** 46 U.S.C. 3306, 3703; 49 CFR 1.45, 1.46. Section 150.105 issued under 44 U.S.C. 3507; 49 CFR 1.45.

268. Revise § 150.110 to read as follows:

**§ 150.110 Applicability.**

This subpart prescribes rules for identifying incompatible hazardous materials and rules for carrying these materials in bulk as cargo in permanently attached tanks or in tanks that are loaded or discharged while aboard the vessel. The rules apply to all vessels that carry liquid dangerous cargoes in bulk that are subject to 46 U.S.C. Chapter 37.

## PART 151—BARGES CARRYING BULK LIQUID HAZARDOUS MATERIAL CARGOES

269. The authority citation for part 151 continues to read as follows:

**Authority:** 33 U.S.C. 1903; 46 U.S.C. 3703; 49 CFR 1.46.

270. Revise § 151.03–30(c) (the Note remains unchanged) to read as follows:

**§ 151.03–30 Hazardous material.**

* * * * *

(c) Designated a hazardous material under 49 U.S.C. 5103.

* * * * *

271. Revise § 151.03–41 to read as follows:

**§ 151.03–41 Officer in Charge, Marine Inspection (OCMI).**

This term means any person from the civilian or military branch of the Coast Guard designated as such by the Commandant and who, under the superintendence and direction of the Coast Guard District Commander, is in charge of an inspection zone for the performance of duties with respect to the enforcement and administration of Subtitle II of Title 46, U.S. Code, Title 46 and Title 33 U.S. Code, and regulations issued under these statutes.

## PART 153—SHIPS CARRYING BULK LIQUID, LIQUEFIED GAS, OR COMPRESSED GAS HAZARDOUS MATERIALS

272. The authority citation for part 153 continues to read as follows:

**Authority:** 46 U.S.C. 3703; 49 CFR 1.46. Section 153.40 issued under 49 U.S.C. 5103. Sections 153.470 through 153.491, 153.1100 through 153.1132, and 153.1600 through 153.1608 also issued under 33 U.S.C. 1903(b).

273. In § 153.2, paragraph (3) (but not the Note) in the definition of Hazardous material is revised to read as follows:

**§ 153.2 Definitions and acronyms.**

* * * * *

*Hazardous material* means a liquid material or substance that is—

* * * * *

(3) Designated a hazardous material under 49 U.S.C. 5103.

* * * * *

**§ 153.470 [Amended]**

274. In § 153.470, remove the Note at the end of the section.

## PART 154—SAFETY STANDARDS FOR SELF-PROPELLED VESSELS CARRYING BULK LIQUEFIED GASES

275. The authority citation for part 154 continues to read as follows:

**Authority:** 46 U.S.C. 3703, 9101; 49 CFR 1.46.

**§ 154.1445 [Removed]**

276. Remove § 154.1445.

## PART 160—LIFESAVING EQUIPMENT

277. The authority citation for part 160 continues to read as follows:

**Authority:** 46 U.S.C. 2103, 3306, 3703, and 4302; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

278. Revise § 160.001–1 to read as follows:

**§ 160.001–1 Scope.**

(a) This subpart contains the general:

(1) Characteristics of life preservers (Type I personal flotation devices (PFDs));

(2) Approval procedures for life preservers; and

(3) Production oversight requirements for life preservers.

(b) Other subparts in this part specify the detailed requirements for standard type life preservers and may supplement the requirements in this subpart.

279. In § 160.001–2, revise paragraphs (b) and (d) to read as follows:

**§ 160.001–2 General characteristics of life preservers.**

* * * * *

(b) A life preserver must be capable of supporting a minimum of 22 pounds in fresh water for 48 hours.

* * * * *

(d) A life preserver must be:

(1) Simple in design;

(2) Capable of being:

(i) Worn inside-out,

(ii) worn clearly in only one way, or

(iii) Donned correctly without demonstration, instructions, or assistance by at least 75 percent of persons unfamiliar with the design; and

(3) Capable of being quickly adjusted for a secure fit to the body of wearers for which it is intended.

* * * * *

280. Revise § 160.001–3 to read as follows:

**§ 160.001–3 Procedure for approval.**

(a) *General.* Designs of life preservers are approved only by the Commandant, U.S. Coast Guard. Manufacturers seeking approval of a life preserver design shall follow the procedures of this section and subpart 159.005 of this chapter.

(b) Each application for approval of a life preserver must contain the information specified in § 159.005–5 of this chapter. The application and, except as provided in paragraphs (c) and (d)(2) of this section, a prototype life preserver must be submitted to the Commandant for preapproval review. If a similar design has already been approved, the Commandant may waive the preapproval review under §§ 159.005–5 and 159.005–7 of this chapter.

(c) If the life preserver is of a standard design, as described by subpart 160.002, 160.005, or 160.055, the application:

(1) Must include the following: A statement of any exceptions to the standard plans and specifications, including drawings, product description, construction specifications, and/or bill of materials.

(2) Need not include: The information specified in § 159.005–5(a)(2).

(d) If the life preserver is of a non-standard design, the application must include the following:

(1) Plans and specifications containing the information required by § 159.005–12 of this chapter, including drawings, product description, construction specifications, and bill of materials.

(2) The information specified in § 159.005–5(a)(2)(i) through (iii) of this chapter, except that, if preapproval review has been waived, the manufacturer is not required to send a prototype PFD sample to the Commandant.

(3) Performance testing results of the design performed by an independent laboratory, that has a Memorandum of Understanding with the Coast Guard under § 159.010–7 of this subchapter covering the in-water testing of personal flotation devices, showing equivalence to the standard design's performance in all material respects.

(4) The Approval Type sought (Type I or Type V).

(5) Any special purpose(s) for which the life preserver is designed and the

vessel(s) or vessel type(s) on which its use is intended.

(6) Buoyancy and other relevant tolerances to be complied with during production.

(7) The text of any optional marking to be included on the life preserver in addition to the markings required by the applicable approval subpart.

(8) For any conditionally approved life preserver, the intended approval condition(s).

(e) The description of quality control procedures required by § 159.005–9 of this chapter may be omitted if the manufacturer's planned quality control procedures meet the requirements of those accepted by the Commandant for the independent laboratory performing production inspections and tests.

(f) *Waiver of tests.* A manufacturer may request that the Commandant waive any test prescribed for approval under the applicable subpart. To request a waiver, the manufacturer must submit to the Commandant and the laboratory described in § 159.010, one of the following:

(1) Satisfactory test results on a PFD of sufficiently similar design as determined by the Commandant.

(2) Engineering analysis demonstrating that the test for which a waiver is requested is not appropriate for the particular design submitted for approval or that, because of its design or construction, it is not possible for the PFD to fail that test.

281. Add § 160.001–5 to read as follows:

**§ 160.001–5 Production oversight.**

(a) *General.* Production tests and inspections must be conducted in accordance with this section, subpart 159.007 of this chapter, and if conducted by an independent laboratory, the independent laboratory's procedures for production inspections and tests as accepted by the Commandant. The Commandant may prescribe additional production tests and inspections necessary to maintain quality control and to monitor compliance with the requirements of this subchapter.

(b) *Oversight.* In addition to responsibilities set out in part 159 of this chapter and the accepted laboratory procedures for production inspections and tests, each manufacturer of a life preserver and each laboratory inspector shall comply with the following, as applicable:

(1) *Manufacturer.* Each manufacturer must—

(i) Perform all tests and examinations necessary to show compliance with this subpart and subpart under which the life preserver is approved on each lot before any inspector's tests and inspection of the lot;

(ii) Follow established procedures for maintaining quality control of the materials used, manufacturing operations, and the finished product; and

(iii) Allow an inspector to take samples of completed units or of component materials for tests required by this subpart and for tests relating to the safety of the design.

(2) *Laboratory.* An inspector from the accepted laboratory shall oversee production in accordance with the laboratory's procedures for production inspections and tests accepted by the Commandant. During production oversight, the inspector shall not perform or supervise any production test or inspection unless—

(i) The manufacturer has a valid approval certificate; and

(ii) The inspector has first observed the manufacturer's production methods and any revisions to those methods.

(3) At least quarterly, the inspector shall check the manufacturer's compliance with the company's quality control procedures, examine the manufacturer's required records, and observe the manufacturer perform each of the required production tests.

(c) *Test facilities.* The manufacturer shall provide a suitable place and apparatus for conducting the tests and inspections necessary to determine compliance of life preservers with this subpart. The manufacturer shall provide means to secure any test that is not continuously observed, such as the 48 hour buoyancy test. The manufacturer must have the calibration of all test equipment checked in accordance with the test equipment manufacturer's recommendation and interval but not less than at least once every year.

(d) *Lots.* A lot may not consist of more than 1000 life preservers. A lot number must be assigned to each group of life preservers produced. Lots must be numbered serially. A new lot must be started whenever any change in materials or a revision to a production method is made, and whenever any substantial discontinuity in the production process occurs. The lot number assigned, along with the approval number, must enable the PFD manufacturer to determine the supplier's identifying information for the component lot.

(e) *Samples.* (1) From each lot of life preservers, manufacturers shall randomly select a number of samples from completed units at least equal to the applicable number required by table 160.001–5(e) for buoyancy testing. Additional samples must be selected for any tests, examinations, and inspections required by the laboratory's production inspections and tests procedures.

TABLE 160.001–5(e).—SAMPLING FOR BUOYANCY TESTS

| Lot size | Number of life preservers in sample |
|---|---|
| 100 and under | 1 |
| 101 to 200 | 2 |
| 201 to 300 | 3 |
| 301 to 500 | 4 |
| 501 to 750 | 6 |
| 751 to 1000 | 8 |

(2) For a lot next succeeding one from which any sample life preserver failed the buoyancy test, the sample shall consist of not less than ten specimen life preservers to be tested for buoyancy in accordance with paragraph (f) of this section.

(f) *Buoyancy test.* The buoyancy of the life preservers must be determined by measuring the upward force exerted by the individual submerged unit. The buoyancy measurement must be made at the end of the 24 or 48 hours of submersion, as specified in the applicable approval subpart, during which period the pad inserts must not be disturbed.

(g) *Buoyancy required.* The buoyancy must meet the requirements of the applicable approval subpart.

(h) *Lot inspection.* On each lot, the laboratory inspector shall perform a final lot inspection to be satisfied that the life preservers meet this subpart. Each lot must demonstrate—

(1) First quality workmanship;

(2) That the general arrangement and attachment of all components, such as body straps, closures, tie tapes, and drawstrings, are as specified in the approved plans and specifications;

(3) Compliance with the marking requirements in the applicable approval subpart; and

(4) The information pamphlet specified in 33 CFR part 181 subpart G, if required, is securely attached to the device, with the PFD selection information visible and accessible prior to purchase.

(i) *Lot acceptance.* When the independent laboratory has determined that the life preservers in the lot are of a type officially approved in the name of the company, and that such life preservers meet the requirements of this subpart, they shall be plainly marked in waterproof ink with the independent laboratory's name or identifying mark.

(j) *Lot rejection.* Each nonconforming unit must be rejected. If three or more nonconforming units are rejected for the same kind of defect, lot inspection must be discontinued and the lot rejected. The inspector must discontinue lot inspection and reject the lot if examination of individual units or the records for the lot shows noncompliance with either this subchapter or the laboratory's or the manufacturer's quality control procedures. A rejected unit or lot may be resubmitted for testing and inspection if the manufacturer first removes and destroys each defective unit or, if authorized by the laboratory, reworks the unit or lot to correct the defect. A rejected lot or rejected unit may not be sold or offered for sale under the representation that it meets this subpart or that it is Coast Guard-approved.

282. Revise § 160.002–5 to read as follows:

**§ 160.002–5 Sampling, tests, and inspections.**

(a) Production tests and inspections must be conducted by the manufacturer of a life preserver and the accepted laboratory inspector in accordance with this section and § 160.001–5.

(b) *Buoyancy test.* The buoyancy of the pad inserts from the life preserver shall be determined according to § 160.001–5(f) of this part with each compartment of the buoyant pad insert covers slit so as not to entrap air. The period of submersion must be at least 48 hours.

(c) *Buoyancy required.* The buoyant pad inserts from Model 3 adult life preservers shall provide not less than 25 pounds buoyancy in fresh water, and the pads from Model 5 child life preservers shall provide not less than 16.5 pounds buoyancy.

283. Revise § 160.002–7 to read as follows:

**§ 160.002–7 Procedure for approval.**

*General.* Manufacturers seeking approval of a life preserver design shall follow the procedures of subpart 159.005 of this chapter, as explained in § 160.001–3 of this part.

284. Revise § 160.005–5 to read as follows:

**§ 160.005–5 Sampling, tests, and inspections.**

(a) Production tests and inspections must be conducted by the manufacturer of a life preserver and the accepted laboratory inspector in accordance with this section and § 160.001–5.

(b) *Buoyancy test.* The buoyancy of the pad inserts from the life preserver shall be determined according to § 160.001–5(f) of this part with each compartment of the buoyant pad insert covers slit so as not to entrap air. The period of submersion must be at least 48 hours.

(c) *Buoyancy required.* The buoyant pad inserts from Model 3 adult life preservers shall provide not less than 25 pounds buoyancy in fresh water, and the pads from Model 5 child life preservers shall provide not less than 16.5 pounds buoyancy.

285. Revise § 160.005–7 to read as follows:

**§ 160.005–7 Procedure for approval.**

*General.* Manufacturers seeking approval of a life preserver design shall follow the procedures of subpart 159.005 of this chapter, as explained in § 160.001–3 of this part.

286. In subpart 160.006, revise the heading to read ''Subpart 160.006—Life Preservers: Repairing.''

**§ 160.006–1 [Removed]**

287. Remove § 160.006–1.

**§ 160.006–4 [Removed]**

288. Remove § 160.006–4.

**§ 160.006–5 [Removed]**

289. Remove § 160.006–5.

**§ 160.013–4 [Removed]**

290. Remove § 160.013–4.

**§ 160.013–6 [Removed]**

291. Remove § 160.013–6.

**§ 160.016–3 [Removed]**

292. Remove § 160.016–3.

**§ 160.024–6 [Removed]**

293. Remove § 160.024–6 and figure 160.024–6(a).

**§ 160.026–6 [Amended]**

294. In § 160.026–6, remove table 160.026–6(f), remove paragraphs (f) and (g), and revise paragraph (a), the text of paragraphs (c) and (d), and paragraph (e) to read as follows:

**§ 160.026–6 Sampling, inspection, and tests of production lots.**

(a) *General.* Containers of emergency drinking water must be tested in accordance with the provisions of this section by an independent laboratory accepted by the Coast Guard under 46 CFR 159.010.

* * * * *

(c) *Visual inspection of containers.* The independent laboratory inspector shall select at random from each lot the number of sample filled containers indicated in table 160.026–6(c), which shall be examined visually for compliance with the requirements of this subpart. If the number of defective cans exceeds the acceptance number shown in the table for the samples selected, the lot shall be rejected.

* * * * *

(d) *Laboratory tests of containers and water.* The manufacturer shall select at random from each lot the number of sets of 11 filled sample containers indicated in Table 160.026–6(d1), which shall be forwarded to an independent laboratory accepted by the Coast Guard under 46 CFR 159.010. The independent laboratory shall perform the tests outlined in Table 160.026–6(d2). If any sample is found to be non-conforming in any of these tests, the lot shall be rejected.

* * * * *

(e) *Lot acceptance.* When the independent laboratory is satisfied that the emergency drinking water meets the requirements of this subpart, the lot shall be accepted. When permitted by the independent laboratory, rejected lots may be resubmitted for official inspection, provided all containers in the lot have been reworked by the packer, and all defective units removed. Emergency drinking water from rejected lots may not, unless subsequently accepted, be sold or offered for sale under representation as being in compliance with this subpart or as being approved for use on merchant vessels.

295. Revise § 160.026–7 to read as follows:

**§ 160.026–7 Procedure for approval.**

(a) *General.* Emergency drinking water for lifeboats and liferafts on merchant vessels is approved only by the Commandant, U.S. Coast Guard.

(b) *Pre-approval samples and plans.* Packers who desire to pack approved emergency drinking water shall have the required tests in accordance with § 160.026–5 performed by an independent laboratory accepted by the Coast Guard under 46 CFR 159.010. A copy of the independent laboratory's report will be forwarded to the Commandant for examination, and, if satisfactory, an official approval number will be assigned to the manufacturer for the emergency drinking water.

**§ 160.035–2 [Amended]**

296. In § 160.035–2, remove paragraph (e).

297. Revise § 160.035–3 to read as follows:

**§ 160.035–3 Construction of steel oar-propelled lifeboats.**

(a) *Type.* Lifeboats shall have rigid sides and be fitted with internal buoyancy so arranged that the boats will float in the flooded condition when

fully loaded with persons and equipment. The capacity of an oar-propelled lifeboat is limited to a maximum of 59 persons. Lifeboats designed to carry 60, but not more than 100, persons shall be either hand-propelled or motor-propelled. Lifeboats designed to carry more than 100 persons shall be motor-propelled, except that a lifeboat designed to carry more than 100 persons may be hand-propelled if it is a replacement for a previously approved hand-propelled lifeboat.

(b) *Materials.* (1) Plating for shell, floors, air tanks, etc., shall be made by the open-hearth or electric furnace process in accordance with ASTM Standards A–525 Class 1.25 Commercial. The bend tests required by these specifications shall be made after the galvanizing or other anticorrosive treatment has been applied.

(2) Rivets and rolled or extruded shapes such as keel, stem, sternpost, gunwales, etc., shall be made by the open-hearth or electric furnace process in accordance with ASTM Standard Specification A–36. Consideration will be given to the use of other steels having equivalent strength where longitudinal cold forming is necessary.

(c) *Riveting.* (1) Riveting of the shell plating to the keel, stem, and sternpost shall be button head rivets, staggered with not less than 12 rivets to the foot. The distance from the edge of the plate to the centers of the rivets in the nearest row shall be not less than ½ inch nor more than ¾ inch. Rivets connecting the shell to the gunwale shall be spaced not more than 3 inches on centers. The size of the rivets for connecting the shell plating to the keel, stem, sternpost, and gunwale shall be ¼-inch diameter for boats 28 feet and under and 5⁄16-inch diameter for boats over 28 feet.

(2) The connection of the floors to the shell shall be a single row of rivets not less than 3⁄16 inch in diameter and spaced not more than 3 inches on centers.

(d) *Welding.* Welding may be substituted for riveting in any location. It shall be performed by welders qualified by the U.S. Coast Guard, American Bureau of Shipping, or U.S. Navy Department, and only approved electrodes shall be used. Details of the joints shall be indicated on the construction drawings submitted for approval.

(e) *Gunwale braces.* (1) The gunwale braces shall be bolted to the thwarts with at least two carriage bolts of a size not less than that noted in table 160.035–3(e)(1) and riveted or welded to the gunwales. Where riveted to the gunwale, at least two rivets of a size not less than that noted in table 160.035–3(e)(1) shall be used.

TABLE 160.035–3(E)(1)

| Length of lifeboat | Brace size (inches) | Bolts and rivets diameter (inch) |
|---|---|---|
| 22 feet and under. | 3 x ¼ | 5⁄16 |
| Over 22 feet and not over 28. | 3 x 5⁄16 | ⅜ |
| Over 28 feet ..... | 3 x ⅜ | 7⁄16 |

(2) Bracket type gunwale braces will be given special consideration.

(f) *Seats.* (1) The thwarts, side benches, and end benches shall be of fir, yellow pine, fibrous glass reinforced plastic (FRP), or approved equivalent.

(2) The edges of all thwarts, side, and end benches shall be well rounded.

(3) Suitable foot rests shall be furnished at a distance of between 17 and 20 inches below the thwarts and side benches. This may be accomplished by raising the footings from the bottom of the boat.

(4) The leading edge of the thwart or end bench shall be located a minimum of 3 inches and a maximum of 6 inches distance from the Rottmer release gear.

(g) *Stretchers.* Stretchers of sufficient size and strength shall be fitted in suitable positions for rowing.

(h) *Disengaging apparatus.* (1) Connections for the disengaging apparatus shall have a minimum factor of safety of six.

(2) For construction and capacity of disengaging apparatus, see subpart 160.033.

(i) *Plugs.* Each lifeboat shall be fitted with an automatic plug so designed and installed as to insure complete drainage at all times when the boat is out of the water. The automatic plug shall be provided with a cap attached to the lifeboat by a suitable chain. The location of drain plug is to be marked on the vertical surface in the vicinity of the plug below the side bench with the word ''plug'' in 3-inch white letters and with an arrow pointing in the direction of the drain plug.

(j) *Protection against corrosion.* (1) All steel or iron entering into the construction of lifeboats shall be galvanized by the hot dipped process. All fabricated pieces or sections are to be galvanized after fabrication. Other methods of corrosion prevention will be given special consideration.

(2) Where welded construction is employed, the material shall be galvanized after welding unless impractical to do so in which case consideration will be given to equivalent protection.

(3) Provisions shall be made to obtain a satisfactory bond between the metal and the paint.

(k) *Rudders.* (1) Each lifeboat shall be fitted with a rudder and tiller. The rudder shall be fitted with a ½-inch diameter manila lanyard of such length as to permit the rudder to be shipped without untying the lanyard.

(2) A suitable hinged or pivoted tiller shall be provided.

(3) Rudder stops shall be provided to limit the rudder angle to approximately 45 degrees each side of the centerline.

(l) *Buoyancy tanks.* (1) All lifeboats shall have inherent buoyancy, or shall be fitted with buoyancy tanks or other equivalent noncorrodible buoyancy units, which shall not be adversely affected by oil or oil products, sufficient to float the boat and its equipment when the boat is flooded and open to the sea. An additional volume of buoyancy, or buoyancy units, equal to at least one-tenth the cubic capacity of the lifeboat shall be provided.

(2) At least 50 percent of the buoyancy shall be located along the sides of the boat and shall be so located that the boat will be on even keel when flooded.

(3) The tops of the buoyancy tanks or buoyancy units shall be protected by the side benches or other suitable means. The construction shall be such that water will not collect on the tops of the tanks.

(4) *Built-in buoyancy tanks.* Each built-in buoyancy tank shall be filled with buoyancy material. The amount of material required shall be determined by the flooding test in accordance with § 160.035–11(b)(2). The buoyancy materials used shall meet the requirements set forth for core materials as follows:

| | | |
|---|---|---|
| Core ..... | Polystyrene .. | MIL–P–40619. |
| | | MIL–P–19644. |
| | Polyurethane | MIL–P–21929. |

(m) *Equipment stowage.* (1) Provision lockers, water tanks, and special equipment lockers shall be watertight and so designed and located as to fit under the side benches, end benches, or footings without projecting into the accommodation spaces of the lifeboat. In special cases, stowage under the thwarts will be permitted. Standard ¼ inch pipe size testing nipples shall be fitted to all such lockers or tanks.

(2) Water tanks shall be constructed of at least 18 USSG material. An opening with a dogged type cover shall be provided for removal of water cans. This opening shall be at least 7 inches in

diameter, but in any case shall be of sufficient size that all water cans can be removed. In addition, built-in water tanks shall have an opening at least 13 inches in diameter with a bolted cover for the purpose of inspection and maintenance. A 2-inch diameter fill cap shall be installed for the purpose of storing rain water. A standard ¼-inch pipe size drainage nipple with hexagonal cap shall be fitted in the bottom of the tank in an accessible location and may be used for air testing the water tank.

(n) *Grab rails.* Grab rails shall be substantially attached to each lifeboat below the turn of the bilge and extend approximately one-half of the length of the lifeboat on each side. The ends of the grab rails shall be faired to prevent fouling and all connections of the rails to the lifeboat shall be made by riveting the palms of the brackets to a small plate and riveting the plate to the shell. To prevent rupture of the shell if the grab rail is carried away, more rivets shall be used in attaching the plate to the shell than in fastening the bracket to the plate. The clearance between the grab rail pipe and the hull shall be at least 1½ inches. The connections of the rails to a fibrous glass reinforced plastic lifeboat hull will be given special consideration.

(o) *Hand rails.* All lifeboats intended for use in ocean and coastwise service shall be fitted with hand rails approximately 18 inches in length, constructed and attached to the lifeboat in the same manner as the grab rails required by paragraph (n) of this section. The clearance between the hand rail pipe and the hull shall be at least 1½ inches. The hand rails shall be located approximately parallel to and at both ends of the grab rails and spaced midway between the grab rail and the gunwale and midway between the grab rail and the keel on both sides of the lifeboat provided that, when the distance from grab rail to gunwale or to the keel exceeds 4 feet, two hand rails shall be fitted so as to provide equal spacing. In no case shall the hand rails project beyond the widest part of the boat. Recessed hand rails or other alternate arrangements will be given consideration.

**§ 160.035–4 [Removed]**

298. Remove § 160.035–4.

**§ 160.035–6 [Amended]**

299. In § 160.035–6, remove the text of paragraphs (b), (d), (f), (g), and (h) and redesignate paragraphs (c), (e), and (i) as paragraphs (b), (c), and (d), respectively.

Table 160.035–6(d)(1) [Removed]

300. Remove table 160.035–6(d)(1).

**§ 160.035–7 [Removed]**

301. Remove § 160.035–7.

**§ 160.035–9 [Amended]**

302. In § 160.035–9, remove paragraph (c) and redesignate paragraph (d) as paragraph (c).

**§ 160.041–5 [Amended]**

303. In § 160.041–5, remove paragraph (a) and redesignate paragraphs (b) through (f) as paragraphs (a) through (e), respectively.

**§ 160.041–7 [Removed]**

304. Remove § 160.041–7.

**§ 160.043–7 [Removed]**

305. Remove § 160.043–7.

**§ 160.044–4 [Amended]**

306. In § 160.044–4, remove paragraph (a) and redesignate paragraphs (b) through (d) as paragraphs (a) through (c), respectively. In the newly designated paragraph (a), replace the word ''pump'' with the words ''bilge pump'' wherever it appears.

**§ 160.044–6 [Removed]**

307. Remove § 160.044–6.

**§ 160.048 [Amended]**

308. In § 160.048–6, remove paragraph (c) and in paragraph (a)(1) revise the entry following ''If pads become waterlogged, replace device.'' to read as follows:

**§ 160.048–6 Marking.**

(a) * * *

(1) * * *

Approved for use on recreational boats only as a throwable device.

* * * * *

**§ 160.049.6 [Amended]**

309. In § 160.049–6, remove paragraph (c) and in paragraph (a)(1) revise the entry following ''Dry out thoroughly when wet.'' to read as follows:

**§ 160.049–6 Marking.**

(a) * * *

(1) * * *

Approved for use on recreational boats only as a throwable device.

* * * * *

**§ 160.050–5 [Amended]**

310. Amend § 160.050–5 as follows:

a. Remove footnote 1;

b. Revise paragraphs (a) through (f);

c. Add paragraphs (g) through (i);

d. Redesignate table 160.050–5(b) as table 160.050–5(e); and

e. Revise the new table 160.050–5(e) to read as follows:

**§ 160.050–5 Sampling, tests, and inspection.**

(a) *General.* Production tests and inspections must be conducted in accordance with this section, subpart 159.007 of this chapter, and if conducted by an independent laboratory, the independent laboratory's procedures for production inspections and tests as accepted by the Commandant. The Commandant may prescribe additional production tests and inspections necessary to maintain quality control and to monitor compliance with the requirements of this subchapter.

(b) *Oversight.* In addition to responsibilities set out in part 159 of this chapter and the accepted laboratory procedures for production inspections and tests, each manufacturer of a ring life buoy and each laboratory inspector shall comply with the following, as applicable:

(1) *Manufacturer.* Each manufacturer must—

(i) Perform all tests and examinations necessary to show compliance with this subpart and the subpart under which the ring life buoy is approved on each lot before any inspector's tests and inspection of the lot;

(ii) Follow established procedures for maintaining quality control of the materials used, manufacturing operations, and the finished product; and

(iii) Allow an inspector to take samples of completed units or of component materials for tests required by this subpart and for tests relating to the safety of the design.

(iv) Meet 33 CFR 181.701 through 33 CFR 181.705 which requires an instruction pamphlet for each device that is sold or offered for sale for use on recreational boats, and must make the pamphlet accessible prior to purchase.

(2) *Laboratory.* An inspector from the accepted laboratory shall oversee production in accordance with the laboratory's procedures for production inspections and tests accepted by the Commandant. During production oversight, the inspector shall not perform or supervise any production test or inspection unless—

(i) The manufacturer has a valid approval certificate; and

(ii) The inspector has first observed the manufacturer's production methods and any revisions to those methods.

(3) At least quarterly, the inspector shall check the manufacturer's compliance with the company's quality control procedures, examine the

manufacturer's required records, and observe the manufacturer perform each of the required production tests.

(c) *Test facilities.* The manufacturer shall provide a suitable place and apparatus for conducting the tests and inspections necessary to determine compliance of ring life buoys with this subpart. The manufacturer shall provide means to secure any test that is not continuously observed, such as the 48 hour buoyancy test. The manufacturer must have the calibration of all test equipment checked in accordance with the test equipment manufacturer's recommendation and interval but not less than at least once every year.

(d) *Lots.* A lot may not consist of more than 1000 life buoys. A lot number must be assigned to each group of life buoys produced. Lots must be numbered serially. A new lot must be started whenever any change in materials or a revision to a production method is made, and whenever any substantial discontinuity in the production process occurs. The lot number assigned, along with the approval number, must enable the ring life buoy manufacturer to determine the supplier's identifying information for the component lot.

(e) *Samples.* (1) From each lot of ring life buoys, manufacturers shall randomly select a number of samples from completed units at least equal to the applicable number required by table 160.050–5(e) for buoyancy testing. Additional samples must be selected for any tests, examinations, and inspections required by the laboratory's production inspections and tests procedures.

TABLE 160.050–5(E).—SAMPLING FOR BUOYANCY TESTS

| Lot size | Number of life buoys in sample |
|---|---|
| 100 and under | 1 |
| 101 to 200 | 2 |
| 201 to 300 | 3 |
| 301 to 500 | 4 |
| 501 to 750 | 6 |
| 751 to 1000 | 8 |

(2) For a lot next succeeding one from which any sample ring life buoy failed the buoyancy or strength test, the sample shall consist of not less than ten specimen ring life buoys to be tested for buoyancy in accordance with paragraph (f) of this section.

(f) *Tests—(1) Strength test.* The buoy body shall be suspended by a 2-inch-wide strap. A similar strap shall be passed around the opposite side of the buoy and a 200-pound weight suspended by it from the buoy. After 30 minutes, the buoy body shall be examined, and there shall be no breaks, cracks or permanent deformation.

(2) *Resistance to damage test.* The buoy body shall be dropped three times from a height of 6 feet onto concrete, and there shall be no breaks or cracks in the body.

(3) *Buoyancy test.* To obtain the buoyancy of the buoy, proceed as follows:

(i) Weigh iron or other weight under water. The weight shall be more than sufficient to submerge the buoy.

(ii) Attach the iron or other weight to the buoy and submerge with the top of the buoy at least 2 inches below the surface for 48 hours.

(iii) After the 48-hour submergence period, weigh the buoy with the weight attached while both are still under water.

(iv) The buoyancy is computed as paragraph (f)(3)(i) minus paragraph (f)(3)(iii) of this section.

(4) *Buoyancy required.* The buoys shall provide a buoyancy of not less than 16.5 pounds for the 20-and 24-inch sizes, and not less than 32 pounds for the 30-inch size.

(g) *Lot inspection.* On each lot, the laboratory inspector shall perform a final lot inspection to be satisfied that the ring life buoys meet this subpart. Each lot must demonstrate—

(1) First quality workmanship;

(2) That the general arrangement and attachment of all components are as specified in the approved plans and specifications; and

(3) Compliance with the marking requirements in the applicable approval subpart.

(h) *Lot acceptance.* When the independent laboratory has determined that the ring life buoys in the lot are of a type officially approved in the name of the company, and that such ring life buoys meet the requirements of this subpart, they shall be plainly marked in waterproof ink with the independent laboratory's name or identifying mark.

(i) *Lot rejection.* Each nonconforming unit must be rejected. If three or more nonconforming units are rejected for the same kind of defect, lot inspection must be discontinued and the lot rejected. The inspector must discontinue lot inspection and reject the lot if examination of individual units or the records for the lot shows noncompliance with either this subchapter or the laboratory's or the manufacturer's quality control procedures. A rejected unit or lot may be resubmitted for testing and inspection if the manufacturer first removes and destroys each defective unit or, if authorized by the laboratory, reworks the unit or lot to correct the defect. A rejected lot or rejected unit may not be sold or offered for sale under the representation that it meets this subpart or that it is Coast Guard-approved.

**§ 160.050–6 [Amended]**

311. In § 160.050–6(a), remove the sentence ''Approved for use on recreational boats less than 16 feet in length and all canoes and kayaks, and only as a throwable device on all other vessels.'' and replace it with the sentence ''Approved for use on recreational boats only as a throwable device.'', and remove paragraph (c).

312. Revise § 160.050–7 to read as follows:

**§ 160.050–7 Procedure for approval.**

(a) *General.* Designs of ring life buoys are approved only by the Commandant, U.S. Coast Guard. Manufacturers seeking approval of a ring life buoy design shall follow the procedures of this section and subpart 159.005 of this chapter.

(b) Each application for approval of a ring life buoy must contain the information specified in § 159.005–5 of this chapter. The application and, except as provided in paragraphs (c) and (d)(2) of this section, a prototype ring life buoy must be submitted to the Commandant for preapproval review. If a similar design has already been approved, the Commandant may waive the preapproval review under §§ 159.005–5 and 159.005–7 of this chapter.

(c) If the ring life buoy is of a standard design, the application:

(1) Must include the following: A statement of any exceptions to the standard plans and specifications, including drawings, product description, construction specifications, and/or bill of materials.

(2) Need not include: The information specified in § 159.005–5(a)(2).

(d) If the ring life buoy is of a non-standard design, the application must include the following:

(1) Plans and specifications containing the information required by § 159.005–12 of this chapter, including drawings, product description, construction specifications, and bill of materials.

(2) The information specified in § 159.005–5(a)(2) (i) through (iii) of this chapter, except that, if preapproval review has been waived, the manufacturer is not required to send a prototype ring life buoy sample to the Commandant.

(3) Performance testing results of the design performed by an independent

laboratory that has a Memorandum of Understanding with the Coast Guard under § 159.010–7 of this subchapter covering the in-water testing of personal flotation devices showing equivalence to the standard design's performance in all material respects.

(4) Buoyancy and other relevant tolerances to be complied with during production.

(5) The text of any optional marking to be included on the ring life buoy in addition to the markings required by the applicable approval subpart.

(6) For any conditionally approved ring life buoy, the intended approval condition(s).

(e) The description of quality control procedures required by § 159.005–9 of this chapter may be omitted if the manufacturer's planned quality control procedures meet the requirements of those accepted by the Commandant for the independent laboratory performing production inspections and tests.

(f) *Waiver of tests.* A manufacturer may request that the Commandant waive any test prescribed for approval under the applicable subpart. To request a waiver, the manufacturer must submit to the Commandant and the laboratory described in § 159.010, one of the following:

(1) Satisfactory test results on a ring life buoy of sufficiently similar design as determined by the Commandant.

(2) Engineering analysis demonstrating that the test for which a waiver is requested is not appropriate for the particular design submitted for approval or that, because of its design or construction, it is not possible for the ring life buoy to fail that test.

**§ 160.053–1 [Amended]**

313. In § 160.053–1, remove paragraph (c).

314. Revise § 160.053–6 to read as follows:

**§ 160.053–6 Procedure for approval.**

(a) *General.* Work vests for use on merchant vessels are approved only by the Commandant, U.S. Coast Guard. Manufacturers seeking approval of a work vest shall follow the procedures of this section and subpart 159.005 of this chapter.

(b) If the work vest is of a standard design, as described by § 160.053–3, in order to be approved, the work vest must be tested in accordance with § 160.053–4 by an independent laboratory accepted by the Coast Guard under 46 CFR 159.010.

(c) If the work vest is of a non-standard design, the application must include the following:

(1) Plans and specifications containing the information required by § 159.005–12 of this chapter, including drawings, product description, construction specifications, and bill of materials.

(2) The information specified in § 159.005–5(a)(2)(i) through (iii) of this chapter, except that, if preapproval review has been waived, the manufacturer is not required to send a prototype work vest sample to the Commandant.

(3) Performance testing results of the design performed by an independent laboratory, that has a Memorandum of Understanding with the Coast Guard under § 159.010–7 of this subchapter covering the in-water testing of personal flotation devices, showing equivalence to the standard design's performance in all material respects.

(4) Any special purpose(s) for which the work vest is designed and the vessel(s) or vessel type(s) on which its use is intended.

(5) Buoyancy and other relevant tolerances to be complied with during production.

(6) The text of any optional marking to be included on the work vest in addition to the markings required by § 160.053.

**§ 160.054–5 [Amended]**

315. In § 160.054–5, remove paragraph (a) and redesignate paragraphs (b) and (c) as paragraphs (a) and (b), respectively.

**§ 160.054–7 [Amended]**

316. In § 160.054–7, remove paragraph (a) and redesignate paragraphs (b) and (c) as paragraphs (a) and (b), respectively.

**§ 160.055–7 [Amended]**

317. Revise § 160.055–7 to read as follows:

**§ 160.055–7 Sampling, tests, and inspections.**

(a) Production tests and inspections must be conducted by the manufacturer of a life preserver and the accepted laboratory inspector in accordance with this section and § 160.001–5.

(b) *Buoyancy test.* The buoyancy of the pad inserts from the life preserver shall be determined according to § 160.001–5(f) of this part with each compartment of the buoyant pad insert covers slit so as not to entrap air. The period of submersion must be at least 48 hours.

(c) *Buoyancy required.* The buoyant pad inserts from Model 3 adult life preservers shall provide not less than 25 pounds buoyancy in fresh water, and the pads from Model 5 child life preservers shall provide not less than 16.5 pounds buoyancy.

318. Revise § 160.055–9(a) to read as follows:

**§ 160.055–9 Procedure for approval—standard and nonstandard life preservers.**

(a) *General.* Manufacturers seeking approval of a life preserver design shall follow the procedures of subpart 159.005 of this chapter, as explained in § 160.001–3 of this part.

* * * * *

**§ 160.056–5 [Removed]**

319. Remove § 160.056–5.

**§ 160.058–6 [Removed]**

320. Remove § 160.058–6.

**§ 160.061–6 [Removed]**

321. Remove § 160.061–6.

**§ 160.061–7 [Removed]**

322. Remove § 160.061–7.

323. Revise § 160.062–6 to read as follows:

**§ 160.062–6 Procedure for approval.**

*General.* Hydraulic releases for use on lifesaving equipment for merchant vessels are approved only by the Commandant, U.S. Coast Guard. In order to be approved, the hydraulic releases must be tested in accordance with § 160.062–4(c) by an independent laboratory accepted by the Coast Guard under 46 CFR 159.010. The independent laboratory will forward the report to the Commandant for examination, and if satisfactory an official approval number will be assigned to the manufacturer for the model hydraulic release submitted.

**§ 160.064–4 [Amended]**

324. In § 160.064–4(a)(1), remove the sentence ''Approved for use on all recreational boats and on uninspected commercial vessels less than 40 feet in length not carrying passengers for hire by persons weighing (more than 90 lb., 50 to 90 lb., 30 to 50 lb., or less than 30 lb.).'' and add, in its place, the sentence ''Approved for use on recreational boats only as a throwable device.'', and remove paragraph (c).

## PART 164—MATERIALS

325. The authority citation for part 164 continues to read as follows:

**Authority:** 46 U.S.C. 3306, 3703, 4302; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

326. Revise subpart 164.013 to read as follows:

## Subpart 164.013—Foam, Unicellular Polyethylene (Buoyant, Slab, Slitted Trigonal Pattern)

Sec.
164.013–1 Scope.
164.013–2 Incorporation by reference.
164.013–3 Material properties and workmanship
164.013–4 Samples submitted for acceptance.
164.013–5 Acceptance tests.
164.013–6 Production tests, inspections, and marking.
164.013–7 Marking.

### § 164.013–1 Scope.

(a) This subpart contains performance requirements, acceptance tests, and production testing and inspection requirements for polyethylene foam used in the construction of personal flotation devices (PFDs) approved under part 160 of this subchapter. Manufacturers shall also comply with the requirements of subpart 164.019 of this chapter.

(b) All polyethylene foams accepted under this subpart are non-standard components. Acceptance of polyethylene foam prior to being incorporated into finished PFDs, or during the course of manufacture, shall in no case be construed as a guarantee of the acceptance of the finished PFD.

### § 164.013–2 Incorporation by reference.

(a) Certain materials are incorporated by reference into this subpart with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than the one listed in paragraph (b) of this section, notice of change must be published in the **Federal Register** and the material made available to the public. All approved material incorporated by reference may be inspected at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC 20002, and at the U.S. Coast Guard, Lifesaving and Fire Safety Division (G-MSE–4), Washington, DC 20593–0001, and is available from the source indicated in paragraph (b) of this section.

(b) The materials approved for incorporation by reference in this subpart, and the sections affected are as follows:

*Underwriters Laboratories (UL)*

Underwriters Laboratories, Inc., P.O. Box 13995, Research Triangle Park, NC 27709–3995 (Phone (919) 549–1400; Facsimile: (919) 549–1842).

UL 1191, Standards for Components for Personal Flotation Devices, May 16, 1995—164.013–3; 160.013–5.

(c) *Copies on file.* Copies of the specifications and letter of acceptance shall be kept on file by the manufacturer.

### § 164.013–3 Material properties and workmanship.

(a) *General.* The unicellular polyethylene foam shall be all new material complying with the requirements outlined in this specification. Unicellular polyethylene foam must comply with the requirements of UL 1191, sections 24, 25, and 26 and its assigned Use Code. Thickness tolerances of the foam must permit the manufacture of PFDs complying with their required buoyancy tolerances.

(b) *Use Codes 4BC, 4H.* Each foam which has a C-factor of at least 94 according to UL 1191 may be assigned Use Codes 4BC and 4H.

(c) *Use Codes 2, 3, 5R.* Each foam which has a V-factor of at least 85 according to UL 1191 may be assigned Use Codes 2, 3, 5R (recreational use applications).

### § 164.013–4 Samples submitted for acceptance.

*Application samples.* A product sample submitted for acceptance as required by § 164.019–7(c)(4) must consist of at least one square foot by the thickness of foam produced.

### § 164.013–5 Acceptance tests.

Manufacturers shall ensure that the performance and identification tests described in UL 1191, as appropriate, are performed on a minimum of five samples in each of the lightest and darkest colors submitted for acceptance by a recognized laboratory accepted under § 164.019.

### § 164.013–6 Production tests, inspections, and marking.

Manufacturers shall provide in-plant quality control of polyethylene foam in accordance with the requirements of § 164.019–13 and any requirements of the recognized laboratory. The manufacturer of the foam has primary responsibility for quality control over the production of the foam.

### § 164.013–7 Marking.

(a) *General.* The manufacturer must ensure that each shipping label, and each unit of put-up, is permanently and clearly marked in a color which contrasts with the color of the surface on which the marking is applied. Each label must be marked with —

(1) The manufacturer's or supplier's name, trade name, or symbol;

(2) The unique style, part, or model number of the material;

(3) The thickness of the material;

(4) The lot number of the material; and

(5) The product Use Code or Codes.

(b) Each unit of put-up must be marked with the appropriate recognized laboratory's certification marking(s).

## PART 166—DESIGNATION AND APPROVAL OF NAUTICAL SCHOOL SHIPS

327. The authority citation for part 166 continues to read as follows:

**Authority:** 46 U.S.C. 2103, 3306, 8105; 46 U.S.C. App. 1295g; 49 CFR 1.46.

328. Revise § 166.01(a) to read as follows:

### § 166.01 Approval of nautical school ships.

(a) Under 46 U.S.C. 7315, graduation from a nautical school vessel may be substituted for the service requirements for able seaman and qualified member of the engine department endorsements or merchant mariner's documents.

* * * * *

## PART 167—PUBLIC NAUTICAL SCHOOL SHIPS

329. The authority citation for part 167 continues to read as follows:

**Authority:** 46 U.S.C. 3306, 6101, 8105; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

330. Revise § 167.01–1 to read as follows:

### § 167.01–1 Basis and purpose of part.

The rules and regulations in this part are prescribed and apply to public nautical school ships, except vessels of the Navy or Coast Guard. It is the intent of the regulations in this part to provide minimum standards for vessels used as nautical school ships in accordance with the various inspection statutes and to obtain their correct and uniform application. This part is not applicable to civilian nautical school ships.

331. Revise § 167.05–15 to read as follows:

### § 167.05–15 Coast Guard District Commander.

This term means an officer of the Coast Guard designated as such by the Commandant to command all Coast Guard activities within the officer's district, which include the inspections, enforcement, and administration of Subtitle II of Title 46, U.S. Code, Title 46 and Title 33 U.S. Code, and regulations issued under these statutes.

332. Revise § 167.05–20 to read as follows:

**§ 167.05–20 Marine inspector or inspector.**

These terms mean any person from the civilian or military branch of the Coast Guard assigned under the superintendence and direction of an Officer in Charge, Marine Inspection, or any other person as may be designated for the performance of duties with respect to the inspections, enforcement, and administration of Subtitle II of Title 46, U.S. Code, Title 46 and Title 33 U.S. Code, and regulations issued under these statutes.

333. Revise § 167.05–30 to read as follows:

**§ 167.05–30 Officer in Charge, Marine Inspection.**

This term means any person from the civilian or military branch of the Coast Guard designated as such by the Commandant and who, under the superintendence and direction of the Coast Guard District Commander, is in charge of an inspection zone for the performance of duties with respect to the inspections, enforcement, and administration of Subtitle II of Title 46, U.S. Code, Title 46 and Title 33 U.S. Code, and regulations issued under these statutes.

334. Revise § 167.10–1 to read as follows:

**§ 167.10–1 Enforcement.**

The Officer in Charge, Marine Inspection, is responsible for the performance of duties within the officer's jurisdiction with respect to inspection of nautical school ships.

**§ 167.25–20 [Removed]**

335. Remove § 167.25–20.

336. Revise § 167.45–60(a) to read as follows:

**§ 167.45–60 Emergency breathing apparatus and flame safety lamps.**

* * * * *

(a) Two pressure-demand, open circuit, self-contained breathing apparatus, approved by the Mine Safety and Health Administration (MSHA) and by the National Institute for Occupational Safety and Health (NIOSH) and having at a minimum a 30-minute air supply, a full face piece, and a spare charge for each. A self-contained compressed-air breathing apparatus previously approved under part 160, subpart 160.011, of this chapter may continue in use as required equipment if it was part of the vessel's equipment on November 23, 1992, and as long as it is maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection.

* * * * *

**§ 167.45–75 [ Amended]**

337. In § 167.45–75, remove the last two sentences.

**§ 167.65–45 [Amended]**

338. In § 167.65–45(c), remove the words ''3d,'' and ''12th,''.

## PART 168—CIVILIAN NAUTICAL SCHOOL VESSELS

339. The authority citation for part 168 continues to read as follows:

**Authority:** 46 U.S.C. 3305, 3306; 49 CFR 1.46.

**§ 168.01–5 [Removed]**

340. Remove § 168.01–5.

**§ 168.01–10 [Removed]**

341. Remove § 168.01–10.

## PART 170—STABILITY REQUIREMENTS FOR ALL INSPECTED VESSELS

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

**Authority:** 43 U.S.C. 1333; 46 U.S.C. 2103, 3306, 3703, 5115; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

343. In § 170.075, revise the introductory text of paragraph (a) to read as follows:

**§ 170.075 Plans.**

(a) Except as provided in paragraph (b) of this section, each applicant for an original certificate of inspection and approval of plans must also submit three copies for plan review being conducted by the Coast Guard Marine Safety Center or four copies for plan review being conducted by the American Bureau of Shipping (ABS) of each of the following plans:

* * * * *

344. Revise § 170.080 to read as follows:

**§ 170.080 Stability booklet.**

Before issuing an original certificate of inspection, the following number of copies of the stability booklet required by § 170.110 must be submitted for approval; three copies for plan review being conducted by the Coast Guard Marine Safety Center or four copies for plan review being conducted by the ABS.

345. Revise § 170.085 to read as follows:

**§ 170.085 Information required before a stability test.**

If a stability test is to be performed, a stability test procedure that contains the information prescribed in § 170.185(g) must be submitted to the Coast Guard Marine Safety Center or the ABS at least two weeks before the test.

346. Revise § 170.093 to read as follows:

**§ 170.093 Specific approvals.**

Certain rules in this subchapter require specific approval of equipment or arrangements by the Commandant, OCMI, or Coast Guard Marine Safety Center. These approval determinations will be made as a part of the plan review process. When plan review is conducted by the ABS, ABS is authorized to make the approval.

**§ 170.098 [Removed]**

347. Remove § 170.098.

348. Revise § 170.100 to read as follows:

**§ 170.100 Addresses for submittal of plans and calculations.**

The plans, information, and calculations required by this subpart must be submitted to one of the following:

(a) The Marine Safety Office in the zone where the vessel is to be built or altered.

(b) Commanding Officer, U.S. Coast Guard Marine Safety Center, 400 Seventh St., SW., Washington, DC 20590–0001.

(c) The American Bureau of Shipping (ABS), Two World Trade Center, 106th Floor, New York, NY 10048.

(d) The American Bureau of Shipping (ABS), ABS Plaza, 16855 North Chase Dr., Houston, TX 77060–6008.

349. Revise § 170.110(b) to read as follows:

**§ 170.110 Stability booklet.**

* * * * *

(b) Each stability booklet must be approved by the Coast Guard Marine Safety Center or the ABS.

* * * * *

350. Revise § 170.120(a) to read as follows:

**§ 170.120 Stability letter.**

(a) Except as provided in paragraph (b) of this section, each vessel must have a stability letter issued by the Coast Guard or the ABS before the vessel is placed into service. This letter sets forth conditions of operation.

* * * * *

351. In § 170.170, revise paragraphs (b) and (d) to read as follows:

**§ 170.170 Calculations required.**

* * * * *

(b) If approved by the Coast Guard Marine Safety Center or the ABS, a larger value of T may be used for a

vessel with a discontinuous weather deck or abnormal sheer.

* * * * *

(d) The criterion specified in this section is generally limited in application to flush deck, mechanically powered vessels of ordinary proportions and form that carry cargo below the main deck. On other types of vessels, the Coast Guard Marine Safety Center or the ABS requires calculations in addition to those in paragraph (a) of this section. On a mechanically powered vessel under 328 feet (100 meters) in length, other than a tugboat or a towboat, the requirements in § 170.173 are applied.

352. In § 170.173, revise the introductory text to paragraph (a) to read as follows:

**§ 170.173 Criterion for vessels of unusual proportion and form.**

(a) If required by the Coast Guard Marine Safety Center or the ABS, each mechanically powered vessel less than 328 feet (100 meters) LLL, other than a tugboat or towboat, must be shown by design calculations to comply with—

* * * * *

353. In § 170.175, revise paragraphs (b) through (d) to read as follows:

**§ 170.175 Stability test: General.**

* * * * *

(b) An authorized Coast Guard or ABS representative must be present at each stability test conducted under this section.

(c) The stability test may be dispensed with, or a deadweight survey may be substituted for the stability test, if the Coast Guard or the A7BS has a record of, or is provided with, the approved results of a stability test of a sister vessel.

(d) The stability test of a vessel may be dispensed with if the Coast Guard or the ABS determines that an accurate estimate of the vessel's lightweight characteristics can be made and that locating the precise position of the vessel's vertical center of gravity is not necessary to ensure that the vessel has adequate stability in all probable loading conditions.

354. In § 170.180, revise the introductory paragraph to read as follows:

**§ 170.180 Plans and information required at the stability test.**

The owner of a vessel must provide the following Coast Guard or ABS approved plans and information to the authorized Coast Guard or ABS representative at the time of the stability test:

* * * * *

355. Revise § 170.185(b) to read as follows:

**§ 170.185 Stability test preparations.**

* * * * *

(b) Each tank vessel must be empty and dry, except that a tank may be partially filled or full if the Coast Guard Marine Safety Center or the ABS determines that empty and dry tanks are impracticable and that the effect of filling or partial filling on the location of the center of gravity and on the displacement can be accurately determined.

* * * * *

356. Revise § 170.190 to read as follows:

**§ 170.190 Stability test procedure modifications.**

The authorized Coast Guard or ABS representative present at a stability test may allow a deviation from the requirements of §§ 170.180 and 170.185 if the representative determines that the deviation would not decrease the accuracy of the test results.

**§ 170.210 [Removed]**

357. Remove § 170.210.

358. Revise § 170.235(b) to read as follows:

**§ 170.235 Fixed ballast.**

* * * * *

(b) Fixed ballast may not be removed from a vessel or relocated unless approved by the Coast Guard Marine Safety Center or the ABS. However, ballast may be temporarily moved for vessel examination or repair if done under the supervision of the OCMI.

## PART 172—SPECIAL RULES PERTAINING TO BULK CARGOES

359. The authority citation for part 172 continues to read as follows:

**Authority:** 46 U.S.C. 3306, 3703, 5115; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

360. Add §§ 172.010 through 172.040 to subpart B to read as follows:

**Subpart B—Bulk Grain**

Sec.
172.010 Applicability.
172.015 Document of authorization.
172.020 Incorporation by reference.
172.030 Exemptions for certain vessels.
172.040 Certificate of loading.

## Subpart B—Bulk Grain

**§ 172.010 Applicability.**

This subpart applies to each vessel that loads grain in bulk, except vessels engaged solely on voyages on rivers, lakes, bays, and sounds or on voyages between Great Lake ports and St. Lawrence River ports as far east as a straight line drawn from Cape de Rosiers to West Point, Anticosti Island and as far east of a line drawn along the 63rd meridian from Anticosti Island to the north shore of the St. Lawrence River.

**§ 172.015 Document of authorization.**

(a) Except as specified in § 172.030, each vessel that loads grain in bulk must have a Document of Authorization issued in accordance with one of the following:

(1) Section 3 of the International Code for the Safe Carriage of Grain in Bulk if the Document of Authorization is issued on or after January 1, 1994. As used in the Code, the term ''Administration'' means ''U.S. Coast Guard''.

(2) Regulation 10 part (a) of the Annex to IMO Assembly resolution A.264(VIII) if the Document of Authorization was issued before January 1, 1994.

(b) The Commandant recognizes the National Cargo Bureau, Inc., 30 Vesey Street, New York, NY 10007–2914, for the purpose of issuing Documents of Authorization in accordance with paragraph (a)(1) of this section.

**§ 172.020 Incorporation by reference.**

(a) Certain material is incorporated by reference into this part under approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the **Federal Register**; and the material must be made available to the public. All approved material is available for inspection at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC 20002, and at the U.S. Coast Guard, Naval Architecture Division, Office of Design and Engineering Standards, 2100 Second Street SW., Washington, DC 20593–0001, and is available for the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the sections affected are as follows:

*International Maritime Organization (IMO)*

Publications Section, 4 Albert Embankment, London, SE1 7SR United Kingdom.

Amendment to Chapter VI of the International Convention for the Safety of Life at Sea, 1960, Resolution A.264(VIII)—172.015

Publication No. 240–E, International Code for the Safe Carriage of Grain in Bulk—172.015

**§ 172.030 Exemptions for certain vessels.**

(a) Vessels are exempt from 172.015 on voyages between:

(1) United States ports along the East Coast as far south as Cape Henry, VA;

(2) Wilmington, NC and Miami, FL;

(3) United States ports in the Gulf of Mexico;

(4) Puget Sound ports and Canadian west coast ports or Columbia River ports, or both;

(5) San Francisco, Los Angeles, and San Diego, CA.

(b) Vessels exempt by paragraph (a) of this section must comply with the following conditions:

(1) The master is satisfied that the vessel's longitudinal strength is not impaired.

(2) The master ascertains the weather to be encountered on the voyage.

(3) Potential heeling moments are reduced to a minimum by carrying as few slack holds as possible.

(4) Each slack surface must be leveled.

(5) The transverse metacentric height (GM), in meters, of the vessel throughout the voyage, after correction for liquid free surface, has been shown by stability calculations to be in excess of the required GM (GMR), in meters.

(i) The GMR is the sum of the increments of GM (GMI) multiplied by the correction factor, f and r.

Where: r = (available freeboard) (beam) of the vessel and

f = 1 if r is > 0.268 or

f = (0.268 r) if r is < 0.268.

(ii) The GMI for each compartment which has a slack surface of grain, i.e., is not trimmed full, is calculated by the following formula:

GMI = (B3xLx0.0661) (Disp. x SF)

where: B = breadth of slack grain surface (m)

L = Length of compartment (m)

Disp. = Displacement of vessel (tons)

SF = Stowage factor of grain in compartment (cubic meters/tons)

(c) Vessels which do not have the Document of Authorization required by § 172.015 may carry grain in bulk up to one third of their deadweight tonnage provided the stability complies with the requirements of Section 9 of the International Code for the Safe Carriage of Grain in Bulk.

**§ 172.040 Certificate of loading.**

(a) Before it sails, each vessel that loads grain in bulk, except vessels engaged solely on voyages on the Great Lakes, rivers, or lakes, bays, and sounds, must have a certificate of loading issued by an organization recognized by the Commandant for that purpose. The certificate of loading may be accepted as prima facie evidence of compliance with the regulations in this subpart.

(b) The Commandant recognizes the National Cargo Bureau, Inc., 30 Vesey Street, New York, NY, 10007–2914, for the purpose of issuing certificates of loading.

## PART 188—GENERAL PROVISIONS

361. The authority citation for part 188 continues to read as follows:

**Authority:** 46 U.S.C. 2113, 3306; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

362. Revise § 188.01–1 to read as follows:

**§ 188.01–1 Purpose of regulations.**

The purpose of the regulations in this subchapter is to set forth uniform minimum requirements for oceanographic research vessels designated in accordance with § 3.10–1 of this title and subject to Coast Guard inspection requirements. The regulations are necessary to carry out the provisions of applicable laws governing inspection and certification of oceanographic research vessels and have the force of law.

**§ 188.01–3 [Amended]**

363. In § 188.01–3, remove paragraph (b) and the paragraph designation (a).

**§ 188.01–5 [Removed]**

364. Remove § 188.01–5.

**§ 188.05–2 [Amended]**

365. In § 188.05–2, remove paragraph (a) and redesignate paragraphs (b) and (c) as paragraphs (a) and (b), respectively.

366. Revise § 188.05–10(b)(2) to read as follows:

**§ 188.05–10 Application to vessels on an international voyage.**

* * * * *

(b) * * *

(2) Is numbered in accordance with 46 U.S.C. Chapter 123.

* * * * *

**§ 188.05–30 [Removed]**

367. Remove § 188.05–30.

368. Revise § 188.10–13 to read as follows:

**§ 188.10–13 Coast Guard District Commander.**

This term means an officer of the Coast Guard designated as such by the Commandant to command all Coast Guard activities within the officer's district, which include the inspections, enforcement, and administration of Subtitle II of Title 46, U.S. Code, Title 46 and Title 33 U.S. Code, and regulations issued under these statutes.

369. Revise § 188.10–45 to read as follows:

**§ 188.10–45 Marine inspector or inspector.**

These terms mean any person from the civilian or military branch of the Coast Guard assigned under the superintendence and direction of an Officer in Charge, Marine Inspection, or any other person as may be designated for the performance of duties with respect to the inspections, enforcement, and administration of Subtitle II of Title 46, U.S. Code, Title 46 and Title 33 U.S. Code, and regulations issued under these statutes.

370. Revise § 188.10–49 to read as follows:

**§ 188.10–49 Numbered vessel.**

This term means a vessel which is numbered under the provisions of 46 U.S.C. Chapter 123.

371. Revise § 188.10–55 to read as follows:

**§ 188.10–55 Officer in Charge, Marine Inspection.**

This term means any person from the civilian or military branch of the Coast Guard designated as such by the Commandant and who, under the superintendence and direction of the Coast Guard District Commander, is in charge of an inspection zone for the performance of duties with respect to the inspections, enforcement, and administration of Subtitle II of Title 46, U.S. Code, Title 46 and Title 33 U.S. Code, and regulations issued under these statutes.

372. Revise § 188.10–65 to read as follows:

**§ 188.10–65 Seagoing barge.**

A seagoing barge is a nonself-propelled vessel of at least 100 gross tons making voyages beyond the Boundary Line (as defined in 46 CFR part 7).

## PART 189—INSPECTION AND CERTIFICATION

373. The authority citation for part 189 continues to read as follows:

**Authority:** 33 U.S.C. 1321(j); 46 U.S.C. 2113, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

374. Revise § 189.35–9(c)(2) to read as follows:

**§ 189.35–9 Plans.**

* * * * *

(c) * * *

(2) Other weight handling gear will be evaluated on the basis of the standards of a recognized organization or association recognized by the Commandant under § 31.10–6.

* * * * *

375. In § 189.40–1, revise paragraphs (a) and (c) to read as follows:

**§ 189.40–1 Definitions relating to hull examinations.**

* * * * *

(a) *Drydock examination* means hauling out a vessel or placing a vessel in a drydock or slipway for an examination of all accessible parts of the vessel's underwater body and all through-hull fittings.

* * * * *

(c) *Underwater survey* means the examination, while the vessel is afloat, of all accessible parts of the vessel's underwater body and all through-hull fittings.

376. In § 189.40–3, revise the heading and paragraphs (d)(4), (d)(5), (e) introductory text, and (e)(1) to read as follows:

**§ 189.40–3 Drydock examination, internal structural examination, cargo tank internal examination, and underwater survey intervals.**

* * * * *

(d) * * *

(4) The means that will be provided for examining through-hull fittings.

(5) The means that will be provided for taking shaft bearing clearances.

* * * * *

(e) Vessels otherwise qualifying under paragraph (d) of this section, that are 15 years of age or older, may be considered for continued participation in or entry into the underwater survey program on a case-by-case basis if—

(1) Before the vessel's next scheduled drydocking, the owner or operator submits a request for participation or continued participation to Commandant (G–MOC);

* * * * *

## PART 193—FIRE PROTECTION EQUIPMENT

377. The authority citation for part 193 continues to read as follows:

**Authority:** 46 U.S.C. 2213, 3102, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

378. In § 193.01–3(b), add, in alphabetical order of the organizations referenced, the following standard:

**§ 193.01–3 Incorporation by reference.**

* * * * *

(b) * * *

*National Fire Protection Association (NFPA)*

Batterymarch Park, Quincy, MA 02269–9101.

NFPA 13–1996, Standard for the Installation of Sprinkler Systems—193.30–1

379. Revise § 193.10–5(f) to read as follows:

**§ 193.10–5 Fire pumps.**

* * * * *

(f) Fire pumps may be used for other purposes provided at least one of the required pumps is kept available for use on the fire system at all times. In no case shall a pump having connection to an oil line be used as a fire pump. Branch lines connected to the fire main for purposes other than fire and deck wash shall be so arranged that adequate water can be made continuously available for firefighting purposes.

* * * * *

380. Add subpart 193.30 to read as follows:

### Subpart 193.30—Automatic Sprinkler Systems

**§ 193.30–1 Application.**

Automatic sprinkling systems shall comply with NFPA 13–1996.

## PART 195—VESSEL CONTROL AND MISCELLANEOUS SYSTEMS AND EQUIPMENT

381. The authority citation for part 195 continues to read as follows:

**Authority:** 46 U.S.C. 2113, 3306; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

**§ 195.30–90 [Amended]**

382. In § 195.30–90(c), remove the words ''After November 23, 1994,'' and capitalize the ''e'' in the word ''each''.

**§ 195.35–90 [Amended]**

383. In § 195.35–90(c), remove the words ''After November 23, 1994,'' and capitalize the ''e'' in the word ''each''.

## PART 196—OPERATIONS

384. The authority citation for part 196 continues to read as follows:

**Authority:** 33 U.S.C. 1321(j); 46 U.S.C. 2213, 3306, 5115, 6101; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

**§ 196.05–1 [Amended]**

385. In § 196.05–1(c), remove the words ''3d,'' and ''12th,''.

386. Revise § 196.53–1 to read as follows:

**§ 196.53–1 Licensed officers.**

All licensed officers on a vessel shall have their licenses conspicuously displayed.

## PART 197—GENERAL PROVISIONS

387. The authority citation for part 197 continues to read as follows:

**Authority:** 33 U.S.C. 1509; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703, 6101; 49 CFR 1.46.

388. Revise § 197.462 to read as follows:

**§ 197.462 Pressure vessels and pressure piping.**

(a) The diving supervisor shall ensure that each pressure vessel, including each volume tank, cylinder and PVHO, and each pressure piping system is examined and tested as required by this section and after any repair, modification or alteration to determine that they are in satisfactory condition and fit for the service intended.

(b) Pressure vessels and pressure piping shall be examined annually for mechanical damage or deterioration. Any defect that may impair the safety of the pressure vessel or piping shall be repaired and pressure tested to the satisfaction of the Officer in Charge, Marine Inspection.

(c) The following tests shall be conducted at least every three years:

(1) All piping permanently installed on a PVHO shall be pressure tested.

(2) PVHOs subject to internal pressure shall be leak tested at the maximum allowable working pressure using the breathing mixture normally used in service.

(3) Equivalent nondestructive testing may be conducted in lieu of pressure testing. Proposals to use nondestructive testing in lieu of pressure testing shall be submitted to the Officer in Charge, Marine Inspection.

(d) Unless otherwise noted, pressure tests conducted in accordance with this section shall be either hydrostatic tests or pneumatic tests.

(1) When a hydrostatic test is conducted on a pressure vessel, the test pressure shall be no less than 1.25 times the maximum allowable working pressure.

(2) When a pneumatic test is conducted on a pressure vessel, the test pressure shall be the maximum allowable working pressure stamped on the nameplate.

(3) When a pneumatic test is conducted on piping, the test pressure shall be no less than 90 percent of the setting of the relief device.

(4) Pressure tests shall be conducted only after suitable precautions are taken to protect personnel and equipment.

(5) When pressure tests are conducted on pressure vessels or pressure piping, the test pressure shall be maintained for a period of time sufficient to allow examination of all joints, connections and high stress areas.

389. In § 197.480, revise paragraphs (a) and (b) to read as follows:

**§ 197.480 Logbooks.**

(a) The person-in-charge of a vessel or facility, that is required by 46 U.S.C.

11301 to have an official logbook, shall maintain the logbook on form CG–706.

(b) The person-in-charge of a vessel or facility not required by 46 U.S.C. 11301 to have an official logbook, shall maintain, on board, a logbook for making the entries required by this subpart.

* * * * *

390. Revise § 197.540(b) to read as follows:

**§ 197.540 Determination of personal exposure.**

* * * * *

(b) *Initial exposure monitoring.* When benzene is first loaded as a cargo on board a vessel, an initial monitoring of each type of operation must be conducted to determine accurately the representative personal exposure of persons involved in the operation.

* * * * *

Dated: September 22, 1997.

**R. C. North,**

*Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine, Safety and Environmental Protection.*

[FR Doc. 97–25572 Filed 9–29–97; 8:45 am]

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# Part III

## Department of Defense

## General Services Administration

## National Aeronautics and Space Administration

**48 CFR Part 1, et al.**

**Federal Acquisition Regulation; Part 15 Rewrite; Contracting by Negotiation and Competitive Range Determination; Final Rule**

**48 CFR Chapter 1**

**Federal Acquisition Regulation; Small Entity Compliance Guide; Final Rule**

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 1, 2, 3, 4, 5, 6, 7, 9, 11, 12, 13, 14, 15, 16, 17, 19, 24, 25, 27, 28, 31, 32, 33, 34, 35, 36, 42, 43, 44, 45, 49, 50, 52, and 53**

**[FAC 97–02; FAR Case 95–029]**

**RIN 9000–AH21**

# Federal Acquisition Regulation; Part 15 Rewrite; Contracting by Negotiation and Competitive Range Determination

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to issue Federal Acquisition Circular 97–02, a final rule which revises Part 15 of the Federal Acquisition Regulation (FAR) and makes conforming changes to other parts of the FAR. This regulatory action was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

**DATES:** Effective Date: October 10, 1997.

*Applicability Date:* The policies, provisions, and clauses of this final rule are effective for all solicitations issued on or after October 10, 1997. However, agencies may delay implementation of this final rule until January 1, 1998, at which time it becomes mandatory for all solicitations issued on or after that date. Agencies using the new policies, provisions, and clauses before January 1, 1998, shall ensure that the cover page of the solicitation for each acquisition subject to this rule, and issued before January 1, 1998, contains a notice that this rule applies to that acquisition. Any solicitation issued before January 1, 1998, that does not contain such a solicitation notice or the new provisions and clauses is automatically conducted in accordance with the FAR excluding changes made by this final rule.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501–4755 for information pertaining to status or publication schedules; For clarification of content, Ralph DeStefano at (202) 501–1758 or Melissa Rider at (703) 602–0131; For contract pricing issues Jerry Olson at (202) 501–3221 or Melissa Rider at (703) 602–0131. Please cite FAC 97–02, FAR case 95–029.

**SUPPLEMENTARY INFORMATION:**

## A. Background

On January 29, 1996, the FAR Council tasked an *ad hoc* interagency committee to rewrite FAR Part 15, Contracting by Negotiation. The rewrite originally was to be accomplished in two phases. Phase I, consisting of the rewrite of FAR 15.000, 15.1, 15.2, 15.3, 15.4, 15.6, and 15.10, covering acquisition techniques and source selection, was published for public comment in the **Federal Register** at 61 FR 48380 on September 12, 1996. In the interest of increasing outreach to small entities, two public meetings were held to discuss the proposed rule: in Washington, DC, on November 8, 1996, and in Kansas City, MO, on November 18, 1996. The public comment period closed on November 26, 1996. The Government received 1541 comments from 100 respondents and considered all comments in drafting revisions to the rule. Due to the significant changes made as a result of public comments, the FAR Council decided to publish a revised proposed rule, that included previously unpublished, Phase II, proposed changes covering Subparts 15.5, 15.7, 15.8, and 15.9, and that incorporated changes made as a result of public comments submitted in response to FAR Case 96–303, Competitive Range Determinations. The revised proposed rule was published in the **Federal Register** on May 14, 1997 (62 FR 26639). The public comment period closed on July 14, 1997. The Government received 841 comments from 80 respondents and considered all the comments in drafting the final rule.

### *Case Summary*

This final rule modifies concepts and processes in the current FAR Part 15, introduces new policies, and incorporates changes in pricing and unsolicited proposal policy. In addition, the sequence in which the information is presented has been revised to facilitate use of the regulation. The final rule does not alter the full and open competition provisions of FAR Part 6. The goals of this rewrite are to infuse innovative techniques into the source selection process, simplify the process, and facilitate the acquisition of best value. The rewrite emphasizes the need for contracting officers to use effective and efficient acquisition methods, and eliminates regulations that impose unnecessary burdens on industry and on Government contracting officers.

The following were considered in drafting this final rule: information received in connection with public meetings held on January 25, 1996, November 8, 1996, and November 18, 1996; public comments received in response to three advance notices of proposed rulemaking (60 FR 63023, December 8, 1995; 60 FR 65360, December 19, 1995; and 60 FR 67113, December 28, 1995); public comments received in response to publication of the Phase I proposed rule in the **Federal Register** (61 FR 48380, September 12, 1996); public comments received in response to publication of the revised proposed rule in the **Federal Register** (62 FR 26639, May 14, 1997); public comments received in response to publication of the Competitive Range Determinations proposed rule in the **Federal Register** (61 FR 40116, July 31, 1996); inputs received over the Acquisition Reform Network (an Internet forum); inputs received from members of Congress and Congressional staff, Government agencies, the Defense Acquisition Regulations Council, the Civilian Agency Acquisition Council, and the Office of Federal Procurement Policy (OFPP); inputs received in response to other notices of the rewrite in various print media and conferences; and inputs received from Government fora such as the Front-Line Professional's Forum and the Federal Procurement Executive Association.

### *Summary of Changes*

This final rule reengineers the processes used to contract by negotiation, with the intent of reducing the resources necessary for source selection and reducing time to contract award. The goals of the FAR Part 15 Rewrite are to ensure that the Government, when contracting by negotiation, receives the best value, while ensuring the fair treatment of offerors. The final rule reengineers the acquisition process in the current FAR and incorporates changes to the proposed rule by:

- Supporting more open exchanges between the Government and industry, allowing industry to better understand the requirement and the Government to better understand industry proposals;
- Reestablishing the ''late is late'' rule for receipt of proposals, responses to requests for information, and modifications;
- Emphasizing that no offeror, otherwise eligible to submit a proposal in response to a Government solicitation, will be excluded from the competitive range without its proposal being initially reviewed and evaluated solely against all the evaluation factors

and significant subfactors in the solicitation;

- Reiterating that all proposals received will be evaluated based upon the criteria in the solicitation;
- Reducing the bid and proposal costs for industry by providing early feedback as to whether a proposal is truly competitive;
- Eliminating mandatory forms currently used as cover sheets for submitting cost or pricing data (SF 1411) and information other than cost or pricing data (SF 1448);
- Simplifying the exception to obtaining cost or pricing data for modifications to contracts for commercial items;
- Revising guidance pertaining to field pricing to reflect the need for greater flexibility and teamwork in today's acquisition environment;
- Simplifying guidance pertaining to unbalanced pricing to reflect its use as a proposal analysis technique designed to assess risk and protect the Government's economic interest;
- Eliminating the requirement for a separate determination and findings supporting cost-plus-fixed-fee contracts;
- Realigning fee limitations with statute, and permitting the contracting officer's signature on the price negotiation memorandum or other documentation of the negotiated price to serve as a determination that fee limits have not been exceeded;
- Increasing the scope of discussions;
- Requiring that adverse past performance to which an offeror has not had an opportunity to respond be brought to the offeror's attention before it can be the determining factor for exclusion from the competitive range;
- Requiring that all adverse past performance information be brought to the offeror's attention during discussions, if the offeror is placed in the competitive range;
- Changing the standard for admission into the competitive range (to all proposals most highly rated) and implementing Section 4103 of the Clinger-Cohen Act of 1996 (Pub. L. 104–106); and
- Streamlining the post-competitive range process by enhancing the ability of the parties to communicate and document understandings reached during discussions.

## B. Regulatory Flexibility Act

A Final Regulatory Flexibility Analysis (FRFA) has been performed and will be provided to the Chief Counsel for Advocacy of the Small Business Administration. Because of the broad range of acquisitions impacted by this rule and the extensive public response to both of the proposed rules, the Final Regulatory Flexibility Analysis is published in its entirety:

**Final Regulatory Flexibility Analysis**

[FAR Case 95–029, FAR Part 15 Rewrite]

This final regulatory flexibility analysis has been prepared consistent with the criteria of 5 U.S.C. 604.

1. *Succinct statement of the need for, and the objectives of, the rule.*

Historically, the executive branch has undertaken a continuous improvement approach to the acquisition process, particularly since the end of World War II. In 1947, the National Security Act established an acquisition process for the Department of Defense. Since that time, at least six major executive branch commissions have separately examined the problems of effectively managing Federal acquisition. In 1972, the Commission on Government Procurement recommended that a consolidated Federal Acquisition Regulation (FAR) be established. Later, the Packard Commission called for a simpler and clearer acquisition framework. In addition, the FAR System, composed of the Defense Acquisition Regulations Council, the Civilian Agency Acquisition Council, and the Federal Acquisition Regulatory Council, has been active in the maintenance and continuous improvement of the FAR for many years now.

Congress has also participated substantially in the reform of Federal acquisition practices. Section 800 of Public Law 101–510 (the National Defense Authorization Act for Fiscal Year 1991) directed the Department of Defense to establish the ''DoD Advisory Panel on Streamlining and Codifying Acquisition Laws.'' The panel recommended changes to acquisition statutes in order to improve the efficiency and effectiveness of the acquisition process, while keeping in mind the need to provide a fair and open acquisition system. The panel's recommendations, published in January 1993, formed the basis of the reforms contained in the Federal Acquisition Streamlining Act of 1994 and the Clinger-Cohen Act of 1996.

The Part 15 rewrite is a normal product of the continuous improvement process employed for maintenance of the FAR. It is worth noting that in the past few years several other parts of the FAR have also been rewritten, including Part 13, Simplified Acquisition Procedures; Part 37, Service Contracting; and Part 45, Government Property. The Part 15 rewrite, like the rewrite of these other FAR parts, conforms with the general reform philosophy espoused by the Clinton-Gore Administration. Vice President Gore, in the *Report of the National Performance Review: Creating a Government that Works Better & Costs Less* recognized the need for deregulation in the acquisition process. The report, published in 1993, emphasized that acquisition regulations should be rewritten to provide for empowerment and flexibility. According to the report, the acquisition regulations should: shift from rigid rules to guiding principles; promote decision making at the lowest possible level; end unnecessary regulatory requirements; foster competitiveness and commercial practices; and shift to a new emphasis on choosing ''best value'' products.

We decided to revise Part 15 for several reasons. In 1995, DoD conducted a survey of the defense industry, military departments, and defense agencies to ascertain which parts of the FAR were most in need of revision. The responses indicated a general consensus that Part 15 was one of the parts that would most benefit from such an effort. Secondly, within the Government, the preponderance of contracting expenditures are accomplished using Part 15 procedures. Finally, the results of a 1991 FAR Improvement Study conducted by the General Services Administration indicated that Subparts 15.6, Source Selection, and 15.8, Price Negotiation, were the most difficult parts of the FAR to use.

On January 29, 1996, the FAR Council tasked an ad hoc interagency committee to rewrite FAR Part 15, Contracting by Negotiation. The rewrite was to be accomplished in two phases. Phase I, consisting of the rewrite of FAR Subparts 15.000, 15.1, 5.2, 15.3, 15.4, 15.6, and 15.10 covering acquisition techniques and source selection, was published for public comment in the **Federal Register** at 61 FR 48380 on September 12, 1996. In the interest of increasing outreach to small entities, two public meetings were held to discuss the proposed rule: in Washington, DC, on November 8, 1996, and in Kansas City, MO, on November 18, 996. In addition, the opportunity for an evening public meeting was publicized in the September 12, 1996, **Federal Register** notice to accommodate schedule constraints that may prevent small entities from being represented at the public meetings. The public comment period closed on November 26, 1996. We received 1541 comments from 100 respondents. Due to the significant changes made as a result of analyzing and resolving public comments, we decided to publish a second proposed rule. All of the comments received were considered in drafting the second proposed rule. The rule was expanded to include the Phase II proposed changes, covering Subparts 15.5, 15.7, 15.8, and 15.9. The revised rule also subsumed FAR Case 96–303, Competitive Range Determinations, and addressed the related public comments. The second proposed rule was published in the **Federal Register** on May 14, 1997 (62 FR 26639). We received 841 comments from 80 respondents and considered all the comments in drafting the final rule.

The goal of the rewrite is to infuse innovative techniques into the source selection process, simplify the acquisition process, incorporate changes in pricing and unsolicited proposal policy, and facilitate the acquisition of best value products and services. The rewrite emphasizes the use of effective and efficient acquisition methods and eliminates unnecessary burdens imposed on industry and Government. Elimination of burdens and creation of a simplified, efficient, and impartial acquisition process benefits all participants in Government contracting, especially small businesses. In addition, the rule revises the sequence in which Part 15 information is presented to facilitate use of the regulation.

2. Summary of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments.

Several significant issues were raised by the public comments. We have addressed these issues as follows:

• Competitive range determinations. Some respondents expressed concern that the shift in competitive range policy to encourage retaining only those offerors rated most highly rather than all those with a reasonable chance of award may inhibit awards to small entities. This revision is consistent with the philosophy of Section 4103 of the Clinger-Cohen Act of 1996. The competitive range guidance in the final rule indicates that contracting officers shall establish a competitive range comprised of only those proposals most highly rated. In contrast, the current FAR advises contracting officers ''when there is doubt as to whether a proposal is in the competitive range, the proposal should be included.'' We considered retaining the existing FAR standard for inclusion in the competitive range, but ultimately rejected it because there are readily discernible benefits from including only the most highly rated offers in the competitive range. First, those included will know that they have a good chance of winning the competition—making it in their best interests to compete aggressively. Second, those eliminated from the range are spared the cost of pursuing an award they have little or no chance of winning. Retaining marginal offers in the range imposes additional, and largely futile, effort and cost on both the Government and industry. We also note that comments received from Government agencies indicate that award is nearly always made to one of the three most highly rated offerors in the competitive range. Therefore, including an offeror that is not most highly rated in the competitive range would not likely impact the final award decision. This final rule ensures that offerors with little probability of success, are advised early on that their competitive position does not merit additional expense in a largely futile attempt to secure the contract.

This knowledge will benefit both large and small entities, but will be especially beneficial to small entities that have constrained budgets. These entities will be able to conserve scarce bid and proposal funds and employ their resources on more productive business opportunities. In addition, the new standard has the derivative benefit of encouraging offerors to submit better, more robust initial proposals in recognition of the fact that only the most highly rated proposals will be included in the competitive range.

• Limiting the competitive range in the interest of efficiency. Some respondents expressed concern that allowing the contracting officer to limit the competitive range in the interest of efficiency would provide a level of discretion to contracting officers that could lead to abuses. The comments expressed a concern that offerors might be excluded from the competitive range for arbitrary reasons unrelated to the actual procurement. In addition, one small business submitted a public comment in support of the efficient competitive range.

This language implements the requirements of Section 4103 of the Clinger-Cohen Act of 1996 to permit contracting officers, in certain circumstances, to reduce the number of proposals in the competitive range to the ''greatest number that will permit an efficient competition among the offerors rated most highly.'' Under this final rule, source selection officials will continue to establish evaluation factors and identify them in the solicitation, including any preferences for small entities. The contracting officer may further reduce the number of proposals that would otherwise be in the competitive range to the greatest number that will permit an efficient competition among the most highly rated offerors only if offerors have been advised of this possibility in the solicitation, and only after evaluating all proposals received in accordance with the criteria specified in the solicitation.

• Expanded exchanges throughout the acquisition process. Some respondents expressed concerns that the increased exchanges between the Government and industry throughout the acquisition process increased the risk of unfair practices. The final rule encourages earlier and more meaningful exchanges of information between the Government and potential contractors to achieve a better understanding of the Government's requirements and the offerors' proposals. This rule contains limits on exchanges that preclude favoring one offeror over another, revealing offerors' technical solutions, revealing prices without the offerors' permission, and knowingly furnishing source selection information. In addition, the guidance in the final rule has been revised to alert contracting officers of the safeguards contained at 3.104, Procurement Integrity, and 24.2, Freedom of Information Act.

• Use of neutral past performance evaluations. Some respondents expressed concerns that neutral past performance evaluations are not adequately defined, and that the rule does not contain sufficient implementing guidance. One respondent suggested that, to avoid abuses of neutral rating, offerors granted such ratings should be required to submit a record of their lack of opportunity to acquire a record of relevant past performance. The second proposed rule contained a definition of neutral rating, and asked respondents to provide suggestions for a better definition. We received only one such suggestion, and, upon analysis, we found that the suggestion did not actually provide a definition of neutral rating but, rather, provided a way to limit the application of neutral ratings. Instead, the final rule includes language based on 41 U.S.C. 405(j)(2) providing offerors, without a previous performance history, a rating that neither rewards nor penalizes the offeror. We selected this alternative to allow the facts of the instant acquisition to be used in determining what rating scheme would satisfy requirements of the statute.

• Ability of offerors to address adverse past performance information before it can be used in a source selection. Respondents, especially the small business community, expressed concerns that offerors might be excluded from a competition on the basis of incorrect past performance information that they have not had the opportunity to address. In response to this concern, the final rule provides that, when conducting communications prior to establishing the competitive range, offerors, including small entities, shall be granted the opportunity to explain situations that contributed to an adverse past performance rating to which they have not had a previous opportunity to respond, before such ratings can be the determining factor for exclusion from the competitive range.

• Impact of oral presentations on small entities. Respondents expressed concerns that the use of oral presentations may present barriers to the participation of small entities in Government procurement because they may be costly and require skills that small entities may not easily attain. The final rule requires contracting officers to consider, among other factors, the impact on small businesses, including cost, before using oral presentations. In fact, based on a recommendation from the Small Business Administration, the final rule also contains guidance on selecting alternatives to in-person presentations (*e.g.*, teleconferencing). Generally, oral presentations are expected to be less costly to prepare than formal written proposals. Experience accumulated by agencies that have already used oral presentations indicates that use of this technique has either improved participation by small entities, or has had no adverse impact on their level of participation.

• The Nuclear Regulatory Commission (NRC) and the Departments of the Army, Energy, HHS, and Treasury submitted comments describing their experiences in using oral presentations. The Department of Energy (DoE) indicated that small businesses that had not previously participated in DoE procurements, competed on procurements using oral presentations. Ft. Sam Houston in San Antonio indicated that by using oral presentations, the lead time on a recent procurement for outpatient clinics was five months, compared to a lead-time of 13–15 months on previous procurements that did not use oral presentations. They further indicated that proposals that previously required ''at least two trips with a two-wheel dolly'' were reduced to one envelope as a result of using oral presentations. The Centers for Disease Control (CDC) stated that in using oral presentations they have always been able to award the contract ahead of their 180-day lead-time target and have been able to save the Government thousands of dollars. The CDC has used oral presentations almost exclusively on small business set-asides, and comments from the offerors have been very positive. The NRC reports that in no case did a large business receive an award for work that was previously performed by a small business.

• Estimate of the number of small entities affected by the rule. Several respondents representing small entities expressed concerns regarding the estimate in the initial regulatory flexibility analysis of small

entities impacted by the proposed rule. We have researched the statistics available in the Federal Procurement Data System, and have revised our estimate. Our discussion of the revised estimate is included in paragraph 3.

• Whether or not this is a major rule, subject to OMB review and analysis under Executive Order 12866. Respondents expressed concern as to whether this rule should be deemed a major rule. The Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget, has determined that this is a significant rule, under Executive Order 12866, subject to OMB review and analysis. However, this is not a major rule, as defined in the Small Business Regulatory Enforcement Fairness Act (SBREFA), 5 U.S.C. 804, because it does not meet the criteria identified at 5 U.S.C. 804(2). In accordance with the requirements of 5 U.S.C. 801 (as added by Subtitle E of Public Law 104–121), a copy of the rule will be provided to Congress and GAO.

3. Description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available.

This rule will apply to all entities, large and small, (including educational and nonprofit), that offer supplies or services to the Government in acquisitions using the Part 15 procedures. As a result of comments received in response to the proposed rule and the initial regulatory flexibility analyses, we have revised our estimate of the number of small entities that will be impacted by the rule.

• Upon further review and analysis, we have identified an error in the supporting data for the initial regulatory flexibility analyses. The figure of 602,000 was described as ''Estimated number of entities impacted by rule'' while in fact that figure is actually the product of the estimated number of actions impacted by the rule multiplied by the average number of participants in each action. This figure is not the estimated number of entities impacted by the rule, as it does not take into account the average number of actions in which each entity participated, and therefore is significantly larger than the actual number of entities impacted by the rule. In the next step in the supporting data calculation, this amount was properly divided by 25, the estimated number of actions in which each entity participates. The result, 24,080, was properly identified as the ''Estimated total number of entities affected by the rule.''

• Based on Federal Procurement Data System (FPDS) statistics for fiscal year 1996, we estimate that 17,717 small businesses received awards valued at $100,000 or more. This statistic includes small businesses receiving awards in response to Part 15 procedures as well as sealed bids. This statistic does not include small entities other than small businesses, *e.g.*, small nonprofit organizations and small local governments. Current data collection categories do not provide this information. Information quantifying the number of unsuccessful offerors that are small entities is not collected at this time. Therefore, although we recognize that the number of small entities impacted by this rule is greater than the number of small entities receiving awards under Part 15 procedures, we do not have data that quantifies this difference.

• One respondent to the proposed rule indicated that approximately 28,000 to 30,000 small businesses participate in DoD acquisitions, and estimated that 200,000 to 500,000 participate Governmentwide. We cannot confirm either estimate, however, available data seems to contradict the Governmentwide estimate. According to the 1994 Report on Small Business and Competition, submitted to the President by the Administrator and the Chief Counsel for Advocacy of the Small Business Administration for inclusion in *The State of Small Business: A Report of the President 1994*, estimates of the number of individual companies competing for Federal contract awards vary between 42,000 and 50,000 (Atch 1). This includes large as well as small entities. The 1995 Report (the most recent version available at the time this final regulatory flexibility analysis was prepared) does not update this estimate. However, the 1995 Report does indicate that the overall number of small businesses in the U.S. economy has increased.

• FPDS statistics for fiscal year 1996 (the most recent FPDS statistics available at the time this analysis was prepared) indicate that there were 17,717 small businesses that received government contract awards over $100,000 (Atch 2). FPDS advises that, of the approximately 17,717 Governmentwide small business awardees, 10,696 received contract awards from DoD (Atch 3). Application of the resulting ratio to the upper limit of the respondent's estimated range (28,000 to 30,000 small businesses participating in DoD procurement) provides an estimate of about 49,692 small businesses participating in Governmentwide acquisitions. This estimate is probably higher than the actual number of such small businesses, as it is close to the estimates referenced in the President's report cited above that include both large and small entities.

• Based on this analysis, we estimate that the number of small entities affected by this rule is no more than 49,692, or approximately 50,000.

4. Description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

This rule will impose no new reporting or recordkeeping requirements on large or small entities. The rule removes the requirement for the use of certain Government forms and formats in responding to requests for proposal. Offerors may extend the proposal acceptance period as part of proposal revisions instead of having to submit a separate, formal confirmation of the extension. Offerors may identify their authorized negotiators without using a Government-required format. The Standard Form 1417, Presolicitation Notice and Response, is no longer required for negotiated acquisitions using Part 15 procedures.

5. Description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

In developing the policies and procedures contained in the final rule, we considered the available alternative approaches, and the impacts, adverse and beneficial, of each of the alternatives to large offerors, small offerors, and the Government. Some of the options were bounded by statutory requirements and a preference for an impartial, efficient, and accessible acquisition system in which appropriate information is readily available to all participants. The final rule does not provide for flexible compliance by small entities because source selection officials will continue to establish evaluation factors as provided in FAR 15.3, Source selection, including any applicable preferences for small entities.

There are five significant areas in which we were able to minimize the impact on small entities:

• Competitive range policy. We considered alternatives in the following areas in order to minimize the impact on small entities—

(a) *Total bid and proposal costs borne by offerors, including small entities.* As an alternative to the language contained in the final rule, we considered whether the potential payoff of receiving an award outweighed the additional cost to an offeror of staying in a competition without having a realistic chance of winning, *i.e.*, whether the long shots came in often enough to make it worth the extra cost of taking the chance. We also note that information provided by agencies in public comments responding to the proposed rule indicates that award is nearly always made to one of the three most highly rated offerors. We have received no comments that contradict this understanding. The benefits to offerors of including only the most highly rated offers in the competitive range are that those included will know that they have a good chance of winning the competition, making it in their best interests to compete aggressively, and those eliminated from the range are spared the cost of pursuing an award when they have little, if any, chance of winning.

(b) *Impacts on resources and cash flow.* A smaller competitive range enables faster progress toward contract award. Therefore, all offerors excluded from the competitive range expend less resources on a competition they have little or no chance of winning. The resources of these offerors can then be applied to the pursuit of other more promising business opportunities. Successful offerors receive contract awards faster, thereby improving their cash flow. Therefore, we decided not to retain the current FAR standard of including all proposals with a reasonable chance of being selected for award, and including any proposals for which there is doubt, *i.e.*, ''when in doubt, leave them in,'' because this standard

prolongs the award process and increases the costs to offerors with little or no chance of winning.

(c) *Perception of barriers to submitting a proposal.* The initial proposed rule contained a solicitation provision that identified a target number of offerors to be included in the competitive range. Public comments indicated that this created a perception that proposals would not be properly evaluated against the evaluation criteria in the solicitation prior to establishment of the competitive range. Respondents indicated that they would view this as a barrier to submitting proposals and competing on Government contracting opportunities. Therefore, we have revised the final rule to eliminate this solicitation provision, and to emphasize that all proposals received are evaluated against all the evaluation factors and significant subfactors in the solicitation before the competitive range is established.

(d) *Limiting the competitive range in the interest of efficiency.* The language in the final rule implements Section 4103 of the Clinger-Cohen Act of 1996, that allows contracting officers, in certain circumstances, to reduce the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated offerors. We considered three alternatives to the language contained in the final rule—

(1) Include at least one small business proposal in the competitive range. At the suggestion of the Small Business Administration Office of Advocacy, we considered imposing a requirement to have at least one small business in the competitive range whenever any small businesses submit proposals. We did not adopt this alternative for two reasons. First, as noted above, public comments from agencies indicate that awards are nearly always made to the one of the three most highly rated proposals going into the competitive range. This is true even when small businesses win full and open competitions. The incidence of award to an offeror other than one of the three such proposals is so small that it does not support keeping any business, particularly a small business with limited bid and proposal resources, in a competition that the business has virtually no chance of winning. Second, this recommendation could conflict with the requirements of Section 4103 of the Clinger-Cohen Act to include the most highly rated proposals in the competitive range, if the small business proposal is not among the most highly rated.

(2) Provide examples of the factors to be considered in limiting the competitive range. The proposed rule contained a list of factors for the contracting officer to consider in establishing the competitive range. As a result of public comments raising concerns about the list, we revised the final rule to delete the list of factors. This permits the facts of the instant acquisition to guide the judgment of the contracting officer in exercising this authority, instead of attempting to impose a static list on all circumstances. Both small and large offerors should benefit from this flexibility. The goal of our final rule language is to allow all participants in the process, both industry and Government, to optimize their resources.

(3) Provide a definition of efficiency. The proposed rule did not define an efficient competition. We received several public comments suggesting that such a definition be provided. Our assessment is that the definition of an efficient competition depends on the facts of the instant acquisition. Instead of imposing a definition that may not be appropriate in certain circumstances, we chose to describe the process for limiting the competitive range for the purpose of efficiency. This enables the contracting officer to exercise this authority appropriately in varying circumstances—all offerors should benefit from this approach.

(e) *Responding to adverse past performance information.* We considered alternatives relating to two issues in this area.

(1) Prohibition on the use of certain types of past performance information. The proposed rule did not prohibit the use of adverse past performance information. Several public comments suggested that past performance information on contracts in litigation or dispute should not be used until the litigation or dispute is resolved. The rule requires the contracting officer to evaluate the currency, relevance, source, context, and general trend of the past performance information. We did not adopt this alternative because the requirement to evaluate the context of the information already addresses this concern. In addition, we were concerned that the suggested alternative may encourage litigation for the purpose of avoiding the inclusion of adverse past performance information in future acquisitions.

(2) Responding to adverse past performance information. The proposed rule did not require contracting officers to allow offerors to respond to adverse past performance information prior to discussions. Some public comments recommended that contracting officers identify any adverse past performance information to the offeror immediately upon receiving the information. They further suggested that the offeror be allowed to respond to such information regardless of the stage of the acquisition. Other public comments recommended that offerors be afforded an opportunity to respond to adverse past performance information on which they had not previously had an opportunity to respond. We revised the final rule to accommodate these recommendations. The initial proposed rule authorized communication regarding adverse past performance information. In the second proposed rule, we revised this guidance to state that contracting officers, when conducting communications with offerors before establishment of the competitive range, shall address adverse past performance information on which the offeror has not previously had the opportunity to comment. We revised the final rule to require that offerors, including small entities, shall be granted the opportunity to explain situations that contributed to an adverse past performance rating to which they have not had a previous opportunity to respond before such ratings can be the determining factor for exclusion from the competitive range. These revisions, together with the requirement to discuss all deficiencies and significant weaknesses with those offerors in the competitive range, ensure that adverse past performance to which an offeror has not had the opportunity to respond will be addressed any time it can affect the outcome of the acquisition. We did not revise the rule to permit offerors to address past performance information to which they have already had an opportunity to respond because the solicitation provides offerors with the opportunity to address problems encountered on previous contracts and related corrective actions. In addition, FAR Subpart 42.15, Contractor performance information, already contains formal rebuttal procedures. We did not revise the rule to permit all offerors to address past performance information to which they have not had a previous opportunity to comment because it would prolong the evaluation process by allowing such exchanges when they will not make a difference in the source selection decision.

(f) *Neutral past performance evaluations.* We considered alternatives relating to two aspects of neutral past performance ratings—

(1) Definition of neutral past performance evaluations. The proposed rules provided a definition of neutral past performance evaluations. Public comments recommended that we revise the definition and provide detailed instructions on how to apply neutral past performance ratings in any source selection. 41 U.S.C. 405(j)(2) requires offerors without a previous performance history, to be given a rating that neither rewards nor penalizes the offeror. We did not adopt the public comment recommendations, opting instead to revise the final rule to reflect the statutory language, so that the facts of the instant acquisition would be used in determining what rating scheme is appropriate. This alternative provides for flexible compliance to satisfy requirements of the statute.

(2) Limiting the instances of neutral evaluations. The proposed rule listed examples of information that may be considered to avoid assigning neutral past performance ratings. One public comment recommended that, in the interest of fairness to all businesses, as well as the minority contractors represented by the respondent, the Government should assign neutral past performance ratings only where the preponderance of the evidence demonstrates that the offeror lacked an opportunity to acquire a record on relevant past performance. In order to minimize the use of neutral past performance ratings, we revised the final rule to indicate that contracting officers ''should'' (rather than ''may'') take into account a broad range of information related to past performance when performing past performance evaluations.

(g) *Providing for increased exchanges between the Government and industry throughout the acquisition process.*

(1) Clarifications. We drafted the rule to allow as much free exchange of information between offerors and the Government as possible, while still permitting award without discussions and complying with applicable statutes. The proposed rule did not differentiate between exchanges of

information when award without discussions was contemplated versus when a competitive range would be established. Public comment pointed out that the proposed rule language may allow exchanges beyond what is permitted by applicable statute when making award without discussions. In drafting the second proposed rule, we limited these exchanges. The resulting language still permits more exchange of information between offerors and the Government than the current FAR. This policy is expected to help offerors, especially small entities that may not be familiar with proposal preparation, by permitting easy clarification of limited aspects of their proposals.

(2) Communications. Public comments indicated that the second proposed rule did not establish a ''bright line'' distinction between when communications conducted in order to establish a competitive range end, and when discussions begin. Small businesses were concerned that the Government may conduct inappropriate communications with selected offerors prior to the establishment of the competitive range to the detriment of small businesses. We revised the final rule to accommodate this concern by clearly defining when discussions begin. We adopted this alternative to preclude the occurrence of the inappropriate communications that concerned small businesses.

(3) Discussions. The initial proposed rule contained the existing FAR guidance regarding the type and amount of information that should be exchanged during discussions.

In response to public comments, the second proposed rule requires a more robust exchange of information during discussions. The language requires the Government to identify, in addition to significant weaknesses and deficiencies, other aspects of an offeror's proposal that could be enhanced materially to improve the offeror's potential for award. This change should benefit all offerors, including small businesses, because it permits offerors to develop a better understanding of the Government's evaluation of their proposal, and permits them to optimize their potential for award.

*(h) Oral presentations.* The existing FAR does not address oral presentations. The proposed rule included general guidelines for the use of oral presentations to provide consistent and impartial Governmentwide application of this technique. We considered alternatives in two aspects of oral presentations.

(1) Methods for recording oral presentations. Some public comments in response to the second proposed rule recommended that the rule should require the Government to prepare a formal, verifiable record of each oral presentation, to place the record in the source selection files, and to provide copies of their own records to offerors. We revised the final rule to allow contracting officers to provide each offeror a copy of that offeror's record, but did not require the Government to make a verifiable record. A requirement for the Government to make a verifiable record of each presentation is not consistent with the objective of this rule to streamline the acquisition process.

(2) Oral presentations and award without discussions. The second proposed rule text on oral presentations did not refer users to the limits on communications set forth elsewhere in the rule. Public comments expressed concerns that the oral presentations might be detrimental to small businesses because, depending on the stage of the acquisition, the atmosphere of oral presentations could be conducive to inappropriate exchanges of information between selected offerors and the Government. We revised the final rule to help users of this technique understand the limits on exchanges of information during the conduct of oral presentations.

## C. Paperwork Reduction Act

The following information collection requirements have been approved by the Office of Management and Budget (OMB) and apply to FAR Part 15: 9000–0037, Standard Form 1417, Presolicitation Notice and Response; 9000–0044, Bid/Offer Acceptance Period; and 9000–0048, Authorized Negotiators. While the Paperwork Reduction Act applies because the rule revises existing information collection requirements, resulting in a slight decrease in the estimated burden, it has been determined that this rule does not materially affect the burden already approved by OMB. Optional forms 307, 308, and 309 do not require independent clearance under the Paperwork Reduction Act because they do not request information beyond identity, date, address, and contact. Therefore, no adjustments to these information collection requirements are sought at this time.

## List of Subjects in 48 CFR Parts 1, 2, 3, 4, 5, 6, 7, 9, 11, 12, 13, 14, 15, 16, 17, 19, 24, 25, 27, 28, 31, 32, 33, 34, 35, 36, 42, 43, 44, 45, 49, 50, 52, and 53

Government procurement.

Dated: September 22, 1997

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

## Federal Acquisition Circular—FAC 97–02

Federal Acquisition Circular (FAC) 97–02 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrtator for the National Aeronatics and Space Administration.

The policies, provisions, and clauses of this final rule are effective for all solicitations issued on or after October 10, 1997. However, agencies may delay implementation of this final rule until January 1, 1998, at which time it becomes mandatory for all solicitations issued on or after that date. Agencies using the new policies, provisions, and clauses before January 1, 1998, shall ensure that the cover page of the solicitation for each acquisition subject to this rule, and issued before January 1, 1998, contains a notice that this rule applies to that acquisition. Any solicitation issued before January 1, 1998, that does not contain such a solicitation notice or the new provisions and clauses is automatically conducted in accordance with the FAR excluding changes made by this final rule.

Dated: September 19, 1997.

Eleanor R. Spector,

*Director, Defense Procurement, Department of Defense.*

Dated: September 10, 1997.

Ida M. Ustad,

*Deputy Associate Administrator, Office of Acquisition Policy, General Services Administration.*

Dated: September 10, 1997.

Tom Luedtke,

*Deputy Associate Administrator for Procurement National Aeronautics and Space Administration.*

Therefore, 48 CFR Parts 1, 2, 3, 4, 5, 6, 7, 9, 11, 12, 13, 14, 15, 16, 17, 19, 24, 25, 27, 28, 31, 32, 33, 34, 35, 36, 42, 43, 44, 45, 49, 50, 52, and 53 are amended as set forth below:

1. The authority citation for 48 CFR Parts 1, , 3, 4, 5, 6, 7, 9, 11, 12, 13, 14, 15, 16, 17, 19, 24, 25, 27, 28, 31, 32, 33, 34, 35, 36, 42, 43, 44, 45, 49, 50, 52, and 53 continues to read as follows:

**Authority:** 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

## PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Section 1.102–2 is amended by adding paragraph (c)(3) to read as follows:

### 1.102–2 Performance standards.

* * * * *

(c) * * *

(3) The Government shall exercise discretion, use sound business judgment, and comply with applicable laws and regulations in dealing with contractors and prospective contractors. All contractors and prospective contractors shall be treated fairly and impartially but need not be treated the same.

* * * * *

3. Section 1.106 is amended in the table following the introductory paragraph by removing the following entries:

### 1.106 OMB Approval under the Paperwork Reduction Act.

| FAR segment | OMB control No. |
|---|---|
| * * * * | |
| SF 1411 ..... | 9000–0013 |

| FAR segment | OMB control No. |
|---|---|
| * * * * | |
| SF 1448 ..... | 9000–0013 |
| * * * * | |

## PART 2—DEFINITIONS OF WORDS AND TERMS

4. Section 2.101 is amended by inserting, in alphabetical order, the definition ''Best value'' to read as follows:

**2.101 Definitions.**

* * * * *

*Best value* means the expected outcome of an acquisition that, in the Government's estimation, provides the greatest overall benefit in response to the requirement.

* * * * *

## PART 4—ADMINISTRATIVE MATTERS

5. Subpart 4.10 is added to read as follows:

### Subpart 4.10—Contract Line Items

**4.1001 Policy.**

Contracts may identify the items or services to be acquired as separately identified line items. Contract line items should provide unit prices or lump sum prices for separately identifiable contract deliverables, and associated delivery schedules or performance periods. Line items may be further subdivided or stratified for administrative purposes (*e.g.*, to provide for traceable accounting classification citations).

## PART 5—PUBLICIZING CONTRACT ACTIONS

6. Section 5.102 is amended by adding paragraph (a)(7) to read as follows:

**5.102 Availability of solicitations.**

(a) * * *

(7) If electronic commerce is employed in the solicitation process, availability of the RFP may be limited to the electronic medium.

* * * * *

## PART 6—COMPETITION REQUIREMENTS

7. Section 6.101 is amended by revising paragraph (b) to read as follows:

**6.101 Policy.**

* * * * *

(b) Contracting officers shall provide for full and open competition through use of the competitive procedure(s) contained in this subpart that are best suited to the circumstances of the contract action and consistent with the need to fulfill the Government's requirements efficiently (10 U.S.C. 2304 and 41 U.S.C. 253).

## PART 7—ACQUISITION PLANNING

8. Section 7.105 is amended by revising paragraph (b)(5) to read as follows:

**7.105 Contents of written acquisition plans.**

* * * * *

(b) * * *

(5) *Budgeting and funding.* Include budget estimates, explain how they were derived, and discuss the schedule for obtaining adequate funds at the time they are required (see subpart 32.7).

* * * * *

## PART 11—DESCRIBING AGENCY NEEDS

9. Section 11.002 is amended at the end of paragraph (d) by adding the following sentence:

**11.002 Policy.**

* * * * *

(d) * * * Environmental objectives, such as pollution prevention (*e.g.*, promoting waste reduction, source reduction, energy efficiency and maximum practicable recovered material content) (see part 23) shall be considered when describing Government requirements for supplies and services, and when developing source selection factors for competitive negotiated acquisitions (see 15.304), when appropriate.

* * * * *

10. Subpart 11.8 is added to read as follows:

### Subpart 11.8—Testing

**11.801 Preaward in-use evaluation.**

Supplies may be evaluated under comparable in-use conditions without a further test plan, provided offerors are so advised in the solicitation. The results of such tests or demonstrations may be used to rate the proposal, to determine technical acceptability, or otherwise to evaluate the proposal (see 15.305).

## PART 14—SEALED BIDDING

**14.201–6 [Amended]**

11. Section 14.201–6 is amended by removing and reserving paragraph (n).

12. Section 14.404–1 is amended in paragraph (e)(1) by removing the reference ''15.103'' and inserting ''paragraph (f) of this subsection''; and by adding paragraph (f) to read as follows:

**14.404–1 Cancellation of invitations after opening.**

* * * * *

(f) When the agency head has determined, in accordance with paragraph (e)(1) of this subsection, that an invitation for bids should be canceled and that use of negotiation is in the Government's interest, the contracting officer may negotiate (in accordance with part 15, as appropriate) and make award without issuing a new solicitation provided—

(1) Each responsible bidder in the sealed bid acquisition has been given notice that negotiations will be conducted and has been given an opportunity to participate in negotiations; and

(2) The award is made to the responsible bidder offering the lowest negotiated price.

13. Part 15 is revised to read as follows:

## PART 15—CONTRACTING BY NEGOTIATION

Sec.
15.000 Scope of part.
15.001 Definitions.
15.002 Types of negotiated acquisition.

**Subpart 15.1—Source Selection Processes and Techniques**

15.100 Scope of subpart.
15.101 Best value continuum.
15.101–1 Tradeoff process.
15.101–2 Lowest price technically acceptable source selection process.
15.102 Oral presentations.

**Subpart 15.2—Solicitation and Receipt of Proposals and Information**

15.200 Scope of subpart.
15.201 Exchanges with industry before receipt of proposals.
15.202 Advisory multi-step process.
15.203 Requests for proposals.
15.204 Contract format.
15.204–1 Uniform contract format.

**Table 15–1—Uniform Contract Format**

15.204–2 Part I—The Schedule.
15.204–3 Part II—Contract Clauses.
15.204–4 Part III—List of Documents, Exhibits, and Other Attachments.
15.204–5 Part IV—Representations and Instructions.
15.205 Issuing solicitations.
15.206 Amending the solicitation.
15.207 Handling proposals and information.
15.208 Submission, modification, revision, and withdrawal of proposals.
15.209 Solicitation provisions and contract clauses.
15.210 Forms.

**Subpart 15.3—Source Selection**

15.300 Scope of subpart.
15.301 Definitions.
15.302 Source selection objective.
15.303 Responsibilities.
15.304 Evaluation factors and significant subfactors.
15.305 Proposal evaluation.
15.306 Exchanges with offerors after receipt of proposals.
15.307 Proposal revisions.
15.308 Source selection decision.

**Subpart 15.4—Contract Pricing**

15.400 Scope of subpart.
15.401 Definitions.
15.402 Pricing policy.
15.403 Obtaining cost or pricing data.
15.403–1 Prohibition on obtaining cost or pricing data (10 U.S.C. 2306a and 41 U.S.C. 254b).
15.403–2 Other circumstances where cost or pricing data are not required.
15.403–3 Requiring information other than cost or pricing data.
15.403–4 Requiring cost or pricing data (10 U.S.C. 2306a and 41 U.S.C. 254b).
15.403–5 Instructions for submission of cost or pricing data or information other than cost or pricing data.
15.404 Proposal analysis.
15.404–1 Proposal analysis techniques.
15.404–2 Information to support proposal analysis.
15.404–3 Subcontract pricing considerations.
15.404–4 Profit.
15.405 Price negotiation.
15.406 Documentation.
15.406–1 Prenegotiation objectives.
15.406–2 Certificate of Current Cost or Pricing Data.
15.406–3 Documenting the negotiation.
15.407 Special cost or pricing areas.
15.407–1 Defective cost or pricing data.
15.407–2 Make-or-buy programs.
15.407–3 Forward pricing rate agreements.
15.407–4 Should-cost review.
15.407–5 Estimating systems.
15.408 Solicitation provisions and contract clauses.

**Table 15–2—Instructions for Submitting Cost or Pricing Data Are Required**

**Subpart 15.5—Preaward, Award, and Postaward Notifications, Protests, and Mistakes**

15.501 Definition.
15.502 Applicability.
15.503 Notifications to unsuccessful offerors.
15.504 Award to successful offeror.
15.505 Preaward debriefing of offerors.
15.506 Postaward debriefing of offerors.
15.507 Protests against award.
15.508 Discovery of mistakes.
15.509 Forms.

**Subpart 15.6—Unsolicited Proposals**

15.600 Scope of subpart.
15.601 Definitions.
15.602 Policy.
15.603 General.
15.604 Agency points of contact.
15.605 Content of unsolicited proposals.
15.606 Agency procedures.
15.606–1 Receipt and initial review.
15.606–2 Evaluation.
15.607 Criteria for acceptance and negotiation of an unsolicited proposal.
15.608 Prohibitions.
15.609 Limited use of data.

**Authority:** 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

### 15.000 Scope of part.

This part prescribes policies and procedures governing competitive and noncompetitive negotiated acquisitions. A contract awarded using other than sealed bidding procedures is a negotiated contract (see 14.101).

### 15.001 Definitions.

As used in this part—

*Proposal modification* is a change made to a proposal before the solicitation closing date and time, or made in response to an amendment, or made to correct a mistake at any time before award.

*Proposal revision* is a change to a proposal made after the solicitation closing date, at the request of or as allowed by a contracting officer, as the result of negotiations.

### 15.002 Types of negotiated acquisition.

(a) *Sole source acquisitions*. When contracting in a sole source environment, the request for proposals (RFP) should be tailored to remove unnecessary information and requirements; *e.g.*, evaluation criteria and voluminous proposal preparation instructions.

(b) *Competitive acquisitions*. When contracting in a competitive environment, the procedures of this part are intended to minimize the complexity of the solicitation, the evaluation, and the source selection decision, while maintaining a process designed to foster an impartial and comprehensive evaluation of offerors' proposals, leading to selection of the proposal representing the best value to the Government (see 2.101).

## Subpart 15.1—Source Selection Processes and Techniques

### 15.100 Scope of subpart.

This subpart describes some of the acquisition processes and techniques that may be used to design competitive acquisition strategies suitable for the specific circumstances of the acquisition.

### 15.101 Best value continuum.

An agency can obtain best value in negotiated acquisitions by using any one or a combination of source selection approaches. In different types of acquisitions, the relative importance of cost or price may vary. For example, in acquisitions where the requirement is clearly definable and the risk of unsuccessful contract performance is minimal, cost or price may play a dominant role in source selection. The less definitive the requirement, the more development work required, or the greater the performance risk, the more technical or past performance considerations may play a dominant role in source selection.

### 15.101–1 Tradeoff process.

(a) A tradeoff process is appropriate when it may be in the best interest of the Government to consider award to other than the lowest priced offeror or other than the highest technically rated offeror.

(b) When using a tradeoff process, the following apply:

(1) All evaluation factors and significant subfactors that will affect contract award and their relative importance shall be clearly stated in the solicitation; and

(2) The solicitation shall state whether all evaluation factors other than cost or price, when combined, are significantly more important than, approximately equal to, or significantly less important than cost or price.

(c) This process permits tradeoffs among cost or price and non-cost factors and allows the Government to accept other than the lowest priced proposal. The perceived benefits of the higher priced proposal shall merit the additional cost, and the rationale for tradeoffs must be documented in the file in accordance with 15.406.

### 15.101–2 Lowest price technically acceptable source selection process.

(a) The lowest price technically acceptable source selection process is appropriate when best value is expected to result from selection of the technically acceptable proposal with the lowest evaluated price.

(b) When using the lowest price technically acceptable process, the following apply:

(1) The evaluation factors and significant subfactors that establish the requirements of acceptability shall be set forth in the solicitation. Solicitations shall specify that award will be made on the basis of the lowest evaluated price of proposals meeting or exceeding the acceptability standards for non-cost factors. If the contracting officer documents the file pursuant to 15.304(c)(3)(iii), past performance need not be an evaluation factor in lowest price technically acceptable source selections. If the contracting officer elects to consider past performance as

an evaluation factor, it shall be evaluated in accordance with 15.305. However, the comparative assessment in 15.305(a)(2)(i) does not apply. If the contracting officer determines that a small business' past performance is not acceptable, the matter shall be referred to the Small Business Administration for a Certificate of Competency determination, in accordance with the procedures contained in subpart 19.6 and 15 U.S.C. 637(b)(7)).

(2) Tradeoffs are not permitted.

(3) Proposals are evaluated for acceptability but not ranked using the non-cost/price factors.

(4) Exchanges may occur (see 15.306).

**15.102 Oral presentations.**

(a) Oral presentations by offerors as requested by the Government may substitute for, or augment, written information. Use of oral presentations as a substitute for portions of a proposal can be effective in streamlining the source selection process. Oral presentations may occur at any time in the acquisition process, and are subject to the same restrictions as written information, regarding timing (see 15.208) and content (see 15.306). Oral presentations provide an opportunity for dialogue among the parties. Pre-recorded videotaped presentations that lack real-time interactive dialogue are not considered oral presentations for the purposes of this section, although they may be included in offeror submissions, when appropriate.

(b) The solicitation may require each offeror to submit part of its proposal through oral presentations. However, certifications, representations, and a signed offer sheet (including any exceptions to the Government's terms and conditions) shall be submitted in writing.

(c) Information pertaining to areas such as an offeror's capability, past performance, work plans or approaches, staffing resources, transition plans, or sample tasks (or other types of tests) may be suitable for oral presentations. In deciding what information to obtain through an oral presentation, consider the following:

(1) The Government's ability to adequately evaluate the information;

(2) The need to incorporate any information into the resultant contract;

(3) The impact on the efficiency of the acquisition; and

(4) The impact (including cost) on small businesses. In considering the costs of oral presentations, contracting officers should also consider alternatives to on-site oral presentations (*e.g.*, teleconferencing, video teleconferencing).

(d) When oral presentations are required, the solicitation shall provide offerors with sufficient information to prepare them. Accordingly, the solicitation may describe—

(1) The types of information to be presented orally and the associated evaluation factors that will be used;

(2) The qualifications for personnel that will be required to provide the oral presentation(s);

(3) The requirements for, and any limitations and/or prohibitions on, the use of written material or other media to supplement the oral presentations;

(4) The location, date, and time for the oral presentations;

(5) The restrictions governing the time permitted for each oral presentation; and

(6) The scope and content of exchanges that may occur between the Government's participants and the offeror's representatives as part of the oral presentations, including whether or not discussions (see 15.306(d)) will be permitted during oral presentations.

(e) The contracting officer shall maintain a record of oral presentations to document what the Government relied upon in making the source selection decision. The method and level of detail of the record (*e.g.*, videotaping, audio tape recording, written record, Government notes, copies of offeror briefing slides or presentation notes) shall be at the discretion of the source selection authority. A copy of the record placed in the file may be provided to the offeror.

(f) When an oral presentation includes information that the parties intend to include in the contract as material terms or conditions, the information shall be put in writing. Incorporation by reference of oral statements is not permitted.

(g) If, during an oral presentation, the Government conducts discussions (see 15.306(d)), the Government must comply with 15.306 and 15.307.

## Subpart 15.2—Solicitation and Receipt of Proposals and Information

**15.200 Scope of subpart.**

This subpart prescribes policies and procedures for—

(a) Exchanging information with industry prior to receipt of proposals;

(b) Preparing and issuing requests for proposals (RFPs) and requests for information (RFIs); and

(c) Receiving proposals and information.

**15.201 Exchanges with industry before receipt of proposals.**

(a) Exchanges of information among all interested parties, from the earliest identification of a requirement through receipt of proposals, are encouraged. Any exchange of information must be consistent with procurement integrity requirements (see 3.104). Interested parties include potential offerors, end users, Government acquisition and supporting personnel, and others involved in the conduct or outcome of the acquisition.

(b) The purpose of exchanging information is to improve the understanding of Government requirements and industry capabilities, thereby allowing potential offerors to judge whether or how they can satisfy the Government's requirements, and enhancing the Government's ability to obtain quality supplies and services, including construction, at reasonable prices, and increase efficiency in proposal preparation, proposal evaluation, negotiation, and contract award.

(c) Agencies are encouraged to promote early exchanges of information about future acquisitions. An early exchange of information among industry and the program manager, contracting officer, and other participants in the acquisition process can identify and resolve concerns regarding the acquisition strategy, including proposed contract type, terms and conditions, and acquisition planning schedules; the feasibility of the requirement, including performance requirements, statements of work, and data requirements; the suitability of the proposal instructions and evaluation criteria, including the approach for assessing past performance information; the availability of reference documents; and any other industry concerns or questions. Some techniques to promote early exchanges of information are—

(1) Industry or small business conferences;

(2) Public hearings;

(3) Market research, as described in part 10;

(4) One-on-one meetings with potential offerors (any that are substantially involved with potential contract terms and conditions should include the contracting officer; also see paragraph (f) of this section regarding restrictions on disclosure of information);

(5) Presolicitation notices;

(6) Draft RFPs;

(7) RFIs;

(8) Presolicitation or preproposal conferences; and

(9) Site visits.

(d) The special notices of procurement matters at 5.205(c), or electronic notices, may be used to publicize the Government's requirement or solicit information from industry.

(e) RFIs may be used when the Government does not presently intend to award a contract, but wants to obtain price, delivery, other market information, or capabilities for planning purposes. Responses to these notices are not offers and cannot be accepted by the Government to form a binding contract. There is no required format for RFIs.

(f) General information about agency mission needs and future requirements may be disclosed at any time.

After release of the solicitation, the contracting officer shall be the focal point of any exchange with potential offerors. When specific information about a proposed acquisition that would be necessary for the preparation of proposals is disclosed to one or more potential offerors, that information shall be made available to the public as soon as practicable, but no later than the next general release of information, in order to avoid creating an unfair competitive advantage. Information provided to a particular offeror in response to that offeror's request shall not be disclosed if doing so would reveal the potential offeror's confidential business strategy, and would be protected under 3.104 or subpart 24.2. When a presolicitation or preproposal conference is conducted, materials distributed at the conference should be made available to all potential offerors, upon request.

**15.202 Advisory multi-step process.**

(a) The agency may publish a presolicitation notice (see 5.204) that provides a general description of the scope or purpose of the acquisition and invites potential offerors to submit information that allows the Government to advise the offerors about their potential to be viable competitors. The presolicitation notice should identify the information that must be submitted and the criteria that will be used in making the initial evaluation. Information sought may be limited to a statement of qualifications and other appropriate information (*e.g.*, proposed technical concept, past performance, and limited pricing information). At a minimum, the notice shall contain sufficient information to permit a potential offeror to make an informed decision about whether to participate in the acquisition. This process should not be used for multi-step acquisitions where it would result in offerors being required to submit identical information in response to the notice and in response to the initial step of the acquisition.

(b) The agency shall evaluate all responses in accordance with the criteria stated in the notice, and shall advise each respondent in writing either that it will be invited to participate in the resultant acquisition or, based on the information submitted, that it is unlikely to be a viable competitor. The agency shall advise respondents considered not to be viable competitors of the general basis for that opinion. The agency shall inform all respondents that, notwithstanding the advice provided by the Government in response to their submissions, they may participate in the resultant acquisition.

**15.203 Requests for proposals.**

(a) Requests for proposals (RFPs) are used in negotiated acquisitions to communicate Government requirements to prospective contractors and to solicit proposals. RFPs for competitive acquisitions shall, at a minimum, describe the—

(1) Government's requirement;

(2) Anticipated terms and conditions that will apply to the contract:

(i) The solicitation may authorize offerors to propose alternative terms and conditions, including the contract line item number (CLIN) structure; and

(ii) When alternative CLIN structures are permitted, the evaluation approach should consider the potential impact on other terms and conditions or the requirement (*e.g.*, place of performance or payment and funding requirements) (see 15.206);

(3) Information required to be in the offeror's proposal; and

(4) Factors and significant subfactors that will be used to evaluate the proposal and their relative importance.

(b) An RFP may be issued for OMB Circular A–76 studies. See subpart 7.3 for additional information regarding cost comparisons between Government and contractor performance.

(c) Electronic commerce may be used to issue RFPs and to receive proposals, modifications, and revisions. In this case, the RFP shall specify the electronic commerce method(s) that offerors may use (see subpart 4.5).

(d) Contracting officers may issue RFPs and/or authorize receipt of proposals, modifications, or revisions by facsimile.

(1) In deciding whether or not to use facsimiles, the contracting officer should consider factors such as—

(i) Anticipated proposal size and volume;

(ii) Urgency of the requirement;

(iii) Availability and suitability of electronic commerce methods; and

(iv) Adequacy of administrative procedures and controls for receiving, identifying, recording, and safeguarding facsimile proposals, and ensuring their timely delivery to the designated proposal delivery location.

(2) If facsimile proposals are authorized, contracting officers may request offeror(s) to provide the complete, original signed proposal at a later date.

(e) Letter RFPs may be used in sole source acquisitions and other appropriate circumstances. Use of a letter RFP does not relieve the contracting officer from complying with other FAR requirements. Letter RFPs should be as complete as possible and, at a minimum, should contain the following:

(1) RFP number and date;

(2) Name, address (including electronic address and facsimile address, if appropriate), and telephone number of the contracting officer;

(3) Type of contract contemplated;

(4) Quantity, description, and required delivery dates for the item;

(5) Applicable certifications and representations;

(6) Anticipated contract terms and conditions;

(7) Instructions to offerors and evaluation criteria for other than sole source actions;

(8) Proposal due date and time; and

(9) Other relevant information; *e.g.*, incentives, variations in delivery schedule, cost proposal support, and data requirements.

(f) Oral RFPs are authorized when processing a written solicitation would delay the acquisition of supplies or services to the detriment of the Government and a notice is not required under 5.202 (*e.g.*, perishable items and support of contingency operations or other emergency situations). Use of an oral RFP does not relieve the contracting officer from complying with other FAR requirements.

(1) The contract files supporting oral solicitations should include—

(i) A description of the requirement;

(ii) Rationale for use of an oral solicitation;

(iii) Sources solicited, including the date, time, name of individuals contacted, and prices offered; and

(iv) The solicitation number provided to the prospective offerors.

(2) The information furnished to potential offerors under oral solicitations should include appropriate items from paragraph (e) of this section.

**15.204 Contract format.**

The use of a uniform contract format facilitates preparation of the solicitation

and contract as well as reference to, and use of, those documents by offerors, contractors, and contract administrators. The uniform contract format need not be used for the following:

(a) Construction and architect-engineer contracts (see part 36).

(b) Subsistence contracts.

(c) Supplies or services contracts requiring special contract formats prescribed elsewhere in this part that are inconsistent with the uniform format.

(d) Letter requests for proposals (see 15.203(e)).

(e) Contracts exempted by the agency head or designee.

**15.204–1 Uniform contract format.**

(a) Contracting officers shall prepare solicitations and resulting contracts using the uniform contract format outlined in Table 15–1 of this subsection.

(b) Solicitations using the uniform contract format shall include Parts I, II, III, and IV (see 15.204–2 through 15.204–5). Upon award, contracting officers shall not physically include Part IV in the resulting contract, but shall retain it in the contract file. Section K shall be incorporated by reference in the contract.

TABLE 15–1.—UNIFORM CONTRACT FORMAT

| Section | Title |
|---|---|
| **Part I—The Schedule** | |
| A ..... | Solicitation/contract form. |
| B ..... | Supplies or services and prices/costs. |
| C ..... | Description/specifications/statement of work. |
| D ..... | Packaging and marking. |
| E ..... | Inspection and acceptance. |
| F ..... | Deliveries or performance. |
| G ..... | Contract administration data. |
| H ..... | Special contract requirements. |
| **Part II—Contract Clauses** | |
| I ..... | Contract clauses. |
| **Part III—List of Documents, Exhibits, and Other Attachments** | |
| J ..... | List of attachments. |
| **Part IV—Representations and Instructions.** | |
| K ..... | Representations, certifications, and other statements of offerors or respondents. |
| L ..... | Instructions, conditions, and notices to offerors or respondents. |
| M .... | Evaluation factors for award. |

**15.204–2 Part I—The Schedule.**

The contracting officer shall prepare the contract Schedule as follows:

(a) *Section A, Solicitation/contract form.* (1) Optional Form (OF) 308, Solicitation and Offer-Negotiated Acquisition, or Standard Form (SF) 33, Solicitation, Offer and Award, may be used to prepare RFPs.

(2) When other than OF 308 or SF 33 is used, include the following information on the first page of the solicitation:

(i) Name, address, and location of issuing activity, including room and building where proposals or information must be submitted.

(ii) Solicitation number.

(iii) Date of issuance.

(iv) Closing date and time.

(v) Number of pages.

(vi) Requisition or other purchase authority.

(vii) Brief description of item or service.

(viii) Requirement for the offeror to provide its name and complete address, including street, city, county, state, and zip code, and electronic address (including facsimile address), if appropriate.

(ix) Offer expiration date.

(b) *Section B, Supplies or services and prices/costs.* Include a brief description of the supplies or services; *e.g.*, item number, national stock number/part number if applicable, nouns, nomenclature, and quantities. (This includes incidental deliverables such as manuals and reports.)

(c) *Section C, Description/specifications/statement of work.* Include any description or specifications needed in addition to Section B (see part 11, Describing Agency Needs).

(d) *Section D, Packaging and marking.* Provide packaging, packing, preservation, and marking requirements, if any.

(e) *Section E, Inspection and acceptance.* Include inspection, acceptance, quality assurance, and reliability requirements (see part 46, Quality Assurance).

(f) *Section F, Deliveries or performance.* Specify the requirements for time, place, and method of delivery or performance (see subpart 11.4, Delivery or Performance Schedules, and 47.301–1).

(g) *Section G, Contract administration data.* Include any required accounting and appropriation data and any required contract administration information or instructions other than those on the solicitation form. Include a statement that the offeror should include the payment address in the proposal, if it is different from that shown for the offeror.

(h) *Section H, Special contract requirements.* Include a clear statement of any special contract requirements that are not included in Section I, Contract clauses, or in other sections of the uniform contract format.

**15.204–3 Part II—Contract Clauses.**

*Section I, Contract clauses.* The contracting officer shall include in this section the clauses required by law or by this part and any additional clauses expected to be included in any resulting contract, if these clauses are not required in any other section of the uniform contract format. An index may be inserted if this section's format is particularly complex.

**15.204–4 Part III—List of Documents, Exhibits, and Other Attachments.**

*Section J, List of attachments.* The contracting officer shall list the title, date, and number of pages for each attached document, exhibit, and other attachment. Cross-references to material in other sections may be inserted, as appropriate.

**15.204–5 Part IV—Representations and Instructions.**

The contracting officer shall prepare the representations and instructions as follows:

(a) *Section K, Representations, certifications, and other statements of offerors.* Include in this section those solicitation provisions that require representations, certifications, or the submission of other information by offerors.

(b) *Section L, Instructions, conditions, and notices to offerors or respondents.* Insert in this section solicitation provisions and other information and instructions not required elsewhere to guide offerors or respondents in preparing proposals or responses to requests for information. Prospective offerors or respondents may be instructed to submit proposals or information in a specific format or severable parts to facilitate evaluation. The instructions may specify further organization of proposal or response parts, such as—

(1) Administrative;

(2) Management;

(3) Technical;

(4) Past performance; and

(5) Cost or pricing data (see Table 15–2 of 15.408) or information other than cost or pricing data.

(c) *Section M, Evaluation factors for award.* Identify all significant factors and any significant subfactors that will be considered in awarding the contract and their relative importance (see 15.304(d)). The contracting officer shall insert one of the phrases in 15.304(e).

**15.205 Issuing solicitations.**

(a) The contracting officer shall issue solicitations to potential sources in accordance with the policies and procedures in 5.102, 19.202–4, and part 6.

(b) A master solicitation, as described in 14.203–3, may also be used for negotiated acquisitions.

**15.206 Amending the solicitation.**

(a) When, either before or after receipt of proposals, the Government changes its requirements or terms and conditions, the contracting officer shall amend the solicitation.

(b) Amendments issued before the established time and date for receipt of proposals shall be issued to all parties receiving the solicitation.

(c) Amendments issued after the established time and date for receipt of proposals shall be issued to all offerors that have not been eliminated from the competition.

(d) If a proposal of interest to the Government involves a departure from the stated requirements, the contracting officer shall amend the solicitation, provided this can be done without revealing to the other offerors the alternate solution proposed or any other information that is entitled to protection (see 15.207(b) and 15.306(e)).

(e) If, in the judgment of the contracting officer, based on market research or otherwise, an amendment proposed for issuance after offers have been received is so substantial as to exceed what prospective offerors reasonably could have anticipated, so that additional sources likely would have submitted offers had the substance of the amendment been known to them, the contracting officer shall cancel the original solicitation and issue a new one, regardless of the stage of the acquisition.

(f) Oral notices may be used when time is of the essence. The contracting officer shall document the contract file and formalize the notice with an amendment (see subpart 4.5, Electronic Commerce in Contracting).

(g) At a minimum, the following information should be included in each amendment:

(1) Name and address of issuing activity.

(2) Solicitation number and date.

(3) Amendment number and date.

(4) Number of pages.

(5) Description of the change being made.

(6) Government point of contact and phone number (and electronic or facsimile address, if appropriate).

(7) Revision to solicitation closing date, if applicable.

**15.207 Handling proposals and information.**

(a) Upon receipt at the location specified in the solicitation, proposals and information received in response to a request for information (RFI) shall be marked with the date and time of receipt and shall be transmitted to the designated officials.

(b) Proposals shall be safeguarded from unauthorized disclosure throughout the source selection process. (See 3.104 regarding the disclosure of source selection information (41 U.S.C. 423)). Information received in response to an RFI shall be safeguarded adequately from unauthorized disclosure.

(c) If any portion of a proposal received by the contracting officer electronically or by facsimile is unreadable, the contracting officer immediately shall notify the offeror and permit the offeror to resubmit the unreadable portion of the proposal. The method and time for resubmission shall be prescribed by the contracting officer after consultation with the offeror, and documented in the file. The resubmission shall be considered as if it were received at the date and time of the original unreadable submission for the purpose of determining timeliness under 15.208(a), provided the offeror complies with the time and format requirements for resubmission prescribed by the contracting officer.

**15.208 Submission, modification, revision, and withdrawal of proposals.**

(a) Offerors are responsible for submitting offers, and any revisions and modifications to them, so as to reach the Government office designated in the solicitation on time. If an emergency or unanticipated event interrupts normal Government processes so that proposals cannot be received at the office designated for receipt of proposals by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation closing date, the time specified for receipt of proposals will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that proposals are due.

(b) Proposals, and modifications to them, that are received in the designated Government office after the exact time specified are ''late and shall be considered only if—

(1) They are received before award is made; and

(2) The circumstances meet the specific requirements of 52.215–1(c)(3)(i).

(c) The contracting officer shall promptly notify any offeror if its proposal, modification, or revision was received late, and shall inform the offeror whether or not it will be considered, unless contract award is imminent and the notice prescribed in 15.503(b) would suffice.

(d) When a late proposal or modification is transmitted to a contracting office in the United States or Canada by registered or certified mail or by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee and is received before award, the offeror shall be promptly notified substantially in accordance with the notice in 14.304–2, appropriately modified to relate to proposals.

(e) Late proposals and modifications that are not considered shall be held unopened, unless opened for identification, until after award and then retained with other unsuccessful proposals.

(f) The following shall, if available, be included in the contracting office files for each late proposal, response to request for information, or modification:

(1) The date of mailing, filing, or delivery.

(2) The date and hour of receipt.

(3) Whether or not considered for award.

(4) The envelope, wrapper, or other evidence of date of submission.

(g) Proposals may be withdrawn at any time before award. Written proposals are withdrawn upon receipt by the contracting officer of a written notice of withdrawal. Oral proposals in response to oral solicitations may be withdrawn orally. The contracting officer shall document the contract file when such oral withdrawals are made. One copy of withdrawn proposals should be retained in the contract file (see 4.803(a)(10)). Extra copies of the withdrawn proposals may be destroyed or returned to the offeror at the offeror's request. Extremely bulky proposals shall only be returned at the offeror's request and expense.

(h) Upon withdrawal of an electronically transmitted proposal, the data received shall not be viewed and shall be purged from primary and backup data storage systems.

**15.209 Solicitation provisions and contract clauses.**

When contracting by negotiation—

(a) The contracting officer shall insert the provision at 52.215–1, Instructions to Offerors—Competitive Acquisition, in all competitive solicitations where the

Government intends to award a contract without discussions.

(1) If the Government intends to make award after discussions with offerors within the competitive range, the contracting officer shall use the basic provision with its Alternate I.

(2) If the Government would be willing to accept alternate proposals, the contracting officer shall alter the basic clause to add a paragraph (c)(9) substantially the same as Alternate II.

(b)(1) The contracting officer shall insert the clause at 52.215–2, Audit and Records-Negotiation (10 U.S.C. 2313, 41 U.S.C. 254d, and OMB Circular No. A–133), in solicitations and contracts except those for—

(i) Acquisitions not exceeding the simplified acquisition threshold;

(ii) The acquisition of utility services at rates not exceeding those established to apply uniformly to the general public, plus any applicable reasonable connection charge; or

(iii) The acquisition of commercial items exempted under 15.403–1.

(2) For facilities acquisitions, the contracting officer shall use the clause with its Alternate I.

(3) For cost-reimbursement contracts with educational institutions and other nonprofit organizations, the contracting officer shall use the clause with its Alternate II.

(4) When the examination of records by the Comptroller General is waived in accordance with 25.901, the contracting officer shall use the clause with its Alternate III.

(c) When issuing a solicitation for information or planning purposes, the contracting officer shall insert the provision at 52.215–3, Request for Information or Solicitation for Planning Purposes, and clearly mark on the face of the solicitation that it is for information or planning purposes.

(d) The contracting officer shall insert the provision at 52.215–4, Type of Business Organization, in all solicitations.

(e) The contracting officer shall insert the provision at 52.215–5, Facsimile Proposals, in solicitations if facsimile proposals are authorized (see 15.203(d)).

(f) The contracting officer shall insert the provision at 52.215–6, Place of Performance, in solicitations unless the place of performance is specified by the Government.

(g) The contracting officer shall insert the provision at 52.215–7, Annual Representations and Certifications—Negotiation, in solicitations if annual representations and certifications are used (see 14.213).

(h) The contracting officer shall insert the clause at 52.215–8, Order of Precedence—Uniform Contract Format, in solicitations and contracts using the format at 15.204.

#### 15.210 Forms.

Prescribed forms are not required to prepare solicitations described in this part. The following forms may be used at the discretion of the contracting officer:

(a) Standard Form 33, Solicitation, Offer, and Award, and Optional Form 308, Solicitation and Offer— Negotiated Acquisition, may be used to issue RFPs and RFIs.

(b) Standard Form 30, Amendment of Solicitation/Modification of Contract, and Optional Form 309, Amendment of Solicitation, may be used to amend solicitations of negotiated contracts.

(c) Optional Form 17, Offer Label, may be furnished with each request for proposal.

### Subpart 15.3—Source Selection

#### 15.300 Scope of subpart.

This subpart prescribes policies and procedures for selection of a source or sources in competitive negotiated acquisitions.

#### 15.301 Definitions.

*Deficiency*, as used in this subpart, is a material failure of a proposal to meet a Government requirement or a combination of significant weaknesses in a proposal that increases the risk of unsuccessful contract performance to an unacceptable level.

*Weakness*, as used in this subpart, is a flaw in the proposal that increases the risk of unsuccessful contract performance. A ''significant weakness'' in the proposal is a flaw that appreciably increases the risk of unsuccessful contract performance.

#### 15.302 Source selection objective.

The objective of source selection is to select the proposal that represents the best value.

#### 15.303 Responsibilities.

(a) Agency heads are responsible for source selection. The contracting officer is designated as the source selection authority, unless the agency head appoints another individual for a particular acquisition or group of acquisitions.

(b) The source selection authority shall—

(1) Establish an evaluation team, tailored for the particular acquisition, that includes appropriate contracting, legal, logistics, technical, and other expertise to ensure a comprehensive evaluation of offers;

(2) Approve the source selection strategy or acquisition plan, if applicable, before solicitation release;

(3) Ensure consistency among the solicitation requirements, notices to offerors, proposal preparation instructions, evaluation factors and subfactors, solicitation provisions or contract clauses, and data requirements;

(4) Ensure that proposals are evaluated based solely on the factors and subfactors contained in the solicitation (10 U.S.C. 2305(b)(1) and 41 U.S.C. 253b(d)(3));

(5) Consider the recommendations of advisory boards or panels (if any); and

(6) Select the source or sources whose proposal is the best value to the Government (10 U.S.C. 2305(b)(4)(B) and 41 U.S.C. 253b(d)(3)).

(c) The contracting officer shall—

(1) After release of a solicitation, serve as the focal point for inquiries from actual or prospective offerors;

(2) After receipt of proposals, control exchanges with offerors in accordance with 15.306; and

(3) Award the contract(s).

#### 15.304 Evaluation factors and significant subfactors.

(a) The award decision is based on evaluation factors and significant subfactors that are tailored to the acquisition.

(b) Evaluation factors and significant subfactors must—

(1) Represent the key areas of importance and emphasis to be considered in the source selection decision; and

(2) Support meaningful comparison and discrimination between and among competing proposals.

(c) The evaluation factors and significant subfactors that apply to an acquisition and their relative importance are within the broad discretion of agency acquisition officials, subject to the following requirements:

(1) Price or cost to the Government shall be evaluated in every source selection (10 U.S.C. 2305(a)(3)(A) (ii) and 41 U.S.C. 253a(c)(1)(B)) (also see part 36 for architect-engineer contracts);

(2) The quality of the product or service shall be addressed in every source selection through consideration of one or more non-cost evaluation factors such as past performance, compliance with solicitation requirements, technical excellence, management capability, personnel qualifications, and prior experience (10 U.S.C. 2305(a)(3) (A)(i) and 41 U.S.C. 253a(c)(1)(A)); and (3)(i) Except as set forth in paragraph (c)(3)(iii) of this section, past performance shall be

evaluated in all source selections for negotiated competitive acquisitions expected to exceed $1,000,000.

(ii) Except as set forth in paragraph (c)(3)(iii) of this section, past performance shall be evaluated in all source selections for negotiated competitive acquisitions issued on or after January 1, 1999, for acquisitions expected to exceed $100,000. Agencies should develop phase-in schedules that meet or exceed this schedule.

(iii) Past performance need not be evaluated if the contracting officer documents the reason past performance is not an appropriate evaluation factor for the acquisition (OFPP Policy Letter 92–5).

(d) All factors and significant subfactors that will affect contract award and their relative importance shall be stated clearly in the solicitation (10 U.S.C. 2305(a)(2)(A)(i) and 41 U.S.C. 253a(b)(1)(A)) (see 15.204-5(c)). The rating method need not be disclosed in the solicitation. The general approach for evaluating past performance information shall be described.

(e) The solicitation shall also state, at a minimum, whether all evaluation factors other than cost or price, when combined, are—

(1) Significantly more important than cost or price;

(2) Approximately equal to cost or price; or

(3) Significantly less important than cost or price (10 U.S.C. 2305(a)(3)(A)(iii) and 41 U.S.C. 253a(c)(1)(C)).

**15.305 Proposal evaluation.**

(a) Proposal evaluation is an assessment of the proposal and the offeror's ability to perform the prospective contract successfully. An agency shall evaluate competitive proposals and then assess their relative qualities solely on the factors and subfactors specified in the solicitation. Evaluations may be conducted using any rating method or combination of methods, including color or adjectival ratings, numerical weights, and ordinal rankings. The relative strengths, deficiencies, significant weaknesses, and risks supporting proposal evaluation shall be documented in the contract file.

(1) *Cost or price evaluation.* Normally, competition establishes price reasonableness. Therefore, when contracting on a firm-fixed-price or fixed-price with economic price adjustment basis, comparison of the proposed prices will usually satisfy the requirement to perform a price analysis, and a cost analysis need not be performed. In limited situations, a cost analysis (see 15.403–1(c)(1)(i)(B)) may be appropriate to establish reasonableness of the otherwise successful offeror's price. When contracting on a cost-reimbursement basis, evaluations shall include a cost realism analysis to determine what the Government should realistically expect to pay for the proposed effort, the offeror's understanding of the work, and the offeror's ability to perform the contract. Cost realism analyses may also be used on fixed-price incentive contracts or, in exceptional cases, on other competitive fixed-price-type contracts (see 15.404-1(d)(3)). The contracting officer shall document the cost or price evaluation.

(2) *Past performance evaluation.* (i) Past performance information is one indicator of an offeror's ability to perform the contract successfully. The currency and relevance of the information, source of the information, context of the data, and general trends in contractor's performance shall be considered (41 U.S.C. 401). This comparative assessment of past performance information is separate from the responsibility determination required under subpart 9.1.

(ii) The solicitation shall describe the approach for evaluating past performance, including evaluating offerors with no relevant performance history, and shall provide offerors an opportunity to identify past or current contracts (including Federal, State, and local government and private) for efforts similar to the Government requirement. The solicitation shall also authorize offerors to provide information on problems encountered on the identified contracts and the offeror corrective actions. The Government shall consider this information, as well as information obtained from any other sources, when evaluating the offeror past performance. The source selection authority shall determine the relevance of similar past performance information.

(iii) The evaluation should take into account past performance information regarding predecessor companies, key personnel who have relevant experience, or subcontractors that will perform major or critical aspects of the requirement when such information is relevant to the instant acquisition.

(iv) In the case of an offeror without a record of relevant past performance or for whom information on past performance is not available, the offeror may not be evaluated favorably or unfavorably on past performance.

(3) *Technical evaluation.* When tradeoffs are performed (see 15.101–1), the source selection records shall include—

(i) An assessment of each offeror's ability to accomplish the technical requirements; and

(ii) A summary, matrix, or quantitative ranking, along with appropriate supporting narrative, of each technical proposal using the evaluation factors.

(4) *Cost information.* Cost information may be provided to members of the technical evaluation team in accordance with agency procedures.

(b) The source selection authority may reject all proposals received in response to a solicitation, if doing so is in the best interest of the Government.

(c) For restrictions on the use of support contractor personnel in proposal evaluation, see 37.203(d).

**15.306 Exchanges with offerors after receipt of proposals.**

(a) *Clarifications and award without discussions.* (1) Clarifications are limited exchanges, between the Government and offerors, that may occur when award without discussions is contemplated.

(2) If award will be made without conducting discussions, offerors may be given the opportunity to clarify certain aspects of proposals (*e.g.*, the relevance of an offeror's past performance information and adverse past performance information to which the offeror has not previously had an opportunity to respond) or to resolve minor or clerical errors.

(3) Award may be made without discussions if the solicitation states that the Government intends to evaluate proposals and make award without discussions. If the solicitation contains such a notice and the Government determines it is necessary to conduct discussions, the rationale for doing so shall be documented in the contract file (see the provision at 52.215–1) (10 U.S.C. 2305(b)(4)(A)(ii) and 41 U.S.C. 253b(d)(1)(B)).

(b) *Communications with offerors before establishment of the competitive range.* Communications are exchanges, between the Government and offerors, after receipt of proposals, leading to establishment of the competitive range. If a competitive range is to be established, these communications—

(1) Shall be limited to the offerors described in paragraphs (b)(1)(i) and (b)(1)(ii) of this section and—

(i) Shall be held with offerors whose past performance information is the determining factor preventing them from being placed within the competitive range. Such communications shall address adverse past performance information to which

an offeror has not had a prior opportunity to respond; and

(ii) May only be held with those offerors (other than offerors under paragraph (b)(1)(i) of this section) whose exclusion from, or inclusion in, the competitive range is uncertain;

(2) May be conducted to enhance Government understanding of proposals; allow reasonable interpretation of the proposal; or facilitate the Government's evaluation process. Such communications shall not be used to cure proposal deficiencies or material omissions, materially alter the technical or cost elements of the proposal, and/or otherwise revise the proposal. Such communications may be considered in rating proposals for the purpose of establishing the competitive range;

(3) Are for the purpose of addressing issues that must be explored to determine whether a proposal should be placed in the competitive range. Such communications shall not provide an opportunity for the offeror to revise its proposal, but may address—

(i) Ambiguities in the proposal or other concerns (*e.g.*, perceived deficiencies, weaknesses, errors, omissions, or mistakes (see 14.407)); and

(ii) Information relating to relevant past performance; and

(4) Shall address adverse past performance information to which the offeror has not previously had an opportunity to comment.

(c) *Competitive range*. (1) Agencies shall evaluate all proposals in accordance with 15.305(a), and, if discussions are to be conducted, establish the competitive range. Based on the ratings of each proposal against all evaluation criteria, the contracting officer shall establish a competitive range comprised of all of the most highly rated proposals, unless the range is further reduced for purposes of efficiency pursuant to paragraph (c)(2) of this section.

(2) After evaluating all proposals in accordance with 15.305(a) and paragraph (c)(1) of this section, the contracting officer may determine that the number of most highly rated proposals that might otherwise be included in the competitive range exceeds the number at which an efficient competition can be conducted. Provided the solicitation notifies offerors that the competitive range can be limited for purposes of efficiency (see 52.215–1(f)(4)), the contracting officer may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals (10 U.S.C. 2305(b)(4) and 41 U.S.C. 253b(d)).

(3) If the contracting officer, after complying with paragraph (d)(3) of this section, decides that an offeror's proposal should no longer be included in the competitive range, the proposal shall be eliminated from consideration for award. Written notice of this decision shall be provided to unsuccessful offerors in accordance with 15.503.

(4) Offerors excluded or otherwise eliminated from the competitive range may request a debriefing (see 15.505 and 15.506).

(d) *Exchanges with offerors after establishment of the competitive range.* Negotiations are exchanges, in either a competitive or sole source environment, between the Government and offerors, that are undertaken with the intent of allowing the offeror to revise its proposal. These negotiations may include bargaining. Bargaining includes persuasion, alteration of assumptions and positions, give-and-take, and may apply to price, schedule, technical requirements, type of contract, or other terms of a proposed contract. When negotiations are conducted in a competitive acquisition, they take place after establishment of the competitive range and are called discussions.

(1) Discussions are tailored to each offeror's proposal, and shall be conducted by the contracting officer with each offeror within the competitive range.

(2) The primary objective of discussions is to maximize the Government's ability to obtain best value, based on the requirement and the evaluation factors set forth in the solicitation.

(3) The contracting officer shall, subject to paragraphs (d)(4) and (e) of this section and 15.307(a), indicate to, or discuss with, each offeror still being considered for award, significant weaknesses, deficiencies, and other aspects of its proposal (such as cost, price, technical approach, past performance, and terms and conditions) that could, in the opinion of the contracting officer, be altered or explained to enhance materially the proposal's potential for award. The scope and extent of discussions are a matter of contracting officer judgment. In discussing other aspects of the proposal, the Government may, in situations where the solicitation stated that evaluation credit would be given for technical solutions exceeding any mandatory minimums, negotiate with offerors for increased performance beyond any mandatory minimums, and the Government may suggest to offerors that have exceeded any mandatory minimums (in ways that are not integral to the design), that their proposals would be more competitive if the excesses were removed and the offered price decreased.

(4) If, after discussions have begun, an offeror originally in the competitive range is no longer considered to be among the most highly rated offerors being considered for award, that offeror may be eliminated from the competitive range whether or not all material aspects of the proposal have been discussed, or whether or not the offeror has been afforded an opportunity to submit a proposal revision (see 15.307(a) and 15.503(a)(1)).

(e) *Limits on exchanges*. Government personnel involved in the acquisition shall not engage in conduct that—

(1) Favors one offeror over another;

(2) Reveals an offeror's technical solution, including unique technology, innovative and unique uses of commercial items, or any information that would compromise an offeror's intellectual property to another offeror;

(3) Reveals an offerors price without that offeror's permission. However, the contracting officer may inform an offeror that its price is considered by the Government to be too high, or too low, and reveal the results of the analysis supporting that conclusion. It is also permissible, at the Government's discretion, to indicate to all offerors the cost or price that the Government's price analysis, market research, and other reviews have identified as reasonable (41 U.S.C. 423(h)(1)(2));

(4) Reveals the names of individuals providing reference information about an offeror's past performance; or

(5) Knowingly furnishes source selection information in violation of 3.104 and 41 U.S.C. 423(h)(1)(2).

**15.307 Proposal revisions.**

(a) If an offerors proposal is eliminated or otherwise removed from the competitive range, no further revisions to that offeror's proposal shall be accepted or considered.

(b) The contracting officer may request or allow proposal revisions to clarify and document understandings reached during negotiations. At the conclusion of discussions, each offeror still in the competitive range shall be given an opportunity to submit a final proposal revision. The contracting officer is required to establish a common cut-off date only for receipt of final proposal revisions. Requests for final proposal revisions shall advise offerors that the final proposal revisions shall be in writing and that the

Government intends to make award without obtaining further revisions.

**15.308 Source selection decision.**

The source selection authority's (SSA) decision shall be based on a comparative assessment of proposals against all source selection criteria in the solicitation. While the SSA may use reports and analyses prepared by others, the source selection decision shall represent the SSA's independent judgment. The source selection decision shall be documented, and the documentation shall include the rationale for any business judgments and tradeoffs made or relied on by the SSA, including benefits associated with additional costs. Although the rationale for the selection decision must be documented, that documentation need not quantify the tradeoffs that led to the decision.

## Subpart 15.4—Contract Pricing

**15.400 Scope of subpart.**

This subpart prescribes the cost and price negotiation policies and procedures for pricing negotiated prime contracts (including subcontracts) and contract modifications, including modifications to contracts awarded by sealed bidding.

**15.401 Definitions.**

*Cost or pricing data* (10 U.S.C. 2306a(h)(1) and 41 U.S.C. 254b) means all facts that, as of the date of price agreement or, if applicable, an earlier date agreed upon between the parties that is as close as practicable to the date of agreement on price, prudent buyers and sellers would reasonably expect to affect price negotiations significantly. Cost or pricing data are data requiring certification in accordance with 15.406–2. Cost or pricing data are factual, not judgmental; and are verifiable. While they do not indicate the accuracy of the prospective contractor's judgment about estimated future costs or projections, they do include the data forming the basis for that judgment. Cost or pricing data are more than historical accounting data; they are all the facts that can be reasonably expected to contribute to the soundness of estimates of future costs and to the validity of determinations of costs already incurred. They also include such factors as: vendor quotations; nonrecurring costs; information on changes in production methods and in production or purchasing volume; data supporting projections of business prospects and objectives and related operations costs; unit-cost trends such as those associated with labor efficiency; make-or-buy decisions; estimated resources to attain business goals; and information on management decisions that could have a significant bearing on costs.

*Cost realism* means that the costs in an offeror's proposal are realistic for the work to be performed; reflect a clear understanding of the requirements; and are consistent with the various elements of the offeror's technical proposal.

*Forward pricing rate agreement* means a written agreement negotiated between a contractor and the Government to make certain rates available during a specified period for use in pricing contracts or modifications. Such rates represent reasonable projections of specific costs that are not easily estimated for, identified with, or generated by a specific contract, contract end item, or task. These projections may include rates for such things as labor, indirect costs, material obsolescence and usage, spare parts provisioning, and material handling.

*Forward pricing rate recommendation* means a rate set unilaterally by the administrative contracting officer for use by the Government in negotiations or other contract actions when forward pricing rate agreement negotiations have not been completed or when the contractor will not agree to a forward pricing rate agreement.

*Information other than cost or pricing data* means any type of information that is not required to be certified in accordance with 15.406–2 and is necessary to determine price reasonableness or cost realism. For example, such information may include pricing, sales, or cost information, and includes cost or pricing data for which certification is determined inapplicable after submission.

*Price*, as used in this subpart, means cost plus any fee or profit applicable to the contract type.

*Subcontract*, as used in this subpart, also includes a transfer of commercial items between divisions, subsidiaries, or affiliates of a contractor or a subcontractor (10 U.S.C. 2306a(h)(2) and 41 U.S.C. 254b(h)(2)).

**15.402 Pricing policy.**

Contracting officers shall—

(a) Purchase supplies and services from responsible sources at fair and reasonable prices. In establishing the reasonableness of the offered prices, the contracting officer shall not obtain more information than is necessary. To the extent that cost or pricing data are not required by 15.403–4, the contracting officer shall generally use the following order of preference in determining the type of information required:

(1) No additional information from the offeror, if the price is based on adequate price competition, except as provided by 15.403–3(b).

(2) Information other than cost or pricing data:

(i) Information related to prices (*e.g.*, established catalog or market prices or previous contract prices), relying first on information available within the Government; second, on information obtained from sources other than the offeror; and, if necessary, on information obtained from the offeror. When obtaining information from the offeror is necessary, unless an exception under 15.403–1(b) (1) or (2) applies, such information submitted by the offeror shall include, at a minimum, appropriate information on the prices at which the same or similar items have been sold previously, adequate for evaluating the reasonableness of the price.

(ii) Cost information, that does not meet the definition of cost or pricing data at 15.401.

(3) *Cost or pricing data*. The contracting officer should use every means available to ascertain whether a fair and reasonable price can be determined before requesting cost or pricing data. Contracting officers shall not require unnecessarily the submission of cost or pricing data, because it leads to increased proposal preparation costs, generally extends acquisition lead time, and consumes additional contractor and Government resources.

(b) Price each contract separately and independently and not—

(1) Use proposed price reductions under other contracts as an evaluation factor; or

(2) Consider losses or profits realized or anticipated under other contracts.

(c) Not include in a contract price any amount for a specified contingency to the extent that the contract provides for a price adjustment based upon the occurrence of that contingency.

**15.403 Obtaining cost or pricing data.**

**15.403–1 Prohibition on obtaining cost or pricing data (10 U.S.C. 2306a and 41 U.S.C. 254b).**

(a) Cost or pricing data shall not be obtained for acquisitions at or below the simplified acquisition threshold.

(b) *Exceptions to cost or pricing data requirements*. The contracting officer shall not require submission of cost or pricing data to support any action (contracts, subcontracts, or modifications) (but may require information other than cost or pricing data to support a determination of price reasonableness or cost realism)—

(1) When the contracting officer determines that prices agreed upon are based on adequate price competition (see standards in paragraph (c)(1) of this subsection);

(2) When the contracting officer determines that prices agreed upon are based on prices set by law or regulation (see standards in paragraph (c)(2) of this subsection);

(3) When a commercial item is being acquired (see standards in paragraph (c)(3) of this subsection);

(4) When a waiver has been granted (see standards in paragraph (c)(4) of this subsection); or

(5) When modifying a contract or subcontract for commercial items (see standards in paragraph (c)(3) of this subsection).

(c) *Standards for exceptions from cost or pricing data requirements*—(1) *Adequate price competition.* A price is based on adequate price competition if—

(i) Two or more responsible offerors, competing independently, submit priced offers that satisfy the Government's expressed requirement and if—

(A) Award will be made to the offeror whose proposal represents the best value (see 2.101) where price is a substantial factor in source selection; and

(B) There is no finding that the price of the otherwise successful offeror is unreasonable. Any finding that the price is unreasonable must be supported by a statement of the facts and approved at a level above the contracting officer;

(ii) There was a reasonable expectation, based on market research or other assessment, that two or more responsible offerors, competing independently, would submit priced offers in response to the solicitation's expressed requirement, even though only one offer is received from a responsible offeror and if—

(A) Based on the offer received, the contracting officer can reasonably conclude that the offer was submitted with the expectation of competition, e.g., circumstances indicate that—

(*1*) The offeror believed that at least one other offeror was capable of submitting a meaningful offer; and

(*2*) The offeror had no reason to believe that other potential offerors did not intend to submit an offer; and

(B) The determination that the proposed price is based on adequate price competition, is reasonable, and is approved at a level above the contracting officer; or

(iii) Price analysis clearly demonstrates that the proposed price is reasonable in comparison with current or recent prices for the same or similar items, adjusted to reflect changes in market conditions, economic conditions, quantities, or terms and conditions under contracts that resulted from adequate price competition.

(2) *Prices set by law or regulation.* Pronouncements in the form of periodic rulings, reviews, or similar actions of a governmental body, or embodied in the laws, are sufficient to set a price.

(3) *Commercial items.* Any acquisition for an item that meets the commercial item definition in 2.101, or any modification, as defined in paragraph (c)(1) or (2) of that definition, that does not change the item from a commercial item to a noncommercial item, is exempt from the requirement for cost or pricing data.

(4) *Waivers.* The head of the contracting activity (HCA) may, without power of delegation, waive the requirement for submission of cost or pricing data in exceptional cases. The authorization for the waiver and the supporting rationale shall be in writing. The HCA may consider waiving the requirement if the price can be determined to be fair and reasonable without submission of cost or pricing data. For example, if cost or pricing data were furnished on previous production buys and the contracting officer determines such data are sufficient, when combined with updated information, a waiver may be granted. If the HCA has waived the requirement for submission of cost or pricing data, the contractor or higher-tier subcontractor to whom the waiver relates shall be considered as having been required to provide cost or pricing data. Consequently, award of any lower-tier subcontract expected to exceed the cost or pricing data threshold requires the submission of cost or pricing data unless an exception otherwise applies to the subcontract or the waiver specifically includes that subcontract.

**15.403–2 Other circumstances where cost or pricing data are not required.**

(a) The exercise of an option at the price established at contract award or initial negotiation does not require submission of cost or pricing data.

(b) Cost or pricing data are not required for proposals used solely for overrun funding or interim billing price adjustments.

**15.403–3 Requiring information other than cost or pricing data.**

(a) *General.* (1) The contracting officer is responsible for obtaining information that is adequate for evaluating the reasonableness of the price or determining cost realism. However, the contracting officer should not obtain more information than is necessary for determining the reasonableness of the price or evaluating cost realism. To the extent necessary to determine the reasonableness of the price, the contracting officer shall require submission of information from the offeror. Unless an exception under 15.403–1(b)(1) or (2) applies, such information submitted by the offeror shall include, at a minimum, appropriate information on the prices at which the same item or similar items have previously been sold, adequate for determining the reasonableness of the price (10 U.S.C. 2306a(d)(1) and 41 U.S.C. 254b(d)(1)).

(2) The contractor's format for submitting such information should be used (see 15.403–5(b)(2)).

(3) The contracting officer shall ensure that information used to support price negotiations is sufficiently current to permit negotiation of a fair and reasonable price. Requests for updated offeror information should be limited to information that affects the adequacy of the proposal for negotiations, such as changes in price lists. Such data shall not be certified in accordance with 15.406–2.

(b) *Adequate price competition.* When adequate price competition exists (see 15.403–1(c)(1)), generally no additional information is necessary to determine the reasonableness of price. However, if there are unusual circumstances where it is concluded that additional information is necessary to determine the reasonableness of price, the contracting officer shall, to the maximum extent practicable, obtain the additional information from sources other than the offeror. In addition, the contracting officer may request information to determine the cost realism of competing offers or to evaluate competing approaches.

(c) *Limitations relating to commercial items (10 U.S.C. 2306a(d)(2) and 41 U.S.C. 254b(d)).* (1) Requests for sales data relating to commercial items shall be limited to data for the same or similar items during a relevant time period.

(2) The contracting officer shall, to the maximum extent practicable, limit the scope of the request for information relating to commercial items to include only information that is in the form regularly maintained by the offeror as part of its commercial operations.

(3) Information obtained relating to commercial items that is exempt from disclosure under 24.202(a) or the Freedom of Information Act (5 U.S.C. 552(b)) shall not be disclosed outside the Government.

**15.403–4 Requiring cost or pricing data (10 U.S.C. 2306a and 41 U.S.C. 254b).**

(a)(1) Cost or pricing data shall be obtained only if the contracting officer concludes that none of the exceptions in 15.403–1(b) applies. However, if the contracting officer has sufficient information available to determine price reasonableness, then a waiver under the exception at 15.403–1(b)(4) should be considered. The threshold for obtaining cost or pricing data is $500,000. Unless an exception applies, cost or pricing data are required before accomplishing any of the following actions expected to exceed the current threshold or, in the case of existing contracts, the threshold specified in the contract:

(i) The award of any negotiated contract (except for undefinitized actions such as letter contracts).

(ii) The award of a subcontract at any tier, if the contractor and each higher-tier subcontractor have been required to furnish cost or pricing data (but see waivers at 15.403–1(c)(4)).

(iii) The modification of any sealed bid or negotiated contract (whether or not cost or pricing data were initially required) or any subcontract covered by paragraph (a)(1)(ii) of this subsection. Price adjustment amounts shall consider both increases and decreases (*e.g.*, a $150,000 modification resulting from a reduction of $350,000 and an increase of $200,000 is a pricing adjustment exceeding $500,000). This requirement does not apply when unrelated and separately priced changes for which cost or pricing data would not otherwise be required are included for administrative convenience in the same modification. Negotiated final pricing actions (such as termination settlements and total final price agreements for fixed-price incentive and redeterminable contracts) are contract modifications requiring cost or pricing data if the total final price agreement for such settlements or agreements exceeds the pertinent threshold set forth at paragraph (a)(1) of this subsection, or the partial termination settlement plus the estimate to complete the continued portion of the contract exceeds the pertinent threshold set forth at paragraph (a)(1) of this subsection (see 49.105(c)(15)).

(2) Unless prohibited because an exception at 15.403–1(b) applies, the head of the contracting activity, without power of delegation, may authorize the contracting officer to obtain cost or pricing data for pricing actions below the pertinent threshold in paragraph (a)(1) of this subsection, provided the action exceeds the simplified acquisition threshold. The head of the contracting activity shall justify the requirement for cost or pricing data. The documentation shall include a written finding that cost or pricing data are necessary to determine whether the price is fair and reasonable and the facts supporting that finding.

(b) When cost or pricing data are required, the contracting officer shall require the contractor or prospective contractor to submit to the contracting officer (and to have any subcontractor or prospective subcontractor submit to the prime contractor or appropriate subcontractor tier) the following in support of any proposal:

(1) The cost or pricing data.

(2) A certificate of current cost or pricing data, in the format specified in 15.406–2, certifying that to the best of its knowledge and belief, the cost or pricing data were accurate, complete, and current as of the date of agreement on price or, if applicable, an earlier date agreed upon between the parties that is as close as practicable to the date of agreement on price.

(c) If cost or pricing data are requested and submitted by an offeror, but an exception is later found to apply, the data shall not be considered cost or pricing data as defined in 15.401 and shall not be certified in accordance with 15.406–2.

(d) The requirements of this subsection also apply to contracts entered into by an agency on behalf of a foreign government.

**15.403–5 Instructions for submission of cost or pricing data or information other than cost or pricing data.**

(a) Taking into consideration the policy at 15.402, the contracting officer shall specify in the solicitation (see 15.408 (l) and (m))—

(1) Whether cost or pricing data are required;

(2) That, in lieu of submitting cost or pricing data, the offeror may submit a request for exception from the requirement to submit cost or pricing data;

(3) Any information other than cost or pricing data that is required; and

(4) Necessary preaward or postaward access to offeror's records.

(b)(1) Unless required to be submitted on one of the termination forms specified in Subpart 49.6, the contracting officer may require submission of cost or pricing data in the format indicated in Table 15–2 of 15.408, specify an alternative format, or permit submission in the contractor's format.

(2) Information other than cost or pricing data may be submitted in the offeror's own format unless the contracting officer decides that use of a specific format is essential and the format has been described in the solicitation.

(3) Data supporting forward pricing rate agreements or final indirect cost proposals shall be submitted in a form acceptable to the contracting officer.

**15.404 Proposal analysis.**

**15.404–1 Proposal analysis techniques.**

(a) *General.* The objective of proposal analysis is to ensure that the final agreed-to price is fair and reasonable.

(1) The contracting officer is responsible for evaluating the reasonableness of the offered prices. The analytical techniques and procedures described in this section may be used, singly or in combination with others, to ensure that the final price is fair and reasonable. The complexity and circumstances of each acquisition should determine the level of detail of the analysis required.

(2) Price analysis shall be used when cost or pricing data are not required (see paragraph (b) of this subsection and 15.404–3).

(3) Cost analysis shall be used to evaluate the reasonableness of individual cost elements when cost or pricing data are required. Price analysis should be used to verify that the overall price offered is fair and reasonable.

(4) Cost analysis may also be used to evaluate information other than cost or pricing data to determine cost reasonableness or cost realism.

(5) The contracting officer may request the advice and assistance of other experts to ensure that an appropriate analysis is performed.

(6) Recommendations or conclusions regarding the Government's review or analysis of an offeror's or contractor's proposal shall not be disclosed to the offeror or contractor without the concurrence of the contracting officer. Any discrepancy or mistake of fact (such as duplications, omissions, and errors in computation) contained in the cost or pricing data or information other than cost or pricing data submitted in support of a proposal shall be brought to the contracting officer's attention for appropriate action.

(7) The Air Force Institute of Technology (AFIT) and the Federal Acquisition Institute (FAI) jointly prepared a five-volume set of Contract Pricing Resource Guides to guide pricing and negotiation personnel. The five guides are: I Price Analysis, II Quantitative Techniques for Contract Pricing, III Cost Analysis, IV Advanced Issues in Contract Pricing, and V Federal Contract Negotiation Techniques. These references provide detailed discussion and examples

applying pricing policies to pricing problems. They are to be used for instruction and professional guidance. However, they are not directive and should be considered informational only. Free copies of the references are available on the World Wide Web, Internet address http://www.gsa.gov/fai.

(b) *Price analysis.* (1) Price analysis is the process of examining and evaluating a proposed price without evaluating its separate cost elements and proposed profit.

(2) The Government may use various price analysis techniques and procedures to ensure a fair and reasonable price, given the circumstances surrounding the acquisition. Examples of such techniques include, but are not limited to the following:

(i) Comparison of proposed prices received in response to the solicitation.

(ii) Comparison of previously proposed prices and contract prices with current proposed prices for the same or similar end items, if both the validity of the comparison and the reasonableness of the previous price(s) can be established.

(iii) Use of parametric estimating methods/application of rough yardsticks (such as dollars per pound or per horsepower, or other units) to highlight significant inconsistencies that warrant additional pricing inquiry.

(iv) Comparison with competitive published price lists, published market prices of commodities, similar indexes, and discount or rebate arrangements.

(v) Comparison of proposed prices with independent Government cost estimates.

(vi) Comparison of proposed prices with prices obtained through market research for the same or similar items.

(c) *Cost analysis.* (1) Cost analysis is the review and evaluation of the separate cost elements and profit in an offeror's or contractor's proposal (including cost or pricing data or information other than cost or pricing data), and the application of judgment to determine how well the proposed costs represent what the cost of the contract should be, assuming reasonable economy and efficiency.

(2) The Government may use various cost analysis techniques and procedures to ensure a fair and reasonable price, given the circumstances of the acquisition. Such techniques and procedures include the following:

(i) Verification of cost or pricing data and evaluation of cost elements, including—

(A) The necessity for, and reasonableness of, proposed costs, including allowances for contingencies;

(B) Projection of the offeror's cost trends, on the basis of current and historical cost or pricing data;

(C) Reasonableness of estimates generated by appropriately calibrated and validated parametric models or cost-estimating relationships; and

(D) The application of audited or negotiated indirect cost rates, labor rates, and cost of money or other factors.

(ii) Evaluating the effect of the offeror's current practices on future costs. In conducting this evaluation, the contracting officer shall ensure that the effects of inefficient or uneconomical past practices are not projected into the future. In pricing production of recently developed complex equipment, the contracting officer should perform a trend analysis of basic labor and materials, even in periods of relative price stability.

(iii) Comparison of costs proposed by the offeror for individual cost elements with—

(A) Actual costs previously incurred by the same offeror;

(B) Previous cost estimates from the offeror or from other offerors for the same or similar items;

(C) Other cost estimates received in response to the Government's request;

(D) Independent Government cost estimates by technical personnel; and

(E) Forecasts of planned expenditures.

(iv) Verification that the offeror's cost submissions are in accordance with the contract cost principles and procedures in part 31 and, when applicable, the requirements and procedures in 48 CFR Chapter 99 (Appendix to the FAR looseleaf edition), Cost Accounting Standards.

(v) Review to determine whether any cost or pricing data necessary to make the contractor's proposal accurate, complete, and current have not been either submitted or identified in writing by the contractor. If there are such data, the contracting officer shall attempt to obtain them and negotiate, using them or making satisfactory allowance for the incomplete data.

(vi) Analysis of the results of any make-or-buy program reviews, in evaluating subcontract costs (see 15.407–2).

(d) *Cost realism analysis.* (1) Cost realism analysis is the process of independently reviewing and evaluating specific elements of each offeror's proposed cost estimate to determine whether the estimated proposed cost elements are realistic for the work to be performed; reflect a clear understanding of the requirements; and are consistent with the unique methods of performance and materials described in the offeror's technical proposal.

(2) Cost realism analyses shall be performed on cost-reimbursement contracts to determine the probable cost of performance for each offeror.

(i) The probable cost may differ from the proposed cost and should reflect the Government's best estimate of the cost of any contract that is most likely to result from the offeror's proposal. The probable cost shall be used for purposes of evaluation to determine the best value.

(ii) The probable cost is determined by adjusting each offeror's proposed cost, and fee when appropriate, to reflect any additions or reductions in cost elements to realistic levels based on the results of the cost realism analysis.

(3) Cost realism analyses may also be used on competitive fixed-price incentive contracts or, in exceptional cases, on other competitive fixed-price-type contracts when new requirements may not be fully understood by competing offerors, there are quality concerns, or past experience indicates that contractors proposed costs have resulted in quality or service shortfalls. Results of the analysis may be used in performance risk assessments and responsibility determinations. However, proposals shall be evaluated using the criteria in the solicitation, and the offered prices shall not be adjusted as a result of the analysis.

(e) *Technical analysis.* (1) The contracting officer may request that personnel having specialized knowledge, skills, experience, or capability in engineering, science, or management perform a technical analysis of the proposed types and quantities of materials, labor, processes, special tooling, facilities, the reasonableness of scrap and spoilage, and other associated factors set forth in the proposal(s) in order to determine the need for and reasonableness of the proposed resources, assuming reasonable economy and efficiency.

(2) At a minimum, the technical analysis should examine the types and quantities of material proposed and the need for the types and quantities of labor hours and the labor mix. Any other data that may be pertinent to an assessment of the offeror's ability to accomplish the technical requirements or to the cost or price analysis of the service or product being proposed should also be included in the analysis.

(f) *Unit prices.* (1) Except when pricing an item on the basis of adequate price competition or catalog or market price, unit prices shall reflect the intrinsic value of an item or service and shall be in proportion to an item's base cost (*e.g.*, manufacturing or acquisition costs). Any method of distributing costs

to line items that distorts the unit prices shall not be used. For example, distributing costs equally among line items is not acceptable except when there is little or no variation in base cost.

(2) Except for the acquisition of commercial items, contracting officers shall require that offerors identify in their proposals those items of supply that they will not manufacture or to which they will not contribute significant value, unless adequate price competition is expected (10 U.S.C. 2304 and 41 U.S.C. 254(d)(5)(A)(i)). Such information shall be used to determine whether the intrinsic value of an item has been distorted through application of overhead and whether such items should be considered for breakout. The contracting officer may require such information in all other negotiated contracts when appropriate.

(g) *Unbalanced pricing.* (1) Unbalanced pricing may increase performance risk and could result in payment of unreasonably high prices. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more contract line items is significantly over or understated as indicated by the application of cost or price analysis techniques. The greatest risks associated with unbalanced pricing occur when—

(i) Startup work, mobilization, first articles, or first article testing are separate line items;

(ii) Base quantities and option quantities are separate line items; or

(iii) The evaluated price is the aggregate of estimated quantities to be ordered under separate line items of an indefinite-delivery contract.

(2) All offers with separately priced line items or subline items shall be analyzed to determine if the prices are unbalanced. If cost or price analysis techniques indicate that an offer is unbalanced, the contracting officer shall—

(i) Consider the risks to the Government associated with the unbalanced pricing in determining the competitive range and in making the source selection decision; and

(ii) Consider whether award of the contract will result in paying unreasonably high prices for contract performance.

(3) An offer may be rejected if the contracting officer determines that the lack of balance poses an unacceptable risk to the Government.

**15.404–2 Information to support proposal analysis.**

(a) *Field pricing assistance.* (1) The contracting officer should request field pricing assistance when the information available at the buying activity is inadequate to determine a fair and reasonable price. Such requests shall be tailored to reflect the minimum essential supplementary information needed to conduct a technical or cost or pricing analysis.

(2) Field pricing assistance generally is directed at obtaining technical, audit, and special reports associated with the cost elements of a proposal, including subcontracts. Information on related pricing practices and history may also be obtained. Field pricing assistance may also include information relative to the business, technical, production, or other capabilities and practices of an offeror. The type of information and level of detail requested will vary in accordance with the specialized resources available at the buying activity and the magnitude and complexity of the required analysis.

(3) When field pricing assistance is requested, contracting officers are encouraged to team with appropriate field experts throughout the acquisition process, including negotiations. Early communication with these experts will assist in determining the extent of assistance required, the specific areas for which assistance is needed, a realistic review schedule, and the information necessary to perform the review.

(4) When requesting field pricing assistance on a contractor's request for equitable adjustment, the contracting officer shall provide the information listed in 43.204(b)(5).

(5) Field pricing information and other reports may include proprietary or source selection information (see 3.104–4 (j) and (k)). Such information shall be appropriately identified and protected accordingly.

(b) *Reporting field pricing information.* (1) Depending upon the extent and complexity of the field pricing review, results, including supporting rationale, may be reported directly to the contracting officer orally, in writing, or by any other method acceptable to the contracting officer.

(i) Whenever circumstances permit, the contracting officer and field pricing experts are encouraged to use telephonic and/or electronic means to request and transmit pricing information.

(ii) When it is necessary to have written technical and audit reports, the contracting officer shall request that the audit agency concurrently forward the audit report to the requesting contracting officer and the administrative contracting officer (ACO). The completed field pricing assistance results may reference audit information, but need not reconcile the audit recommendations and technical recommendations. A copy of the information submitted to the contracting officer by field pricing personnel shall be provided to the audit agency.

(2) Audit and field pricing information, whether written or reported telephonically or electronically, shall be made a part of the official contract file (see 4.807(f)).

(c) *Audit assistance for prime contracts or subcontracts.* (1) The contracting officer may contact the cognizant audit office directly, particularly when an audit is the only field pricing support required. The audit office shall send the audit report, or otherwise transmit the audit recommendations, directly to the contracting officer.

(i) The auditor shall not reveal the audit conclusions or recommendations to the offeror/contractor without obtaining the concurrence of the contracting officer. However, the auditor may discuss statements of facts with the contractor.

(ii) The contracting officer should be notified immediately of any information disclosed to the auditor after submission of a report that may significantly affect the audit findings and, if necessary, a supplemental audit report shall be issued.

(2) The contracting officer shall not request a separate preaward audit of indirect costs unless the information already available from an existing audit, completed within the preceding 12 months, is considered inadequate for determining the reasonableness of the proposed indirect costs (41 U.S.C. 254d and 10 U.S.C. 2313).

(3) The auditor is responsible for the scope and depth of the audit. Copies of updated information that will significantly affect the audit should be provided to the auditor by the contracting officer.

(4) General access to the offeror's books and financial records is limited to the auditor. This limitation does not preclude the contracting officer or the ACO, or their representatives, from requesting that the offeror provide or make available any data or records necessary to analyze the offeror's proposal.

(d) *Deficient proposals.* The ACO or the auditor, as appropriate, shall notify the contracting officer immediately if the data provided for review is so deficient as to preclude review or audit, or if the contractor or offeror has denied access to any records considered essential to conduct a satisfactory review or audit. Oral notifications shall

be confirmed promptly in writing, including a description of deficient or denied data or records. The contracting officer immediately shall take appropriate action to obtain the required data. Should the offeror/contractor again refuse to provide adequate data, or provide access to necessary data, the contracting officer shall withhold the award or price adjustment and refer the contract action to a higher authority, providing details of the attempts made to resolve the matter and a statement of the practicability of obtaining the supplies or services from another source.

**15.404–3 Subcontract pricing considerations.**

(a) The contracting officer is responsible for the determination of price reasonableness for the prime contract, including subcontracting costs. The contracting officer should consider whether a contractor or subcontractor has an approved purchasing system, has performed cost or price analysis of proposed subcontractor prices, or has negotiated the subcontract prices before negotiation of the prime contract, in determining the reasonableness of the prime contract price. This does not relieve the contracting officer from the responsibility to analyze the contractor's submission, including subcontractor's cost or pricing data.

(b) The prime contractor or subcontractor shall—

(1) Conduct appropriate cost or price analyses to establish the reasonableness of proposed subcontract prices;

(2) Include the results of these analyses in the price proposal; and

(3) When required by paragraph (c) of this subsection, submit subcontractor cost or pricing data to the Government as part of its own cost or pricing data.

(c) Any contractor or subcontractor that is required to submit cost or pricing data also shall obtain and analyze cost or pricing data before awarding any subcontract, purchase order, or modification expected to exceed the cost or pricing data threshold, unless an exception in 15.403–1(b) applies to that action.

(1) The contractor shall submit, or cause to be submitted by the subcontractor(s), cost or pricing data to the Government for subcontracts that are the lower of either—

(i) $10,000,000 or more; or

(ii) Both more than the pertinent cost or pricing data threshold and more than 10 percent of the prime contractor's proposed price, unless the contracting officer believes such submission is unnecessary.

(2) The contracting officer may require the contractor or subcontractor to submit to the Government (or cause submission of) subcontractor cost or pricing data below the thresholds in paragraph (c)(1) of this subsection that the contracting officer considers necessary for adequately pricing the prime contract.

(3) Subcontractor cost or pricing data shall be submitted in the format provided in Table 15–2 of 15.408 or the alternate format specified in the solicitation.

(4) Subcontractor cost or pricing data shall be current, accurate, and complete as of the date of price agreement, or, if applicable, an earlier date agreed upon by the parties and specified on the contractor's Certificate of Current Cost or Pricing Data. The contractor shall update subcontractor's data, as appropriate, during source selection and negotiations.

(5) If there is more than one prospective subcontractor for any given work, the contractor need only submit to the Government cost or pricing data for the prospective subcontractor most likely to receive the award.

**15.404–4 Profit.**

(a) *General.* This subsection prescribes policies for establishing the profit or fee portion of the Government prenegotiation objective in price negotiations based on cost analysis.

(1) Profit or fee prenegotiation objectives do not necessarily represent net income to contractors. Rather, they represent that element of the potential total remuneration that contractors may receive for contract performance over and above allowable costs. This potential remuneration element and the Government's estimate of allowable costs to be incurred in contract performance together equal the Government's total prenegotiation objective. Just as actual costs may vary from estimated costs, the contractor's actual realized profit or fee may vary from negotiated profit or fee, because of such factors as efficiency of performance, incurrence of costs the Government does not recognize as allowable, and the contract type.

(2) It is in the Government's interest to offer contractors opportunities for financial rewards sufficient to stimulate efficient contract performance, attract the best capabilities of qualified large and small business concerns to Government contracts, and maintain a viable industrial base.

(3) Both the Government and contractors should be concerned with profit as a motivator of efficient and effective contract performance. Negotiations aimed merely at reducing prices by reducing profit, without proper recognition of the function of profit, are not in the Government's interest. Negotiation of extremely low profits, use of historical averages, or automatic application of predetermined percentages to total estimated costs do not provide proper motivation for optimum contract performance.

(b) *Policy.* (1) Structured approaches (see paragraph (d) of this subsection) for determining profit or fee prenegotiation objectives provide a discipline for ensuring that all relevant factors are considered. Subject to the authorities in 1.301(c), agencies making noncompetitive contract awards over $100,000 totaling $50 million or more a year—

(i) Shall use a structured approach for determining the profit or fee objective in those acquisitions that require cost analysis; and

(ii) May prescribe specific exemptions for situations in which mandatory use of a structured approach would be clearly inappropriate.

(2) Agencies may use another agency's structured approach.

(c) *Contracting officer responsibilities.* (1) When the price negotiation is not based on cost analysis, contracting officers are not required to analyze profit.

(2) When the price negotiation is based on cost analysis, contracting officers in agencies that have a structured approach shall use it to analyze profit. When not using a structured approach, contracting officers shall comply with paragraph (d)(1) of this subsection in developing profit or fee prenegotiation objectives.

(3) Contracting officers shall use the Government prenegotiation cost objective amounts as the basis for calculating the profit or fee prenegotiation objective. Before applying profit or fee factors, the contracting officer shall exclude any facilities capital cost of money included in the cost objective amounts. If the prospective contractor fails to identify or propose facilities capital cost of money in a proposal for a contract that will be subject to the cost principles for contracts with commercial organizations (see subpart 31.2), facilities capital cost of money will not be an allowable cost in any resulting contract (see 15.408(i)).

(4)(i) The contracting officer shall not negotiate a price or fee that exceeds the following statutory limitations, imposed by 10 U.S.C. 2306(e) and 41 U.S.C. 254(b):

(A) For experimental, developmental, or research work performed under a cost-plus-fixed-fee contract, the fee shall

not exceed 15 percent of the contract's estimated cost, excluding fee.

(B) For architect-engineer services for public works or utilities, the contract price or the estimated cost and fee for production and delivery of designs, plans, drawings, and specifications shall not exceed 6 percent of the estimated cost of construction of the public work or utility, excluding fees.

(C) For other cost-plus-fixed-fee contracts, the fee shall not exceed 10 percent of the contract's estimated cost, excluding fee.

(ii) The contracting officer's signature on the price negotiation memorandum or other documentation supporting determination of fair and reasonable price documents the contracting officer's determination that the statutory price or fee limitations have not been exceeded.

(5) The contracting officer shall not require any prospective contractor to submit breakouts or supporting rationale for its profit or fee objective but may consider it, if it is submitted voluntarily.

(6) If a change or modification calls for essentially the same type and mix of work as the basic contract and is of relatively small dollar value compared to the total contract value, the contracting officer may use the basic contract's profit or fee rate as the prenegotiation objective for that change or modification.

(d) *Profit-analysis factors*—(1) *Common factors.* Unless it is clearly inappropriate or not applicable, each factor outlined in paragraphs (d)(1)(i) through (vi) of this subsection shall be considered by agencies in developing their structured approaches and by contracting officers in analyzing profit, whether or not using a structured approach.

(i) *Contractor effort.* This factor measures the complexity of the work and the resources required of the prospective contractor for contract performance. Greater profit opportunity should be provided under contracts requiring a high degree of professional and managerial skill and to prospective contractors whose skills, facilities, and technical assets can be expected to lead to efficient and economical contract performance. The subfactors in paragraphs (d)(1)(i)(A) through (D) of this subsection shall be considered in determining contractor effort, but they may be modified in specific situations to accommodate differences in the categories used by prospective contractors for listing costs—

(A) *Material acquisition.* This subfactor measures the managerial and technical effort needed to obtain the required purchased parts and material, subcontracted items, and special tooling. Considerations include the complexity of the items required, the number of purchase orders and subcontracts to be awarded and administered, whether established sources are available or new or second sources must be developed, and whether material will be obtained through routine purchase orders or through complex subcontracts requiring detailed specifications. Profit consideration should correspond to the managerial and technical effort involved.

(B) *Conversion direct labor.* This subfactor measures the contribution of direct engineering, manufacturing, and other labor to converting the raw materials, data, and subcontracted items into the contract items. Considerations include the diversity of engineering, scientific, and manufacturing labor skills required and the amount and quality of supervision and coordination needed to perform the contract task.

(C) *Conversion-related indirect costs.* This subfactor measures how much the indirect costs contribute to contract performance. The labor elements in the allocable indirect costs should be given the profit consideration they would receive if treated as direct labor. The other elements of indirect costs should be evaluated to determine whether they merit only limited profit consideration because of their routine nature, or are elements that contribute significantly to the proposed contract.

(D) *General management.* This subfactor measures the prospective contractor's other indirect costs and general and administrative (G&A) expense, their composition, and how much they contribute to contract performance. Considerations include how labor in the overhead pools would be treated if it were direct labor, whether elements within the pools are routine expenses or instead are elements that contribute significantly to the proposed contract, and whether the elements require routine as opposed to unusual managerial effort and attention.

(ii) *Contract cost risk.* (A) This factor measures the degree of cost responsibility and associated risk that the prospective contractor will assume as a result of the contract type contemplated and considering the reliability of the cost estimate in relation to the complexity and duration of the contract task. Determination of contract type should be closely related to the risks involved in timely, cost-effective, and efficient performance. This factor should compensate contractors proportionately for assuming greater cost risks.

(B) The contractor assumes the greatest cost risk in a closely priced firm-fixed-price contract under which it agrees to perform a complex undertaking on time and at a predetermined price. Some firm-fixed-price contracts may entail substantially less cost risk than others because, for example, the contract task is less complex or many of the contractor's costs are known at the time of price agreement, in which case the risk factor should be reduced accordingly. The contractor assumes the least cost risk in a cost-plus-fixed-fee level-of-effort contract, under which it is reimbursed those costs determined to be allocable and allowable, plus the fixed fee.

(C) In evaluating assumption of cost risk, contracting officers shall, except in unusual circumstances, treat time-and-materials, labor-hour, and firm-fixed-price, level-of-effort term contracts as cost-plus-fixed-fee contracts.

(iii) *Federal socioeconomic programs.* This factor measures the degree of support given by the prospective contractor to Federal socioeconomic programs, such as those involving small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, women-owned small business concerns, handicapped sheltered workshops, and energy conservation. Greater profit opportunity should be provided contractors that have displayed unusual initiative in these programs.

(iv) *Capital investments.* This factor takes into account the contribution of contractor investments to efficient and economical contract performance.

(v) *Cost-control and other past accomplishments.* This factor allows additional profit opportunities to a prospective contractor that has previously demonstrated its ability to perform similar tasks effectively and economically. In addition, consideration should be given to measures taken by the prospective contractor that result in productivity improvements, and other cost-reduction accomplishments that will benefit the Government in follow-on contracts.

(vi) *Independent development.* Under this factor, the contractor may be provided additional profit opportunities in recognition of independent development efforts relevant to the contract end item without Government assistance. The contracting officer should consider whether the development cost was recovered directly or indirectly from Government sources.

(2) *Additional factors.* In order to foster achievement of program objectives, each agency may include additional factors in its structured approach or take them into account in the profit analysis of individual contract actions.

**15.405 Price negotiation.**

(a) The purpose of performing cost or price analysis is to develop a negotiation position that permits the contracting officer and the offeror an opportunity to reach agreement on a fair and reasonable price. A fair and reasonable price does not require that agreement be reached on every element of cost, nor is it mandatory that the agreed price be within the contracting officer's initial negotiation position. Taking into consideration the advisory recommendations, reports of contributing specialists, and the current status of the contractor's purchasing system, the contracting officer is responsible for exercising the requisite judgment needed to reach a negotiated settlement with the offeror and is solely responsible for the final price agreement. However, when significant audit or other specialist recommendations are not adopted, the contracting officer should provide rationale that supports the negotiation result in the price negotiation documentation.

(b) The contracting officer's primary concern is the overall price the Government will actually pay. The contracting officer's objective is to negotiate a contract of a type and with a price providing the contractor the greatest incentive for efficient and economical performance. The negotiation of a contract type and a price are related and should be considered together with the issues of risk and uncertainty to the contractor and the Government. Therefore, the contracting officer should not become preoccupied with any single element and should balance the contract type, cost, and profit or fee negotiated to achieve a total result—a price that is fair and reasonable to both the Government and the contractor.

(c) The Government's cost objective and proposed pricing arrangement directly affect the profit or fee objective. Because profit or fee is only one of several interrelated variables, the contracting officer shall not agree on profit or fee without concurrent agreement on cost and type of contract.

(d) If, however, the contractor insists on a price or demands a profit or fee that the contracting officer considers unreasonable, and the contracting officer has taken all authorized actions (including determining the feasibility of developing an alternative source) without success, the contracting officer shall refer the contract action to a level above the contracting officer. Disposition of the action should be documented.

**15.406 Documentation.**

**15.406–1 Prenegotiation objectives.**

(a) The prenegotiation objectives establish the Government's initial negotiation position. They assist in the contracting officer's determination of fair and reasonable price. They should be based on the results of the contracting officer's analysis of the offeror's proposal, taking into consideration all pertinent information including field pricing assistance, audit reports and technical analysis, fact-finding results, independent Government cost estimates and price histories.

(b) The contracting officer shall establish prenegotiation objectives before the negotiation of any pricing action. The scope and depth of the analysis supporting the objectives should be directly related to the dollar value, importance, and complexity of the pricing action. When cost analysis is required, the contracting officer shall document the pertinent issues to be negotiated, the cost objectives, and a profit or fee objective.

**15.406–2 Certificate of Current Cost or Pricing Data.**

(a) When cost or pricing data are required, the contracting officer shall require the contractor to execute a Certificate of Current Cost or Pricing Data, using the format in this paragraph, and shall include the executed certificate in the contract file.

CERTIFICATE OF CURRENT COST OR PRICING DATA

This is to certify that, to the best of my knowledge and belief, the cost or pricing data (as defined in section 15.401 of the Federal Acquisition Regulation (FAR) and required under FAR subsection 15.403–4) submitted, either actually or by specific identification in writing, to the Contracting Officer or to the Contracting Officer's representative in support of ____* are accurate, complete, and current as of ____**. This certification includes the cost or pricing data supporting any advance agreements and forward pricing rate agreements between the offeror and the Government that are part of the proposal.

Firm _____

Signature _____

Name _____

Title _____

Date of execution*** _____

* Identify the proposal, request for price adjustment, or other submission involved, giving the appropriate identifying number (e.g., RFP No.).

** Insert the day, month, and year when price negotiations were concluded and price agreement was reached or, if applicable, an earlier date agreed upon between the parties that is as close as practicable to the date of agreement on price.

*** Insert the day, month, and year of signing, which should be as close as practicable to the date when the price negotiations were concluded and the contract price was agreed to. (End of certificate)

(b) The certificate does not constitute a representation as to the accuracy of the contractor's judgment on the estimate of future costs or projections. It applies to the data upon which the judgment or estimate was based. This distinction between fact and judgment should be clearly understood. If the contractor had information reasonably available at the time of agreement showing that the negotiated price was not based on accurate, complete, and current data, the contractor's responsibility is not limited by any lack of personal knowledge of the information on the part of its negotiators.

(c) The contracting officer and contractor are encouraged to reach a prior agreement on criteria for establishing closing or cutoff dates when appropriate in order to minimize delays associated with proposal updates. Closing or cutoff dates should be included as part of the data submitted with the proposal and, before agreement on price, data should be updated by the contractor to the latest closing or cutoff dates for which the data are available. Use of cutoff dates coinciding with reports is acceptable, as certain data may not be reasonably available before normal periodic closing dates (*e.g.,* actual indirect costs). Data within the contractor's or a subcontractor's organization on matters significant to contractor management and to the Government will be treated as reasonably available. What is significant depends upon the circumstances of each acquisition.

(d) Possession of a Certificate of Current Cost or Pricing Data is not a substitute for examining and analyzing the contractor's proposal.

(e) If cost or pricing data are requested by the Government and submitted by an offeror, but an exception is later found to apply, the data shall not be considered cost or pricing data and shall not be certified in accordance with this subsection.

**15.406–3 Documenting the negotiation.**

(a) The contracting officer shall document in the contract file the principal elements of the negotiated

agreement. The documentation (*e.g.*, price negotiation memorandum (PNM)) shall include the following:

(1) The purpose of the negotiation.

(2) A description of the acquisition, including appropriate identifying numbers (*e.g.*, RFP No.).

(3) The name, position, and organization of each person representing the contractor and the Government in the negotiation.

(4) The current status of any contractor systems (*e.g.*, purchasing, estimating, accounting, and compensation) to the extent they affected and were considered in the negotiation.

(5) If cost or pricing data were not required in the case of any price negotiation exceeding the cost or pricing data threshold, the exception used and the basis for it.

(6) If cost or pricing data were required, the extent to which the contracting officer—

(i) Relied on the cost or pricing data submitted and used them in negotiating the price;

(ii) Recognized as inaccurate, incomplete, or noncurrent any cost or pricing data submitted; the action taken by the contracting officer and the contractor as a result; and the effect of the defective data on the price negotiated; or

(iii) Determined that an exception applied after the data were submitted and, therefore, considered not to be cost or pricing data.

(7) A summary of the contractor's proposal, any field pricing assistance recommendations, including the reasons for any pertinent variances from them, the Government's negotiation objective, and the negotiated position. Where the determination of price reasonableness is based on cost analysis, the summary shall address each major cost element. When determination of price reasonableness is based on price analysis, the summary shall include the source and type of data used to support the determination.

(8) The most significant facts or considerations controlling the establishment of the prenegotiation objectives and the negotiated agreement including an explanation of any significant differences between the two positions.

(9) To the extent such direction has a significant effect on the action, a discussion and quantification of the impact of direction given by Congress, other agencies, and higher-level officials (*i.e.*, officials who would not normally exercise authority during the award and review process for the instant contract action).

(10) The basis for the profit or fee prenegotiation objective and the profit or fee negotiated.

(11) Documentation of fair and reasonable pricing.

(b) Whenever field pricing assistance has been obtained, the contracting officer shall forward a copy of the negotiation documentation to the office(s) providing assistance. When appropriate, information on how advisory field support can be made more effective should be provided separately.

### 15.407 Special cost or pricing areas.

#### 15.407–1 Defective cost or pricing data.

(a) If, before agreement on price, the contracting officer learns that any cost or pricing data submitted are inaccurate, incomplete, or noncurrent, the contracting officer shall immediately bring the matter to the attention of the prospective contractor, whether the defective data increase or decrease the contract price. The contracting officer shall consider any new data submitted to correct the deficiency, or consider the inaccuracy, incompleteness, or noncurrency of the data when negotiating the contract price. The price negotiation memorandum shall reflect the adjustments made to the data or the corrected data used to negotiate the contract price.

(b)(1) If, after award, cost or pricing data are found to be inaccurate, incomplete, or noncurrent as of the date of final agreement on price or an earlier date agreed upon by the parties given on the contractor's or subcontractor's Certificate of Current Cost or Pricing Data, the Government is entitled to a price adjustment, including profit or fee, of any significant amount by which the price was increased because of the defective data. This entitlement is ensured by including in the contract one of the clauses prescribed in 15.408 (b) and (c) and is set forth in the clauses at 52.215–10, Price Reduction for Defective Cost or Pricing Data, and 52.215–11, Price Reduction for Defective Cost or Pricing Data—Modifications. The clauses give the Government the right to a price adjustment for defects in cost or pricing data submitted by the contractor, a prospective subcontractor, or an actual subcontractor.

(2) In arriving at a price adjustment, the contracting officer shall consider the time by which the cost or pricing data became reasonably available to the contractor, and the extent to which the Government relied upon the defective data.

(3) The clauses referred to in paragraph (b)(1) of this subsection recognize that the Government's right to a price adjustment is not affected by any of the following circumstances:

(i) The contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position;

(ii) The contracting officer should have known that the cost or pricing data in issue were defective even though the contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the contracting officer;

(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under such contract; or

(iv) Cost or pricing data were required; however, the contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data relating to the contract.

(4) Subject to paragraphs (b)(5) and (6) of this subsection, the contracting officer shall allow an offset for any understated cost or pricing data submitted in support of price negotiations, up to the amount of the Government's claim for overstated pricing data arising out of the same pricing action (*e.g.*, the initial pricing of the same contract or the pricing of the same change order).

(5) An offset shall be allowed only in an amount supported by the facts and if the contractor—

(i) Certifies to the contracting officer that, to the best of the contractor's knowledge and belief, the contractor is entitled to the offset in the amount requested; and

(ii) Proves that the cost or pricing data were available before the ''as of'' date specified on the Certificate of Current Cost or Pricing Data but were not submitted. Such offsets need not be in the same cost groupings (*e.g.*, material, direct labor, or indirect costs).

(6) An offset shall not be allowed if—

(i) The understated data were known by the contractor to be understated before the ''as of'' date specified on the Certificate of Current Cost or Pricing Data; or

(ii) The Government proves that the facts demonstrate that the price would not have increased in the amount to be offset even if the available data had been submitted before the ''as of'' date specified on the Certificate of Current Cost or Pricing Data.

(7)(i) In addition to the price adjustment, the Government is entitled to recovery of any overpayment plus interest on the overpayments. The Government is also entitled to penalty

amounts on certain of these overpayments. Overpayment occurs only when payment is made for supplies or services accepted by the Government. Overpayments do not result from amounts paid for contract financing, as defined in 32.902.

(ii) In calculating the interest amount due, the contracting officer shall—

(A) Determine the defective pricing amounts that have been overpaid to the contractor;

(B) Consider the date of each overpayment (the date of overpayment for this interest calculation shall be the date payment was made for the related completed and accepted contract items; or for subcontract defective pricing, the date payment was made to the prime contractor, based on prime contract progress billings or deliveries, which included payments for a completed and accepted subcontract item); and

(C) Apply the underpayment interest rate(s) in effect for each quarter from the time of overpayment to the time of repayment, utilizing rate(s) prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2).

(iii) In arriving at the amount due for penalties on contracts where the submission of defective cost or pricing data was a knowing submission, the contracting officer shall obtain an amount equal to the amount of overpayment made. Before taking any contractual actions concerning penalties, the contracting officer shall obtain the advice of counsel.

(iv) In the demand letter, the contracting officer shall separately include—

(A) The repayment amount;

(B) The penalty amount (if any);

(C) The interest amount through a specified date; and

(D) A statement that interest will continue to accrue until repayment is made.

(c) If, after award, the contracting officer learns or suspects that the data furnished were not accurate, complete, and current, or were not adequately verified by the contractor as of the time of negotiation, the contracting officer shall request an audit to evaluate the accuracy, completeness, and currency of the data. The Government may evaluate the profit-cost relationships only if the audit reveals that the data certified by the contractor were defective. The contracting officer shall not reprice the contract solely because the profit was greater than forecast or because a contingency specified in the submission failed to materialize.

(d) For each advisory audit received based on a postaward review that indicates defective pricing, the contracting officer shall make a determination as to whether or not the data submitted were defective and relied upon. Before making such a determination, the contracting officer should give the contractor an opportunity to support the accuracy, completeness, and currency of the data in question. The contracting officer shall prepare a memorandum documenting both the determination and any corrective action taken as a result. The contracting officer shall send one copy of this memorandum to the auditor and, if the contract has been assigned for administration, one copy to the administrative contracting officer (ACO). A copy of the memorandum or other notice of the contracting officer's determination shall be provided to the contractor.

(e) If both the contractor and subcontractor submitted, and the contractor certified, or should have certified, cost or pricing data, the Government has the right, under the clauses at 52.215–10, Price Reduction for Defective Cost or Pricing Data, and 52.215–11, Price Reduction for Defective Cost or Pricing Data—Modifications, to reduce the prime contract price if it was significantly increased because a subcontractor submitted defective data. This right applies whether these data supported subcontract cost estimates or supported firm agreements between subcontractor and contractor.

(f) If Government audit discloses defective subcontractor cost or pricing data, the information necessary to support a reduction in prime contract and subcontract prices may be available only from the Government. To the extent necessary to secure a prime contract price reduction, the contracting officer should make this information available to the prime contractor or appropriate subcontractors, upon request. If release of the information would compromise Government security or disclose trade secrets or confidential business information, the contracting officer shall release it only under conditions that will protect it from improper disclosure. Information made available under this paragraph shall be limited to that used as the basis for the prime contract price reduction. In order to afford an opportunity for corrective action, the contracting officer should give the prime contractor reasonable advance notice before determining to reduce the prime contract price.

(1) When a prime contractor includes defective subcontract data in arriving at the price but later awards the subcontract to a lower priced subcontractor (or does not subcontract for the work), any adjustment in the prime contract price due to defective subcontract data is limited to the difference (plus applicable indirect cost and profit markups) between the subcontract price used for pricing the prime contract, and either the actual subcontract price or the actual cost to the contractor, if not subcontracted, provided the data on which the actual subcontract price is based are not themselves defective.

(2) Under cost-reimbursement contracts and under all fixed-price contracts except firm-fixed-price contracts and fixed-price contracts with economic price adjustment, payments to subcontractors that are higher than they would be had there been no defective subcontractor cost or pricing data shall be the basis for disallowance or nonrecognition of costs under the clauses prescribed in 15.408 (b) and (c). The Government has a continuing and direct financial interest in such payments that is unaffected by the initial agreement on prime contract price.

**15.407–2 Make-or-buy programs.**

(a) *General.* The prime contractor is responsible for managing contract performance, including planning, placing, and administering subcontracts as necessary to ensure the lowest overall cost and technical risk to the Government. When make-or-buy programs are required, the Government may reserve the right to review and agree on the contractor's make-or-buy program when necessary to ensure negotiation of reasonable contract prices, satisfactory performance, or implementation of socioeconomic policies. Consent to subcontracts and review of contractors' purchasing systems are separate actions covered in part 44.

(b) *Definitions.* As used in this subsection—

*Buy item* means an item or work effort to be produced or performed by a subcontractor.

*Make item* means an item or work effort to be produced or performed by the prime contractor or its affiliates, subsidiaries, or divisions.

*Make-or-buy program* means that part of a contractor's written plan for a contract identifying those major items to be produced or work efforts to be performed in the prime contractor's facilities and those to be subcontracted.

(c) *Acquisitions requiring make-or-buy programs.* (1) Contracting officers may require prospective contractors to submit make-or-buy program plans for negotiated acquisitions requiring cost or

pricing data whose estimated value is $10 million or more, except when the proposed contract is for research or development and, if prototypes or hardware are involved, no significant follow-on production is anticipated.

(2) Contracting officers may require prospective contractors to submit make-or-buy programs for negotiated acquisitions whose estimated value is under $10 million only if the contracting officer—

(i) Determines that the information is necessary; and

(ii) Documents the reasons in the contract file.

(d) *Solicitation requirements.* When prospective contractors are required to submit proposed make-or-buy programs, the solicitation shall include—

(1) A statement that the program and required supporting information must accompany the offer; and

(2) A description of factors to be used in evaluating the proposed program, such as capability, capacity, availability of small, small disadvantaged, and women-owned small business concerns for subcontracting, establishment of new facilities in or near labor surplus areas, delivery or performance schedules, control of technical and schedule interfaces, proprietary processes, technical superiority or exclusiveness, and technical risks involved.

(e) *Program requirements.* To support a make-or-buy program, the following information shall be supplied by the contractor in its proposal:

(1) *Items and work included.* The information required from a contractor in a make-or-buy program shall be confined to those major items or work efforts that normally would require company management review of the make-or-buy decision because they are complex, costly, needed in large quantities, or require additional facilities to produce. Raw materials, commercial items (see 2.101), and off-the-shelf items (see 46.101) shall not be included, unless their potential impact on contract cost or schedule is critical. Normally, make-or-buy programs should not include items or work efforts estimated to cost less than 1 percent of the total estimated contract price or any minimum dollar amount set by the agency.

(2) The offeror's program should include or be supported by the following information:

(i) A description of each major item or work effort.

(ii) Categorization of each major item or work effort as ''must make,'' ''must buy, or ''can either make or buy.''

(iii) For each item or work effort categorized as ''can either make or buy,'' a proposal either to ''make'' or to ''buy.''

(iv) Reasons for categorizing items and work efforts as ''must make'' or ''must buy,'' and proposing to ''make'' or to ''buy'' those categorized as ''can either make or buy.'' The reasons must include the consideration given to the evaluation factors described in the solicitation and must be in sufficient detail to permit the contracting officer to evaluate the categorization or proposal.

(v) Designation of the plant or division proposed to make each item or perform each work effort, and a statement as to whether the existing or proposed new facility is in or near a labor surplus area.

(vi) Identification of proposed subcontractors, if known, and their location and size status (also see Subpart 19.7 for subcontracting plan requirements).

(vii) Any recommendations to defer make-or-buy decisions when categorization of some items or work efforts is impracticable at the time of submission.

(viii) Any other information the contracting officer requires in order to evaluate the program.

(f) *Evaluation, negotiation, and agreement.* Contracting officers shall evaluate and negotiate proposed make-or-buy programs as soon as practicable after their receipt and before contract award.

(1) When the program is to be incorporated in the contract and the design status of the product being acquired does not permit accurate precontract identification of major items or work efforts, the contracting officer shall notify the prospective contractor in writing that these items or efforts, when identifiable, shall be added under the clause at 52.215–9, Changes or Additions to Make-or-Buy Program.

(2) Contracting officers normally shall not agree to proposed ''make items'' when the products or services are not regularly manufactured or provided by the contractor

and are available—quality, quantity, delivery, and other essential factors considered—from another firm at equal or lower prices, or when they are regularly manufactured or provided by the contractor, but are available—quality, quantity, delivery, and other essential factors considered— from another firm at lower prices. However, the contracting officer may agree to these as ''make items'' if an overall lower Governmentwide cost would result or it is otherwise in the best interest of the Government. If this situation occurs in any fixed-price incentive or cost-plus-incentive-fee contract, the contracting officer shall specify these items in the contract and state that they are subject to paragraph (d) of the clause at 52.215–9, Changes or Additions to Make-or-Buy Program (see 15.408(a)). If the contractor proposes to reverse the categorization of such items during contract performance, the contract price shall be subject to equitable reduction.

(g) *Incorporating make-or-buy programs in contracts.* The contracting officer may incorporate the make-or-buy program in negotiated contracts for—

(1) Major systems (see part 34) or their subsystems or components, regardless of contract type; or

(2) Other supplies and services if—

(i) The contract is a cost-reimbursable contract, or a cost-sharing contract in which the contractor's share of the cost is less than 25 percent; and

(ii) The contracting officer determines that technical or cost risks justify Government review and approval of changes or additions to the make-or-buy program.

**15.407–3 Forward pricing rate agreements.**

(a) When cost or pricing data are required, offerors are required to describe any forward pricing rate agreements (FPRA's) in each specific pricing proposal to which the rates apply and to identify the latest cost or pricing data already submitted in accordance with the agreement. All data submitted in connection with the agreement, updated as necessary, form a part of the total data that the offeror certifies to be accurate, complete, and current at the time of agreement on price for an initial contract or for a contract modification.

(b) Contracting officers will use FPRA rates as bases for pricing all contracts, modifications, and other contractual actions to be performed during the period covered by the agreement. Conditions that may affect the agreement's validity shall be reported promptly to the ACO. If the ACO determines that a changed condition invalidates the agreement, the ACO shall notify all interested parties of the extent of its effect and status of efforts to establish a revised FPRA.

(c) Contracting officers shall not require certification at the time of agreement for data supplied in support of FPRA's or other advance agreements. When a forward pricing rate agreement or other advance agreement is used to price a contract action that requires a certificate, the certificate supporting that contract action shall cover the data supplied to support the FPRA or other

advance agreement, and all other data supporting the action.

**15.407–4 Should-cost review.**

(a) *General.* (1) Should-cost reviews are a specialized form of cost analysis. Should-cost reviews differ from traditional evaluation methods because they do not assume that a contractor's historical costs reflect efficient and economical operation. Instead, these reviews evaluate the economy and efficiency of the contractor's existing work force, methods, materials, facilities, operating systems, and management. These reviews are accomplished by a multi-functional team of Government contracting, contract administration, pricing, audit, and engineering representatives. The objective of should-cost reviews is to promote both short and long-range improvements in the contractor's economy and efficiency in order to reduce the cost of performance of Government contracts. In addition, by providing rationale for any recommendations and quantifying their impact on cost, the Government will be better able to develop realistic objectives for negotiation.

(2) There are two types of should-cost reviews—program should-cost review (see paragraph (b) of this subsection) and overhead should-cost review (see paragraph (c) of this subsection). These should-cost reviews may be performed together or independently. The scope of a should-cost review can range from a large-scale review examining the contractor's entire operation (including plant-wide overhead and selected major subcontractors) to a small-scale tailored review examining specific portions of a contractor's operation.

(b) *Program should-cost review.* (1) A program should-cost review is used to evaluate significant elements of direct costs, such as material and labor, and associated indirect costs, usually associated with the production of major systems. When a program should-cost review is conducted relative to a contractor proposal, a separate audit report on the proposal is required.

(2) A program should-cost review should be considered, particularly in the case of a major system acquisition (see part 34), when—

(i) Some initial production has already taken place;

(ii) The contract will be awarded on a sole source basis;

(iii) There are future year production requirements for substantial quantities of like items;

(iv) The items being acquired have a history of increasing costs;

(v) The work is sufficiently defined to permit an effective analysis and major changes are unlikely;

(vi) Sufficient time is available to plan and adequately conduct the should-cost review; and

(vii) Personnel with the required skills are available or can be assigned for the duration of the should-cost review.

(3) The contracting officer should decide which elements of the contractor's operation have the greatest potential for cost savings and assign the available personnel resources accordingly. The expertise of on-site Government personnel should be used, when appropriate. While the particular elements to be analyzed are a function of the contract work task, elements such as manufacturing, pricing and accounting, management and organization, and subcontract and vendor management are normally reviewed in a should-cost review.

(4) In acquisitions for which a program should-cost review is conducted, a separate program should-cost review team report, prepared in accordance with agency procedures, is required. The contracting officer shall consider the findings and recommendations contained in the program should-cost review team report when negotiating the contract price. After completing the negotiation, the contracting officer shall provide the ACO a report of any identified uneconomical or inefficient practices, together with a report of correction or disposition agreements reached with the contractor. The contracting officer shall establish a follow-up plan to monitor the correction of the uneconomical or inefficient practices.

(5) When a program should-cost review is planned, the contracting officer should state this fact in the acquisition plan or acquisition plan updates (see subpart 7.1) and in the solicitation.

(c) *Overhead should-cost review.* (1) An overhead should-cost review is used to evaluate indirect costs, such as fringe benefits, shipping and receiving, facilities and equipment, depreciation, plant maintenance and security, taxes, and general and administrative activities.

It is normally used to evaluate and negotiate an FPRA with the contractor. When an overhead should-cost review is conducted, a separate audit report is required.

(2) The following factors should be considered when selecting contractor sites for overhead should-cost reviews:

(i) Dollar amount of Government business.

(ii) Level of Government participation.

(iii) Level of noncompetitive Government contracts.

(iv) Volume of proposal activity.

(v) Major system or program.

(vi) Corporate reorganizations, mergers, acquisitions, or takeovers.

(vii) Other conditions (*e.g.*, changes in accounting systems, management, or business activity).

(3) The objective of the overhead should-cost review is to evaluate significant indirect cost elements in-depth, and identify and recommend corrective actions regarding inefficient and uneconomical practices. If it is conducted in conjunction with a program should-cost review, a separate overhead should-cost review report is not required. However, the findings and recommendations of the overhead should-cost team, or any separate overhead should-cost review report, shall be provided to the ACO. The ACO should use this information to form the basis for the Government position in negotiating an FPRA with the contractor. The ACO shall establish a follow-up plan to monitor the correction of the uneconomical or inefficient practices.

**15.407–5 Estimating systems.**

(a) Using an acceptable estimating system for proposal preparation benefits both the Government and the contractor by increasing the accuracy and reliability of individual proposals. Cognizant audit activities, when it is appropriate to do so, shall establish and manage regular programs for reviewing selected contractors' estimating systems or methods, in order to reduce the scope of reviews to be performed on individual proposals, expedite the negotiation process, and increase the reliability of proposals. The results of estimating system reviews shall be documented in survey reports.

(b) The auditor shall send a copy of the estimating system survey report and a copy of the official notice of corrective action required to each contracting office and contract administration office having substantial business with that contractor. Significant deficiencies not corrected by the contractor shall be a consideration in subsequent proposal analyses and negotiations.

**15.408 Solicitation provisions and contract clauses.**

(a) *Changes or Additions to Make-or-Buy Program.* The contracting officer shall insert the clause at 52.215–9, Changes or Additions to Make-or-Buy Program, in solicitations and contracts when it is contemplated that a make-or-

buy program will be incorporated in the contract. If a less economical ''make'' or ''buy'' categorization is selected for one or more items of significant value, the contracting officer shall use the clause with—

(1) Its Alternate I, if a fixed-price incentive contract is contemplated; or

(2) Its Alternate II, if a cost-plus-incentive-fee contract is contemplated.

(b) *Price Reduction for Defective Cost or Pricing Data.* The contracting officer shall, when contracting by negotiation, insert the clause at 52.215–10, Price Reduction for Defective Cost or Pricing Data, in solicitations and contracts when it is contemplated that cost or pricing data will be required from the contractor or any subcontractor (see 15.403–4).

(c) *Price Reduction for Defective Cost or Pricing Data—Modifications.* The contracting officer shall, when contracting by negotiation, insert the clause at 52.215–11, Price Reduction for Defective Cost or Pricing Data—Modifications, in solicitations and contracts when it is contemplated that cost or pricing data will be required from the contractor or any subcontractor (see 15.403–4) for the pricing of contract modifications, and the clause prescribed in paragraph (b) of this section has not been included.

(d) *Subcontractor Cost or Pricing Data.* The contracting officer shall insert the clause at 52.215–12, Subcontractor Cost or Pricing Data, in solicitations and contracts when the clause prescribed in paragraph (b) of this section is included.

(e) *Subcontractor Cost or Pricing Data— Modifications.* The contracting officer shall insert the clause at 52.215–13, Subcontractor Cost or Pricing Data—Modifications, in solicitations and contracts when the clause prescribed in paragraph (c) of this section is included.

(f) *Integrity of Unit Prices.* (1) The contracting officer shall insert the clause at 52.215–14, Integrity of Unit Prices, in solicitations and contracts except for—

(i) Acquisitions at or below the simplified acquisition threshold;

(ii) Construction or architect-engineer services under part 36;

(iii) Utility services under part 41;

(iv) Service contracts where supplies are not required;

(v) Acquisitions of commercial items; and

(vi) Contracts for petroleum products.

(2) The contracting officer shall insert the clause with its Alternate I when contracting without adequate price competition or when prescribed by agency regulations.

(g) *Termination of Defined Benefit Pension Plans.* The contracting officer shall insert the clause at 52.215–15, Termination of Defined Benefit Pension Plans, in solicitations and contracts for which it is anticipated that cost or pricing data will be required or for which any preaward or postaward cost determinations will be subject to part 31.

(h) *Facilities Capital Cost of Money.* The contracting officer shall insert the provision at 52.215–16, Facilities Capital Cost of Money, in solicitations expected to result in contracts that are subject to the cost principles for contracts with commercial organizations (see subpart 31.2).

(i) *Waiver of Facilities Capital Cost of Money.* If the prospective contractor does not propose facilities capital cost of money in its offer, the contracting officer shall insert the clause at 52.215–17, Waiver of Facilities Capital Cost of Money, in the resulting contract.

(j) *Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions.* The contracting officer shall insert the clause at 52.215–18, Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions, in solicitations and contracts for which it is anticipated that cost or pricing data will be required or for which any preaward or postaward cost determinations will be subject to part 31.

(k) *Notification of Ownership Changes.* The contracting officer shall insert the clause at 52.215–19, Notification of Ownership Changes, in solicitations and contracts for which it is contemplated that cost or pricing data will be required or for which any preaward or postaward cost determination will be subject to subpart 31.2.

(l) *Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data.* Considering the hierarchy at 15.402, the contracting officer may insert the provision at 52.215–20, Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data, in solicitations if it is reasonably certain that cost or pricing data or information other than cost or pricing data will be required. This provision also provides instructions to offerors on how to request an exception. The contracting officer shall—

(1) Use the provision with its Alternate I to specify a format for cost or pricing data other than the format required by Table 15–2 of this section;

(2) Use the provision with its Alternate II if copies of the proposal are to be sent to the ACO and contract auditor;

(3) Use the provision with its Alternate III if submission via electronic media is required; and

(4) Replace the basic provision with its Alternate IV if cost or pricing data are not expected to be required because an exception may apply, but information other than cost or pricing data is required as described in 15.403–3.

(m) *Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data—Modifications.* Considering the hierarchy at 15.402, the contracting officer may insert the clause at 52.215–21, Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data—Modifications, in solicitations and contracts if it is reasonably certain that cost or pricing data or information other than cost or pricing data will be required for modifications. This clause also provides instructions to contractors on how to request an exception. The contracting officer shall—

(1) Use the clause with its Alternate I to specify a format for cost or pricing data other than the format required by Table 15–2 of this section;

(2) Use the clause with its Alternate II if copies of the proposal are to be sent to the ACO and contract auditor;

(3) Use the clause with its Alternate III if submission via electronic media is required; and

(4) Replace the basic clause with its Alternate IV if cost or pricing data are not expected to be required because an exception may apply, but information other than cost or pricing data is required as described in 15.403–3.

**Table 15–2—Instructions for Submitting Cost/Price Proposals When Cost or Pricing Data Are Required**

This document provides instructions for preparing a contract pricing proposal when cost or pricing data are required.

**Note 1:** There is a clear distinction between submitting cost or pricing data and merely making available books, records, and other documents without identification. The requirement for submission of cost or pricing data is met when all accurate cost or pricing data reasonably available to the offeror have been submitted, either actually or by specific identification, to the Contracting Officer or an authorized representative. As later information comes into your possession, it should be submitted promptly to the Contracting Officer in a manner that clearly shows how the information relates to the offeror's price proposal. The requirement for submission of cost or pricing data continues up to the time of agreement on price, or an earlier date agreed upon between the parties if applicable.

**Note 2:** By submitting your proposal, you grant the Contracting Officer or an authorized representative the right to examine records that formed the basis for the pricing proposal. That examination can take place at any time before award. It may include those books, records, documents, and other types of

factual information (regardless of form or whether the information is specifically referenced or included in the proposal as the basis for pricing) that will permit an adequate evaluation of the proposed price.

*I. General Instructions*

A. You must provide the following information on the first page of your pricing proposal:

(1) Solicitation, contract, and/or modification number;

(2) Name and address of offeror;

(3) Name and telephone number of point of contact;

(4) Name of contract administration office (if available);

(5) Type of contract action (that is, new contract, change order, price revision/redetermination, letter contract, unpriced order, or other);

(6) Proposed cost; profit or fee; and total;

(7) Whether you will require the use of Government property in the performance of the contract, and, if so, what property;

(8) Whether your organization is subject to cost accounting standards; whether your organization has submitted a CASB Disclosure Statement, and if it has been determined adequate; whether you have been notified that you are or may be in noncompliance with your Disclosure Statement or CAS, and, if yes, an explanation; whether any aspect of this proposal is inconsistent with your disclosed practices or applicable CAS, and, if so, an explanation; and whether the proposal is consistent with your established estimating and accounting principles and procedures and FAR Part 31, Cost Principles, and, if not, an explanation;

(9) The following statement: This proposal reflects our estimates and/or actual costs as of this date and conforms with the instructions in FAR 15.403–5(b)(1) and Table 15–2. By submitting this proposal, we grant the Contracting Officer and authorized representative(s) the right to examine, at any time before award, those records, which include books, documents, accounting procedures and practices, and other data, regardless of type and form or whether such supporting information is specifically referenced or included in the proposal as the basis for pricing, that will permit an adequate evaluation of the proposed price.

(10) Date of submission; and

(11) Name, title and signature of authorized representative.

B. In submitting your proposal, you must include an index, appropriately referenced, of all the cost or pricing data and information accompanying or identified in the proposal. In addition, you must annotate any future additions and/or revisions, up to the date of agreement on price, or an earlier date agreed upon by the parties, on a supplemental index.

C. As part of the specific information required, you must submit, with your proposal, cost or pricing data (that is, data that are verifiable and factual and otherwise as defined at FAR 15.401). You must clearly identify on your cover sheet that cost or pricing data are included as part of the proposal. In addition, you must submit with your proposal any information reasonably required to explain your estimating process, including—

(1) The judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data; and

(2) The nature and amount of any contingencies included in the proposed price.

D. You must show the relationship between contract line item prices and the total contract price. You must attach cost-element breakdowns for each proposed line item, using the appropriate format prescribed in the ''Formats for Submission of Line Item Summaries'' section of this table. You must furnish supporting breakdowns for each cost element, consistent with your cost accounting system.

E. When more than one contract line item is proposed, you must also provide summary total amounts covering all line items for each element of cost.

F. Whenever you have incurred costs for work performed before submission of a proposal, you must identify those costs in your cost/price proposal.

G. If you have reached an agreement with Government representatives on use of forward pricing rates/factors, identify the agreement, include a copy, and describe its nature.

H. As soon as practicable after final agreement on price or an earlier date agreed to by the parties, but before the award resulting from the proposal, you must, under the conditions stated in FAR 15.406–2, submit a Certificate of Current Cost or Pricing Data.

*II. Cost Elements*

Depending on your system, you must provide breakdowns for the following basic cost elements, as applicable:

A. *Materials and services.* Provide a consolidated priced summary of individual material quantities included in the various tasks, orders, or contract line items being proposed and the basis for pricing (vendor quotes, invoice prices, *etc.*). Include raw materials, parts, components, assemblies, and services to be produced or performed by others. For all items proposed, identify the item and show the source, quantity, and price. Conduct price analyses of all subcontractor proposals. Conduct cost analyses for all subcontracts when cost or pricing data are submitted by the subcontractor. Include these analyses as part of your own cost or pricing data submissions for subcontracts expected to exceed the appropriate threshold in FAR 15.403–4. Submit the subcontractor cost or pricing data as part of your own cost or pricing data as required in paragraph IIA(2) of this table. These requirements also apply to all subcontractors if required to submit cost or pricing data.

(1) *Adequate Price Competition.* Provide data showing the degree of competition and the basis for establishing the source and reasonableness of price for those acquisitions (such as subcontracts, purchase orders, material order, etc.) exceeding, or expected to exceed, the appropriate threshold set forth at FAR 15.403–4 priced on the basis of adequate price competition. For interorganizational transfers priced at other than the cost of comparable competitive commercial work of the division, subsidiary, or affiliate of the contractor, explain the pricing method (see FAR 31.205–26(e)).

(2) *All Other.* Obtain cost or pricing data from prospective sources for those acquisitions (such as subcontracts, purchase orders, material order, etc.) exceeding the threshold set forth in FAR 15.403–4 and not otherwise exempt, in accordance with FAR 15.403–1(b) (*i.e.,* adequate price competition, commercial items, prices set by law or regulation or waiver). Also provide data showing the basis for establishing source and reasonableness of price. In addition, provide a summary of your cost analysis and a copy of cost or pricing data submitted by the prospective source in support of each subcontract, or purchase order that is the lower of either $10,000,000 or more, or both more than the pertinent cost or pricing data threshold and more than 10 percent of the prime contractor's proposed price. The Contracting Officer may require you to submit cost or pricing data in support of proposals in lower amounts. Subcontractor cost or pricing data must be accurate, complete and current as of the date of final price agreement, or an earlier date agreed upon by the parties, given on the prime contractor's Certificate of Current Cost or Pricing Data. The prime contractor is responsible for updating a prospective subcontractor's data. For standard commercial items fabricated by the offeror that are generally stocked in inventory, provide a separate cost breakdown, if priced based on cost. For interorganizational transfers priced at cost, provide a separate breakdown of cost elements. Analyze the cost or pricing data and submit the results of your analysis of the prospective source's proposal. When submission of a prospective source's cost or pricing data is required as described in this paragraph, it must be included along with your own cost or pricing data submission, as part of your own cost or pricing data. You must also submit any other cost or pricing data obtained from a subcontractor, either actually or by specific identification, along with the results of any analysis performed on that data.

B. *Direct Labor.* Provide a time-phased (*e.g.,* monthly, quarterly, etc.) breakdown of labor hours, rates, and cost by appropriate category, and furnish bases for estimates.

C. *Indirect Costs.* Indicate how you have computed and applied your indirect costs, including cost breakdowns. Show trends and budgetary data to provide a basis for evaluating the reasonableness of proposed rates. Indicate the rates used and provide an appropriate explanation.

D. *Other Costs.* List all other costs not otherwise included in the categories described above (*e.g.,* special tooling, travel, computer and consultant services, preservation, packaging and packing, spoilage and rework, and Federal excise tax on finished articles) and provide bases for pricing.

E. *Royalties.* If royalties exceed $1,500, you must provide the following information on a

separate page for each separate royalty or license fee:

(1) Name and address of licensor.

(2) Date of license agreement.

(3) Patent numbers.

(4) Patent application serial numbers, or other basis on which the royalty is payable.

(5) Brief description (including any part or model numbers of each contract item or component on which the royalty is payable).

(6) Percentage or dollar rate of royalty per unit.

(7) Unit price of contract item.

(8) Number of units.

(9) Total dollar amount of royalties.

(10) If specifically requested by the Contracting Officer, a copy of the current license agreement and identification of applicable claims of specific patents (see FAR 27.204 and 31.205–37).

F. *Facilities Capital Cost of Money.* When you elect to claim facilities capital cost of money as an allowable cost, you must submit Form CASB-CMF and show the calculation of the proposed amount (see FAR 31.205–10).

*III. Formats for Submission of Line Item Summaries*

A. New Contracts (Including Letter Contracts)

| Cost elements (1) | Proposed contract estimate—total cost (2) | Proposed contract estimate—unit cost (3) | Reference (4) |
|---|---|---|---|
| | | | |

Column and Instruction

(1) Enter appropriate cost elements.

(2) Enter those necessary and reasonable costs that, in your judgment, will properly be incurred in efficient contract performance. When any of the costs in this column have already been incurred (*e.g.*, under a letter contract), describe them on an attached supporting page. When preproduction or startup costs are significant, or when specifically requested to do so by the Contracting Officer, provide a full identification and explanation of them.

(3) Optional, unless required by the Contracting Officer.

(4) Identify the attachment in which the information supporting the specific cost element may be found. (Attach separate pages as necessary.)

B. Change Orders, Modifications, and Claims

| Cost elements (1) | Estimated cost of all work deleted (2) | Cost of deleted work already performed (3) | Net cost to be deleted (4) | Cost of work added (5) | Net cost of change (6) | Reference (7) |
|---|---|---|---|---|---|---|
| | | | | | | |

Column and Instruction

(1) Enter appropriate cost elements.

(2) Include the current estimates of what the cost would have been to complete the deleted work not yet performed (not the original proposal estimates), and the cost of deleted work already performed.

(3) Include the incurred cost of deleted work already performed, using actuals incurred if possible, or, if actuals are not available, estimates from your accounting records. Attach a detailed inventory of work, materials, parts, components, and hardware already purchased, manufactured, or performed and deleted by the change, indicating the cost and proposed disposition of each line item. Also, if you desire to retain these items or any portion of them, indicate the amount offered for them.

(4) Enter the net cost to be deleted, which is the estimated cost of all deleted work less the cost of deleted work already performed. Column (2) minus Column (3) equals Column (4).

(5) Enter your estimate for cost of work added by the change. When nonrecurring costs are significant, or when specifically requested to do so by the Contracting Officer, provide a full identification and explanation of them. When any of the costs in this column have already been incurred, describe them on an attached supporting schedule.

(6) Enter the net cost of change, which is the cost of work added, less the net cost to be deleted. Column (5) minus Column (4) equals Column (6). When this result is negative, place the amount in parentheses.

(7) Identify the attachment in which the information supporting the specific cost element may be found. (Attach separate pages as necessary.)

C. Price Revision/Redetermination

| Cutoff date (1) | Number of units completed (2) | Number of units to be completed (3) | Contract amount (4) | Redetermination proposal amount (5) | Difference (6) | Cost elements (7) | Incurred cost—preproduction (8) | Incurred cost—completed units (9) | Incurred cost—work in process (10) | Total incurred cost (11) | Estimated cost to complete (12) | Estimated total cost (13) | Reference (14) |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | | | | | |

(Use as applicable).

Column and Instruction

(1) Enter the cutoff date required by the contract, if applicable.

(2) Enter the number of units completed during the period for which experienced costs of production are being submitted.

(3) Enter the number of units remaining to be completed under the contract.

(4) Enter the cumulative contract amount.

(5) Enter your redetermination proposal amount.

(6) Enter the difference between the contract amount and the redetermination proposal amount. When this result is negative, place the amount in parentheses. Column (4) minus Column (5) equals Column (6).

(7) Enter appropriate cost elements. When residual inventory exists, the final costs established under fixed-price-incentive and fixed-price-redeterminable arrangements should be net of the fair market value of such inventory. In support of subcontract costs, submit a listing of all subcontracts subject to repricing action, annotated as to their status.

(8) Enter all costs incurred under the contract before starting production and other nonrecurring costs (usually referred to as startup costs) from your books and records as of the cutoff date. These include such costs as preproduction engineering, special plant rearrangement, training program, and any identifiable nonrecurring costs such as initial rework, spoilage, pilot runs, etc. In the event the amounts are not segregated in or otherwise available from your records, enter in this column your best estimates. Explain the basis for each estimate and how the costs are charged on your accounting records (*e.g.*, included in production costs as direct engineering labor, charged to manufacturing overhead). Also show how the costs would be allocated to the units at their various stages of contract completion.

(9) Enter in Column (9) the production costs from your books and records (exclusive of preproduction costs reported in Column (8)) of the units completed as of the cutoff date.

(10) Enter in Column (10) the costs of work in process as determined from your records or inventories at the cutoff date. When the amounts for work in process are not available in your records but reliable estimates for them can be made, enter the estimated amounts in Column (10) and enter in Column (9) the differences between the total incurred costs (exclusive of preproduction costs) as of the cutoff date and these estimates. Explain the basis for the estimates, including identification of any provision for experienced or anticipated allowances, such as shrinkage, rework, design changes, *etc.* Furnish experienced unit or lot costs (or labor hours) from inception of contract to the cutoff date, improvement curves, and any other available production cost history pertaining to the item(s) to which your proposal relates.

(11) Enter total incurred costs (Total of Columns (8), (9), and (10)).

(12) Enter those necessary and reasonable costs that in your judgment will properly be incurred in completing the remaining work to be performed under the contract with respect to the item(s) to which your proposal relates.

(13) Enter total estimated cost (Total of Columns (11) and (12)).

(14) Identify the attachment in which the information supporting the specific cost element may be found. (Attach separate pages as necessary.)

## Subpart 15.5—Preaward, Award, and Postaward Notifications, Protests, and Mistakes

### 15.501 Definition.

*Day*, as used in this subpart, has the meaning set forth at 33.101.

### 15.502 Applicability.

This subpart applies to competitive proposals, as described in 6.102(b), and a combination of competitive procedures, as described in 6.102(c). The procedures in 15.504, 15.506, 15.507, 15.508, and 15.509, with reasonable modification, should be followed for sole source acquisitions and acquisitions described in 6.102(d)(1) and (2).

### 15.503 Notifications to unsuccessful offerors.

(a) *Preaward notices*—(1) *Preaward notices of exclusion from competitive range.* The contracting officer shall notify offerors promptly in writing when their proposals are excluded from the competitive range or otherwise eliminated from the competition. The notice shall state the basis for the determination and that a proposal revision will not be considered.

(2) *Preaward notices for small business set-asides.* In addition to the notice in paragraph (a)(1) of this section, when using a small business set-aside (see subpart 19.5), upon completion of negotiations and determinations of responsibility, but prior to award, the contracting officer shall notify each offeror in writing of the name and location of the apparent successful offeror. The notice shall also state that

(i) The Government will not consider subsequent revisions of the offeror's proposal; and

(ii) No response is required unless a basis exists to challenge the small business size status of the apparent successful offeror. The notice is not required when the contracting officer determines in writing that the urgency of the requirement necessitates award without delay or when the contract is entered into under the 8(a) program (see 19.805–2).

(b) *Postaward notices.* (1) Within 3 days after the date of contract award, the contracting officer shall provide written notification to each offeror whose proposal was in the competitive range but was not selected for award (10 U.S.C. 2305(b)(5) and 41 U.S.C. 253b(c)) or had not been previously notified under paragraph (a) of this section. The notice shall include—

(i) The number of offerors solicited;

(ii) The number of proposals received;

(iii) The name and address of each offeror receiving an award;

(iv) The items, quantities, and any stated unit prices of each award. If the number of items or other factors makes listing any stated unit prices impracticable at that time, only the total contract price need be furnished in the notice. However, the items, quantities, and any stated unit prices of each award shall be made publicly available, upon request; and

(v) In general terms, the reason(s) the offeror's proposal was not accepted, unless the price information in paragraph (b)(1)(iv) of this section readily reveals the reason. In no event shall an offeror's cost breakdown, profit, overhead rates, trade secrets, manufacturing processes and techniques, or other confidential business information be disclosed to any other offeror.

(2) Upon request, the contracting officer shall furnish the information described in paragraph (b)(1) of this section to unsuccessful offerors in solicitations using simplified acquisition procedures in part 13.

(3) Upon request, the contracting officer shall provide the information in paragraph (b)(1) of this section to unsuccessful offerors that received a preaward notice of exclusion from the competitive range.

### 15.504 Award to successful offeror.

The contracting officer shall award a contract to the successful offeror by furnishing the executed contract or other notice of the award to that offeror.

(a) If the award document includes information that is different than the latest signed proposal, as amended by the offeror's written correspondence, both the offeror and the contracting officer shall sign the contract award.

(b) When an award is made to an offeror for less than all of the items that may be awarded and additional items are being withheld for subsequent award, each notice shall state that the Government may make subsequent awards on those additional items within the proposal acceptance period.

(c) If the Optional Form (OF) 307, Contract Award, Standard Form (SF) 26, Award/Contract, or SF 33, Solicitation, Offer and Award, is not used to award the contract, the first page of the award document shall contain the Government's acceptance statement from Block 15 of that form, exclusive of the Item 3 reference language, and shall contain the contracting officer's name, signature, and date. In addition, if the award document includes information

that is different than the signed proposal, as amended by the offeror's written correspondence, the first page shall include the contractor's agreement statement from Block 14 of the OF 307 and the signature of the contractor's authorized representative.

**15.505 Preaward debriefing of offerors.**

Offerors excluded from the competitive range or otherwise excluded from the competition before award may request a debriefing before award (10 U.S.C. 2305(b)(6)(A) and 41 U.S.C. 253b(f)–(h)).

(a)(1) The offeror may request a preaward debriefing by submitting a written request for debriefing to the contracting officer within 3 days after receipt of the notice of exclusion from the competition.

(2) At the offeror's request, this debriefing may be delayed until after award. If the debriefing is delayed until after award, it shall include all information normally provided in a postaward debriefing (see 15.506(d)). Debriefings delayed pursuant to this paragraph could affect the timeliness of any protest filed subsequent to the debriefing.

(3) If the offeror does not submit a timely request, the offeror need not be given either a preaward or a postaward debriefing. Offerors are entitled to no more than one debriefing for each proposal.

(b) The contracting officer shall make every effort to debrief the unsuccessful offeror as soon as practicable, but may refuse the request for a debriefing if, for compelling reasons, it is not in the best interests of the Government to conduct a debriefing at that time. The rationale for delaying the debriefing shall be documented in the contract file. If the contracting officer delays the debriefing, it shall be provided no later than the time postaward debriefings are provided under 15.506. In that event, the contracting officer shall include the information at 15.506(d) in the debriefing.

(c) Debriefings may be done orally, in writing, or by any other method acceptable to the contracting officer.

(d) The contracting officer should normally chair any debriefing session held. Individuals who conducted the evaluations shall provide support.

(e) At a minimum, preaward debriefings shall include—

(1) The agency's evaluation of significant elements in the offeror's proposal;

(2) A summary of the rationale for eliminating the offeror from the competition; and

(3) Reasonable responses to relevant questions about whether source selection procedures contained in the solicitation, applicable regulations, and other applicable authorities were followed in the process of eliminating the offeror from the competition.

(f) Preaward debriefings shall not disclose—

(1) The number of offerors;

(2) The identity of other offerors;

(3) The content of other offerors proposals;

(4) The ranking of other offerors;

(5) The evaluation of other offerors; or

(6) Any of the information prohibited in 15.506(e).

(g) An official summary of the debriefing shall be included in the contract file.

**15.506 Postaward debriefing of offerors.**

(a)(1) An offeror, upon its written request received by the agency within 3 days after the date on which that offeror has received notification of contract award in accordance with 15.503(b), shall be debriefed and furnished the basis for the selection decision and contract award.

(2) To the maximum extent practicable, the debriefing should occur within 5 days after receipt of the written request. Offerors that requested a postaward debriefing in lieu of a preaward debriefing, or whose debriefing was delayed for compelling reasons beyond contract award, also should be debriefed within this time period.

(3) An offeror that was notified of exclusion from the competition (see 15.505(a)), but failed to submit a timely request, is not entitled to a debriefing.

(4)(i) Untimely debriefing requests may be accommodated.

(ii) Government accommodation of a request for delayed debriefing pursuant to 15.505(a)(2), or any untimely debriefing request, does not automatically extend the deadlines for filing protests. Debriefings delayed pursuant to 15.505(a)(2) could affect the timeliness of any protest filed subsequent to the debriefing.

(b) Debriefings of successful and unsuccessful offerors may be done orally, in writing, or by any other method acceptable to the contracting officer.

(c) The contracting officer should normally chair any debriefing session held. Individuals who conducted the evaluations shall provide support.

(d) At a minimum, the debriefing information shall include—

(1) The Government's evaluation of the significant weaknesses or deficiencies in the offeror's proposal, if applicable;

(2) The overall evaluated cost or price (including unit prices), and technical rating, if applicable, of the successful offeror and the debriefed offeror, and past performance information on the debriefed offeror;

(3) The overall ranking of all offerors, when any ranking was developed by the agency during the source selection;

(4) A summary of the rationale for award;

(5) For acquisitions of commercial items, the make and model of the item to be delivered by the successful offeror; and

(6) Reasonable responses to relevant questions about whether source selection procedures contained in the solicitation, applicable regulations, and other applicable authorities were followed.

(e) The debriefing shall not include point-by-point comparisons of the debriefed offeror's proposal with those of other offerors. Moreover, the debriefing shall not reveal any information prohibited from disclosure by 24.202 or exempt from release under the Freedom of Information Act (5 U.S.C. 552) including—

(1) Trade secrets;

(2) Privileged or confidential manufacturing processes and techniques;

(3) Commercial and financial information that is privileged or confidential, including cost breakdowns, profit, indirect cost rates, and similar information; and

(4) The names of individuals providing reference information about an offeror's past performance.

(f) An official summary of the debriefing shall be included in the contract file.

**15.507 Protests against award.**

(a) Protests against award in negotiated acquisitions shall be handled in accordance with part 33. Use of agency protest procedures that incorporate the alternative dispute resolution provisions of Executive Order 12979 is encouraged for both preaward and postaward protests.

(b) If a protest causes the agency, within 1 year of contract award, to—

(1) Issue a new solicitation on the protested contract award, the contracting officer shall provide the information in paragraph (c) of this section to all prospective offerors for the new solicitation; or

(2) Issue a new request for revised proposals on the protested contract award, the contracting officer shall provide the information in paragraph (c) of this section to offerors that were in the competitive range and are requested to submit revised proposals.

(c) The following information will be provided to appropriate parties:

(1) Information provided to unsuccessful offerors in any debriefings conducted on the original award regarding the successful offeror's proposal; and

(2) Other nonproprietary information that would have been provided to the original offerors.

**15.508 Discovery of mistakes.**

Mistakes in a contractor's proposal that are disclosed after award shall be processed substantially in accordance with the procedures for mistakes in bids at 14.407–4.

**15.509 Forms.**

Optional Form 307, Contract Award, Standard Form (SF) 26, Award/Contract, or SF 33, Solicitation, Offer and Award, may be used to award negotiated contracts in which the signature of both parties on a single document is appropriate. If these forms are not used, the award document shall incorporate the agreement and award language from the OF 307.

## Subpart 15.6—Unsolicited Proposals

**15.600 Scope of subpart.**

This subpart sets forth policies and procedures concerning the submission, receipt, evaluation, and acceptance or rejection of unsolicited proposals.

**15.601 Definitions.**

As used in this subpart—

*Advertising material* means material designed to acquaint the Government with a prospective contractor's present products, services, or potential capabilities, or designed to stimulate the Government's interest in buying such products or services.

*Commercial item offer* means an offer of a commercial item that the vendor wishes to see introduced in the Government's supply system as an alternate or a replacement for an existing supply item. This term does not include innovative or unique configurations or uses of commercial items that are being offered for further development and that may be submitted as an unsolicited proposal.

*Contribution* means a concept, suggestion, or idea presented to the Government for its use with no indication that the source intends to devote any further effort to it on the Government's behalf.

*Unsolicited proposal* means a written proposal for a new or innovative idea that is submitted to an agency on the initiative of the offeror for the purpose of obtaining a contract with the Government, and that is not in response to a request for proposals, Broad Agency Announcement, Small Business Innovation Research topic, Small Business Technology Transfer Research topic, Program Research and Development Announcement, or any other Government-initiated solicitation or program.

**15.602 Policy.**

It is the policy of the Government to encourage the submission of new and innovative ideas in response to Broad Agency Announcements, Small Business Innovation Research topics, Small Business Technology Transfer Research topics, Program Research and Development Announcements, or any other Government-initiated solicitation or program. When the new and innovative ideas do not fall under topic areas publicized under those programs or techniques, the ideas may be submitted as unsolicited proposals.

**15.603 General.**

(a) Unsolicited proposals allow unique and innovative ideas or approaches that have been developed outside the Government to be made available to Government agencies for use in accomplishment of their missions. Unsolicited proposals are offered with the intent that the Government will enter into a contract with the offeror for research and development or other efforts supporting the Government mission, and often represent a substantial investment of time and effort by the offeror.

(b) Advertising material, commercial item offers, or contributions, as defined in 15.601, or routine correspondence on technical issues, are not unsolicited proposals.

(c) A valid unsolicited proposal must—

(1) Be innovative and unique;

(2) Be independently originated and developed by the offeror;

(3) Be prepared without Government supervision, endorsement, direction, or direct Government involvement;

(4) Include sufficient detail to permit a determination that Government support could be worthwhile and the proposed work could benefit the agency's research and development or other mission responsibilities; and

(5) Not be an advance proposal for a known agency requirement that can be acquired by competitive methods.

(d) Unsolicited proposals in response to a publicized general statement of agency needs are considered to be independently originated.

**15.604 Agency points of contact.**

(a) Preliminary contact with agency technical or other appropriate personnel before preparing a detailed unsolicited proposal or submitting proprietary information to the Government may save considerable time and effort for both parties (see 15.201). Agencies shall make available to potential offerors of unsolicited proposals at least the following information:

(1) Definition (see 15.601) and content (see 15.605) of an unsolicited proposal acceptable for formal evaluation.

(2) Requirements concerning responsible prospective contractors (see subpart 9.1), and organizational conflicts of interest (see subpart 9.5).

(3) Guidance on preferred methods for submitting ideas/concepts to the Government, such as any agency: upcoming solicitations; Broad Agency Announcements; Small Business Innovation Research programs; Small Business Technology Transfer Research programs; Program Research and Development Announcements; or grant programs.

(4) Agency points of contact for information regarding advertising, contributions, and other types of transactions similar to unsolicited proposals.

(5) Information sources on agency objectives and areas of potential interest.

(6) Procedures for submission and evaluation of unsolicited proposals.

(7) Instructions for identifying and marking proprietary information so that it is protected and restrictive legends conform to 15.609.

(b) Only the cognizant contracting officer has the authority to bind the Government regarding unsolicited proposals.

**15.605 Content of unsolicited proposals.**

Unsolicited proposals should contain the following information to permit consideration in an objective and timely manner:

(a) Basic information including—

(1) Offeror's name and address and type of organization; *e.g.*, profit, nonprofit, educational, small business;

(2) Names and telephone numbers of technical and business personnel to be contacted for evaluation or negotiation purposes;

(3) Identification of proprietary data to be used only for evaluation purposes;

(4) Names of other Federal, State, or local agencies or parties receiving the proposal or funding the proposed effort;

(5) Date of submission; and

(6) Signature of a person authorized to represent and contractually obligate the offeror.

(b) Technical information including—

(1) Concise title and abstract (approximately 200 words) of the proposed effort;

(2) A reasonably complete discussion stating the objectives of the effort or activity, the method of approach and extent of effort to be employed, the nature and extent of the anticipated results, and the manner in which the work will help to support accomplishment of the agency's mission;

(3) Names and biographical information on the offeror's key personnel who would be involved, including alternates; and

(4) Type of support needed from the agency; *e.g.*, facilities, equipment, materials, or personnel resources.

(c) Supporting information including—

(1) Proposed price or total estimated cost for the effort in sufficient detail for meaningful evaluation;

(2) Period of time for which the proposal is valid (a 6-month minimum is suggested);

(3) Type of contract preferred;

(4) Proposed duration of effort;

(5) Brief description of the organization, previous experience, relevant past performance, and facilities to be used;

(6) Other statements, if applicable, about organizational conflicts of interest, security clearances, and environmental impacts; and

(7) The names and telephone numbers of agency technical or other agency points of contact already contacted regarding the proposal.

**15.606 Agency procedures.**

(a) Agencies shall establish procedures for controlling the receipt, evaluation, and timely disposition of unsolicited proposals consistent with the requirements of this subpart. The procedures shall include controls on the reproduction and disposition of proposal material, particularly data identified by the offeror as subject to duplication, use, or disclosure restrictions.

(b) Agencies shall establish agency points of contact (see 15.604) to coordinate the receipt and handling of unsolicited proposals.

**15.606–1 Receipt and initial review.**

(a) Before initiating a comprehensive evaluation, the agency contact point shall determine if the proposal—

(1) Is a valid unsolicited proposal, meeting the requirements of 15.603(c);

(2) Is suitable for submission in response to an existing agency requirement (see 15.602);

(3) Is related to the agency mission;

(4) Contains sufficient technical and cost information for evaluation;

(5) Has been approved by a responsible official or other representative authorized to obligate the offeror contractually; and

(6) Complies with the marking requirements of 15.609.

(b) If the proposal meets these requirements, the contact point shall promptly acknowledge receipt and process the proposal.

(c) If a proposal is rejected because the proposal does not meet the requirements of paragraph (a) of this subsection, the agency contact point shall promptly inform the offeror of the reasons for rejection in writing and of the proposed disposition of the unsolicited proposal.

**15.606–2 Evaluation.**

(a) Comprehensive evaluations shall be coordinated by the agency contact point, who shall attach or imprint on each unsolicited proposal, circulated for evaluation, the legend required by 15.609(d). When performing a comprehensive evaluation of an unsolicited proposal, evaluators shall consider the following factors, in addition to any others appropriate for the particular proposal:

(1) Unique, innovative and meritorious methods, approaches, or concepts demonstrated by the proposal;

(2) Overall scientific, technical, or socioeconomic merits of the proposal;

(3) Potential contribution of the effort to the agency's specific mission;

(4) The offeror's capabilities, related experience, facilities, techniques, or unique combinations of these that are integral factors for achieving the proposal objectives;

(5) The qualifications, capabilities, and experience of the proposed principal investigator, team leader, or key personnel critical to achieving the proposal objectives; and

(6) The realism of the proposed cost.

(b) The evaluators shall notify the agency point of contact of their recommendations when the evaluation is completed.

**15.607 Criteria for acceptance and negotiation of an unsolicited proposal.**

(a) A favorable comprehensive evaluation of an unsolicited proposal does not, in itself, justify awarding a contract without providing for full and open competition. The agency point of contact shall return an unsolicited proposal to the offeror, citing reasons, when its substance—

(1) Is available to the Government without restriction from another source;

(2) Closely resembles a pending competitive acquisition requirement;

(3) Does not relate to the activity's mission; or

(4) Does not demonstrate an innovative and unique method, approach, or concept, or is otherwise not deemed a meritorious proposal.

(b) The contracting officer may commence negotiations on a sole source basis only when—

(1) An unsolicited proposal has received a favorable comprehensive evaluation;

(2) A justification and approval has been obtained (see 6.302–1(a)(2)(i) for research proposals or other appropriate provisions of subpart 6.3, and 6.303–2(b));

(3) The agency technical office sponsoring the contract furnishes the necessary funds; and

(4) The contracting officer has complied with the synopsis requirements of subpart 5.2.

**15.608 Prohibitions.**

(a) Government personnel shall not use any data, concept, idea, or other part of an unsolicited proposal as the basis, or part of the basis, for a solicitation or in negotiations with any other firm unless the offeror is notified of and agrees to the intended use. However, this prohibition does not preclude using any data, concept, or idea in the proposal that also is available from another source without restriction.

(b) Government personnel shall not disclose restrictively marked information (see 3.104 and 15.609) included in an unsolicited proposal. The disclosure of such information concerning trade secrets, processes, operations, style of work, apparatus, and other matters, except as authorized by law, may result in criminal penalties under 18 U.S.C. 1905.

**15.609 Limited use of data.**

(a) An unsolicited proposal may include data that the offeror does not want disclosed to the public for any purpose or used by the Government except for evaluation purposes. If the offeror wishes to restrict the data, the title page must be marked with the following legend:

Use and Disclosure of Data

This proposal includes data that shall not be disclosed outside the Government and shall not be duplicated, used, or disclosed—in whole or in part—for any purpose other than to evaluate this proposal. However, if a contract is awarded to this offeror as a result of—or in connection with—the submission of these data, the Government shall have the right to duplicate, use, or disclose the data to the extent provided in the resulting contract. This restriction does not limit the Government's right to use information contained in these data if they are obtained from another source without restriction. The data subject to this restriction are contained in Sheets [*insert numbers or other identification of sheets*].

(b) The offeror shall also mark each sheet of data it wishes to restrict with the following legend: Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this proposal.

(c) The agency point of contact shall return to the offeror any unsolicited proposal marked with a legend different from that provided in paragraph (a) of this section. The return letter will state that the proposal cannot be considered because it is impracticable for the Government to comply with the legend and that the agency will consider the proposal if it is resubmitted with the proper legend.

(d) The agency point of contact shall place a cover sheet on the proposal or clearly mark it as follows, unless the offeror clearly states in writing that no restrictions are imposed on the disclosure or use of the data contained in the proposal:

Unsolicited Proposal—Use of Data Limited

All Government personnel must exercise extreme care to ensure that the information in this proposal is not disclosed to an individual who has not been authorized access to such data in accordance with FAR 3.104, and is not duplicated, used, or disclosed in whole or in part for any purpose other than evaluation of the proposal, without the written permission of the offeror. If a contract is awarded on the basis of this proposal, the terms of the contract shall control disclosure and use. This notice does not limit the Government's right to use information contained in the proposal if it is obtainable from another source without restriction. This is a Government notice, and shall not by itself be construed to impose any liability upon the Government or Government personnel for disclosure or use of data contained in this proposal.

(e) The notice in paragraph (d) of this section is used solely as a manner of handling unsolicited proposals that will be compatible with this subpart. However, the use of this notice shall not be used to justify the withholding of a record, nor to improperly deny the public access to a record, where an obligation is imposed on an agency by the Freedom of Information Act, 5 U.S.C. 552, as amended. A prospective offeror should identify trade secrets, commercial or financial information, and privileged or confidential information to the Government (see paragraph (a) of this section).

(f) When an agency receives an unsolicited proposal without any restrictive legend from an educational or nonprofit organization or institution, and an evaluation outside the Government is necessary, the agency point of contact shall—

(1) Attach a cover sheet clearly marked with the legend in paragraph (d) of this section;

(2) Change the beginning of this legend to read ''All Government and non-Government personnel * * * ''; and

(3) Require any non-Government evaluator to agree in writing that data in the proposal will not be disclosed to others outside the Government.

(g) If the proposal is received with the restrictive legend (see paragraph (a) of this section), the modified cover sheet shall also be used and permission shall be obtained from the offeror before release of the proposal for evaluation by non-Government personnel.

(h) When an agency receives an unsolicited proposal with or without a restrictive legend from other than an educational or nonprofit organization or institution, and evaluation by Government personnel outside the agency or by experts outside of the Government is necessary, written permission must be obtained from the offeror before release of the proposal for evaluation. The agency point of contact shall—

(1) Clearly mark the cover sheet with the legend in paragraph (d) or as modified in paragraph (f) of this section; and

(2) Obtain a written agreement from any non-Government evaluator stating that data in the proposal will not be disclosed to persons outside the Government.

## PART 16—TYPES OF CONTRACTS

14. Section 16.306 is amended by revising paragraph (c) to read as follows:

### 16.306 Cost-plus-fixed-fee contracts.

* * * * *

(c) *Limitations.* No cost-plus-fixed-fee contract shall be awarded unless the contracting officer complies with all limitations in 16.301–3.

* * * * *

## PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

15. Section 36.520 is added to read as follows:

### 36.520 Contracting by negotiation.

The contracting officer shall insert in solicitations for construction the provision at 52.236–28, Preparation of Offers—Construction, when contracting by negotiation.

## PART 42—CONTRACT ADMINISTRATION

16. Section 42.705–1 is amended by revising paragraph (b)(2) to read as follows:

### 42.705–1 Contracting officer determination procedure.

* * * * *

(b) * * *

(2) The auditor shall submit to the contracting officer an advisory audit report identifying any relevant advance agreements or restrictive terms of specific contracts.

* * * * *

### 42.705–2 [Amended]

17. Section 42.705–2 is amended by removing paragraph (b)(2)(iii) and redesignating paragraphs (b)(2)(iv) and (b)(2)(v) as (b)(2)(iii) and (b)(2)(iv).

18. Section 42.1502 is amended by revising the first sentence of paragraph (a) to read as follows:

### 42.1502 Policy.

(a) Except as provided in paragraph (b) of this section, agencies shall prepare an evaluation of contractor performance for each contract in excess of $1,000,000 (regardless of the date of contract award) and for each contract in excess of $100,000 beginning not later than January 1, 1998 (regardless of the date of contract award), at the time the work under the contract is completed. * * *

* * * * *

19. Section 42.1503 is amended in paragraph (b) by adding a sentence to the end of the paragraph to read as follows:

### 42.1503 Procedures.

* * * * *

(b) * * * A copy of the annual or final past performance evaluation shall be provided to the contractor as soon as it is finalized.

* * * * *

20. Subpart 42.17 is added to read as follows:

## Subpart 42.17—Forward Pricing Rate Agreements

### 42.1701 Procedures.

(a) Negotiation of forward pricing rate agreements (FPRA's) may be requested by the contracting officer or the contractor or initiated by the administrative contracting officer (ACO). In determining whether or not to establish such an agreement, the ACO should consider whether the benefits to be derived from the agreement are commensurate with the effort of establishing and monitoring it. Normally, FPRA's should be negotiated

only with contractors having a significant volume of Government contract proposals. The cognizant contract administration agency shall determine whether an FPRA will be established.

(b) The ACO shall obtain the contractor's proposal and require that it include cost or pricing data that are accurate, complete, and current as of the date of submission. The ACO shall invite the cognizant contract auditor and contracting offices having a significant interest to participate in developing a Government objective and in the negotiations. Upon completing negotiations, the ACO shall prepare a price negotiation memorandum (PNM) (see 15.406–3) and forward copies of the PNM and FPRA to the cognizant auditor and to all contracting offices that are known to be affected by the FPRA. A Certificate of Current Cost or Pricing Data shall not be required at this time (see 15.407–3(c)).

(c) The FPRA shall provide specific terms and conditions covering expiration, application, and data requirements for systematic monitoring to ensure the validity of the rates. The agreement shall provide for cancellation at the option of either party and shall require the contractor to submit to the ACO and to the cognizant contract auditor any significant change in cost or pricing data.

(d) When an FPRA is invalid, the contractor should submit and negotiate a new proposal to reflect the changed conditions. If an FPRA has not been established or has been invalidated, the ACO will issue a forward pricing rate recommendation (FPRR) to buying activities with documentation to assist negotiators. In the absence of an FPRA or FPRR, the ACO shall include support for rates utilized.

(e) The ACO may negotiate continuous updates to the FPRA. The FPRA will provide specific terms and conditions covering notification, application, and data requirements for systematic monitoring to ensure the validity of the rates.

## PART 43—CONTRACT MODIFICATIONS

21. Section 43.301 is amended by revising the introductory text of paragraph (a)(1) to read as follows:

### 43.301 Use of forms.

(a)(1) The Standard Form 30 (SF 30), Amendment of Solicitation/Modification of Contract, exclusive of actions processed under part 15, shall (except for the options stated in 43.301(a)(2) or actions processed under part 15) be used for—

* * * * *

## PART 49—TERMINATION OF CONTRACTS

22. Section 49.208 is amended by revising the third sentence of the introductory paragraph to read as follows:

### 49.208 Equitable adjustment after partial termination.

* * * The contractor shall submit the proposal in the format of Table 15–2 of 15.408.

## PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

23. Section 52.215–1 is added to read as follows:

### 52.215–1 Instructions to Offerors—Competitive Acquisition.

As prescribed in 15.209(a), insert the following provision:

Instructions to Offerors—Competitive Acquisition (Oct 1997)

*(a) Definitions.* As used in this provision—

*Discussions* are negotiations that occur after establishment of the competitive range that may, at the Contracting Officer's discretion, result in the offeror being allowed to revise its proposal.

*In writing or written* means any worded or numbered expression which can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.

*Proposal modification* is a change made to a proposal before the solicitation's closing date and time, or made in response to an amendment, or made to correct a mistake at any time before award.

*Proposal revision* is a change to a proposal made after the solicitation closing date, at the request of or as allowed by a Contracting Officer as the result of negotiations.

*Time,* if stated as a number of days, is calculated using calendar days, unless otherwise specified, and will include Saturdays, Sundays, and legal holidays. However, if the last day falls on a Saturday, Sunday, or legal holiday, then the period shall include the next working day.

(b) *Amendments to solicitations.* If this solicitation is amended, all terms and conditions that are not amended remain unchanged. Offerors shall acknowledge receipt of any amendment to this solicitation by the date and time specified in the amendment(s).

(c) *Submission, modification, revision, and withdrawal of proposals.* (1) Unless other methods (e.g., electronic commerce or facsimile) are permitted in the solicitation, proposals and modifications to proposals shall be submitted in paper media in sealed envelopes or packages (i) addressed to the office specified in the solicitation, and (ii) showing the time and date specified for receipt, the solicitation number, and the name and address of the offeror. Offerors using commercial carriers should ensure that the proposal is marked on the outermost wrapper with the information in paragraphs (c)(1)(i) and (c)(1)(ii) of this provision.

(2) The first page of the proposal must show—

(i) The solicitation number;

(ii) The name, address, and telephone and facsimile numbers of the offeror (and electronic address if available);

(iii) A statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation and agreement to furnish any or all items upon which prices are offered at the price set opposite each item;

(iv) Names, titles, and telephone and facsimile numbers (and electronic addresses if available) of persons authorized to negotiate on the offeror's behalf with the Government in connection with this solicitation; and

(v) Name, title, and signature of person authorized to sign the proposal. Proposals signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the issuing office.

(3) *Late proposals and revisions.* (i) Any proposal received at the office designated in the solicitation after the exact time specified for receipt of offers will not be considered unless it is received before award is made and—

(A) It was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th);

(B) It was sent by mail (or telegram or facsimile, if authorized) or hand-carried (including delivery by a commercial carrier) if it is determined by the Government that the late receipt was due primarily to Government mishandling after receipt at the Government installation;

(C) It was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term ''working days'' excludes weekends and U.S. Federal holidays;

(D) It was transmitted through an electronic commerce method authorized by the solicitation and was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of proposals; or

(E) There is acceptable evidence to establish that it was received at the activity designated for receipt of offers and was under the Government's control prior to the time set for receipt of offers, and the Contracting Officer determines that accepting the late offer would not unduly delay the procurement; or

(F) It is the only proposal received.

(ii) Any modification or revision of a proposal or response to request for information, including any final proposal revision, is subject to the same conditions as

in subparagraphs (c)(3)(i)(A) through (c)(3)(i)(E) of this provision.

(iii) The only acceptable evidence to establish the date of mailing of a late proposal or modification or revision sent either by registered or certified mail is the U.S. or Canadian Postal Service postmark both on the envelope or wrapper and on the original receipt from the U.S. or Canadian Postal Service. Both postmarks must show a legible date or the proposal, response to a request for information, or modification or revision shall be processed as if mailed late. ''Postmark'' means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, offerors or respondents should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and the envelope or wrapper.

(iv) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the proposal wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(v) The only acceptable evidence to establish the date of mailing of a late offer, modification or revision, or withdrawal sent by Express Mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the ''Express Mail Next Day Service-Post Office to Addressee'' label and the postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. ''Postmark'' has the same meaning as defined in paragraph (c)(3)(iii) of this provision, excluding postmarks of the Canadian Postal Service. Therefore, offerors or respondents should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and the envelope or wrapper.

(vi) Notwithstanding paragraph (c)(3)(i) of this provision, a late modification or revision of an otherwise successful proposal that makes its terms more favorable to the Government will be considered at any time it is received and may be accepted.

(vii) Proposals may be withdrawn by written notice or telegram (including mailgram) received at any time before award. If the solicitation authorizes facsimile proposals, proposals may be withdrawn via facsimile received at any time before award, subject to the conditions specified in the provision entitled ''Facsimile Proposals.'' Proposals may be withdrawn in person by an offeror or an authorized representative, if the representative's identity is made known and the representative signs a receipt for the proposal before award.

(viii) If an emergency or unanticipated event interrupts normal Government processes so that proposals cannot be received at the office designated for receipt of proposals by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation or other notice of an extension of the closing date, the time specified for receipt of proposals will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office.

(4) Unless otherwise specified in the solicitation, the offeror may propose to provide any item or combination of items.

(5) Proposals submitted in response to this solicitation shall be in English and in U.S. dollars, unless otherwise permitted by the solicitation.

(6) Offerors may submit modifications to their proposals at any time before the solicitation closing date and time, and may submit modifications in response to an amendment, or to correct a mistake at any time before award.

(7) Offerors may submit revised proposals only if requested or allowed by the Contracting Officer.

(8) Proposals may be withdrawn at any time before award. Withdrawals are effective upon receipt of notice by the Contracting Officer.

(d) *Offer expiration date.* Proposals in response to this solicitation will be valid for the number of days specified on the solicitation cover sheet (unless a different period is proposed by the offeror).

(e) *Restriction on disclosure and use of data.* Offerors that include in their proposals data that they do not want disclosed to the public for any purpose, or used by the Government except for evaluation purposes, shall—

(1) Mark the title page with the following legend: This proposal includes data that shall not be disclosed outside the Government and shall not be duplicated, used, or disclosed—in whole or in part—for any purpose other than to evaluate this proposal. If, however, a contract is awarded to this offeror as a result of—or in connection with— the submission of this data, the Government shall have the right to duplicate, use, or disclose the data to the extent provided in the resulting contract. This restriction does not limit the Government's right to use information contained in this data if it is obtained from another source without restriction. The data subject to this restriction are contained in sheets [insert numbers or other identification of sheets]; and

(2) Mark each sheet of data it wishes to restrict with the following legend: Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this proposal.

(f) *Contract award.* (1) The Government intends to award a contract or contracts resulting from this solicitation to the responsible offeror(s) whose proposal(s) represents the best value after evaluation in accordance with the factors and subfactors in the solicitation.

(2) The Government may reject any or all proposals if such action is in the Government's interest.

(3) The Government may waive informalities and minor irregularities in proposals received.

(4) The Government intends to evaluate proposals and award a contract without discussions with offerors (except clarifications as described in FAR 15.306(a)). Therefore, the offeror's initial proposal should contain the offeror's best terms from a cost or price and technical standpoint. The Government reserves the right to conduct discussions if the Contracting Officer later determines them to be necessary. If the Contracting Officer determines that the number of proposals that would otherwise be in the competitive range exceeds the number at which an efficient competition can be conducted, the Contracting Officer may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals.

(5) The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit cost or prices offered, unless the offeror specifies otherwise in the proposal.

(6) The Government reserves the right to make multiple awards if, after considering the additional administrative costs, it is in the Government's best interest to do so.

(7) Exchanges with offerors after receipt of a proposal do not constitute a rejection or counteroffer by the Government.

(8) The Government may determine that a proposal is unacceptable if the prices proposed are materially unbalanced between line items or subline items. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more contract line items is significantly overstated or understated as indicated by the application of cost or price analysis techniques. A proposal may be rejected if the Contracting Officer determines that the lack of balance poses an unacceptable risk to the Government.

(9) If a cost realism analysis is performed, cost realism may be considered by the source selection authority in evaluating performance or schedule risk.

(10) A written award or acceptance of proposal mailed or otherwise furnished to the successful offeror within the time specified in the proposal shall result in a binding contract without further action by either party.

(11) The Government may disclose the following information in postaward debriefings to other offerors:

(i) The overall evaluated cost or price and technical rating of the successful offeror;

(ii) The overall ranking of all offerors, when any ranking was developed by the agency during source selection;

(iii) A summary of the rationale for award; and

(iv) For acquisitions of commercial items, the make and model of the item to be delivered by the successful offeror. (End of provision)

*Alternate I (Oct 1997).* As prescribed in 15.209(a)(1), substitute the following paragraph (f)(4) for paragraph (f)(4) of the basic provision:

(f)(4) The Government intends to evaluate proposals and award a contract after conducting discussions with offerors whose proposals have been determined to be within the competitive range. If the Contracting Officer determines that the number of

proposals that would otherwise be in the competitive range exceeds the number at which an efficient competition can be conducted, the Contracting Officer may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals. Therefore, the offeror's initial proposal should contain the offeror's best terms from a price and technical standpoint.

*Alternate II (Oct 1997).* As prescribed in 15.209(a)(2), add a paragraph (c)(9) substantially the same as the following to the basic clause:

(9) Offerors may submit proposals that depart from stated requirements. Such proposals shall clearly identify why the acceptance of the proposal would be advantageous to the Government. Any deviations from the terms and conditions of the solicitation, as well as the comparative advantage to the Government, shall be clearly identified and explicitly defined. The Government reserves the right to amend the solicitation to allow all offerors an opportunity to submit revised proposals based on the revised requirements.

24. Sections 52.215–3 through 52.215–15 are revised to read as follows:

**52.215–3 Request for Information or Solicitation for Planning Purposes.**

As prescribed in 15.209(c), insert the following provision:

Request for Information or Solicitation for Planning Purposes (Oct 1997)

(a) The Government does not intend to award a contract on the basis of this solicitation or to otherwise pay for the information solicited except as an allowable cost under other contracts as provided in subsection 31.205–18, Bid and proposal costs, of the Federal Acquisition Regulation.

(b) Although ''proposal'' and ''offeror'' are used in this Request for Information, your response will be treated as information only. It shall not be used as a proposal.

(c) This solicitation is issued for the purpose of: [*state purpose*]. (End of provision)

**52.215–4 Type of Business Organization.**

As prescribed in 15.209(d), insert the following provision:

Type of Business Organization (Oct 1997)

The offeror or respondent, by checking the applicable box, represents that—

(a) It operates as ☐ an individual, ☐ a partnership, ☐ a nonprofit organization, ☐ a joint venture, or ☐ a corporation incorporated under the laws of the State of _____.

(b) If the offeror or respondent is a foreign entity, it operates as ☐ an individual, ☐ a partnership, ☐ a nonprofit organization, ☐ a joint venture, or ☐ a corporation, registered for business in (country) _____.

(End of provision)

**52.215–5 Facsimile Proposals.**

As prescribed in 15.209(e), insert the following provision:

Facsimile Proposals (Oct 1997)

(a) *Definition. Facsimile proposal,* as used in this provision, means a proposal, revision or modification of a proposal, or withdrawal of a proposal that is transmitted to and received by the Government via facsimile machine.

(b) Offerors may submit facsimile proposals as responses to this solicitation. Facsimile proposals are subject to the same rules as paper proposals.

(c) The telephone number of receiving facsimile equipment is: [*insert telephone number*].

(d) If any portion of a facsimile proposal received by the Contracting Officer is unreadable to the degree that conformance to the essential requirements of the solicitation cannot be ascertained from the document—

(1) The Contracting Officer immediately shall notify the offeror and permit the offeror to resubmit the proposal;

(2) The method and time for resubmission shall be prescribed by the Contracting Officer after consultation with the offeror; and

(3) The resubmission shall be considered as if it were received at the date and time of the original unreadable submission for the purpose of determining timeliness, provided the offeror complies with the time and format requirements for resubmission prescribed by the Contracting Officer.

(e) The Government reserves the right to make award solely on the facsimile proposal. However, if requested to do so by the Contracting Officer, the apparently successful offeror promptly shall submit the complete original signed proposal. (End of provision)

**52.215–6 Place of Performance.**

As prescribed in 15.209(f), insert the following provision:

Place of Performance (Oct 1997)

(a) The offeror or respondent, in the performance of any contract resulting from this solicitation, ☐ intends, ☐ does not intend [*check applicable block*] to use one or more plants or facilities located at a different address from the address of the offeror or respondent as indicated in this proposal or response to request for information.

(b) If the offeror or respondent checks ''intends'' in paragraph (a) of this provision, it shall insert in the following spaces the required information:

| Place of performance (street address, city, state, county, zip code) | Name and address of owner and operator of the plant or facility if other than offeror or respondent |
|---|---|
| _____ | _____ |
| _____ | _____ |

(End of provision)

**52.215–7 Annual Representations and Certifications—Negotiation.**

As prescribed in 15.209(g), insert the following provision:

Annual Representations and Certifications—Negotiation (Oct 1997)

The offeror has [*check the appropriate block*]:

☐ (a) Submitted to the contracting office issuing this solicitation, annual representations and certifications dated _____ [*insert date of signature on submission*] that are incorporated herein by reference, and are current, accurate, and complete as of the date of this proposal, except as follows [*insert changes that affect only this proposal; if ''none,'' so state*]:

☐ (b) Enclosed its annual representations and certifications. (End of provision)

**52.215–8 Order of Precedence—Uniform Contract Format.**

As prescribed in 15.209(h), insert the following clause:

Order of Precedence—Uniform Contract Format (Oct 1997)

Any inconsistency in this solicitation or contract shall be resolved by giving precedence in the following order:

(a) The Schedule (excluding the specifications).

(b) Representations and other instructions.

(c) Contract clauses.

(d) Other documents, exhibits, and attachments.

(e) The specifications. (End of clause)

**52.215–9 Changes or Additions to Make-or-Buy Program.**

As prescribed in 15.408(a), insert the following clause:

Changes or Additions to Make-or-Buy Program (Oct 1997)

(a) The Contractor shall perform in accordance with the make-or-buy program incorporated in this contract. If the Contractor proposes to change the program, the Contractor shall, reasonably in advance of the proposed change, (1) notify the Contracting Officer in writing, and (2) submit justification in sufficient detail to permit evaluation. Changes in the place of performance of any ''make'' items in the program are subject to this requirement.

(b) For items deferred at the time of negotiation of this contract for later addition to the program, the Contractor shall, at the earliest possible time—

(1) Notify the Contracting Officer of each proposed addition; and

(2) Provide justification in sufficient detail to permit evaluation.

(c) Modification of the make-or-buy program to incorporate proposed changes or additions shall be effective upon the Contractor's receipt of the Contracting Officer's written approval. (End of clause)

*Alternate I (Oct 1997).* As prescribed in 15.408(a)(1) add the following paragraph (d) to the basic clause:

(d) If the Contractor desires to reverse the categorization of ''make'' or ''buy'' for any item or items designated in the contract as subject to this paragraph, it shall—

(1) Support its proposal with cost or pricing data when permitted and necessary to support evaluation; and

(2) After approval is granted, promptly negotiate with the Contracting Officer an equitable reduction in the contract price in accordance with paragraph (k) of the Incentive Price Revision—Firm Target clause

or paragraph (m) of the Incentive Price Revision—Successive Targets clause of this contract.

*Alternate II (Oct 1997).* As prescribed in 15.408(a)(2), add the following paragraph (d) to the basic clause:

(d) If the Contractor desires to reverse the categorization of ''make'' or ''buy'' for any item or items designated in the contract as subject to this paragraph, it shall—

(1) Support its proposal with cost or pricing data to permit evaluation; and

(2) After approval is granted, promptly negotiate with the Contracting Officer an equitable reduction in the contract's total estimated cost and fee in accordance with paragraph (e) of the Incentive Fee clause of this contract.

### 52.215–10 Price Reduction for Defective Cost or Pricing Data.

As prescribed in 15.408(b), insert the following clause:

Price Reduction for Defective Cost or Pricing Data (Oct 1997)

(a) If any price, including profit or fee, negotiated in connection with this contract, or any cost reimbursable under this contract, was increased by any significant amount because—

(1) The Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data;

(2) A subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data; or

(3) Any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction.

(b) Any reduction in the contract price under paragraph (a) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which—

(1) The actual subcontract; or

(2) The actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.

(c)(1) If the Contracting Officer determines under paragraph (a) of this clause that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:

(i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.

(ii) The Contracting Officer should have known that the cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer.

(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.

(iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.

(2)(i) Except as prohibited by subdivision (c)(2)(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if—

(A) The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and

(B) The Contractor proves that the cost or pricing data were available before the ''as of'' date specified on its Certificate of Current Cost or Pricing Data, and that the data were not submitted before such date.

(ii) An offset shall not be allowed if—

(A) The understated data were known by the Contractor to be understated before the ''as of'' date specified on its Certificate of Current Cost or Pricing Data; or

(B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the ''as of'' date specified on its Certificate of Current Cost or Pricing Data.

(d) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid—

(1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and

(2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data that were incomplete, inaccurate, or noncurrent. (End of clause)

### 52.215–11 Price Reduction for Defective Cost or Pricing Data—Modifications.

As prescribed in 15.408(c), insert the following clause:

Price Reduction for Defective Cost or Pricing Data—Modifications (Oct 1997)

(a) This clause shall become operative only for any modification to this contract involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403–4, except that this clause does not apply to any modification if an exception under FAR 15.403–1 applies.

(b) If any price, including profit or fee, negotiated in connection with any modification under this clause, or any cost reimbursable under this contract, was increased by any significant amount because (1) the Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data, (2) a subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data, or (3) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction. This right to a price reduction is limited to that resulting from defects in data relating to modifications for which this clause becomes operative under paragraph (a) of this clause.

(c) Any reduction in the contract price under paragraph (b) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which—

(1) The actual subcontract; or

(2) The actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.

(d)(1) If the Contracting Officer determines under paragraph (b) of this clause that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:

(i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.

(ii) The Contracting Officer should have known that the cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer.

(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.

(iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.

(2)(i) Except as prohibited by subdivision (d)(2)(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if—

(A) The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and

(B) The Contractor proves that the cost or pricing data were available before the ''as of'' date specified on its Certificate of Current Cost or Pricing Data, and that the data were not submitted before such date.

(ii) An offset shall not be allowed if—

(A) The understated data were known by the Contractor to be understated before the ''as of'' date specified on its Certificate of Current Cost or Pricing Data; or

(B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the ''as of'' date specified on its Certificate of Current Cost or Pricing Data.

(e) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid—

(1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and

(2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data that were incomplete, inaccurate, or noncurrent. (End of clause)

**52.215–12 Subcontractor Cost or Pricing Data.**

As prescribed in 15.408(d), insert the following clause:

Subcontractor Cost or Pricing Data (Oct 1997)

(a) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.403–4, on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403–4, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR 15.403–1 applies.

(b) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 15.406–2 that, to the best of its knowledge and belief, the data submitted under paragraph (a) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(c) In each subcontract that exceeds the threshold for submission of cost or pricing data at FAR 15.403–4, when entered into, the Contractor shall insert either—

(1) The substance of this clause, including this paragraph (c), if paragraph (a) of this clause requires submission of cost or pricing data for the subcontract; or

(2) The substance of the clause at FAR 52.215–13, Subcontractor Cost or Pricing Data—Modifications. (End of clause)

**52.215–13 Subcontractor Cost or Pricing Data—Modifications.**

As prescribed in 15.408(e), insert the following clause:

Subcontractor Cost or Pricing Data—Modifications (Oct 1997)

(a) The requirements of paragraphs (b) and (c) of this clause shall—

(1) Become operative only for any modification to this contract involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403–4; and

(2) Be limited to such modifications.

(b) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.403–4, on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403–4, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR 15.403–1 applies.

(c) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 15.406–2 that, to the best of its knowledge and belief, the data submitted under paragraph (b) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that exceeds the threshold for submission of cost or pricing data at FAR 15.403–4 on the date of agreement on price or the date of award, whichever is later. (End of clause)

**52.215–14 Integrity of Unit Prices.**

As prescribed in 15.408(f)(1), insert the following clause:

Integrity of Unit Prices (Oct 1997)

(a) Any proposal submitted for the negotiation of prices for items of supplies shall distribute costs within contracts on a basis that ensures that unit prices are in proportion to the items' base cost (*e.g.*, manufacturing or acquisition costs). Any method of distributing costs to line items that distorts unit prices shall not be used. For example, distributing costs equally among line items is not acceptable except when there is little or no variation in base cost. Nothing in this paragraph requires submission of cost or pricing data not otherwise required by law or regulation.

(b) When requested by the Contracting Officer, the Offeror/Contractor shall also identify those supplies that it will not manufacture or to which it will not contribute significant value.

(c) The Contractor shall insert the substance of this clause, less paragraph (b), in all subcontracts for other than: acquisitions at or below the simplified acquisition threshold in FAR Part 2; construction or architect-engineer services under FAR Part 36; utility services under FAR Part 41; services where supplies are not required; commercial items; and petroleum products. (End of clause)

*Alternate I (Oct 1997).* As prescribed in 15.408(f)(2), substitute the following paragraph (b) for paragraph (b) of the basic clause:

(b) The Offeror/Contractor shall also identify those supplies that it will not manufacture or to which it will not contribute significant value.

**52.215–15 Termination of Defined Benefit Pension Plans.**

As prescribed in 15.408(g), insert the following clause:

Termination of Defined Benefit Pension Plans (Oct 1997)

The Contractor shall promptly notify the Contracting Officer in writing when it determines that it will terminate a defined benefit pension plan or otherwise recapture such pension fund assets. If pension fund assets revert to the Contractor or are constructively received by it under a termination or otherwise, the Contractor shall make a refund or give a credit to the Government for its equitable share as required by FAR 31.205–6(j)(4). The Contractor shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirement of FAR 15.408(g). (End of clause)

**52.215–16 [Removed]**

25. Section 52.215–16 is removed.

**52.215–30 [Redesignated as 52.215–16 and Amended]**

26. Section 52.215–30 is redesignated as 52.215–16, amended in the introductory text by removing the reference ''15.904(a)'' and inserting ''15.408(h),'' and revising the clause date to read ''(OCT 1997)''.

**15.215–17 [Removed]**

27. Section 52.215–17 is removed.

**52.215–31 [Redesignated as 52.215–17 and Amended]**

28. Section 52.215–31 is redesignated as 52.215–17, amended in the introductory text by removing the reference ''15.904(b)'' and inserting ''15.408(i),'' and revising the clause date to read ''(OCT 1997)''.

29. Sections 52.215–18 through 52.215–21 are revised to read as follows:

**52.215–18 Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions.**

As prescribed in 15.408(j), insert the following clause:

Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions (Oct 1997)

The Contractor shall promptly notify the Contracting Officer in writing when it determines that it will terminate or reduce a PRB plan. If PRB fund assets revert, or inure, to the Contractor or are constructively received by it under a plan termination or otherwise, the Contractor shall make a refund or give a credit to the Government for its equitable share as required by FAR 31.205–6(o)(6). The Contractor shall include the

substance of this clause in all subcontracts under this contract that meet the applicability requirements of FAR 15.408(j). (End of clause)

**52.215–19 Notification of Ownership Changes.**

As prescribed in 15.408(k), insert the following clause:

Notification of Ownership Changes (Oct 1997)

(a) The Contractor shall make the following notifications in writing:

(1) When the Contractor becomes aware that a change in its ownership has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the Contractor shall notify the Administrative Contracting Officer (ACO) within 30 days.

(2) The Contractor shall also notify the ACO within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership.

(b) The Contractor shall—

(1) Maintain current, accurate, and complete inventory records of assets and their costs;

(2) Provide the ACO or designated representative ready access to the records upon request;

(3) Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the Contractor's ownership changes; and

(4) Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Contractor ownership change.

(c) The Contractor shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirement of FAR 15.408(k). (End of clause)

**52.215–20 Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data.**

As prescribed in 15.408(l), insert the following provision:

Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data (Oct 1997)

(a) *Exceptions from cost or pricing data.* (1) In lieu of submitting cost or pricing data, offerors may submit a written request for exception by submitting the information described in the following subparagraphs. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable.

(i) *Identification of the law or regulation establishing the price offered.* If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.

(ii) *Commercial item exception.* For a commercial item exception, the offeror shall submit, at a minimum, information on prices at which the same item or similar items have previously been sold in the commercial market that is adequate for evaluating the reasonableness of the price for this acquisition. Such information may include--

(A) For catalog items, a copy of or identification of the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which the proposal is being submitted. Provide a copy or describe current discount policies and price lists (published or unpublished), *e.g.*, wholesale, original equipment manufacturer, or reseller. Also explain the basis of each offered price and its relationship to the established catalog price, including how the proposed price relates to the price of recent sales in quantities similar to the proposed quantities;

(B) For market-priced items, the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. In addition, describe the nature of the market;

(C) For items included on an active Federal Supply Service Multiple Award Schedule contract, proof that an exception has been granted for the schedule item.

(2) The offeror grants the Contracting Officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this provision, and the reasonableness of price. For items priced using catalog or market prices, or law or regulation, access does not extend to cost or profit information or other data relevant solely to the offeror's determination of the prices to be offered in the catalog or marketplace.

(b) *Requirements for cost or pricing data.* If the offeror is not granted an exception from the requirement to submit cost or pricing data, the following applies:

(1) The offeror shall prepare and submit cost or pricing data and supporting attachments in accordance with Table 15–2 of FAR 15.408.

(2) As soon as practicable after agreement on price, but before contract award (except for unpriced actions such as letter contracts), the offeror shall submit a Certificate of Current Cost or Pricing Data, as prescribed by FAR 15.406–2. (End of provision)

*Alternate I (Oct 1997).* As prescribed in 15.408(l), substitute the following paragraph (b)(1) for paragraph (b)(1) of the basic provision:

(b)(1) The offeror shall submit cost or pricing data and supporting attachments in the following format:

*Alternate II (Oct 1997).* As prescribed in 15.408(l), add the following paragraph (c) to the basic provision:

(c) When the proposal is submitted, also submit one copy each to: (1) the Administrative Contracting Officer, and (2) the Contract Auditor.

*Alternate III (Oct 1997).* As prescribed in 15.408(l), add the following paragraph (c) to the basic provision (if Alternate II is also used, redesignate the following paragraph as paragraph (d)).

(c) Submit the cost portion of the proposal via the following electronic media: *[Insert media format, e.g., electronic spreadsheet format, electronic mail, etc.]*

*Alternate IV (Oct 1997).* As prescribed in 15.408(l), replace the text of the basic provision with the following:

(a) Submission of cost or pricing data is not required.

(b) Provide information described below: *[Insert description of the information and the format that are required, including access to records necessary to permit an adequate evaluation of the proposed price in accordance with 15.403–3.]*

**52.215–21 Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data—Modifications.**

As prescribed in 15.408(m), insert the following clause:

Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data—Modifications (Oct 1997)

(a) *Exceptions from cost or pricing data.* (1) In lieu of submitting cost or pricing data for modifications under this contract, for price adjustments expected to exceed the threshold set forth at FAR 15.403–4 on the date of the agreement on price or the date of the award, whichever is later, the Contractor may submit a written request for exception by submitting the information described in the following subparagraphs. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable—

(i) *Identification of the law or regulation establishing the price offered.* If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.

(ii) *Information on modifications of contracts or subcontracts for commercial items.* (A) If—

(*1*) The original contract or subcontract was granted an exception from cost or pricing data requirements because the price agreed upon was based on adequate price competition or prices set by law or regulation, or was a contract or subcontract for the acquisition of a commercial item; and

(*2*) The modification (to the contract or subcontract) is not exempted based on one of these exceptions, then the Contractor may provide information to establish that the modification would not change the contract or subcontract from a contract or subcontract for the acquisition of a commercial item to a contract or subcontract for the acquisition of an item other than a commercial item.

(*B*) For a commercial item exception, the Contractor shall provide, at a minimum, information on prices at which the same item or similar items have previously been sold that is adequate for evaluating the reasonableness of the price of the modification. Such information may include—

(*1*) For catalog items, a copy of or identification of the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which the proposal is

being submitted. Provide a copy or describe current discount policies and price lists (published or unpublished), *e.g.*, wholesale, original equipment manufacturer, or reseller. Also explain the basis of each offered price and its relationship to the established catalog price, including how the proposed price relates to the price of recent sales in quantities similar to the proposed quantities.

(*2*) For market-priced items, the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. In addition, describe the nature of the market.

(*3*) For items included on an active Federal Supply Service Multiple Award Schedule contract, proof that an exception has been granted for the schedule item.

(2) The Contractor grants the Contracting Officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this clause, and the reasonableness of price. For items priced using catalog or market prices, or law or regulation, access does not extend to cost or profit information or other data relevant solely to the Contractor's determination of the prices to be offered in the catalog or marketplace.

(b) *Requirements for cost or pricing data.* If the Contractor is not granted an exception from the requirement to submit cost or pricing data, the following applies:

(1) The Contractor shall submit cost or pricing data and supporting attachments in accordance with Table 15–2 of FAR 15.408.

(2) As soon as practicable after agreement on price, but before award (except for unpriced actions), the Contractor shall submit a Certificate of Current Cost or Pricing Data, as prescribed by FAR 15.406–2. (End of clause)

*Alternate I (Oct 1997).* As prescribed in 15.408(m), substitute the following paragraph (b)(1) for paragraph (b)(1) of the basic clause.

(1) The Contractor shall submit cost or pricing data and supporting attachments prepared in the following format:

*Alternate II (Oct 1997).* As prescribed in 15.408(m), add the following paragraph (c) to the basic clause:

(c) When the proposal is submitted, also submit one copy each to: (1) the Administrative Contracting Officer, and (2) the Contract Auditor.

*Alternate III (Oct 1997).* As prescribed in 15.408(m), add the following paragraph (c) to the basic clause (if Alternate II is also used, redesignate the following paragraph as paragraph (d)):

(c) Submit the cost portion of the proposal via the following electronic media: *[Insert media format]*

*Alternate IV (Oct 1997).* As prescribed in 15.408(m), replace the text of the basic clause with the following:

(a) Submission of cost or pricing data is not required.

(b) Provide information described below: [*Insert description of the information and the format that are required, including access to records necessary to permit an adequate evaluation of the proposed price in accordance with 15.403–3.*]

**52.215–22 through 52.215–42 [Removed]**

30. Sections 52.215–22 through 52.215–42 are removed.

31. Section 52.216–5 is amended by revising the clause date to read ''(OCT 1997)'', paragraph (d)(1)(i)(A), and the introductory text of (d)(1)(ii) to read as follows:

**52.216–5 Price Redetermination—Prospective.**

* * * * *

(d) * * *

(1) * * *

(i) * * *

(A) An estimate and breakdown of the costs of these supplies or services in the format of Table 15–2, FAR 15.408, or in any other form on which the parties may agree;

* * * * *

(ii) A statement of all costs incurred in performing this contract through the end of the _____ month (see Note (3)) before the submission of proposed prices in the format of Table 15–2, FAR 15.408 (or in any other form on which the parties may agree), with sufficient supporting data to disclose unit costs and cost trends for—

* * * * *

32. Section 52.216–6 is amended by revising the clause date to read ''(OCT 1997)'', and paragraph (c)(1)(ii) to read as follows:

**52.216–6 Price Redetermination—Retroactive.**

* * * * *

(c) * * *

(1) * * *

(ii) A statement in the format of Table 15–2, FAR 15.408, or in any other form on which the parties may agree, of all costs incurred in performing the contract; and

* * * * *

33. Section 52.216–16 is amended by revising the clause date to read (OCT 1997), and paragraph (c)(1) introductory text to read as follows:

**52.216–16 Incentive Price Revision—Firm Target.**

* * * * *

(c) *Data submission.* (1) Within _____ [*Contracting Officer insert number of days*] days after the end of the month in which the Contractor has delivered the last unit of supplies and completed the services specified by item number in paragraph (a) of this clause, the Contractor shall sumbit in the format of Table 15–2, FAR 15.408, or in any other form on which the parties agree—

* * * * *

34. Section 52.216–17 is amended by revising the date of the clause to read ''(OCT 1997)'', the introductory text of paragraphs (c)(1)(ii) and (iii), and the introductory text of paragraph (e) to read as follows:

**52.216–17 Incentive Price Revision—Successive Targets.**

* * * * *

(c)(1) * * *

(ii) A detailed statement of all costs incurred in the performance of this contract through the end of the month specified above, in the format of Table 15–2, FAR 15.408 (or in any other form on which the parties may agree), with sufficient supporting data to disclose unit costs and cost trends for—

* * * * *

(iii) An estimate of costs of all supplies delivered and to be delivered and all services performed and to be performed under this contract, using the statement of costs incurred plus an estimate of costs to complete performance, in the format of Table 15–2, FAR 15.408 (or in any other form on which the parties may agree), together with—

* * * * *

(e) *Submitting data for final price revision.* Unless a firm fixed price has been established in accordance with paragraph (d) of this section within _____ [*Contracting Officer insert number of days*] days after the end of the month in which the Contractor has delivered the last unit of supplies and completed the services specified by item number in paragraph (a) of this section, the Contractor shall submit in the format of Table 15–2, FAR 15.408 (or in any other form on which the parties agree)—

* * * * *

35. Section 52.236–28 is added to read as follows:

**52.236–28 Preparation of Proposals—Construction.**

As prescribed in 36.520, insert the following provision:

Preparation of Proposals—Construction (Oct 1997)

(a) Proposals must be (1) submitted on the forms furnished by the Government or on copies of those forms, and (2) manually signed. The person signing a proposal must initial each erasure or change appearing on any proposal form.

(b) The proposal form may require offerors to submit proposed prices for one or more items on various bases, including—

(1) Lump sum price;

(2) Alternate prices;

(3) Units of construction; or

(4) Any combination of paragraphs (b)(1) through (b)(3) of this provision.

(c) If the solicitation requires submission of a proposal on all items, failure to do so may result in the proposal being rejected without further consideration. If a proposal on all items is not required, offerors should insert the words ''no proposal'' in the space provided for any item on which no price is submitted.

(d) Alternate proposals will not be considered unless this solicitation authorizes their submission.

(End of provision)

## PART 53—FORMS

36. Section 53.213 is amended by revising the section heading and paragraph (a) to read as follows:

**53.213 Simplified acquisition procedures (SF's 18, 30, 44, 1165, and 1449, and OF's 336, 347, and 348).**

* * * * *

(a) *SF 18 (Rev. 6/95), Request for Quotations, or SF 1449 (10/95 Ed.), olicitation/Contract/Order for Commercial Items.* SF 18 is prescribed for use in obtaining price, cost, delivery, and related information from suppliers as specified in 13.107. SF 1449, as prescribed in 53.212, or other agency forms/automated formats, may also be used to obtain price, cost, delivery, and related information from suppliers as specified in 13.107.

* * * * *

37. Section 53.214 is amended by revising the first sentence of paragraph (a), paragraph (c); and the first sentence of paragraph (d) to read as follows:

**53.214 Sealed bidding.**

* * * * *

(a) *SF 26 (4/85), Award/Contract.* SF 26 is prescribed for use in awarding sealed bid contracts for supplies or services in which bids were obtained on SF 33, Solicitation, Offer and Award, as specified in 14.408–1(d)(1). * * *

* * * * *

(c) *SF 33 (Rev. 4/85), Solicitation, Offer and Award.* SF 33 is prescribed for use in soliciting bids for supplies or services and for awarding the contracts that result from the bids, as specified in 14.201–2(a)(1), unless award is accomplished by SF 26. Pending issuance of a new edition of the form, the reference in block 1 should be amended to read 15 CFR 700 and in the Caution statement of ''block 9'' revise 52.215–10 to read 52.215–1.

(d) SF 1447 (5/88), Solicitation/Contract. SF 1447 is prescribed for use in soliciting supplies or services and for awarding contracts that result from the bids. * * *

* * * * *

38. Section 53.215–1 is revised to read as follows:

**53.215–1 Solicitation and receipt of proposals.**

The following forms are prescribed, as stated in the following paragraphs, for use in contracting by negotiation (except for construction, architect-engineer services, or acquisitions made using simplified acquisition procedures):

(a) *SF 26 (Rev. 4/85), Award/Contract.* SF 26, prescribed in 53.214(a), may be used in entering into negotiated contracts in which the signature of both parties on a single document is appropriate, as specified in 15.509(b).

(b) *SF 30 (Rev. 10/83), Amendment of Solicitation/Modification of Contract.* SF 30, prescribed in 53.243, may be used for amending requests for proposals and for amending requests for information, as specified in 15.210(b).

(c) *SF 33 (Rev. 4/85), Solicitation, Offer and Award.* SF 33, prescribed in 53.214(c), may be used in connection with the solicitation and award of negotiated contracts. Award of such contracts may be made by either OF 307, SF 33, or SF 26, as specified in 53.214(c) and 15.509. Pending issuance of a new edition of the form, the reference in ''block 1'' should be amended to read ''15 CFR 700'' and in the Caution statement of ''block 9'' revise 52.215–10 to read 52.215–1.

(d) *OF 17 (Rev. 12/93), Offer Label.* OF 17 may be furnished with each request for proposals to facilitate identification and handling of proposals, as specified in 15.210(c).

(e) *OF 307 (9/97), Contract Award.* OF 307 may be used to award negotiated contracts as specified in 15.509(a).

(f) *OF 308 (9/97), Solicitation and Offer-Negotiated Acquisition.* OF 308 may be used to support solicitation of negotiated contracts as specified in 15.210(a). Award of such contracts may be made by OF 307, as specified in 15.509(a).

(g) *OF 309 (9/97), Amendment of Solicitation.* OF 309 may be used to amend solicitations of negotiated contracts, as specified in 15.210(b).

**53.215–2 [Removed]**

39. Section 53.215–2 is removed.

40. Section 53.243 is amended by revising the introductory paragraph to read as follows:

**53.243 Contract modifications (SF 30).**

*SF 30 (Rev. 10/83), Amendment of Solicitation/Modification of Contract.* SF 30 is prescribed for use in amending invitation for bids, as specified in 14.208; modifying purchase and delivery orders, as specified in 13.503(b); and modifying contracts, as specified in 42.1203(f), 43.301, 49.602–5, and elsewhere in this chapter. The form may also be used to amend solicitations for negotiated contracts, as specified in 15.210(b). Pending the publication of a new edition of the form, Instruction (b), Item 3 (effective date), is revised in paragraphs (3) and (5) as follows:

* * * * *

41. Section 53.249 is amended by adding a sentence to the end of paragraphs (a)(2), (a)(3), and (a)(4) to read as follows:

**53.249 Termination of contracts.**

(a) * * *

(2) * * * Pending issuance of a new edition of the form, in the ''Note'' of the Certification on page 4, revise the references 15.804–2, 15.804–2(a), and 15.804–6 to read 15.403, 15.406–2, and 15.408, Table 15–2, respectively.

(3) * * * Pending issuance of a new edition of the form, in the ''Note'' of the Certification on page 4, revise the references ''15.804–2, 15.804–2(a), and 15.804–6'' to read ''15.403, 15.406–2, and 15.408, Table 15–2,'' respectively.

(4) * * * Pending issuance of a new edition of the form, in the ''Note'' of the Certification, revise the references ''15.804–2, 15.804–2(a), and 15.804–6'' to read ''15.403, 15.406–2, and 15.408, Table 15–2,'' respectively.

* * * * *

**53.301–1411 [Removed]**

42. Section 53.301–1411 is removed.

**53.301–1448 [Removed]**

43. Section 53.301–1448 is removed.

44. Sections 53.302–307 through 53.302–309 are added to read as follows:

**53.302–307 Optional Form 307, Contract Award.**

BILLING CODE 6820–EP–P

# CONTRACT AWARD

PAGE OF PAGES

| 1. CONTRACT NUMBER | 2. EFFECTIVE DATE | 3. SOLICITATION NUMBER | 4. REQUISITION/PROJECT NUMBER |
|---|---|---|---|
| | | | |

| 5. ISSUED BY | CODE | 6. ADMINISTERED BY *(If other than Item 5)* | CODE |
|---|---|---|---|
| | | | |

| 7. NAME AND ADDRESS OF CONTRACTOR | CODE | 8. PAYMENT WILL BE MADE BY |
|---|---|---|
| | | |

| 9A. DUNS NUMBER | 9B. TAXPAYER'S IDENTIFICATION NO. | 10. SUBMIT INVOICES *(4 copies unless otherwise specified)* TO ☐ ITEM 5 ☐ ITEM 6 ☐ ITEM 8 ☐ OTHER *(Specify)* |
|---|---|---|
| | | |

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12. BRIEF DESCRIPTION

13. TOTAL AMOUNT OF CONTRACT ▶

**14. CONTRACTOR'S AGREEMENT.** Contractor agrees to furnish and deliver the items or perform services to the extent stated in this document for the consideration stated. The rights and obligations of the parties to this contract shall be subject to and governed by this document and any documents attached or incorporated by reference.

☐ A. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN FOUR COPIES TO THE ISSUING OFFICE. *(Check if applicable)*

B. SIGNATURE OF PERSON AUTHORIZED TO SIGN

C. NAME OF SIGNER

D. TITLE OF SIGNER

E. DATE

**15. AWARD.** The Government hereby accepts your offer on the solicitation identified in item 3 above as reflected in this award document. The rights and obligations of the parties to this contract shall be subject to and governed by this document and any documents attached or incorporated by reference.

A. UNITED STATES OF AMERICA *(Signature of Contracting Officer)*

B. NAME OF CONTRACTING OFFICER

C. DATE

**OPTIONAL FORM 307** (9-97)
Prescribed by GSA - FAR (48 CFR) 53.215-1(e)

**53.302–308 Optional Form 308, Solicitation and Offer—Negotiated Acquisition.**

| SOLICITATION AND OFFER - NEGOTIATED ACQUISITION | PAGE | OF | PAGES |
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## I. SOLICITATION

| 1. SOLICITATION NUMBER | 2. DATE ISSUED | 3. OFFERS DUE BY | 4. OFFERS VALID FOR 60 DAYS UNLESS A DIFFERENT PERIOD IS ENTERED HERE |
|---|---|---|---|
| | | | |

| 5. ISSUED BY | 6. ADDRESS OFFER TO *(If other than Item 5)* |
|---|---|
| | |

7. FOR INFORMATION CALL *(No collect calls)*

| A. NAME | B. TELEPHONE | | C. E-MAIL ADDRESS |
|---|---|---|---|
| | AREA CODE | PHONE NUMBER | |

8. BRIEF DESCRIPTION

9. TABLE OF CONTENTS

| (X) | SEC. | DESCRIPTION | PAGE(S) | (X) | SEC. | DESCRIPTION | PAGE(S) |
|---|---|---|---|---|---|---|---|
| | | PART I - THE SCHEDULE | | | | PART II - CONTRACT CLAUSES | |
| | A | SOLICITATION/CONTRACT FORM | | | I | CONTRACT CLAUSES | |
| | B | SUPPLIES OR SERVICES AND PRICES/COSTS | | | | PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACH. | |
| | C | DESCRIPTION/SPECS./WORK STATEMENT | | | J | LIST OF ATTACHMENTS | |
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| | E | INSPECTION AND ACCEPTANCE | | | K | REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS | |
| | F | DELIVERIES OR PERFORMANCE | | | | | |
| | G | CONTRACT ADMINISTRATION DATA | | | L | INSTRS., CONDS., AND NOTICES TO OFFERORS | |
| | H | SPECIAL CONTRACT REQUIREMENTS | | | M | EVALUATION FACTORS FOR AWARD | |

## II. OFFER

The undersigned agrees to furnish and deliver the items or perform services to the extent stated in this document for the consideration stated. The rights and obligations of the parties to the resultant contract shall be subject to and governed by this document and any documents attached or incorporated by reference.

| 10A. PERSONS AUTHORIZED TO NEGOTIATE | 10B. TITLE | 10C. TELEPHONE | |
|---|---|---|---|
| | | AREA CODE | NUMBER |
| | | | |
| | | | |
| | | | |
| | | | |

| 11. NAME AND ADDRESS OF OFFEROR | 12A. SIGNATURE OF PERSON AUTHORIZED TO SIGN | |
|---|---|---|
| | 12B. NAME OF SIGNER | |
| | 12C. TITLE OF SIGNER | |
| | 12D. DATE | 12E. TELEPHONE |
| | | AREA CODE / NUMBER |

**OPTIONAL FORM 308** (9-97)
Prescribed by GSA - FAR (48 CFR) 53.215-1(f)

**53.302–309 Optional Form 309, Amendment of Solicitation.**

| AMENDMENT OF SOLICITATION *(Negotiated Procurements)* | PAGE | OF | PAGES |
|---|---|---|---|
| | | | |

NOTICE: Offerors must acknowledge receipt of this amendment in writing, by the date and time specified for proposal submissions or the date and time specified in Block 6, whichever is later. IF YOUR ACKNOWLEDGMENT IS NOT RECEIVED AT THE DESIGNATED LOCATION BY THE SPECIFIED DATE AND TIME, YOUR OFFER MAY BE REJECTED. If, by virtue of this amendment, you wish to change your offer, such change must make reference to the solicitation and this amendment and be received prior to the date and time specified in Block 6.

**I. AMENDMENT**

| 1. SOLICITATION NUMBER | 2. SOLICITATION DATE | 3. AMENDMENT NUMBER | 4. AMENDMENT DATE |
|---|---|---|---|
| | | | |

| 5. ISSUED BY | 6. DUE DATE | |
|---|---|---|
| | THIS AMENDMENT DOES NOT CHANGE THE DATE BY WHICH OFFERS ARE DUE UNLESS A DATE AND TIME IS INSERTED BELOW. | |
| | A. DATE | B. TIME |

7. FOR INFORMATION CALL *(No collect calls)*

| A. NAME | B. TELEPHONE | | C. E-MAIL ADDRESS |
|---|---|---|---|
| | AREA CODE | PHONE NUMBER | |

8. DESCRIPTION OF AMENDMENT

Except as provided herein, all terms and conditions of the solicitation remain unchanged and in full force and effect.

**II. ACKNOWLEDGMENT OF AMENDMENT**

In lieu of other written methods of acknowledgment, the offeror may complete Blocks 9 and 10 and return this amendment to the address in Block 5.

| 9. NAME AND ADDRESS OF OFFEROR | 10A. OFFEROR *(Signature of person authorized to sign)* |
|---|---|
| | 10B. NAME OF SIGNER |
| | 10C. TITLE OF SIGNER |
| | 10D. DATE |

**OPTIONAL FORM 309** (9-97)
Prescribed by GSA - FAR (48 CFR) 53.215-1(g)

BILLING CODE 6820–EP–C

45. Amend the internal references throughout Chapter 1 as indicated in the following table:

| Location | Remove | Insert |
|---|---|---|
| 1.106 | 15.106 | 15.209 |
| 1.106 | 15.404 | 15.2 |
| 1.106 | 15.7 | 15.407–2 |
| 1.106 | 15.8 | 15.4 |
| 1.106 | 15.804–8 | 15.408 |
| 1.106 | 15.812–1(b) | 15.404–1(f) |
| 1.106 | 15.813–1 | |
| 1.106 | 15.813–2 | |
| 1.106 | 15.813–3 | |
| 1.106 | 15.813–6 | |
| 1.106 | 52.215–6 | 52.215–4 |
| 1.106 | 52.215–11 | 52.215–1(c)(2)(iv) |
| 1.106 | 52.215–19 | 52.215–1(d) |
| 1.106 | 52.215–20 | 52.215–6 |
| 1.106 | 52.215–21 | 52.215–9 |
| 1.106 | 52.215–24 | 52.215–12 |
| 1.106 | 52.215–25 | 52.215–13 |
| 1.106 | 52.215–26 | 52.215–14 |
| 1.106 | 52.215–40 | 52.215–19 |
| 1.106 | 52.215–41 | 52.215–20 |
| 1.106 | 52.215–42 | 52.215–21 |
| 2.101 (definition of ''offer'') | 15.5 | 15.6 |
| 3.104–3 (paragraph (5) of definition ''Contractor bid or proposal information''). | 52.215–12 | 52.215–1(e) |
| 3.104–5(b) | 15.411 and 15.413 | 15.207 |
| 3.104–5(d)(3) introductory text | 52.215–12 | 52.215–1(e) |
| 3.501–2(c) | 15.804–6(f) | 15.408, Table 15–2, paragraph A., column (2) under ''Formats for Submission of Line Item Summaries''. |
| 3.501–2(c) | 15.803(d) | 15.405 |
| 5.204 | 15.404 | 15.201 |
| 5.303(b)(2) | 15.1003(b) | 15.503(b) |
| 6.302–1(d)(2) | (See 15.402(h)) | |
| 7.105(a)(3)(iii) | 15.810 | 15.407–4 |
| 7.105(b)(3) | 15.6 | 15.3 |
| 7.105(b)(11) | 15.7 | 15.407–2 |
| 7.306(b) | 15.6 | 15.3 |
| 9.306(j) | 15.814 | 15.404–1(g) |
| 12.206 | 15.6 | 15.3 |
| 12.209 | 15.8 | 15.4 |
| 12.301(c)(2) | 15.6 | 15.3 |
| 12.503(c)(2) | 15.804 | 15.403 |
| 12.504(a)(9) | (see Subpart 15.1) | 15.209(b) |
| 12.504(c)(2) | 15.8 | 15.4 |
| 12.602(b) | 15.6 | 15.3 |
| 13.106–2(c)(3) | 15.1003(b)(2) | 15.503(b)(2) |
| 13.108(a) | (See 15.402(e)) | |
| 14.103–1(d) | 15.804–2 | 15.403–4(a)(1)(iii) |
| 14.105 | 15.405 | 15.201(e) |
| 14.201–7(a) | 15.804–2(a)(1) | 15.403–4(a)(1) |
| 14.201–7(b)(1) | 15.804–2(a)(1) | 15.403–4(a)(1) |
| 14.201–7(c)(1) | 15.804–2(a)(1) | 15.403–4(a)(1) |
| 14.207 | 15.409 | 15.201 |
| 14.404–2(g) | 15.814 | 15.404–1(g) |
| 14.408–2(a) | 15.805–2 | 15.404–1(b) |
| 14.408–2(b) | 15.814 | 15.404–1(g) |
| 14.503–1(c)(2) | 15.413 | 15.609 |
| 14.503–1(g) | 15.1005 and 15.1006 | 15.505 and 15.506 |
| 14.503–1(h) | 15.412 | 15.208(b) and (c) |
| 16.104(b) | 15.808–2 | 15.404–1(b) |
| 16.301–3(a)(3) | 15.903(d) | 15.404–4(c)(4)(i) |
| 16.505(b)(3) | 15.804–1(b)(1) | 15.403–1(c)(1) |
| 16.603–2(c)(3) | 15.8 | 15.4 |
| 16.603–4(b)(3) | 15.804–1 | 15.403–1 |
| 17.106–1(c)(1) | 15.804–6 | 15.408, Table 15–2, Formats for Submission of Line Items Summaries C(8). |
| 19.202–6(a) | 15.805–2 | 15.405 |
| 19.302(d)(1) | 15.1003(a)(2) | 15.503(a)(2) |
| 19.806(a) | 15.8 both times it appears | 15.4 |
| 24.202(b) | 15.804–5(b) | 15.403–3(b) |

| Location | Remove | Insert |
|---|---|---|
| 25.405(e) | 15.1003 | 15.503 |
| 25.901(b) | 15.106(b) | 15.209(b) |
| 27.204–1(b) | FAR 15.804 | 15.403 |
| 27.204–2 | 15.804 | 15.403 |
| 27.407(a)(1) | 15.4 or 15.5 | 15.2 or 15.6 |
| 27.407(b) | 15.4 or 15.5 | 15.2 or 15.6 |
| 28.101–4(b) | 15.610(a) | 15.306(a)(2) |
| 31.000 | 15.805–3 | 15.404–1(c) |
| 31.103(a) | 15.805–3 | 15.404–1(c) |
| 31.105(b) | 15.805–3 | 15.404–1(c) |
| 31.106–1 introductory paragraph | 15.805–3 | 15.404–1(c) |
| 31.109(g) | 15.808, Price negotiation memorandum | 15.406–3 |
| 31.204(b) | 15.805–3 | 15.404–1(c) |
| 31.205–6(j)(4) | certified (see 15.804) | (see 15.403–4) |
| 31.205–18(c)(1)(i)(A) | 15.804 | 15.403–4 |
| 31.205–18(c)(1)(i)(B) | 15.804 | 15.403–4 |
| 31.205–33(c)(1) | 52.215–12 | 52.215–1(e) |
| 31.205–26(e) | 15.804–1 | 15.403–1(b) |
| 31.205–42(c) introductory paragraph | (See 15.804–6(f)) | |
| 32.204 | 15.606 | 15.206 |
| 33.103(f)(3) | 15.1006 | 15.505 or 15.506 |
| 33.104(c)(1) | 15.1006 | 15.505 or 15.506 |
| 33.207(d) | 15.804–2(a)(1)(iii) | 15.403–4(a)(1)(iii) |
| 34.005–2(a)(2) | 15.404 | 15.201 |
| 35.007(d) | 15.406–5(b) | 15.204–5(b) |
| 35.007(e) introductory paragraph | 15.605(e) | 15.304 |
| 35.007(g) | 15.409 | 15.201 |
| 35.007(i) | 15.5 | 15.6 |
| 35.008(d) | 15.10 | 15.5 |
| 35.008(e) | 15.805 | 15.404–1(c) |
| 36.214(b)(1) | 15.804–1 and 15.804–2 | 15.403–1 and 15.403–2 |
| 36.215 | 15.903(d)(1)(iii) | 15.404–4(c)(4)(i) |
| 36.303–2(a) | 15.605 | 15.304 |
| 36.606(a) | 15.903(d)(1)(ii) | 15.404–4(c)(4)(i) |
| 36.607(b) | 15.1004, 15.006(b) through (f), 15.1007(c); 15.1006(d)(2) through (d)(5). | 15.503, 15.506(b) through (f), 15.507(c), 15.506(d)(2) through (d)(5) |
| 42.302(a)(4) | 15.8 | 15.4 |
| 42.302(a)(5) | 15.809 | 15.407–3 |
| 43.204(b)(4) | 15.805 | 15.404–1(c) |
| 44.202–2(a)(1) | Subpart 15.7 | 15.407–2 |
| 44.305–3(a)(1) | 15.804 | 15.403 |
| 45.103(b)(1) | 15.804–1 | 15.403–1 |
| 45.106(b)(2)(i) | 15.804–1 | 15.403–1 |
| 45.302–2(c) | Subpart 15.9 | 15.404–4 |
| 48.102(e) | 15.903(d) | 15.404–4(c)(4)(i) |
| 49.105(c)(15) | 15.804–4(h) and 15.804 | 15.403–4(a)(1) and 15.403–4 |
| 49.110(a) | 15.808(a) and 15.808(b) | 15.406–3 (twice). |
| 50.203(c) | 15.103 | 14.404–1(f) |
| 52.212–2 provision date | (Oct 1995) | (Oct 1997). |
| 52.212–2(a) | 15.605 | 15.304 |
| 52.214–26 clause date | (Oct 1995) | (Oct 1997). |
| 52.214–26(e) | 15.804–2(a)(1) | 15.403–4(a)(1) |
| 52.214–27 clause date | (Oct 1995) | (Oct 1997). |
| 52.214–27(a) | 15.804–2(a)(1) and 15.804–1 | 15.403–4(a)(1) and 15.403–1(b) |
| 52.214–28 clause date | (Oct 1995) | (Oct 1997). |
| 52.214–28(a)(1) | 15.804–2(a)(1) | 15.403–4(a)(1) |
| 52.214–28(b) | 15.804–2(a)(1) both times it appears | 15.403–4 (a)(1) |
| | 15.804–1 | 15.403–1(b) |
| 52.214–28(c) | 15.804–4 | 15.406–2 |
| 52.214–28(d) | 15.804–2(a)(1) | 15.403–4(a)(1) |
| 52.214–34 introductory text | 15.407(l) | |
| 52.214–35 introductory text | 15.407(m) | |
| 52.215–2 introductory text | 15.106(b) | 15.209(b) |
| Alternate I | 15.106(c) | 15.209(b)(2) |
| Alternate II | 15.106(c) | 15.209(b)(3) |
| Alternate III | 15.106(c) | 15.209(b)(4) |
| 52.216–25 clause date | (Apr 1984) | (Oct 1997). |
| 52.216–25(c) | 15.8 | 15.4 |
| 52.217–2 clause date | (Jul 1996) | (Oct 1997). |
| 52.217–2(f)(1) | 15.8 | 15.4 |
| 52.219–10 clause date | (Oct 1995) | (Oct 1997). |
| 52.219–10(c) | Subpart 15.9 | 15.404–4 |
| 52.244–1 clause date | (Feb 1995) | (Oct 1997). |
| 52.244–1(g) | 15.903(d) | 15.404–4(c)(4)(i) |

| Location | Remove | Insert |
|---|---|---|
| 52.244–2 clause date | (Feb 1997) | (Oct 1997). |
| 52.244–2(g) | 15.903(d) | 15.404–4(c)(4)(i) |
| 52.244–3 clause date | (Apr 1985) | (Oct 1997). |
| 52.244–3(b) | 15.903(d) | 15.404–4(c)(4)(i) |

[FR Doc. 97–25666 Filed 9–29–97; 8:45 am]

BILLING CODE 6820–EP–P

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

## 48 CFR Chapter 1

## Federal Acquisition Regulation; Small Entity Compliance Guide

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Small Entity Compliance Guide.

**SUMMARY:** This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator for the National Aeronautics and Space Administration as the Federal Acquisition Regulation (FAR) Council. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121). It consists of a summary of the rule appearing in Federal Acquisition Circular (FAC) 97–02 which amends the FAR. Further information regarding this rule may be obtained by referring to FAC 97–02 which precedes this notice. This document may be obtained from the Internet at http://www.arnet.gov/far.

**FOR FURTHER INFORMATION CONTACT:** Beverly Fayson, FAR Secretariat, (202) 501–4755.

**SUPPLEMENTARY INFORMATION:**

### Part 15 Rewrite; Contracting by Negotiation and Competitive Range Determination [FAC 97–02, FAR Case 95–029]

The final rule revises Part 15, Contracting by Negotiation. The final rule infuses innovative techniques into the source selection process, simplifies the acquisition process, incorporates changes in pricing and unsolicited proposal policy, and facilitates the acquisition of best value products and services. The final rule emphasizes the use of effective and efficient acquisition methods and eliminates unnecessary burdens imposed on industry and Government. In addition, the rule revises the sequence in which Part 15 information is presented to facilitate use of the regulation.

Dated: September 22, 1997.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

[FR Doc. 97–25683 Filed 9–29–97; 8:45 am]

BILLING CODE 6820–EP–P

federal register

Tuesday
September 30, 1997

# Part IV

# Department of Veterans Affairs

**38 CFR Parts 3, 17 and 21**

**Monetary Allowance Under 28 U.S.C. 1805 for a Child Suffering From Spina Bifida Who Is a Child of a Vietnam Veteran; Final Rule**

**Provision of Health Care to Vietnam Veterans' Children With Spina Bifida; Final Rule**

**Provision of Vocational Training and Rehabilitation to Vietnam Veterans' Children With Spina Bifida; Final Rule**

**DEPARTMENT OF VETERANS AFFAIRS**

**38 CFR Part 3**

**RIN 2900–AI70**

## Monetary Allowance Under 38 U.S.C. 1805 for a Child Suffering From Spina Bifida Who Is a Child of a Vietnam Veteran

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Department of Veterans Affairs (VA) adjudication regulations to provide for payment of a monetary allowance to a child suffering from spina bifida who is a child of a Vietnam veteran. The intended effect of this amendment is to implement legislation authorizing VA to provide such benefits.

**DATES:** *Effective Date:* October 1, 1997.

**FOR FURTHER INFORMATION CONTACT:** John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW, Washington, DC 20420, telephone (202) 273–7230.

**SUPPLEMENTARY INFORMATION:** Section 3 of the Agent Orange Act of 1991, Pub. L. 102–4, 105 Stat. 11, directed the Secretary of Veterans Affairs to seek to enter into an agreement with the National Academy of Sciences (NAS) for a series of reports to review and summarize the scientific evidence concerning the association between exposure to herbicides used in support of military operations in the Republic of Vietnam during the Vietnam era, and each disease suspected to be associated with such exposure. In its most recent report, entitled ''Veterans and Agent Orange: Update 1996,'' which was released on March 14, 1996, NAS noted what it considered ''limited/suggestive evidence of an association'' between herbicide exposure and spina bifida in the offspring of Vietnam veterans.

Since VA did not have the statutory authority to provide benefits to children of veterans based on birth defects, the Secretary announced on May 28, 1996, that he would seek legislation to provide an appropriate remedy. VA submitted proposed legislation to Congress in July of that year. Section 421 of Pub. L. 104–204 added a new chapter 18 to title 38, United States Code, authorizing VA to provide certain benefits, including a monthly monetary allowance, to children suffering from spina bifida who are the natural children of veterans who served in the Republic of Vietnam during the Vietnam era. VA published a proposal to implement section 421 of Pub. L. 104–204 in the **Federal Register** of May 1, 1997 (62 FR 23724–23731). Interested persons were invited to submit written comments on or before June 30, 1997. We received a total of thirty-two comments from: the Vietnam Veterans of America, Inc.; the Vietnam Veterans of America (Illinois State Council Service Program); a combined comment from the National Veterans Legal Services Program (NVLSP), the Spina Bifida Association of America, and the National Alliance of Veteran Family Service Organizations; the Veterans of Foreign Wars of the United States (VFW); The American Legion; the Paralyzed Veterans of America (PVA); Senator Tom Daschle; Senator John D. Rockefeller IV; and twenty-four other concerned individuals.

A number of commenters specifically recommended changes to the statutory language of title 38, United States Code, chapter 18. Others recommended that in the regulation we change the amount of the monetary allowance associated with the three levels of disability; add additional payment levels for the monetary allowance; pay the monetary allowance retroactive to dates prior to October 1, 1997; provide automobile adaptive equipment or an automobile allowance and specially adapted housing to children with spina bifida; pay the benefit to children with spina bifida occulta; pay the benefit to grandchildren of Vietnam veterans; and pay the benefit to the children of certain individuals who do not meet the statutory definition of the term ''veteran.'' No changes are made based on these comments. VA has no legal authority to make any of these changes.

One commenter suggested that in the regulation VA use the term ''biological child'' of a Vietnam veteran rather than ''natural child.''

Section 1801(1) of title 38, United States Code, defines the term ''child'' for purposes of this benefit as meaning, among other things, a ''natural child'' of a Vietnam veteran. The term ''natural'' as used in the statute means relating naturally rather than by adoption (Webster's New World Dictionary, Third College Ed., 1988, 903), so in our judgment the terms ''natural child'' and ''biological child'' are synonymous. Using a term in the regulation that is inconsistent with the statutory language might imply a difference that we do not intend. Therefore, we make no change based on this suggestion.

One commenter stated that a child with spina bifida who is the legally adopted child of a Vietnam veteran should be eligible for this benefit.

The statute clearly defines the term ''child'' as used in determining eligibility for spina bifida benefits as meaning the natural child of a Vietnam veteran (see 38 U.S.C. 1801 (1)). Since VA has no authority to expand that statutory definition, we make no change based on this comment.

We proposed to terminate the monetary allowance effective the last day of the month before the month in which the beneficiary dies. A commenter suggested that we terminate not only this benefit, but benefits to veterans and survivors as well, effective the first day of the month following the month of death.

Because 38 U.S.C. 5112(b)(1) requires VA to discontinue compensation, dependency and indemnity compensation, or pension payments on the last day of the month before the death of the beneficiary, we have no discretion with respect to these benefits. Although Pub. L. 104–204 is silent on the issue of effective dates for discontinuing the monetary allowance, there is no indication in chapter 18 of title 38, United States Code, or its legislative history that Congress intended VA to administer the monetary allowance for children with spina bifida any differently than compensation, dependency and indemnity compensation, or pension in this respect, and we make no change based on this suggestion.

We proposed to define the term ''Vietnam veteran,'' for purposes of this benefit, to include an individual with service in the waters offshore and service in other locations ''if the conditions of service involved duty or visitation in the Republic of Vietnam.'' One commenter recommended that we eliminate the phrase ''if the conditions of service involved duty or visitation in the Republic of Vietnam.''

VA defines the term *service in the Republic of Vietnam*, for the purposes of presuming herbicide exposure, to include service in the waters offshore and service in other locations ''if the conditions of service involved duty or visitation in the Republic of Vietnam'' (see 38 CFR 3.307(a)(6)(iii)). Because herbicides were not applied in waters off the shore of Vietnam, limiting the scope of the term *service in the Republic of Vietnam* to persons whose service involved duty or visitation in the Republic of Vietnam limits the focus of the presumption of exposure to persons who may have been in areas where herbicides could have been encountered. Since the purpose of this rulemaking is to provide a monetary allowance to the children of those same veterans that VA presumes to be

herbicide-exposed if the children are born with spina bifida, it would be inappropriate to revise the presumption of exposure for the purposes of this benefit. We make no change based on this comment.

VA proposed to amend 38 CFR 3.263 and 3.275 to implement the provisions of 38 U.S.C. 1805(c) that specify that the monetary allowance not be considered income or resources in determining eligibility for benefits under any Federal program. One commenter stated that not only should the monetary allowance be excluded from VA net worth calculations but that assets purchased with the monetary allowance should also be excluded from those calculations.

Both §§ 3.263 and 3.275 define ''net worth'' to mean the market value, less mortgages or other encumbrances, of all real and personal properties owned by the claimant, except the claimant's dwelling (single family unit), including a reasonable lot area, and personal effects suitable and consistent with the claimant's reasonable mode of life. In our judgment, that definition allows reasonable exclusions from net worth for purposes of VA's income-based benefit programs, and we make no change based on this comment.

Several commenters suggested that VA provide an outreach plan as part of the final regulation. Although we intend informally to advise potentially eligible claimants that benefits are available and to solicit claims, we see no reason to include a statement regarding this matter in the regulations, since those who read the regulations necessarily would know about the program.

Several commenters stated that spina bifida claimants should have the same due process and appellate rights as other VA claimants.

38 CFR 3.103, Procedural due process and appellate rights, clearly states that its provisions apply to all claims for benefits and relief within the purview of VA's adjudication regulations (38 CFR part 3). Since the regulatory framework for the monetary allowance to children with spina bifida (38 CFR 3.814) is codified within 38 CFR part 3, the due process and appellate rights provided by § 3.103 apply to spina bifida claimants.

One commenter requested that the comment period for this rulemaking proceeding be extended until the end of the comment period for the proposed rule regarding vocational training and rehabilitation for Vietnam veterans' children who suffer from spina bifida.

Such an extension is unwarranted. An understanding of the issues in the rulemaking proceeding regarding vocational training and rehabilitation is not necessary to make informed comments regarding this rulemaking proceeding.

Another commenter recommended that VA use its Schedule for Rating Disabilities (title 38, Code of Federal Regulations, part 4) to evaluate the severity of disabilities for the purpose of furnishing the monetary allowance for spina bifida.

38 U.S.C. 1155, the statutory authority for VA's Schedule for Rating Disabilities, provides that evaluations of disabled veterans be based, as far as practicable, upon average impairment of earning capacity resulting from similar disabilities in civil occupations, and be at one of ten grades in 10 percent increments. 38 U.S.C. 1805(b) authorizes VA to pay a monetary allowance to an eligible child with spina bifida at one of three levels based on the degree of disability suffered by the child, as determined in accordance with a schedule for rating such disabilities to be prescribed by the Secretary. By requiring evaluations at three levels rather than 10, and by not directing that evaluations be based on average impairment of earning capacity or be expressed in percentages, Congress established requirements for evaluating spina bifida so different from the requirements for evaluating disabilities for compensation and pension purposes that they are incompatible with the Schedule for Rating Disabilities. By codifying the requirement to establish rating criteria for spina bifida other than under the authority of 38 U.S.C. 1155, Congress further indicated its expectation that children with spina bifida would be evaluated under different criteria. For these reasons, we make no change based on this comment.

Section 1805 of title 38, United States Code, provides a monetary allowance at one of three levels to eligible individuals based on the degree of disability to be determined according to a rating schedule prescribed by the Secretary. We proposed to base the three levels of disability on neurological deficit, as manifested by impairment of functioning of: the extremities; bowel or bladder; and intellect; and to evaluate each of those at one of three levels of severity. Several commenters objected that those criteria are too narrow because they fail to include all disabilities ''related to, or secondary to, spina bifida,'' such as hydrocephalus, Arnold-Chiari malformation, sexual/reproductive dysfunction, latex allergy, seizure disorders, etc.

While spina bifida is commonly associated with other developmental defects and congenital abnormalities, 38 U.S.C. 1805 authorizes VA to pay the monetary allowance for any ''disability resulting from'' spina bifida. Neurological deficit is the main determinant of disability for individuals with spina bifida (Long-term Outcome in Surgically Treated Spina Bifida Cystica, Isao Date, M.D., Yasunori Yagyu, M.D., Shoji Asari, M.D., and Takshi Ohmoto, M.D., *Surg. Neurol.* 1993, 40:471–5).

Conditions that are commonly associated with spina bifida, such as Arnold-Chiari malformation, hydrocephalus, etc., generally affect one or more of the same functions we proposed to use for rating spina bifida. The evaluation criteria do not require the raters to rate impairment of those functions only to the extent that it is due to spina bifida, but allow them to take into account the effect on those functions of associated conditions. In our judgment, the rating criteria that we proposed constitute a reasonable method for differentiating between three levels of disability, as Congress required, and we make no change based on these comments.

Several commenters felt that the payment criteria do not take into account the synergistic effect of disabilities and recommended that an individual with more than one Level II disability be rated at Level III.

Congress mandated rating criteria supporting three levels of payment. If we are to administer this monetary allowance equitably, and in the manner we believe Congress intended, in assigning an intermediate (Level II) payment based on combined aspects of neurological impairment, we must consider not only that some beneficiaries with spina bifida may be less severely disabled than a particular individual, but that some may be more severely disabled. Someone with even four Level II disabilities, for example, would not be as severely disabled as someone with any of the Level III disabilities, because the criteria used to assess each disability represent incremental degrees of severity from least (Level I) through most severe (Level III). Since Congress established three levels of payment, it would not be equitable, in our judgment, to pay someone with Level II impairment of each neurological function considered in the criteria the same amount as someone with Level III impairment of each neurological function considered. The criteria as proposed represent a reasonable and equitable method for distinguishing three levels of disability, and we make no change based on this comment.

We proposed to measure impairment of intellectual functioning using

intelligence quotient (I.Q.). A number of commenters stated that I.Q. is not the best representation of intellectual functioning as it relates to level of disability. Some recommended that we use ''performance I.Q.'' or ''assessed intellectual functioning'' instead.

According to a recent British study, it is, in fact, I.Q. that is one of the two main determinants of disability and dependency in individuals with spina bifida, neurological deficit being the other (Open spina bifida: a complete cohort reviewed 25 years after closure, Urology Department, Addenbrooke's Hospital, Cambridge, UK, *Dev Med Child Neurol* 1995 Jan; 37(1):19–29). Furthermore, it is important to keep the criteria as simple and objective as possible to ensure consistent ratings and timely resolution of claims. Although I.Q. can be measured by any of several standardized tests that are in general use, we are not aware of any comparable standard objective measures for the other aspects of intellectual functioning that the commenters suggested we use. For these reasons, we make no change based on these comments.

One commenter felt that the payment criteria should take into account emotional suffering due to past surgical procedures.

38 U.S.C. 1805 authorizes a monetary allowance for disability resulting from spina bifida. In normal usage, the term ''disability'' implies a lack of the ability to function normally, physically or mentally (Dorland's Illustrated Medical Dictionary, 27th ed. 1988, 480). In our judgment, mental suffering due to prior surgeries is not a disability as that term is used in the statute, and we make no change based on this comment.

We proposed to evaluate impairment of bowel and bladder function from least (Level I) to most (Level III) severely impaired based on whether an individual is continent of urine and feces, requires drugs or mechanical means to maintain proper bladder or bowel function, or is completely incontinent of urine or feces. A number of commenters stated that these criteria penalize individuals for receiving appropriate treatment and are a financial disincentive to seeking treatment.

The issue is not whether impairment of bowel or bladder function is severely disabling—we can concede that it is—but the degree of severity. An individual who is continent at least part of the time, by whatever means, is clearly less disabled than one who is unable to attain any degree of continence by any means. Even in cases where an individual has attained continence of either bowel or bladder function through drugs or mechanical means, other factors would influence the payment level. For example, some individuals may be able to attain continence for either bowel or bladder function but not both. In such a case, the payment level would remain at Level III. Furthermore, individuals with impairment of bowel or bladder function will, in many cases, have other impairments that affect the payment level, so that a change from incontinence to continence might not warrant any change in the payment level. In our judgment, the fact that a beneficiary might, in rare cases, receive a higher monthly payment if he or she does not follow procedures designed to alleviate, or at least manage, incontinence will not outweigh for most individuals with spina bifida the incentives, from both health and social perspectives, to follow such a program. We therefore make no change based on this comment.

Two commenters pointed out that because the degree of continence may change, the payment level may need to change. One recommended that we not reduce the payment from Level II (based on the fact that an individual requires drugs to maintain urinary continence) to Level I, until one year after he or she becomes continent without drugs, in order to ascertain whether continence can be maintained without medication.

The payment level is based on a combination of specified functional impairments. For that reason, a change in the severity of one type of impairment would not necessarily affect the payment level. A reduction from Level II to Level I based on the fact that an individual has achieved urinary continence, for example, would occur only if all other specified impairments (bowel, ambulation, I.Q., upper extremities) were also at Level I. Under the provisions of 38 CFR 3.814, VA will reevaluate the disability level whenever there is an indication of material change in an individual's condition; these evaluations will generally be based on medical reports from the beneficiary's primary care physician or the medical institution where he or she receives treatment. Should the health-care provider indicate that the long-term effect of withdrawing treatment cannot yet be determined, the rating activity could defer the reevaluation if it had any potential effect on the payment level. The length of any deferment should be based on medical evidence rather than a fixed period set by regulation, however, and we make no change based on this comment.

Because all children less than one year of age, whether or not they are suffering from spina bifida, are essentially helpless, incontinent, unable to walk, and too young for I.Q. to be measured, we proposed to pay children under the age of one at Level I. Several commenters objected to this provision.

One commenter stated that this provision is unfair because it is at odds with the likely disability once the child is old enough to be properly examined, and arbitrary because it treats infants with spina bifida differently than older individuals with spina bifida without a rational basis.

The rating criteria for spina bifida are based on impairment of specified neurological functions. These functions have not yet developed in newborns, regardless of their spina bifida status. We do not dispute the fact that an infant with spina bifida has disabilities due to the condition. However, since it would be purely speculative to assess the severity of impairment of neurological functions until such time as those functions would have developed, in our judgment, there is a rational basis for setting the level of the monthly allowance at the lowest rate established by statute. As for the comment that Level I may not reflect the eventual severity of the child's disability, we believe that the monetary allowance is meant to reflect the current, rather than potential, level of severity, and that the requirement to reevaluate at age one is sufficient to ensure the child will be paid according to the actual impairment of neurological function once it is possible to objectively assess that impairment.

Three commenters felt that a child under the age of one should be paid at Level III. One commenter gave as a reason that this is the period of most intensive medical and surgical treatment. Another said a child with hydrocephalus could have multiple shunt malfunctions.

The issue is impairment of specific functions that are not yet developed in any infant. A child eligible for the monetary allowance is also entitled to health care from VA, including medical care, supplies, transportation, etc. Such a child will not be deprived of needed medical care because of the amount of monetary allowance. Furthermore, a child under the age of one may be evaluated at Level III if a pediatric neurologist or pediatric neurosurgeon certifies that there is a neurologic deficit present that will prevent the individual from ambulating, that will preclude self-care and feeding self because of sensory or motor impairment of the upper extremities, or that will make it impossible for the individual to achieve urinary or fecal continence. For these

reasons, we make no change based on this comment.

One commenter said this inequity of presuming a Level I could continue for years if the parents or VA fail to arrange a reevaluation.

No changes are made based on this comment. These regulations require VA to reevaluate a child when it reaches one year of age and thereafter at intervals of not more than five years. That is adequate protection against the inequity the commenter foresees. Anything beyond that would be a duty beyond the scope of VA's responsibility. Furthermore, a child, parent, or guardian may submit evidence that the disability has worsened at any time after the child is one year of age, and VA will determine whether that evidence warrants a change in the amount of monetary allowance.

Several commenters felt that the provision requiring certification by a pediatric neurologist for an infant to be paid at Level III is too stringent. Some commenters suggested that in addition to pediatric neurologists the certification also should be allowed to be made by pediatric neurosurgeons. We agree that such determinations could also be made by pediatric neurosurgeons. However, due to the difficulty of making an objective prognosis for infants with this complex disability, we believe that only pediatric neurologists and pediatric neurosurgeons have sufficient expertise to ensure that the option of rating the infant at Level III is equitably and consistently applied. Accordingly, the final rule limits such certifications to pediatric neurologists and pediatric neurosurgeons.

Some commenters said that infants with spina bifida, particularly those in rural areas, might not have access to a pediatric neurologist and recommended that VA accept certifications from other health-care practitioners.

Hospitals even in rural areas offer referral services for treatment or evaluation of severely disabled children. Under the provisions of 38 U.S.C. 1803, VA will provide an eligible child with spina bifida any health care, including transportation expenses, that it determines is necessary. If VA determines that evaluation by a pediatric neurologist or a pediatric neurosurgeon qualifies as a reasonable need, the services of a pediatric neurologist or a pediatric neurosurgeon will be available to any eligible disabled child who needs them, and we make no change based on this comment.

We proposed to rate impairment of neurological function of the lower extremities at Level I if the individual is able to walk without braces or other external support; at Level II if he or she is ambulatory, but only with braces or other external support; and at Level III if he or she is unable to ambulate. One commenter said that the need to wear braces should warrant a Level III determination, and another said that some who can walk without braces still have very severe disability.

This comment raises the same issue, i.e., the degree of severity, discussed above in conjunction with the synergistic effects of disabilities. In order to administer this monetary allowance equitably, it is important that we consider not only that some beneficiaries may be less severely disabled than an individual rated at Level II, but also that some may be more severely disabled. While spina bifida is undoubtedly a very disabling condition, the statute requires us to establish rating criteria that distinguish three levels of disability. A person able to ambulate with braces or other external support is unquestionably less severely disabled than an individual who is unable to ambulate. We believe, therefore, the proposed criteria establish a clear and reasonable separation between the intermediate and most severe levels of impairment of neurological functioning of the lower extremities, and we make no change based on this comment.

We proposed to reevaluate individuals with spina bifida at the age of one year and then at intervals of no more than five years until the individual reaches the age of 21. One commenter proposed that VA waive further reevaluation if the child's primary caregiver states that it is unlikely that the overall level of disability will improve.

Periodic reevaluations are necessary because, until maturity, the level of neurological functioning may fluctuate. Virtually all children can be taught to ambulate with sufficient bracing and external support, for example, but those with lesions at L2 or higher will usually revert to wheelchairs in the teenage period (*Diseases of the Nervous System*, Arthur K. Asbury, M.D., Guy M. McKhann, M.D., and W. Ian McDonald, Ph. D., 1986, 712). The purpose of the reevaluations is to ensure that the beneficiary is being paid at the level commensurate with the severity of the disability. Although reevaluation will generally be based on private medical evidence, it is the VA adjudicator, rather than the caregiver, who is responsible for determining how that medical evidence compares to the requirements set forth in VA regulations. We therefore make no change based on this comment.

One commenter noted that the application form asked for parents' Social Security numbers. The commenter asserted that the form should clearly state that this is optional information. No change to the form is made based on this comment. The form clearly and prominently states in the material under the heading ''Privacy Act Information'' that disclosure of Social Security numbers is voluntary.

One commenter also noted that the application form asked for the parents' VA claim numbers and asserted that such information is irrelevant and should be eliminated from the form. No change to the form is made based on this comment. Not all parents will have VA claim numbers. However, for those who do, the corresponding claims file should provide relevant information that would eliminate the need for other searching. For example, the file should establish whether the parent had service in the Republic of Vietnam during the Vietnam era.

For the sake of clarity, we have made some non-substantive editorial changes to the proposed language.

VA appreciates the comments submitted in response to the proposed rule. Based on the rationale set forth in the proposed rule and this document, the provisions of the proposed rule are adopted with the changes noted above.

**Executive Order 12866**

This final rule has been reviewed by OMB under Executive Order 12866.

**Administrative Procedure Act**

There is good cause for making this final rule effective without regard to a 30 day delay. This final rule does not adversely affect anyone, and the affected children need the benefits from the rule as soon as possible.

**Paperwork Reduction Act**

Information collection requirements associated with this final rule concerning the Application for Spina Bifida Benefits (38 CFR 3.814) have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (44 U.S.C. 3504(h)) and have been assigned OMB Control Number 2900–0572.

This collection of information included in 38 CFR 3.814 concerns an application for eligibility for the monetary allowance based on spina bifida that must be submitted on VA Form 21–0304, which has been approved.

OMB assigns a control number for each collection of information it approves. VA may not conduct or

sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The valid OMB control number assigned to the collection of information in this final rule is displayed at the end of the affected section of the regulations.

Two collection of information comments were received and are discussed above.

**Regulatory Flexibility Act**

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. This final rule would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of §§ 603 and 604.

There is no Catalog of Federal Domestic Assistance program number for this benefit.

**List of Subjects in 38 CFR Part 3**

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Reporting and recordkeeping requirements, Veterans, Vietnam.

Approved: September 11, 1997.

**Hershel W. Gober,**

*Acting Secretary of Veterans Affairs.*

For the reasons set forth in the preamble, 38 CFR part 3 is amended as follows:

## PART 3—ADJUDICATION

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

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

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

2. In § 3.27, paragraph (c) is redesignated as paragraph (d), a new paragraph (c) is added, and newly redesignated paragraph (d) and its authority citation are revised to read as follows:

**§ 3.27 Automatic adjustment of benefit rates.**

* * * * *

(c) *Monetary allowance under 38 U.S.C. 1805 for a child suffering from spina bifida who is a child of a Vietnam veteran.* Whenever there is a cost-of-living increase in benefit amounts payable under section 215(i) of Title II of the Social Security Act, VA shall, effective on the dates such increases become effective, increase by the same percentage the monthly allowance under 38 U.S.C. 1805 for a child suffering from spina bifida who is a child of a Vietnam veteran.

(Authority: 38 U.S.C. 1805(b)(3))

(d) *Publishing requirements.* Increases in pension rates, parents' dependency and indemnity compensation rates and income limitation, and the monthly allowance under 38 U.S.C. 1805 for a child suffering from spina bifida made under this section shall be published in the **Federal Register**.

(Authority: 38 U.S.C. 5312(c)(1), 1805(b)(3))

3. In § 3.105, paragraphs (g) and (h) are redesignated as paragraphs (h) and (i), respectively; in paragraphs (d), (e), (f) and newly redesignated paragraph (h) remove ''paragraph (h)'' each time it appears and add, in its place, ''paragraph (i)''; in newly redesignated paragraph (i)(1) remove ''paragraphs (d) through (g)'' and add, in its place, ''paragraphs (d) through (h)''; in newly redesignated paragraph (i)(2) introductory text remove ''paragraph (d), (e), (f) or (g)'' and add, in its place, ''paragraph (d), (e), (f), (g) or (h)''; in newly redesignated paragraph (i)(2)(ii) remove ''paragraph (f)'' and add, in its place, ''paragraphs (f) and (g)''; in newly redesignated paragraph (i)(2)(iii) remove ''paragraph (g)'' and add, in its place, ''paragraph (h)''; and add a new paragraph (g) to read as follows:

**§ 3.105 Revision of decisions.**

* * * * *

(g) *Reduction in evaluation—monetary allowance to a child suffering from spina bifida under 38 U.S.C. 1805.* Where a change in disability level warrants a reduction of the monthly allowance currently being paid, VA will notify the beneficiary at his or her latest address of record of the proposed reduction, furnish detailed reasons therefor, and allow the beneficiary 60 days to present additional evidence to show that the monthly allowance should be continued at the present level. Unless otherwise provided in paragraph (i) of this section, if VA does not receive additional evidence within that period, it will take final rating action and reduce the award effective the last day of the month following sixty days from the date of notice to the payee of the proposed reduction.

(Authority: 38 U.S.C. 501)

* * * * *

**§ 3.158 [Amended]**

4. In § 3.158, paragraphs (a) and (c) are amended by removing ''or dependency and indemnity compensation'' and adding, in its place, ''dependency and indemnity compensation, or monetary allowance under the provisions of 38 U.S.C. 1805''.

5. In § 3.261, paragraph (a)(40) is added to read as follows:

**§ 3.261 Character of income; exclusions and estates.**

* * * * *

(a) * * *

| Income | Dependency (parents) | Dependency and indemnity compensation (parents) | Pension; old-law (veterans, surviving spouses and children) | Pension; section 306 (veterans, surviving spouses and children) | See— |
|---|---|---|---|---|---|
| * * | * | * | * | * | * |
| (40) Monetary allowance under 38 U.S.C. 1805 for children suffering from spina bifida who are children of Vietnam Veterans (38 U.S.C. 1805(d)). | Excluded ..... | Excluded ..... | Excluded ..... | Excluded ..... | § 3.262(y). |

* * * * *

6. In § 3.262, paragraph (y) is added immediately preceding the final authority citation at the end of the section to read as follows:

**§ 3.262 Evaluation of income.**

* * * * *

(y) *Monetary allowance under 38 U.S.C. 1805 for a child suffering from spina bifida who is a child of a Vietnam veteran.* There shall be excluded from income computation any allowance paid under the provisions of 38 U.S.C. 1805 to a child suffering from spina

bifida who is the child of a Vietnam veteran.

(Authority: 38 U.S.C. 1805(d))

* * * * *

7. In § 3.263, paragraph (g) is added to read as follows:

**§ 3.263 Corpus of estate; net worth.**

* * * * *

(g) *Monetary allowance under 38 U.S.C. 1805 for a child suffering from spina bifida who is a child of a Vietnam veteran.* There shall be excluded from the corpus of estate or net worth of a claimant any allowance paid under the provisions of 38 U.S.C. 1805 to a child suffering from spina bifida who is the child of a Vietnam veteran.

(Authority: 38 U.S.C. 1805(d))

8. In § 3.272, paragraph (u) is added to read as follows:

**§ 3.272 Exclusions from income.**

* * * * *

(u) *Monetary allowance under 38 U.S.C. 1805 for a child suffering from spina bifida who is a child of a Vietnam veteran.* Any allowance paid under the provisions of 38 U.S.C. 1805 to a child suffering from spina bifida who is the child of a Vietnam veteran.

(Authority: 38 U.S.C. 1805(d))

9. In § 3.275, paragraph (i) is added to read as follows:

**§ 3.275 Criteria for evaluating net worth.**

* * * * *

(i) *Monetary allowance under 38 U.S.C. 1805 for a child suffering from spina bifida who is a child of a Vietnam veteran.* There shall be excluded from the corpus of estate or net worth of a claimant any allowance paid under the provisions of 38 U.S.C. 1805 to a child suffering from spina bifida who is the child of a Vietnam veteran.

(Authority: 38 U.S.C. 1805(d))

10. In § 3.403, the introductory text and paragraphs (a) through (e) are redesignated as paragraph (a) introductory text and paragraphs (a)(1) through (a)(5), respectively, and paragraph (b) is added to read as follows:

**§ 3.403 Children.**

* * * * *

(b) *Monetary allowance under 38 U.S.C. 1805 for a child suffering from spina bifida who is a child of a Vietnam veteran (§ 3.814).* An award of the monetary allowance under 38 U.S.C. 1805 to a child suffering from spina bifida who is the child of a Vietnam veteran will be either date of birth if claim is received within one year of that date, or, date of claim, but not earlier than October 1, 1997.

(Authority: 38 U.S.C. 1806, 5110(n); sec. 422(c), Pub. L. 104–204, 110 Stat. 2926)

11. In § 3.503, the introductory text and paragraphs (a) through (j) are redesignated as paragraph (a) introductory text and paragraphs (a)(1) through (a)(10), respectively, and paragraph (b) is added to read as follows:

**§ 3.503 Children.**

* * * * *

(b) *Monetary allowance under 38 U.S.C. 1805 for a child suffering from spina bifida who is a child of a Vietnam veteran (§ 3.814).* The effective date of discontinuance of the monthly allowance under 38 U.S.C. 1805 to a child suffering from spina bifida who is the child of a Vietnam veteran will be the last day of the month before the month in which the death of the child occurred.

(Authority: 38 U.S.C. 501)

12. Section 3.814 is added under the undesignated centerheading ''Special Benefits'' to read as follows:

**§ 3.814 Monetary allowance under 38 U.S.C. 1805 for a child suffering from spina bifida who is a child of a Vietnam veteran.**

(a) VA shall pay a monthly allowance based upon the level of disability determined under the provisions of paragraph (d) of this section to or for a child who it has determined is suffering from spina bifida and who is a child of a Vietnam veteran. Receipt of this allowance shall not affect the right of the child, or the right of any individual based on the child's relationship to that individual, to receive any other benefit to which the child, or that individual, may be entitled under any law administered by VA. If a child suffering from spina bifida is the natural child of two Vietnam veterans, he or she is entitled to only one monthly allowance under this section.

(b) Applicants for the monetary allowance under this section must submit an application to the VA regional office and include the information mandated on the following VA form entitled ''Application for Spina Bifida Benefits'':

BILLING CODE 8320–01–P

OMB Approved No. 2900-0572
Respondent Burden: 10 Minutes

Department of Veterans Affairs

# APPLICATION FOR SPINA BIFIDA BENEFITS

PRIVACY ACT INFORMATION: The social security number and other information on this form is requested under 38 U.S.C. chapter 18, which provides benefits to Vietnam veterans' children with spina bifida. Any information on this form may be disclosed outside VA only if authorized under 38 U.S.C. 5701 and the Privacy Act, including the routine uses identified in the VA system of records, 58VA21/22, Compensation, Pension, Education and Rehabilitation Records - VA, published in the Federal Register. Routine disclosures may be made for the following purposes: Debt collection, civil or criminal law enforcement, communications with members of Congress or other representatives, benefits delivery, administration of programs, and personnel administration. Disclosure of the social security numbers and other requested information is voluntary; however, failure to furnish that information would impose administrative difficulties which may result in a delay in processing your application for spina bifida benefits.

RESPONDENT BURDEN: VA may not conduct or sponsor, and respondent is not required to respond to this collection of information unless it displays a valid OMB Control Number. Public reporting burden for this collection of information is estimated to average 10 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. If you have comments regarding this burden estimate or any other aspect of this collection of information, call 1-800-827-1000 for mailing information on where to send your comments.

| | |
|---|---|
| 1. NAME OF CLAIMANT-CHILD *(First, middle, last)* | 2. SOCIAL SECURITY NUMBER OF CLAIMANT-CHILD *(If available)* |
| 3. CLAIMANT-CHILD'S DATE OF BIRTH *(Mo.,day,yr.)* | 4. CLAIMANT-CHILD'S PLACE OF BIRTH *(City and state)* |
| 5. ADDRESS OF CLAIMANT-CHILD *(Include number and street or rural route, city or P.O., State and ZIP Code)* | 6. TELEPHONE NUMBER OF CLAIMANT-CHILD *(Include Area Code)* ( ) |
| 7. NAME(S) OF NATURAL PARENT(S) *(Please provide information for both)* | |
| A. FATHER *(First, middle, last)* | B. MOTHER *(First, middle, last)* |
| 8. ADDRESS,TELEPHONE NUMBER AND VETERAN STATUS OF NATURAL PARENT(S) | |
| A. FATHER *(Include number and street or rural route, city or P.O., State and ZIP Code)* ( ) | C. MOTHER *(Include number and street or rural route, city or P.O., State and ZIP Code)* ( ) |
| B. VIETNAM SERVICE? *(If "Yes," provide dates below)* ☐ YES ☐ NO *(From:_____ To:_____)* | D. VIETNAM SERVICE? *(If "Yes," provide dates below)* ☐ YES ☐ NO *(From:_____ To:_____)* |
| 9. SOCIAL SECURITY NUMBER(S) OF NATURAL PARENT(S) | |
| A. FATHER | B. MOTHER |
| 10. VA CLAIM NUMBER(S) OF NATURAL PARENT(S) *(If veteran previously applied to VA for any benefit)* | |
| A. FATHER | B. MOTHER |

11. IF CHILD IS UNDER AGE 18 WHO HAS CUSTODY, IF OTHER THAN NATURAL PARENT? *(Complete Items 11A, 11B and 11C)*

| | | |
|---|---|---|
| A. NAME OF CUSTODIAN/GUARDIAN OF CLAIMANT-CHILD | B. RELATIONSHIP TO CHILD ☐ ADOPTIVE PARENT ☐ GUARDIAN ☐ OTHER *(Specify)* _____ | C. ADDRESS OF CUSTODIAN/GUARDIAN OF CLAIMANT-CHILD |

12A. IF CLAIMANT-CHILD IS AGE 18 OR OLDER HAS THE CLAIMANT-CHILD BEEN DECLARED INCOMPETENT?
☐ YES ☐ NO *(If "Yes," complete Items 12B and 12C)*

| | |
|---|---|
| 12B. NAME AND ADDRESS OF THE COURT WHICH MADE THE FINDING OF INCOMPETENCY? | 12C. NAME AND ADDRESS OF THE GUARDIAN |

13. NAME AND ADDRESS OF PRIMARY HEALTH CARE PROVIDER FOR THE CLAIMANT-CHILD

| | |
|---|---|
| 14A. HAS THE CHILD BEEN DIAGNOSED WITH SPINA BIFIDA? ☐ YES ☐ NO *(If "Yes," complete Items 14B and 14C)* | 14B. DATE OF DIAGNOSIS *(Mo.,day,yr.)* |

14C. IF THE CLAIMANT-CHILD HAS BEEN TREATED/HOSPITALIZED FOR SPINA BIFIDA RELATED DISABILITIES WITHIN THE LAST YEAR, PLEASE PROVIDE THE NAME AND ADDRESS OF EACH HOSPITAL OR OTHER INSTITUTION WHERE THE TREATMENT WAS PROVIDED *(Use reverse or attach a separate sheet if more space is needed)*

I/We, the undersigned, hereby authorize the hospital or physician shown in Items 13 and 14C to disclose and release to the Department of Veterans Affairs (VA) any information that may have been obtained in connection with the physical examination or treatment of the child.

| | |
|---|---|
| 15A. SIGNATURE(S) OF PARENT/GUARDIAN/ADULT CHILD | 15B. DATE SIGNED |
| 16A. SIGNATURE OF WITNESS (Required) | 16B. DATE SIGNED |

I/We, the undersigned, declare under penalty of perjury that the information provided is true and correct and that the child named in Item 1 above is the natural child of the person(s) named above in Item 7.

| | |
|---|---|
| 17A. SIGNATURE | 17B. DATE SIGNED |
| 18A. SIGNATURE | 18B. DATE SIGNED |

VA FORM JUL 1997 **21-0304**

BILLING CODE 8320-01-C

(c) *Definitions.*—(1) *Vietnam veteran.* For the purposes of this section, the term ''Vietnam veteran'' means a veteran who performed active military, naval, or air service in the Republic of Vietnam during the Vietnam era. *Service in the Republic of Vietnam* includes service in the waters offshore and service in other locations if the conditions of service involved duty or visitation in the Republic of Vietnam.

(2) *Child.* For the purposes of this section, the term ''child'' means a natural child of a Vietnam veteran, regardless of age or marital status, conceived after the date on which the veteran first served in the Republic of Vietnam during the Vietnam era. Notwithstanding the provisions of § 3.204(a)(1), VA shall require the types of evidence specified in §§ 3.209 and 3.210 sufficient to establish in the judgment of the Secretary that a child is the natural child of a Vietnam veteran.

(3) *Spina bifida.* For the purposes of this section, the term ''spina bifida'' means any form and manifestation of spina bifida except spina bifida occulta.

(d)(1) VA shall determine the level of disability suffered by the child in accordance with the following criteria:

(i) *Level I.* The child is able to walk without braces or other external support (although gait may be impaired), has no sensory or motor impairment of upper extremities, has an IQ of 90 or higher, and is continent of urine and feces.

(ii) *Level II.* Provided that none of the child's disabilities are severe enough to be evaluated at Level III, and the child: is ambulatory, but only with braces or other external support; or, has sensory or motor impairment of upper extremities, but is able to grasp pen, feed self, and perform self care; or, has an IQ of at least 70 but less than 90; or, requires drugs or intermittent catheterization or other mechanical means to maintain proper urinary bladder function, or mechanisms for proper bowel function.

(iii) *Level III.* The child is unable to ambulate; or, has sensory or motor impairment of upper extremities severe enough to prevent grasping a pen, feeding self, and performing self care; or, has an IQ of 69 or less; or, has complete urinary or fecal incontinence.

(2) Provided that they are adequate for assessing the level of disability due to spina bifida under the provisions of paragraph (d)(1) of this section, VA may accept statements from private physicians, or examination reports from government or private institutions, for the purpose of rating spina bifida claims without further examination. In the absence of such information, VA will schedule an examination for the purpose of assessing the level of disability.

(3) Unless or until VA is able to obtain medical evidence adequate to assess the level of disability due to spina bifida, or to reassess the level of disability when required to do so under the provisions of paragraph (d)(4) or (5) of this section, VA will rate the disability of a person eligible for this monetary allowance at no higher than Level I.

(4) Children under the age of one year will be rated at Level I unless a pediatric neurologist or a pediatric neurosurgeon certifies that, in his or her medical judgment, there is a neurological deficit that will prevent the child from ambulating; from grasping a pen, feeding him or herself, or performing self care; or from achieving urinary or fecal continence. If such a deficit is present, the child will be rated at Level III. In either case, VA will reassess the level of disability when the child reaches the age of one year.

(5) VA will reassess the level of disability due to spina bifida whenever it receives medical evidence indicating that a change is warranted. For individuals between the ages of one and twenty-one, however, it will reassess the level of disability at intervals of not more than five years. Thereafter, it will reassess the level of disability only if evidence indicates there has been a material change in the level of disability or that the current rating may be incorrect.

(Paperwork requirements were approved by the Office of Management and Budget under control number 2900–0572.)

(Authority: 38 U.S.C. 501, 1805)

## PART 3—[AMENDED]

13. The Cross Reference following § 3.57 is amended by removing ''§ 3.403(a)'' and ''§ 3.503(c)'' and adding, in their places, ''§ 3.403(a)(1)'' and ''§ 3.503(a)(3)'', respectively.

14. Each Cross Reference following §§ 3.659 and 3.703 is amended by removing ''§ 3.503(g)'' and adding, in its place, ''§ 3.503(a)(7)''.

15. The Cross Reference following § 3.707 is amended by removing ''§ 3.503(h)'' and adding, in its place, ''§ 3.503(a)(8)''.

16. The Cross Reference following § 3.807 is amended by removing ''§ 3.503(h)'' and adding, in its place, ''§ 3.503(a)(8).''.

[FR Doc. 97–25663 Filed 9–29–97; 8:45 am]

BILLING CODE 8320–01–P

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 17

**RIN 2900–AI65**

### Provision of Health Care to Vietnam Veterans' Children With Spina Bifida

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This document establishes regulations regarding Vietnam veterans' children with spina bifida. The regulations concern the provision of health care needed for the spina bifida or any disability that is associated with such condition. This action is necessary to establish a mechanism for providing health care to such children in accordance with recently enacted legislation.

**DATES:** *Effective Date:* October 1, 1997.

**FOR FURTHER INFORMATION CONTACT:** Robert De Vesty, Health Systems Specialist, Office of Public Health and Environmental Hazards (13), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington DC, 20420, telephone (202) 273–8575.

**SUPPLEMENTARY INFORMATION:** In a document published in the **Federal Register** on May 1, 1997 (62 FR 23731), we proposed to amend the ''Medical'' regulations (38 CFR part 17) by setting forth new §§ 17.900–17.905 regarding the provision of health care to Vietnam veterans' children with spina bifida. Spina bifida is a congenital birth defect, characterized by defective closure of the bones surrounding the spinal cord. The spinal cord and its covering (the meninges) may protrude through the defect.

The provisions of 38 U.S.C. Chapter 18 (Pub. L. 104–204, section 421, September 26, 1996) provide for three separate types of benefits for Vietnam veterans' children who suffer from spina bifida: (1) Monthly monetary allowances, (2) provision of health care needed for the spina bifida or any disability that is associated with such condition, and (3) provision of vocational training and rehabilitation.

This document establishes a final rule to set forth a mechanism regarding provision of health care to Vietnam veterans' children with spina bifida.

We requested that comments to the proposed rule be submitted on or before June 30, 1997. We received 33 comments. Based on the rationale set forth in the proposed rule and this document, the proposed rule is adopted as a final rule with changes explained below.

Comments regarding issues concerning monthly monetary allowances for Vietnam veterans' children who suffer from spina bifida and the provision of vocational training and rehabilitation for such children will be addressed in separate final rules that specifically concern these issues.

Some of the suggested changes cannot be made because they would be inconsistent with statutory authorities. There is no authority for VA to pay for services provided before October 1, 1997, or to pay for services prior to the date of receipt of application. There is no authority to provide comprehensive health care coverage or insurance (health care is limited to care for spina bifida or disabilities associated with such condition). There is no authority to provide such health care unless the child is a child of a Vietnam veteran who was not dishonorably discharged (see Pub. L. 104–204, 38 U.S.C. 101, 1801–1806).

Commenters asserted that the final rule should state specifically that the provision of health care would cover durable medical equipment and medical supplies, including catheters, diapers, pads, etc. Because this appeared to be a concern from many of the commenters, the final rule is clarified, consistent with the intent of the proposed rule, to state specifically that these types of equipment and supplies are covered when provided by VA or authorized by an approved health care provider (see § 17.900(b) and the definition of ''health care'' in § 17.901).

One commenter questioned what standard would apply for replacing durable medical equipment, particularly when a child has outgrown medical equipment. In this regard, the provisions of § 17.902 provide that medical equipment will be covered based on a demonstrated medical need.

Commenters questioned whether the final rule would cover adaptive housing and vehicles. VA is authorized to provide health care determined to be medically necessary. In our view, coverage for adaptive housing and vehicles is outside the scope of this authorization.

One commenter questioned whether treatment of behavioral problems such as attention deficit disorder would be covered under the final rule. This would have to be determined on a case-by-case basis. Any health care determined to be needed for the spina bifida or any disability that is associated with such condition would be covered.

One commenter questioned whether payment would be made for services if the child suffering from spina bifida has died. Covered services provided for an eligible child prior to death would be paid even if the child died after the services were provided.

One commenter questioned whether complications during pregnancy of a Vietnam veterans' child who suffer from spina bifida would be covered. Another commenter questioned whether hydrocephalus and Arnold-Chiari malformation would be covered for such children. Another questioned whether other abnormalities would be covered. These conditions would be covered insofar as they constitute a disability associated with spina bifida.

One commenter questioned whether care at the Department of Defense (DOD) facilities would be paid by VA. Costs for care provided by DOD is the responsibility of DOD.

One commenter asserted that preventive care should be listed specifically as a covered benefit. No changes are made based on this comment. The definition of ''health care'' in § 17.901 specifically states that ''preventive care'' is covered.

One commenter asserted that payment should be made for experimental or investigative care. No changes are made based on this comment. We have no way to determine whether such care would be effective and not harmful.

Commenters asserted that payment for respite care and home care (including attendant care) and case management services should not be limited to approved health care providers and should include health care providers that are not certified or licensed. The terms ''health care provider'' and ''approved health care provider'' are defined in § 17.901. No changes are made based on these comments. This final rule does not preclude services from individuals who do not qualify as ''approved health care providers.'' However, VA will pay only for services rendered by ''approved health care providers.'' We believe that the utilization of approved health care providers as defined in § 17.901 is necessary to ensure appropriate quality standards for services paid by VA.

A number of commenters expressed concern that their ability to utilize Medicaid, Medicare, or other health insurance would be limited by the spina bifida program. In this regard, the spina bifida regulations provide for VA to be the exclusive payer only for services paid under the spina bifida regulations. Also, by statute monetary benefits are not considered income or resources in determining eligibility for or the amount of benefits under any Federal or Federally-assisted program, including Medicaid and Medicare. Consistent with these concepts, we added language to the final rule to state that in the usual case claims for health care for other than covered services for spina bifida and disabilities associated with spina bifida would be submitted to an insurer, Medicare, Medicaid, health plan, or other program providing health care coverage.

One commenter expressed concern that charges could exceed the amount reimbursed by VA and that providers would charge patients for the excess. In this regard, the regulations state that VA is the exclusive payer for services paid under the spina bifida regulations. Accordingly, the amount paid by VA would constitute payment in full.

Several commenters questioned whether they could have a choice regarding their provider. Recipients will be able to choose any provider meeting the criteria in § 17.901.

One commenter suggested that the preauthorization procedures are unnecessarily restrictive and burdensome, and that there should be an emergency exception for preauthorization. The preauthorization procedures apply to that type of care most likely to cause disagreement with respect to medical need. These procedures will help avoid unexpected liabilities for noncovered services. Further, it would be rare that an emergency would arise for the types of care requiring preauthorization. Even so, we have added provisions stating that preauthorization would not be required for a condition for which failure to receive immediate treatment poses a serious threat to life or health. A provision also is added stating that such emergency care should be reported by telephone within 72 hours of the emergency. These provisions would ensure that preauthorization procedures would not impede the provisions of emergent health care and would help ensure that recipients understand in a timely manner what health care is covered under this final rule.

The preauthorization provisions state that care will be authorized only in those cases where there is a demonstrated medical need. One commenter asserted that the burden of proof should rest on VA regarding whether care is medically necessary. No changes are made based on this comment. The statutory provisions of 38 U.S.C. 1803(a) state that the Secretary shall provide ''such health care as the Secretary determines is needed for the child for the spina bifida or any disability associated with such condition.'' Even so, VA will consider any evidence from providers or others that might support a claim.

One commenter asserted that Vietnam veterans' children who suffer from spina bifida should have the same appeal rights as other VA claimants. In this regard, § 17.904 sets forth an appeal process and the note to this section states that there are further appellate rights for an appeal to the Board of Veterans' Appeals. This is equivalent to the appellate process afforded veterans for other matters.

The proposed regulations provided that ''if a health care provider, Vietnam veteran's child or representative disagrees with a determination concerning provision of health care or a health care provider disagrees with a determination concerning payment, the person or entity may request reconsideration.'' The proposed regulations further provided that ''such request must be submitted in writing within one year of the date of the initial determination to the Chief, Administrative Division, Health Administration Center, P.O. Box 65025, Denver, CO 80206–9025.'' Moreover, the proposed regulations provided that ''if the person or entity seeking reconsideration is still dissatisfied, within 30 days of the date of the decision he or she may make a written request for review by the Director, Health Administration Center, P.O. Box 65025, Denver, CO 80206–9025.'' Commenters asserted that the 30-day period for further reconsideration should be extended to 90 or 180 days. In this regard, they argued that 30 days might not be enough time for individuals on travel or who get their mail irregularly. The final rule extends the time period from 30 days to 90 days. This should be adequate to allow sufficient time for the preparation of an appeal.

One commenter asserted that the date for satisfying the period for filing an appeal be the date the appeal is postmarked. The provisions of § 17.904 are amended to state that an appeal would be filed at the time it was delivered to VA or the time it was released for submission to VA (postmark would constitute evidence of release for submission to VA).

One commenter asserted that the review appeal decisions should be required to include a statement of findings and reasons. The regulations are clarified to specifically require inclusion of findings and reasons.

One commenter asserted that ID cards should be issued so that children suffering from spina bifida could more easily identify themselves to health care providers as eligible for benefits under the VA's spina bifida regulations. It is anticipated that ID cards will be issued.

One commenter requested that the comment period for this rule making proceeding be extended until the end of the comment period for the proposed rule regarding vocational training and rehabilitation for Vietnam veterans' children who suffer from spina bifida. Such an extension is unwarranted. An understanding of the issues in the rule making proceeding regarding vocational training and rehabilitation is not necessary to make informed comments regarding this rule making proceeding.

Additional changes are made to the final rule for purposes of clarification.

**Executive Order 12866**

This final rule has been reviewed by OMB under Executive Order 12866.

**Administrative Procedure Act**

There is good cause for making this final rule effective without regard to a 30 day delay. This final rule does not adversely affect anyone and the affected children need the benefits from the rule as soon as possible.

**Paperwork Reduction Act**

Information collection and recordkeeping requirements associated with this final rule (38 CFR 17.902, 17.903, 17.904) have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501–3520) and have been assigned OMB control number 2900–0577.

The provisions of 38 CFR 17.902 will require individuals to submit to a preauthorization specialist of the Health Administration Center a preauthorization application for health care consisting of case management, durable medical equipment, home care, professional counseling, mental health services, respite care, training, substance abuse treatment, dental services, transplantation services or travel (other than mileage at the General Services Administration rate for privately owned automobiles). The preauthorization application will contain the child's name and social security number; the type of service requested; the medical justification; the estimated cost; and the name, address, and telephone number of the provider. Such information is necessary to make preauthorization determinations in accordance with § 17.902.

The provisions of 38 CFR 17.903 will require that, as a condition of payment, claims from ''approved health care providers'' for health care provided under 38 CFR 17.900 must include the following information, as appropriate: with respect to patient identification information: the veteran's and patient's full name, social security numbers, patient's address, and date of birth; with respect to patient treatment information (inpatient and outpatient services): full name and address (such as hospital or physician), remittance address, physical location where services were rendered, individual provider's professional status (M.D., Ph.D., R.N., etc.), and provider tax identification number (TIN) or social security number (SSN); with respect to patient treatment information (inpatient institutional services): dates of service (specific and inclusive); summary level itemization (by revenue code); dates of service for all absences from a hospital or other approved institution during a period for which inpatient benefits are being claimed; principal diagnosis established, after study, to be chiefly responsible for causing the patient's hospitalization; all secondary diagnoses; all procedures performed; discharge status of the patient; and institution's Medicare provider number; with respect to patient treatment information for all other health care providers and ancillary outpatient services: diagnosis, procedure code for each procedure, service or supply for each date of service, and individual billed charge for each procedure, service or supply for each date of service; with respect to prescription drugs and medicines: name and address of pharmacy where drug was dispensed, name of drug, National Drug Code (NDC) for drug provided, strength, quantity, date dispensed, and pharmacy receipt for each drug dispensed. Such information will be necessary to make payment determinations in accordance with 38 CFR 17.903.

The provisions of 38 CFR 17.904 will establish a review process regarding disagreements by a Vietnam veteran's child or representative with a determination concerning authorization of health care or a health care provider's disagreement with a determination regarding payment. The person or entity requesting reconsideration of such determination will be required to submit such request to the Chief, Administrative Division, Health Administration Center, in writing within one year of the date of initial determination. The request must state why the decision is in error and include any new and relevant information not previously considered. After reviewing the matter, a benefits advisor will issue a written determination to the person or entity seeking reconsideration. If such person or entity remains dissatisfied with the determination, the person or entity will be permitted to make a written request for review by the

Director, Health Administration Center. The information to be collected under § 17.904 is necessary to make review and appeal determinations.

Interested parties were invited to submit comments on the collection of information. However, no comments were received.

OMB assigns a control number for each collection of information it approves. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The valid OMB control number assigned to the collections of information in this final rule is displayed at the end of each of the affected sections of the regulations.

## Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. It is estimated that there are only between 600 and 2,000 Vietnam veterans' children who suffer from spina bifida. They are widely geographically diverse and the health care provided to them would not have a significant impact on any small businesses. Therefore, pursuant to 5 U.S.C. 605(b), the final rule is exempt from the initial and final regulatory flexibility analysis requirements of §§ 603 and 604.

There are no Catalog of Federal Domestic Assistance numbers for this final rule.

## List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: September 11, 1997.

**Hershel W. Gober,**

*Acting Secretary of Veterans Affairs.*

For the reasons set forth in the preamble, 38 CFR part 17 is amended as follows:

## PART 17—MEDICAL

1. The authority citation for part 17 continues to read as follows:

**Authority:** 38 U.S.C. 501(a), 1721, unless otherwise noted.

2. In part 17, an undesignated center heading and new §§ 17.900 through 17.905 are added to read as follows:

**Health Care for a Vietnam Veteran's Child With Spina Bifida**

Sec.
17.900 Spina bifida—provision of health care.
17.901 Definitions.
17.902 Preauthorization.
17.903 Payment.
17.904 Review and appeal process.
17.905 Medical records.

## Health Care for a Vietnam Veteran's Child With Spina Bifida

### § 17.900 Spina bifida—provision of health care.

(a) VA shall provide a Vietnam veteran's child who has been determined under § 3.814 of this title to suffer from spina bifida with such health care as the Secretary determines is needed by the child for the spina bifida or any disability that is associated with such condition. This is not intended to be a comprehensive insurance plan and does not cover health care unrelated to spina bifida.

(b) Health care provided under this section shall be provided directly by VA, by contract with an approved health care provider, or by other arrangement with an approved health care provider. VA may inform spina bifida patients, parents, or guardians that health care may be available at not-for-profit charitable entities.

(Authority: 38 U.S.C. 101(2), 1801–1806)

**Note to § 17.900:** VA provides payment under this section only for health care relating to spina bifida or a disability that is associated with such condition. VA is the exclusive payer for services paid under this section regardless of any third party insurer, Medicare, Medicaid, health plan, or any other plan or program providing health care coverage. Any third-party insurer, Medicare, Medicaid, health plan, or any other plan or program providing health care coverage would be responsible according to its provisions for payment for health care not relating to spina bifida and not constituting a disability that is associated with such condition (accordingly, in the usual case claims for health care for other than covered services for spina bifida and disabilities associated with spinal bifida would be submitted to an insurer, Medicare, Medicaid, health plan, or other program providing health care coverage).

### § 17.901 Definitions.

For purposes of §§ 17.900 through 17.905—

*Approved health care provider* means a health care provider approved by the Health Care Financing Administration (HCFA), Department of Defense Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA), Joint Commission on Accreditation of Health Care Organizations (JCAHO), or any health care provider approved for providing health care pursuant to a state license or certificate. An entity or individual shall be deemed to be an approved health care provider only when acting within the scope of the approval, license, or certificate.

*Child* means the same as defined at § 3.814(c) of this title.

*Habilitative and rehabilitative care* means such professional counseling, guidance services and treatment programs (other than vocational training under 38 U.S.C. 1804) as are necessary to develop, maintain, or restore, to the maximum extent practicable, the functioning of a disabled person.

*Health care* means home care, hospital care, nursing home care, outpatient care, preventive care, habilitative and rehabilitative care, case management, and respite care; and includes the training of appropriate members of a child's family or household in the care of the child; and the provision of such pharmaceuticals, supplies (including continence-related supplies such as catheters, pads, and diapers), equipment (including durable medical equipment), devices, appliances, assistive technology, direct transportation costs to and from approved health care providers (including any necessary costs for meals and lodging en route, and accompaniment by an attendant or attendants), and other materials as the Secretary determines necessary.

*Health care provider* means any entity or individual who furnishes health care, including specialized spina bifida clinics, health care plans, insurers, organizations, and institutions.

*Home care* means medical care, habilitative and rehabilitative care, preventive health services, and health-related services furnished to an individual in the individual's home or other place of residence.

*Hospital care* means care and treatment furnished to an individual who has been admitted to a hospital as a patient.

*Nursing home care* means care and treatment furnished to an individual who has been admitted to a nursing home as a resident.

*Outpatient care* means care and treatment, including preventive health services, furnished to an individual other than hospital care or nursing home care.

*Preventive care* means care and treatment furnished to prevent disability or illness, including periodic examinations, immunizations, patient health education, and such other services as the Secretary determines necessary to provide effective and economical preventive health care.

*Respite care* means care furnished on an intermittent basis for a limited period to an individual who resides primarily in a private residence when such care will help the individual continue residing in such private residence.

*Spina bifida* means all forms and manifestations of spina bifida except spina bifida occulta (this includes complications or associated medical conditions which are adjunct to spina bifida according to the scientific literature).

*Vietnam veteran* means the same as defined at § 3.814(c) of this title.

(Authority: 38 U.S.C. 101(2), 1801–1806)

**§ 17.902 Preauthorization.**

(a) Preauthorization from a preauthorization specialist of the Health Administration Center is required for health care consisting of case management, durable medical equipment, home care, professional counseling, mental health services, respite care, training, substance abuse treatment, dental services, transplantation services, or travel (other than mileage at the General Services Administration rate for privately owned automobiles). This care will be authorized only in those cases where there is a demonstrated medical need. Applications for provision of health care requiring preauthorization shall either be made by telephone at (800) 733–8387, or in writing to Health Administration Center, P.O. Box 65025, Denver, CO 80206–9025. The application shall contain the following:

(1) Name of child,

(2) Child's social security number,

(3) Name of veteran,

(4) Veteran's social security number,

(5) Type of service requested,

(6) Medical justification,

(7) Estimated cost, and

(8) Name, address, and telephone number of provider.

(b) Notwithstanding the provisions of paragraph (a) of this section, preauthorization shall not be required for a condition for which failure to receive immediate treatment poses a serious threat to life or health. Such emergency care should be reported by telephone at (800) 733–8387 to the Health Administration Center, Denver, CO within 72 hours of the emergency.

(Paperwork requirements were approved by the Office of Management and Budget under control number 2900–0577.)

(Authority: 38 U.S.C. 101(2), 1801–1806)

**§ 17.903 Payment.**

(a)(1) Payment under this section will be determined utilizing the same payment methodologies as provided for under the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA) (see 38 CFR 17.84).

(2) As a condition of payment, the services must have occurred on or after October 1, 1997, and must have occurred on or after the date the child was determined eligible for benefits under § 3.814 of this title. Also, as a condition of payment, claims from approved health care providers for health care provided under this section must be filed with the Health Administration Center, P.O. Box 65025, Denver, CO 80206–9025, no later than:

(i) One year after the date of service; or

(ii) In the case of inpatient care, one year after the date of discharge; or

(iii) In the case of retroactive approval for health care, 180 days following beneficiary notification of authorization.

(3) Claims for health care provided under the provisions of §§ 17.900 through 17.905 shall contain, as appropriate, the information set forth in paragraphs (a)(3)(i) through (a)(3)(v) of this section.

(i) Patient identification information:

(A) Full name,

(B) Address,

(C) Date of birth, and

(D) Social Security number.

(ii) Provider identification information (inpatient and outpatient services):

(A) Full name and address (such as hospital or physician),

(B) Remittance address,

(C) Address where services were rendered,

(D) Individual provider's professional status (M.D., Ph.D., R.N., etc.), and

(E) Provider tax identification number (TIN) or Social Security number.

(iii) Patient treatment information (long-term care or institutional services):

(A) Dates of service (specific and inclusive),

(B) Summary level itemization (by revenue code),

(C) Dates of service for all absences from a hospital or other approved institution during a period for which inpatient benefits are being claimed,

(D) Principal diagnosis established, after study, to be chiefly responsible for causing the patient's hospitalization,

(E) All secondary diagnoses,

(F) All procedures performed,

(G) Discharge status of the patient, and

(H) Institution's Medicare provider number.

(iv) Patient treatment information for all other health care providers and ancillary outpatient services such as durable medical equipment, medical requisites and independent laboratories:

(A) Diagnosis,

(B) Procedure code for each procedure, service or supply for each date of service, and

(C) Individual billed charge for each procedure, service or supply for each date of service.

(v) Prescription drugs and medicines and pharmacy supplies:

(A) Name and address of pharmacy where drug was dispensed,

(B) Name of drug,

(C) Drug Code for drug provided,

(D) Strength,

(E) Quantity,

(F) Date dispensed,

(G) Pharmacy receipt for each drug dispensed (including billed charge), and

(H) Diagnosis.

(b) Health care payment shall be provided in accordance with the provisions of §§ 17.900 through 17.905. However, the following are specifically excluded from payment:

(1) Care as part of a grant study or research program,

(2) Care considered experimental or investigational,

(3) Drugs not approved by the U.S. Food and Drug Administration for commercial marketing,

(4) Services, procedures or supplies for which the beneficiary has no legal obligation to pay, such as services obtained at a health fair,

(5) Services provided outside the scope of the provider's license or certification, and

(6) Services rendered by providers suspended or sanctioned by a Federal agency.

(c) Payments made in accordance with the provisions of §§ 17.900 through 17.905 shall constitute payment in full. Accordingly, the health care provider or agent for the health care provider may not impose any additional charge for any services for which payment is made by VA.

(d) Explanation of benefits (EOB). When a claim under the provisions of §§ 17.900 through 17.905 is adjudicated, an EOB will be sent to the beneficiary or guardian and the provider. The EOB provides at a minimum, the following information:

(1) Name and address of recipient,

(2) Description of services and/or supplies provided,

(3) Dates of services or supplies provided,

(4) Amount billed,

(5) Determined allowable amount,

(6) To whom payment, if any, was made, and

(7) Reasons for denial (if applicable).

(Paperwork requirements were approved by the Office of Management and Budget under control number 2900–0577.)

(Authority: 38 U.S.C. 101(2), 1801–1806)

**§ 17.904 Review and appeal process.**

If a health care provider, Vietnam veteran's child or representative disagrees with a determination concerning provision of health care or a health care provider disagrees with a determination concerning payment, the person or entity may request reconsideration. Such request must be submitted in writing within one year of the date of the initial determination to the Chief, Administrative Division, Health Administration Center, P.O. Box 65025, Denver, CO 80206–9025. The request must state why it is concluded that the decision is in error and must include any new and relevant information not previously considered. Any request for reconsideration that does not identify the reason for dispute will be returned to the sender without further consideration. After reviewing the matter, including any relevant supporting documentation, a benefits advisor will issue a written determination (with a statement of findings and reasons) to the person or entity seeking reconsideration that affirms, reverses or modifies the previous decision. If the person or entity seeking reconsideration is still dissatisfied, within 90 days of the date of the decision he or she may make a written request for review by the Director, Health Administration Center, P.O. Box 65025, Denver, CO 80206–9025. The Director will review the claim and any relevant supporting documentation and issue a decision in writing (with a statement of findings and reasons) that affirms, reverses or modifies the previous decision. An appeal under this section would be considered as filed the time it was delivered to the VA or at the time it was released for submission to the VA (for example, this could be evidenced by the postmark, if mailed).

**Note to § 17.904:** The final decision of the Director will inform the claimant of further appellate rights for an appeal to the Board of Veterans Appeals.

(Paperwork requirements were approved by the Office of Management and Budget under control number 2900–0577.)

(Authority: 38 U.S.C. 101(2), 1801–1806)

**§ 17.905 Medical records.**

Copies of medical records generated outside VA that relate to activities for which VA is asked to provide payment, and that VA determines are necessary to adjudicate claims under §§ 17.900 through 17.905, must be provided to VA at no cost.

(Authority: 38 U.S.C. 101(2), 1801–1806)

[FR Doc. 97–25664 Filed 9–29–97; 8:45 am]

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## DEPARTMENT OF VETERANS AFFAIRS

## 38 CFR Part 21

**RIN 2900–AI72**

## Provision of Vocational Training and Rehabilitation to Vietnam Veterans' Children With Spina Bifida

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This document establishes Department of Veterans Affairs (VA) regulations for providing vocational training and rehabilitation to Vietnam veterans' children with spina bifida. This is necessary for providing vocational training and rehabilitation to these children under recently enacted legislation that authorizes this benefit.

**EFFECTIVE DATE:** October 1, 1997.

**FOR FURTHER INFORMATION CONTACT:** Charles A. Graffam, Veterans Claims Examiner, Vocational Rehabilitation and Counseling Service (28), Department of Veterans Affairs, 810 Vermont Ave., NW, Washington, DC 20420; (202) 273–7410.

**SUPPLEMENTARY INFORMATION:** In a document published in the **Federal Register** on July 1, 1997 (62 FR 35454), we proposed to amend the Vocational Rehabilitation and Education regulations (38 U.S.C. part 21) to add a new subpart M regarding the provision of vocational training, services, and assistance to Vietnam veterans' children with spina bifida. Spina bifida is a congenital birth defect, characterized by defective closure of the bones surrounding the spinal cord. The spinal cord and its covering (the meninges) may protrude through the defect.

The provisions of 38 U.S.C. chapter 18 (Public Law 104–204, sections 421 and 422, September 26, 1996) provide for three separate types of benefits for Vietnam veterans' children who suffer from spina bifida: (1) Monthly monetary allowances, (2) provision of health care needed for the spina bifida or any disability that is associated with such condition, and (3) provision of vocational training and rehabilitation.

This document establishes a final rule to set forth a mechanism regarding provision of vocational training and rehabilitation to Vietnam veterans' children with spina bifida.

We requested that comments on the proposed rule be submitted on or before September 2, 1997. We received five comments. VA appreciates the comments submitted in response to the proposed rule. Based on the rationale set forth in the proposed rule and this document, the provisions of the proposed rule are adopted with the changes discussed below.

Comments regarding issues concerning monthly monetary allowances for Vietnam veterans' children who suffer from spina bifida and provision of health care for such children are addressed in separate final rules that specifically concern these issues.

Commenters recommended that we reimburse children for vocational training received prior to October 1, 1997; pay for the purchase and ongoing expenses of owning and operating a vehicle; provide automobile adaptive equipment; provide for specially adapted housing; pay a subsistence allowance to individuals receiving vocational training; allow concurrent receipt of benefits under 38 U.S.C. chapter 35 and the vocational training program; provide comprehensive medical and dental care for conditions unrelated to spina bifida; provide a work-study program; and provide vocational training for children of certain individuals who do not meet the statutory definition of the term ''veteran.'' No changes are made based on these comments since VA has no legal authority to do so.

Commenters asserted that benefits should be provided to grandchildren and other direct descendants of Vietnam veterans. No changes are made based on these comments. Under the provisions of 38 U.S.C. 1801, benefits are limited to natural children of a Vietnam veteran. In our view, this includes only the immediate offspring of a Vietnam veteran and does not include grandchildren or other descendants.

One commenter asserted that all Vietnam veterans' children suffering from spina bifida should receive vocational training and that there should be a gradation of vocational training benefits based on disability so that the most in need would receive the maximum benefit. No changes are made based on this comment. The vocational training regulations are designed to provide for training based on the

individual capabilities of those who suffer from spina bifida. Thus, each child will receive only those services needed and the level of services will accord with the needs of the individual child. Even so, not all Vietnam veterans' children who suffer from spina bifida will be eligible for vocational training. The statutory authority limits vocational training to children for whom VA has found that achievement of a vocational goal is reasonably feasible.

The provisions of proposed § 21.8050 stated that VA may provide to vocational training program participants vocationally oriented independent living services, but only to the extent that the services are indispensable to the achievement of the vocational goal and do not constitute a significant portion of the services to be provided. Commenters asserted that VA should provide a full range of independent living services for children seeking vocational training. In this regard, one commenter asserted that the terms ''indispensable'' and ''significant portion'' are not sufficiently precise and would not allow for adequate independent living services. More specifically the commenter asserted that the regulation should allow independent living services as long as they do not constitute a majority of the vocational rehabilitation services provided.

No changes are made based on these comments. We believe that the current language should be retained. Under the provisions of 38 U.S.C. 1804(c)(1)(A), a child's program is to consist of vocationally oriented services and training. Thus, the focus of a child's program must be on vocational training. Taking extensive time for independent living services would hamper the ability to achieve a vocational goal. Further, it is unlikely that a child who requires a significant amount of independent living services would meet the criteria for entrance into a vocational training program; i.e., it must be reasonably feasible for the child to achieve a vocational goal.

Two commenters questioned whether the vocational training could include professional training. Under the provisions of 38 U.S.C. 1804, the training may include a program of education at an institution of higher education if the program of education is predominantly vocational in content and the vocational goal can be achieved within 24 months.

Commenters asserted that the final rule should allow for further training after the initial training. Proposed § 21.8072(b) already provided for additional training. It provided that a child who has previously achieved a vocational goal in a vocational training program may not receive additional training unless a counseling psychologist or a vocational rehabilitation counselor sets aside the child's achievement of that vocational goal based on a finding under § 21.8284(a) that ''the child's disability has worsened to the extent that he or she can no longer perform the duties of the occupation which was the child's vocational goal'' or under § 21.8284(b) that ''[t]he occupation that was the child's vocational goal * * * is now unsuitable.''

A commenter asserted that additional training should be allowed for the other reasons stated in § 21.8284(c) through (e); i.e.:

''(c) The vocational training program services and assistance the child originally received are now inadequate to make the child employable in the occupation which he or she sought to achieve;

''(d) Experience has demonstrated that VA should not reasonably have expected employment in the objective or field for which the child received vocational training program services and assistance; or

''(e) Technological change that occurred after the child achieved a vocational goal under this subpart now prevents the child from:

''(1) Performing the duties of the occupation for which VA provided training, services, or assistance, or in a related occupation; or

''(2) Securing employment in the occupation for which VA provided training, services, or assistance, or in a related occupation.''

We agree that the provisions of paragraphs (c) through (e) in § 21.8284 set forth appropriate bases for allowing additional vocational training. The final rule in § 21.8072 is changed accordingly.

Proposed § 21.8370 provided for VA to reimburse certain children for the actual cost of transportation necessary for the child to pursue a vocational training program (and for a limited period thereafter), not to exceed $70 per month. Three commenters asserted that the maximum amount should be increased. Two of them suggested an amount, $200 per month. We agree that that the maximum amount should be increased to $200 per month and a corresponding change is made to the final rule. This amount would more closely compare to maximum amounts paid veterans for costs of transportation under the vocational rehabilitation program authorized under 38 U.S.C. chapter 31.

The provisions of § 21.8080 state that a counseling psychologist or vocational rehabilitation counselor will work in consultation with each eligible child to develop an individualized written plan of services and assistance to meet the child's vocational training needs. One commenter asserted that this would limit the child's freedom of choice for training opportunities. No changes are made based on this comment. Under the provisions of the regulations, the child will be an active participant in the decisionmaking. However, the determination of the counseling psychologist or vocational rehabilitation counselor is essential to ensure that the vocational training is reasonable and appropriate for the child's condition.

One comment asserted that the final rule should require VA to utilize vocational rehabilitation specialists, vocational rehabilitation counselors, and counseling psychologists who have substantial experience in serving persons with developmental disabilities. The comment further asserted that the final rule should state that VA will contract for such services if they are unavailable within VA. No changes are made based on this comment. VA is committed to providing competent and comprehensive services. The regulations provide for certain determinations to be made by counseling psychologists, vocation rehabilitation counselors, or vocational rehabilitation specialists. When VA determines that it is necessary to contract for services of individuals to gain additional expertise in developmental disabilities, VA intends to exercise its authority to do so. However, there is no need to address these internal issues in the regulations.

One commenter stated that insofar as authorized by the child, the evaluation for vocational training should include all pertinent records that have been developed outside VA; e.g., school transcripts, counseling records, personal assessments. No changes are made based on this comment. VA uses all available resources in evaluating claimants, including non-VA records authorized by affected individuals.

Commenters asserted that the vocational training regulations should specifically set forth the appeal rights for adverse decisions. Commenters further asserted that the appeal rights should be the same as for other VA claimants. No changes are made based on these comments. The provisions of § 21.8380 make applicable the informal appeal rights of § 21.420. Also, §§ 21.420(d) and 21.59 inform claimants of additional appeal rights to the Board of Veterans' Appeals. These appeal

rights are comparable to appeal rights in other VA programs.

One commenter objected to the establishment of regulations that separately address: (1) Monthly monetary allowances, (2) provision of health care needed for the spina bifida or any disability that is associated with such condition, and (3) provision of vocational training and rehabilitation. The commenter asserted that this approach ignored ''internal coordination.'' No changes are made based on this comment. The regulations are consistent with the provisions of 38 U.S.C. chapter 18 which specify three separate types of benefits for Vietnam veterans' children who suffer from spina bifida.

For the sake of clarity, we have made some nonsubstantive editorial changes to the proposed language.

### Administrative Procedure Act

There is good cause for making this final rule effective without regard to a 30-day delay. This final rule does not adversely affect anyone and the affected children need the benefits from the rule as soon as possible.

### Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this final rule (38 CFR 21.8014, 21.8016, and 21.8370) have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501–3520) and have been assigned OMB control numbers 2900–0579, 2900–0581, and 2900–0580; respectively.

Section 21.8014 will prescribe the information to be submitted for an application for a Vietnam veteran's child suffering from spina bifida to participate in a VA vocational training program. It will establish a requirement that a child with spina bifida submit an application for vocational training to be considered for this benefit. VA needs to know sufficient identifying information about the applicant and the applicant's natural parent who was a Vietnam veteran to be able to relate the claim to other existing VA records. The information collected allows the Vocational Rehabilitation and Counseling (VR&C) Division to review the existing records and to set up an appointment for an applicant to meet with a VR&C staff member to evaluate the claim.

Section 21.8016 will require a written election, and permit a written reelection, of which benefit a child with spina bifida wants to receive if the child is eligible for training under both 38 U.S.C. chapter 35 and Vocational Training Benefits for Vietnam Veterans' Children for Spina Bifida. 38 U.S.C. 1804(e)(1) specifically bars the concurrent receipt of benefits under these two programs. VA will use the collected information to provide the benefit the child wants to receive.

Section 21.8370 will permit a child receiving vocational training to request VA reimbursement for certain transportation costs and will require submission of supporting documentation to receive reimbursement. VA must determine that the child would be unable to pursue training or employment without this assistance. A child must specifically request VA assistance with transportation expenses. This allows VA to investigate the child's situation to establish that the child would be unable to pursue training or employment without VA travel assistance. To receive payment, the child must provide supportive documentation of actual expenses incurred for the travel. This prevents VA from making payment erroneously or for fraudulently claimed travel.

OMB assigns a control number for each collection of information it approves. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The valid OMB control number assigned to each collection of information in this final rule is displayed at the end of the affected sections of the regulations.

Interested persons were invited to submit comments on the collections of information. However, no comments were received.

### Executive Order 12866

This final rule has been reviewed by OMB under Executive Order 12866.

### Regulatory Flexibility Act

The Secretary of Veterans Affairs hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. It is estimated that there are only between 600–2,000 Vietnam veterans' children who suffer from spina bifida. They are widely dispersed geographically, and the services provided to them will not have a significant impact on any small businesses. Moreover, the institutions capable of providing appropriate services and vocational training to children with spina bifida generally are large capitalization facilities. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

There is no Catalog of Federal Domestic Assistance program number for this benefit.

### List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflicts of interest, Defense Department, Education, Employment, Government contracts, Grant programs-education, Grant programs-veterans, Health care, Loan programs-education, Loan programs-veterans, Manpower training programs, Personnel training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: September 16, 1997.

**Hershel W. Gober,**

*Acting Secretary of Veterans Affairs.*

For the reasons set forth in the preamble, 38 CFR part 21 is amended as set forth below:

## PART 21—VOCATIONAL REHABILITATION AND EDUCATION

In part 21, subpart M is added to read as follows:

### Subpart M—Vocational Training and Rehabilitation for Vietnam Veterans' Children With Spina Bifida

Sec.

**General**

21.8010 Vocational training program for certain Vietnam veterans' children with spina bifida.
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21.8016 Nonduplication of benefits.

**Basic Entitlement Requirements**

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21.8022 Entry and reentry.

**Evaluation**

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**Services and Assistance to Program Participants**

21.8050 Scope of training, services, and assistance.

**Duration of Training**

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21.8072 Authorizing training, services, and assistance beyond the initial individualized written plan of vocational rehabilitation.

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**Counseling**

21.8100 Counseling.

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21.8120 Vocational training, services, and assistance.

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**Supplies**

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**Vocational Training Program Entrance, Termination, and Resources**

21.8280 Effective date of induction into a vocational training program.
21.8282 Termination of a vocational training program.
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**Rate of Pursuit**

21.8310 Rate of pursuit.

**Authorization of Services**

21.8320 Authorization of services.

**Leaves of Absence**

21.8340 Leaves of absence.

**Satisfactory Conduct and Cooperation**

21.8360 Satisfactory conduct and cooperation.

**Transportation Services**

21.8370 Authorization of transportation services.

**Additional Applicable Regulations**

21.8380 Additional applicable regulations.

**Delegation of Authority**

21.8410 Delegation of authority.

## Subpart M—Vocational Training and Rehabilitation for Vietnam Veterans' Children With Spina Bifida

**Authority:** 38 U.S.C. 101, 501, 512, 1151 note, 1801–1806, 5112, unless otherwise noted.

### General

**§ 21.8010 Vocational training program for certain Vietnam veterans' children with spina bifida.**

VA will provide an evaluation to a Vietnam veteran's child who VA has determined under § 3.814 of this title suffers from spina bifida. If this evaluation establishes that it is feasible for the child to achieve a vocational goal, VA will provide the child with the vocational training, employment assistance, and other related rehabilitation services authorized by this subpart that VA finds the child needs to enable the child to achieve a vocational goal, including employment.

(Authority: 38 U.S.C. 1804)

**§ 21.8012 Definitions and abbreviations.**

(a) *Program-specific definitions and abbreviations.* For the purposes of this subpart:

*Child* has the same meaning as § 3.814(c) of this title provides.

*Employment assistance* means employment counseling, placement and post-placement services, and personal and work adjustment training.

*Institution of higher education* has the same meaning that § 21.4200 provides for the term *institution of higher learning.*

*Program of employment services* means the services a child may receive if the child's entire program consists only of employment assistance.

*Program participant* means a child who, following an evaluation in which VA finds the child's achievement of a vocational goal is reasonably feasible, elects to participate in a vocational training program under this subpart.

*Spina bifida* means any form and manifestation of spina bifida except spina bifida occulta.

*Vietnam veteran* has the same meaning as § 3.814(c) of this title provides.

*Vocational training program* means the vocationally oriented training services, and assistance, including placement and post-placement services, and personal and work-adjustment training that VA finds necessary to enable the child to prepare for and participate in vocational training or employment. A vocational training program may include a program of education offered by an institution of higher education only if the program is predominantly vocational in content.

*VR&C* refers to the Vocational Rehabilitation and Counseling activity (usually a division) in a Veterans Benefits Administration regional office, the staff members of that activity in the regional office or in outbased locations, and the services that activity provides.

(Authority: 38 U.S.C. 101, 1801, 1802, 1804)

(b) *Other terms and abbreviations.* The following terms and abbreviations have the same meaning or explanation that § 21.35 provides:

(1) CP (Counseling psychologist);
(2) Program of education;
(3) Rehabilitation facility;
(4) School, educational institution, or institution;
(5) Training establishment;
(6) Vocational goal;
(7) VRC (Vocational rehabilitation counselor);
(8) VRS (Vocational rehabilitation specialist); and
(9) Workshop.

(Authority: 38 U.S.C. 1801, 1804)

**§ 21.8014 Application.**

(a) *Filing an application.* To participate in a vocational training program, the child (or the child's parent or guardian, an authorized representative, or a Member of Congress acting on behalf of the child) must file an application. An application is a request for an evaluation of the feasibility of the child's achievement of a vocational goal and, if a CP or VRC determines that achievement of a vocational goal is feasible, for participation in a vocational training program. The application may be in any form, but it must:

(1) Be in writing over the signature of the applicant or the individual applying on the child's behalf;
(2) Provide the child's full name, address, and VA claim number, if any, and the Vietnam veteran's full name and Social Security number or VA claim number, if any; and
(3) Clearly identify the benefit sought.

(Authority: 38 U.S.C. 1804(a)).

(b) *Time for filing.* An application under this subpart may be filed at any time after September 30, 1997.

(Paperwork requirements were approved by the Office of Management and Budget under control number 2900–0579.)

(Authority: 38 U.S.C. 1801, 1804)

**§ 21.8016 Nonduplication of benefits.**

(a) *Election of benefits—chapter 35.* A child may not receive benefits concurrently under 38 U.S.C. chapter 35 and under this subpart. If the child is eligible for both benefits, he or she must elect in writing which benefit to receive.

(Authority: 38 U.S.C. 1804(e)(1))

(b) *Reelections of benefits—chapter 35.* A child receiving benefits under this subpart or under 38 U.S.C. chapter 35

may change his or her election at any time. A reelection between benefits under this subpart and under 38 U.S.C. chapter 35 must be prospective, however, and may not result in a child receiving benefits under both programs for the same period of training.

(Authority: 38 U.S.C. 1804(e)(1))

(c) *Length of benefits under multiple programs—chapter 35.* The aggregate period for which a child may receive assistance under this subpart and under 38 U.S.C. chapter 35 together may not exceed 48 months of full-time training or the part-time equivalent.

(Paperwork requirements were approved by the Office of Management and Budget under control number 2900–0581.)

(Authority: 38 U.S.C. 1804(e)(2))

## Basic Entitlement Requirements

### § 21.8020 Entitlement to vocational training and employment assistance.

(a) *Basic entitlement requirements.* Under this subpart, for a child to receive vocational training, employment assistance, and related rehabilitation services and assistance to achieve a vocational goal (to include employment), the following requirements must be met:

(1) A CP or VRC must determine that achievement of a vocational goal by the child is reasonably feasible; and

(2) The child and VR&C staff members must work together to develop and then agree to an individualized written plan of vocational rehabilitation identifying the vocational goal and the means to achieve this goal.

(Authority: 38 U.S.C. 1804(b))

(b) *Services and assistance.* A child found eligible and entitled to be a vocational training program participant may receive the services and assistance described in § 21.8050(a). The following sections in subpart A of this part apply to the provision of these services and assistance in a manner comparable to their application for a veteran under that subpart:

(1) Section 21.250(a) and (b)(2);

(2) Section 21.252;

(3) Section 21.254;

(4) Section 21.256 (not including paragraph (e)(2);

(5) Section 21.257; and

(6) Section 21.258.

(Authority: 38 U.S.C. 1804)

(c) *Requirements to receive employment services and assistance.* VA will provide employment services and assistance under paragraph (b) of this section only if the child:

(1) Has achieved a vocational objective;

(2) Has voluntarily ceased vocational training under this subpart, but the case manager finds the child has attained sufficient skills to be employable; or

(3) VA determines during evaluation that the child already has the skills necessary for suitable employment and does not need additional training, but to secure suitable employment the child does need the employment assistance that paragraph (b) of this section describes.

(Authority: 38 U.S.C. 1804)

(d) *Additional employment services and assistance.* If a child has received employment assistance and obtains a suitable job, but VA later finds the child needs additional employment services and assistance, VA may provide the child with these services and assistance if, and to the extent, the child has remaining program entitlement.

(Authority: 38 U.S.C. 1804)

(e) *Program entitlement usage*—(1) *Basic entitlement period.* A child will be entitled to receive 24 months of full-time training, services, and assistance (including employment assistance) or the part-time equivalent, as part of a vocational training program.

(2) *Extension of basic entitlement period.* The child may receive an extension of the basic 24-month entitlement period, not to exceed another 24 months of full-time program participation or the part-time equivalent. VA may authorize an extension only if VA first determines that:

(i) The extension is necessary for the child to achieve a vocational goal identified before the end of the basic 24-month entitlement period; and

(ii) The child can achieve the vocational goal within the extended period.

(3) *Principles for charging entitlement.* VA will charge entitlement usage for training, services, or assistance (but not the initial evaluation, as described in § 21.8032) on the same basis as VA would charge entitlement usage for providing the same training, services, or assistance to a veteran in a vocational rehabilitation program under 38 U.S.C. chapter 31. VA may charge entitlement at a half-time, three-quarter-time, or full-time rate based upon the child's training time using the rate of pursuit criteria in § 21.8310. The provisions concerning reduced work tolerance under § 21.312 or less than half-time training under § 21.314 do not apply under this subpart.

(Authority: 38 U.S.C. 1804)

### § 21.8022 Entry and reentry.

(a) *Dates of entry.* VA may not evaluate a child for a vocational training program before the later of the following dates:

(1) The date VA first receives an application for a vocational training program for the child; or

(2) October 1, 1997.

(Authority: 38 U.S.C. 1151 note, 1804, 1806)

(b) *Reentry.* If a child interrupts or ends pursuit of a vocational training program and VA subsequently allows the child to reenter the program, the date of reentrance will accord with the facts, but may not precede the date VA receives an application for the reentrance.

(Authority: 38 U.S.C. 1804)

## Evaluation

### § 21.8030 Requirement for evaluation of child.

(a) *Children to be evaluated.* The VR&C Division will evaluate each child who:

(1) Applies for a vocational training program; and

(2) Has been determined under § 3.814 of this title to suffer from spina bifida.

(Authority: 38 U.S.C. 1804(a))

(b) *Purpose of evaluation.* The evaluation has two purposes:

(1) To ascertain whether achievement of a vocational goal by the child is reasonably feasible; and

(2) If a vocational goal is reasonably feasible, to develop an individualized plan of integrated training, services, and assistance that the child needs to prepare for and participate in vocational training or employment.

(Authority: 38 U.S.C. 1804)

### § 21.8032 Evaluations.

(a) *Scope and nature of evaluation.* The scope and nature of the evaluation under this program will be comparable to an evaluation of the reasonable feasibility of achieving a vocational goal for a veteran under 38 U.S.C. chapter 31 and §§ 21.50(b)(5) and 21.53(b) and (d).

(Authority: 38 U.S.C. 1804(a))

(b) *Specific services to determine the reasonable feasibility of achieving a vocational goal.* As a part of the evaluation of reasonable feasibility of achieving a vocational goal, VA may provide the following specific services, as appropriate:

(1) Assessment of feasibility by a CP or VRC;

(2) Review of feasibility assessment and of need for special services by the Vocational Rehabilitation Panel;

(3) Provision of medical, testing, and other diagnostic services to ascertain the child's capacity for training and employment; and

(4) Evaluation of employability by professional staff of an educational or rehabilitation facility, for a period not to exceed 30 days.

(Authority: 38 U.S.C. 1804(a))

(c) *Responsibility for evaluation.* A CP or VRC will make all determinations as to the reasonable feasibility of achieving a vocational goal.

(Authority: 38 U.S.C. 1804(a), (b))

## Services and Assistance to Program Participants

### § 21.8050 Scope of training, services, and assistance.

(a) *Allowable training, services, and assistance.* VA may provide to vocational training program participants:

(1) Vocationally oriented training, services, and assistance, to include:

(i) Training in an institution of higher education if the program is predominantly vocational; and

(ii) Tuition, fees, books, equipment, supplies, and handling charges.

(2) Employment assistance including:

(i) Vocational, psychological, employment, and personal adjustment counseling;

(ii) Services to place the individual in suitable employment and post-placement services necessary to ensure satisfactory adjustment in employment; and

(iii) Personal adjustment and work adjustment training.

(3) Vocationally oriented independent living services only to the extent that the services are indispensable to the achievement of the vocational goal and do not constitute a significant portion of the services to be provided.

(4) Other vocationally oriented services and assistance of the kind VA provides veterans under the 38 U.S.C. chapter 31 program, except as paragraph (c) of this section provides, that VA determines the program participant needs to prepare for and take part in vocational training or in employment.

(Authority: 38 U.S.C. 1804(c))

(b) *Vocational training program.* VA will provide either directly or by contract, agreement, or arrangement with another entity, and at no cost to the beneficiary, the vocationally oriented training, other services, and assistance that VA approves for the individual child's program under this subpart. Authorization and payment for approved services will be made in a comparable manner to that VA provides for veterans under the 38 U.S.C. chapter 31 program.

(Authority: 38 U.S.C. 1804(c))

(c) *Prohibited services and assistance.* VA may not provide to a vocational training program participant any:

(1) Loan;

(2) Subsistence allowance;

(3) Automobile adaptive equipment;

(4) Training at an institution of higher education in a program of education that is not predominantly vocational in content;

(5) Employment adjustment allowance;

(6) Room and board in a special rehabilitation facility for a period in excess of 30 days; or

(7) Independent living services, except those that are incidental to the pursuit of the vocational training program.

(Authority: 38 U.S.C. 1804(c))

## Duration of Vocational Training

### § 21.8070 Basic duration of a vocational training program.

(a) *Basic duration of a vocational training program.* The duration of a vocational training program, as § 21.8020(e)(1) and (e)(2) provide, may not exceed 24 months of full-time training, services, and assistance or the part-time equivalent, except as § 21.8072 allows.

(Authority: 38 U.S.C. 1804(d))

(b) *Responsibility for estimating the duration of a vocational training program.* While preparing the individualized written plan of vocational rehabilitation, the CP or VRC will estimate the time the child needs to complete a vocational training program.

(Authority: 38 U.S.C. 1804(c))

(c) *Duration and scope of training must meet general requirements for entry into the selected occupation.* The child will receive training, services, and assistance, as § 21.8120 describes, for a period that VA determines the child needs to reach the level employers generally recognize as necessary for entry into employment in a suitable occupational objective.

(Authority: 38 U.S.C. 1804(c))

(d) *Approval of training beyond the entry level.* To qualify for employment in a particular occupation, the child may need training that exceeds the amount a person generally needs for employment in that occupation. VA will provide the necessary additional training under one or more of the following conditions:

(1) Training requirements for employment in the child's vocational goal in the area where the child lives or will seek employment exceed those job seekers generally need for that type of employment;

(2) The child is preparing for a type of employment in which he or she will be at a definite disadvantage in competing with nondisabled persons and the additional training will offset the competitive disadvantage;

(3) The choice of a feasible occupation is limited, and additional training will enhance the child's employability in one of the feasible occupations; or

(4) The number of employment opportunities within a feasible occupation is restricted.

(Authority: 38 U.S.C. 1804(c))

(e) *Estimating the duration of the training period.* In estimating the length of the training period the child needs, the CP or VRC must determine that:

(1) The proposed vocational training would not normally require a person without a disability more than 24 months of full-time pursuit, or the part-time equivalent, for successful completion; and

(2) The program of training and other services the child needs, based upon VA's evaluation, will not exceed 24 months or the part-time equivalent. In calculating the proposed program's length, the CP or VRC will follow the procedures in § 21.8074(a).

(Authority: 38 U.S.C. 1804(d))

(f) *Required selection of an appropriate vocational goal.* If the total period the child would require for completion of an initial vocational training program in paragraph (e) of this section is more than 24 months, or the part-time equivalent, the CP or VRC must work with the child to select another suitable initial vocational goal.

(Authority: 38 U.S.C. 1804(d)(2))

### § 21.8072 Authorizing training, services, and assistance beyond the initial individualized written plan of vocational rehabilitation.

(a) *Extension of the duration of a vocational training program.* VA may authorize an extension of a vocational training program when necessary to provide additional training, services, and assistance to enable the child to achieve the vocational or employment goal identified before the end of the child's basic entitlement period, as stated in the individualized written plan of vocational rehabilitation under § 21.8080. A change from one occupational objective to another in the same field or occupational family meets the criterion for prior identification in the individualized written plan of vocational rehabilitation.

(Authority: 38 U.S.C. 1804(d)(2), (e)(2))

(b) *Extensions for prior participants in the program.* (1) Except as paragraph (b)(2) of this section provides, VA may authorize additional training, limited to the use of remaining program entitlement including any allowable extension, for a child who previously participated in vocational training under this subpart. The additional training must:

(i) Be designed to enable the child to complete the prior vocational goal or a different vocational goal; and

(ii) Meet the same provisions as apply to training for new participants.

(2) A child who has previously achieved a vocational goal in a vocational training program under this subpart may not receive additional training under paragraph (b)(1) of this section unless a CP or VRC sets aside the child's achievement of that vocational goal under § 21.8284.

(Authority: 38 U.S.C. 1804(b) through (e))

(c) *Responsibility for authorizing a program extension.* A CP or VRC may approve extensions of the vocational training program the child is pursuing up to the maximum program limit of 48 months if the CP or VRC determines that the child needs the additional time to successfully complete training and obtain employment, and the following conditions are met:

(1) The child has completed more than half of the planned training; and

(2) The child is making satisfactory progress.

(Authority: 38 U.S.C. 1804(d)(2))

**§ 21.8074 Computing the period for vocational training program participation.**

(a) *Computing the participation period.* To compute the number of months and days of a child's participation in a vocational training program:

(1) Count the number of actual months and days of the child's:

(i) Pursuit of vocational education or training;

(ii) Receipt of extended evaluation-type services and training, or services and training to enable the child to prepare for vocational training or employment, if a veteran in a 38 U.S.C. chapter 31 program would have received a subsistence allowance while receiving the same type of services and training; and

(iii) Receipt of employment and post-employment services (any period of employment or post-employment services is considered full-time program pursuit).

(2) Do not count:

(i) The initial evaluation period;

(ii) Any period before the child enters a vocational training program under this subpart;

(iii) Days of authorized leave; and

(iv) Other periods during which the child will not pursue training, such as periods between terms.

(3) Convert part-time training periods to full-time equivalents.

(4) Total the months and days under paragraphs (a)(1) through (a)(3) of this section. This sum is the period of the child's participation in the program.

(Authority: 38 U.S.C. 1804(d))

(b) *Consistency with principles for charging entitlement.* Computation of the program participation period under this section will be consistent with the principles for charging entitlement under § 21.8020.

(Authority: 38 U.S.C. 1804(d))

## Individualized Written Plan of Vocational Rehabilitation

**§ 21.8080 Requirement for an individualized written plan of vocational rehabilitation.**

(a) *General.* A CP or VRC will work in consultation with each child for whom a vocational goal is feasible to develop an individualized written plan of vocational rehabilitation services and assistance to meet the child's vocational training needs. The CP or VRC will develop this individualized written plan of vocational rehabilitation in a manner comparable to the rules governing the development of an individualized written rehabilitation plan (IWRP) for a veteran for 38 U.S.C. chapter 31 purposes, as §§ 21.80, 21.84, 21.88, 21.90, 21.92, 21.94 (a) through (d), and 21.96 provide.

(Authority: 38 U.S.C. 1804(b))

(b) *Selecting the type of training to include in the individualized written plan of vocational rehabilitation.* If training is necessary, the CP or VRC will explore a range of possibilities, to include paid and unpaid on-job training, institutional training, and a combination of on-job and institutional training to accomplish the goals of the program. Generally, a child's program should include on-job training, or a combination of on-job and institutional training, when this training:

(1) Is available;

(2) Is as suitable as using only institutional training for accomplishing the goals of the program; and

(3) Will meet the child's vocational training program needs.

(Authority: 38 U.S.C. 1804(b), (c))

**§ 21.8082 Inability of child to complete individualized written plan of vocational rehabilitation or achieve vocational goal.**

(a) *Inability to timely complete an individualized written plan of vocational rehabilitation or achieve identified goal.* After a vocational training program has begun, the VR&C case manager may determine that the child cannot complete the vocational training program described in the child's individualized written plan of vocational rehabilitation within the time limits of the individualized written plan of vocational rehabilitation or cannot achieve the child's identified vocational goal. Subject to paragraph (b) of this section, VR&C may assist the child in revising or selecting a new individualized written plan of vocational rehabilitation or goal.

(b) *Allowable changes in the individualized written plan of vocational rehabilitation or goal.* Any change in the child's individualized written plan of vocational rehabilitation or vocational goal is subject to the child's continuing eligibility under the vocational training program and the provisions governing duration of a vocational training program in §§ 21.8020(c) and 21.8070 through 21.8074.

(Authority: 38 U.S.C. 1804(d), 1804(e))

(c) *Change in the individualized written plan of vocational rehabilitation or vocational goal.* (1) The individualized written plan of vocational rehabilitation or vocational goal may be changed under the same conditions as provided for a veteran under § 21.94 (a) through (d), and subject to § 21.8070 (d) through (f), if:

(i) The CP or VRC determines that achievement of a vocational goal is still reasonably feasible and that the new individualized written plan of vocational rehabilitation or goal is necessary to enable the child to prepare for and participate in vocational training or employment; and

(ii) Reentrance is authorized under § 21.8284 in a case when the child has completed a vocational training program under this subpart.

(2) A CP or VRC may approve a change of vocational goal from one field or occupational family to another field or occupational family if the child can achieve the new goal:

(i) Before the end of the basic 24-month entitlement period that § 21.8020(c)(1) describes; or

(ii) Before the end of any allowable extension under §§ 21.8020(c)(2) and 21.8072 if the new vocational goal in another field or occupational family was

identified during the basic 24-month entitlement period.

(3) A change from one occupational objective to another in the same field or occupational family does not change the planned vocational goal.

(4) The child must have sufficient remaining entitlement to pursue the new individualized written plan of vocational rehabilitation or goal, as § 21.8020 provides.

(Authority: 38 U.S.C. 1804(d))

(d) *Assistance if child terminates planned program before completion.* If the child elects to terminate the planned vocational training program, he or she will receive the assistance that § 21.80(d) provides in identifying other resources through which to secure the desired training or employment.

(Authority: 38 U.S.C. 1804(c))

## Counseling

### § 21.8100 Counseling.

A child requesting or receiving services and assistance under this subpart will receive professional counseling by VR&C and other qualified VA staff members, and by contract counseling providers, as necessary, in a manner comparable to VA's provision of these services to veterans under the 38 U.S.C. chapter 31 program, as §§ 21.100 and 21.380 provide.

(Authority: 38 U.S.C. 1803(c)(8), 1804(c))

## Vocational Training, Services, and Assistance

### § 21.8120 Vocational training, services, and assistance.

(a) *Purposes.* A child eligible for a vocational training program may receive training, services, and assistance to enable the child to prepare for and participate in vocational training or employment.

(Authority: 38 U.S.C. 1804(b), (c))

(b) *Training permitted.* VA and the child will select vocationally oriented courses of study and training, completion of which usually results in a diploma, certificate, degree, qualification for licensure, or direct placement in employment. The educational and training services to be provided include:

(1) Remedial, deficiency, and refresher training; and

(2) Training that leads to an identifiable vocational goal. Under this program, VA may authorize all forms of programs that §§ 21.122 through 21.132 describe. This includes education and training programs in institutions of higher education. VA may authorize the education and training at an undergraduate or graduate degree level, only if the degree program is predominantly vocational in nature. For a child to participate in a graduate degree program, the graduate degree must be a requirement for entry into the child's vocational goal. For example, a master's degree is required to engage in social work. The program of training is predominantly vocational in content if the majority of the instruction provides the technical skills and knowledge employers generally regard as specific to, and required for, entry into the child's vocational goal.

(c) *Cost of education and training services.* The CP or VRC will consider the cost of training in selecting a facility when:

(1) There is more than one facility in the area in which the child resides that:

(i) Meets the requirements for approval under §§ 21.290 through 21.298 (except as provided by § 21.8286(b)),

(ii) Can provide the training, services and other supportive assistance the child's individualized written plan of vocational rehabilitation specifies, and

(iii) Is within reasonable commuting distance; or

(2) The child wishes to train at a suitable facility in another area, even though a suitable facility in the area where the child lives can provide the training. In considering the costs of providing training in this case, VA will use the provisions of § 21.120 (except 21.120(a)(3)), § 21.370 (however, the words ''under § 21.282'' in § 21.370(b)(2)(iii)(B) do not apply), and § 21.372 in a manner comparable to that for veterans under the 38 U.S.C. chapter 31 program.

(Authority: 38 U.S.C. 1804(b), (c))

(d) *Accessible courses not locally available.* If suitable vocational training courses are not available in the area in which the child lives, or if they are available but not accessible to the child, VA may make other arrangements. These arrangements may include, but are not limited to:

(1) Transportation of the child, but not the child's family, personal effects, or household belongings, to another area where necessary services are available; or

(2) Use of an individual instructor to provide necessary training in a manner comparable to that for veterans under the 38 U.S.C. chapter 31 program, as § 21.146 describes.

(Authority: 38 U.S.C. 1804(b), (c))

## Evaluation and Improvement of Vocational Potential

### § 21.8140 Evaluation and improvement of vocational potential.

(a) *General.* A CP or VRC may use the services that paragraph (d) of this section describes to:

(1) Evaluate vocational training and employment potential;

(2) Provide a basis for planning:

(i) A program of services and assistance to improve the child's preparation for vocational training and employment; or

(ii) A vocational training program;

(3) Reevaluate the vocational training feasibility of a child participating in a vocational training program; and

(4) Remediate deficiencies in the child's basic capabilities, skills, or knowledge to give the child the ability to participate in vocational training or employment.

(Authority: 38 U.S.C. 1804(b))

(b) *Periods when evaluation and improvement services may be provided.* A CP or VRC may authorize the services described in paragraph (d) of this section, except those in paragraph (d)(4) of this section, for delivery during:

(1) An initial evaluation; or

(2) Pursuit of a vocational training program.

(Authority: 38 U.S.C. 1804(c))

(c) *Duration of services.* The duration of services needed to improve vocational training and employment potential, furnished on a full-time basis either as a preliminary part or all of a vocational training program, may not exceed 9 months. If VA furnishes these services on a less than full-time basis, the duration will be for the period necessary, but may not exceed the equivalent of 9 months of full-time training.

(Authority: 38 U.S.C. 1804(c))

(d) *Scope of services.* Evaluation and improvement services include:

(1) Diagnostic services;

(2) Personal and work adjustment training;

(3) Referral for medical care and treatment for the spina bifida or related conditions;

(4) Vocationally oriented independent living services indispensable to pursuing a vocational training program;

(5) Language training, speech and voice correction, training in ambulation, and one-hand typewriting;

(6) Orientation, adjustment, mobility and related services; and

(7) Other appropriate services to assist the child in functioning in the proposed training or work environment.

(Authority: 38 U.S.C. 1804(c))

(e) *Applicability of chapter 31 rules on special rehabilitation services.* The provisions of § 21.140 do not apply to this subpart. Subject to the provisions of this subpart, the following provisions apply to the vocational training program under this subpart in a manner comparable to that for veterans under the 38 U.S.C. chapter 31 program: § 21.142(a) and (b); § 21.144; § 21.146; § 21.148(a) and (c); § 21.150 other than paragraph (b); § 21.152 other than paragraph (b); § 21.154 other than paragraph (b); and § 21.156.

(Authority: 38 U.S.C. 1804(c))

## Supplies

### § 21.8210 Supplies.

(a) *Purpose of furnishing supplies.* VA will provide the child with the supplies that the child needs to pursue training, to obtain and maintain employment, and otherwise to achieve the goal of his or her vocational training program.

(Authority: 38 U.S.C. 1804(c))

(b) *Types of supplies.* VA may provide books, tools, and other supplies and equipment that VA determines are necessary for the child's vocational training program and are required by similarly circumstanced veterans pursuing such training under 38 U.S.C. chapter 31.

(Authority: 38 U.S.C. 1804(c))

(c) *Periods during which VA may furnish supplies.* VA may provide supplies to a child receiving:

(1) An evaluation;

(2) Vocational training, services, and assistance to reach the point of employability; or

(3) Employment services.

(Authority: 38 U.S.C. 1804(c))

(d) *Other rules.* The provisions of §§ 21.212 through 21.224 apply to children pursuing a vocational training program under this subpart in a comparable manner as VA provides supplies to veterans under 38 U.S.C. chapter 31, except the following portions:

(1) Section 21.216(a)(3) pertaining to special modifications, including automobile adaptive equipment;

(2) Section 21.220(a)(1) pertaining to advancements from the revolving fund loan;

(3) Section 21.222(b)(x) pertaining to discontinuance from an independent living services program.

(Authority: 38 U.S.C. 1804(c))

## Program Costs

### § 21.8260 Training, services, and assistance costs.

The provisions of § 21.262 pertaining to reimbursement for training and other program costs apply, in a comparable manner as provided under the 38 U.S.C. chapter 31 program for veterans, to payments to facilities, vendors, and other providers for training, supplies, and other services they deliver under this subpart.

(Authority: 38 U.S.C. 1804(c))

## Vocational Training Program Entrance, Termination, and Resources

### § 21.8280 Effective date of induction into a vocational training program.

Subject to the limitations in § 21.8022, the date a child is inducted into a vocational training program will be the date the child first begins to receive training, services, or assistance under an individualized written plan of vocational rehabilitation.

(Authority: 38 U.S.C. 1804(c), (d))

### § 21.8282 Termination of a vocational training program.

A case manager may terminate a child's vocational training program for cause, including lack of cooperation, failure to pursue the individualized written plan of vocational rehabilitation, fraud, or administrative error. A child for whom a vocational goal is reasonably feasible remains eligible for the program subject to the rules of this subpart unless the child's eligibility for or entitlement to a vocational training program under this subpart resulted from fraud or administrative error.

(a) *Fraud.* If a child establishes eligibility for or entitlement to benefits under this subpart through fraud, VA will terminate the award of vocational training and rehabilitation as of the date VA first began to pay benefits.

(b) *Administrative error.* If a child who is not entitled to benefits under this subpart receives those benefits through VA administrative error, VA will terminate the award of benefits as of the first day of the calendar month beginning at least 60 days after notifying the child of the proposed termination. This 60-day period may not result in the entrance of the child into a new quarter, semester, or other term of training unless VA has already obligated payment for the training.

(c) *Lack of cooperation or failure to pursue individualized written plan of vocational rehabilitation.* If reasonable VR&C efforts to motivate a child do not resolve a lack of cooperation or failure to pursue an individualized written plan of vocational rehabilitation, VA will terminate the award of benefits as of the first day of the calendar month beginning at least 60 days after notifying the child of the proposed termination. This 60-day period may not result in the entrance of the child into a new quarter, semester, or other term of training. VA will deobligate payment for training in the new quarter, semester, or other term of training.

(Authority: 38 U.S.C. 1804)

### § 21.8284 Additional vocational training.

VA may provide an additional period of training or services under a vocational training program to a child who has completed training for a vocational goal and/or been suitably employed under this subpart, if the child is otherwise eligible and has remaining program entitlement as provided in § 21.8072(b), only under one of the following conditions:

(a) Current facts, including any relevant medical findings, establish that the child's disability has worsened to the extent that he or she can no longer perform the duties of the occupation which was the child's vocational goal under this subpart;

(b) The occupation that was the child's vocational goal under this subpart is now unsuitable;

(c) The vocational training program services and assistance the child originally received are now inadequate to make the child employable in the occupation which he or she sought to achieve;

(d) Experience has demonstrated that VA should not reasonably have expected employment in the objective or field for which the child received vocational training program services and assistance; or

(e) Technological change that occurred after the child achieved a vocational goal under this subpart now prevents the child from:

(1) Performing the duties of the occupation for which VA provided training, services, or assistance, or in a related occupation; or

(2) Securing employment in the occupation for which VA provided training, services, or assistance, or in a related occupation.

(Authority: 38 U.S.C. 1804(c))

### § 21.8286 Training resources.

(a) *Applicable 38 U.S.C. chapter 31 resource provisions.* The provisions of § 21.146 and §§ 21.290 through 21.298 apply to children pursuing a vocational training program under this subpart in a comparable manner as for veterans under the 38 U.S.C. chapter 31 program,

except as paragraph (b) of this section specifies.

(Authority: 38 U.S.C. 1804(c))

(b) *Limitations.* The provisions of § 21.294(b)(1)(i) and (b)(1)(ii) pertaining to independent living services do not apply to this subpart. The provisions of § 21.294(b)(1)(iii) pertaining to authorization of independent living services as a part of an individualized written plan of vocational rehabilitation apply to children under this subpart in a comparable manner as for veterans under the 38 U.S.C. chapter 31 program only to the extent § 21.8050 allows.

(Authority: 38 U.S.C. 1804(c))

## Rate of Pursuit

### § 21.8310 Rate of pursuit.

(a) *General requirements.* VA will approve a child's pursuit of a vocational training program at a rate consistent with his or her ability to successfully pursue training, considering:

(1) Effects of his or her disability;

(2) Family responsibilities;

(3) Travel;

(4) Reasonable adjustment to training; and

(5) Other circumstances affecting the child's ability to pursue training.

(Authority: 38 U.S.C. 1804(c))

(b) *Continuous pursuit.* A child should pursue a program of vocational training with as little interruption as necessary, considering the factors in paragraph (a) of this section.

(Authority: 38 U.S.C. 1804(c))

(c) *Responsibility for determining the rate of pursuit.* VR&C staff members will consult with the child when determining the rate and continuity of pursuit of a vocational training program. These staff members will also confer with the medical consultant and the Vocational Rehabilitation Panel described in §§ 21.60 and 21.62, as necessary. This rate and continuity of pursuit determination will occur during development of the individualized written plan of vocational rehabilitation, but may change later, as necessary to enable the child to complete training.

(Authority: 38 U.S.C. 1804(c))

(d) *Measurement of training time used.* VA will measure the rate of pursuit in a comparable manner to rate of pursuit measurement under § 21.310 for veterans under the 38 U.S.C. chapter 31 program.

(Authority: 38 U.S.C. 1804(c))

## Authorization of Services

### § 21.8320 Authorization of services.

The provisions of § 21.326, pertaining to the commencement and termination dates of a period of employment services, apply to children under this subpart in a manner comparable to that provided for veterans under the 38 U.S.C. chapter 31 program. References in that section to an individualized employment assistance plan IEAP should be considered as referring to the child's individualized written plan of vocational rehabilitation under this subpart.

(Authority: 38 U.S.C. 1804(c))

## Leaves of Absence

### § 21.8340 Leaves of absence.

(a) *Purpose of leave of absence.* The purpose of the leave system is to enable the child to maintain his or her status as an active program participant.

(Authority: 38 U.S.C. 1804(c))

(b) *Basis for leave of absence.* The VR&C case manager may grant the child leaves of absence for periods during which the child fails to pursue a vocational training program. For prolonged periods of absence, the VR&C case manager may approve leaves of absence only if the case manager determines the child is unable to pursue a vocational training program through no fault of the child.

(Authority: 38 U.S.C. 1804(c))

(c) *Effect on entitlement.* During a leave of absence, the running of the basic 24-month period of entitlement, plus any extensions thereto, shall be suspended until the child resumes the program.

(Authority: 38 U.S.C. 1804(c))

## Satisfactory Conduct and Cooperation

### § 21.8360 Satisfactory conduct and cooperation.

The provisions for satisfactory conduct and cooperation in §§ 21.362 and 21.364, except as otherwise provided in this section, apply to children under this subpart in a manner comparable to the way they apply to veterans under the 38 U.S.C. chapter 31 program. If a child fails to meet these requirements for satisfactory conduct or cooperation, the VR&C case manager will terminate the child's vocational training program. VA will not grant a child reentrance to a vocational training program unless the reasons for unsatisfactory conduct or cooperation have been removed.

(Authority: 38 U.S.C. 1804(c))

## Transportation Services

### § 21.8370 Authorization of transportation services.

(a) *General.* VA shall authorize transportation services necessary for a child to pursue a vocational training program. The sections in subpart A of this part that are referred to in this paragraph (a) shall apply to children under this subpart in a manner comparable to the way they apply to veterans under the 38 U.S.C. chapter 31 program. Transportation services include:

(1) Transportation for evaluation or counseling under § 21.376;

(2) Intraregional travel under § 21.370 (except that assurance that the child meets all basic requirements for induction into training will be determined without regard to the provisions of § 21.282) and interregional travel under § 21.372;

(3) Special transportation allowance under § 21.154; and

(4) Commuting to and from training and while seeking employment, subject to paragraphs (c) and (d) of this section.

(Authority: 38 U.S.C. 1804(c))

(b) *Reimbursement.* For transportation services that VA authorizes, VA will normally pay in arrears and in the same manner as tuition, fees, and other services under this program.

(Authority: 38 U.S.C. 1804(c))

(c) *Payment for commuting expenses for training and seeking employment.* VA may pay for transportation during the period of vocational training and the first 3 months the child receives employment services. VA may reimburse the child's costs, not to exceed $200 per month, of commuting to and from training and seeking employment if he or she requests this assistance and VA determines, after careful examination of the child's situation and subject to the limitations in paragraph (d) of this section, that the child would be unable to pursue training or employment without this assistance. VA may:

(1) Reimburse the facility at which the child is training if the facility provided transportation or related services; or

(2) Reimburse the child for his or her actual commuting expense if the child paid for the transportation.

(Authority: 38 U.S.C. 1804(c))

(d) *Limitations.* Payment of commuting expenses under paragraph (a)(4) of this section may not be made for any period when the child:

(1) Is gainfully employed;

(2) Is eligible for, and entitled to, payment of commuting costs through other VA and non-VA programs; or

(3) Can commute to school with family, friends, or fellow students.

(Authority: 38 U.S.C. 1804(c))

(e) *Documentation.* VA must receive supportive documentation with each request for reimbursement. The individualized written plan of vocational rehabilitation will specify whether VA will pay monthly or at a longer interval.

(Authority: 38 U.S.C. 1804(c))

(f) *Nonduplication.* A child eligible for reimbursement of transportation services both under this section and under § 21.154 will receive only the benefit under § 21.154.

(Paperwork requirements were approved by the Office of Management and Budget under control number 2900–0580.)

(Authority: 38 U.S.C. 1804(c))

## Additional Applicable Regulations

### § 21.8380 Additional applicable regulations.

The following regulations are applicable to children in this program in a manner comparable to that provided for veterans under the 38 U.S.C. chapter 31 program: §§ 21.380, 21.412, 21.414 (except paragraphs (c), (d), and (e)), 21.420, and 21.430.

(Authority: 38 U.S.C. 1804, 5112)

## Delegation of Authority

### § 21.8410 Delegation of authority.

The Secretary delegates authority for making findings and decisions under 38 U.S.C. 1804 and the applicable regulations, precedents, and instructions for the program under this subpart to the Under Secretary for Benefits and to VR&C supervisory or non-supervisory staff members.

(Authority: 38 U.S.C. 512(a))

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# Part V

# Department of the Interior

## Fish and Wildlife Service

**50 CFR Part 20**

**Migratory Bird Hunting; Late Seasons and Bag and Possession Limits for Certain Migratory Game Birds; Final Rule**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 20**

**RIN 1018-AE14**

## Migratory Bird Hunting; Late Seasons and Bag and Possession Limits for Certain Migratory Game Birds

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** This rule prescribes the hunting seasons, hours, areas, and daily bag and possession limits for general waterfowl seasons and those early seasons for which States previously deferred selection. Taking of migratory birds is prohibited unless specifically provided for by annual regulations. This rule permits the taking of designated species during the 1997–98 season.

**DATE:** This rule takes effect on September 30, 1997.

**ADDRESSES:** The public may inspect comments during normal business hours in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

**FOR FURTHER INFORMATION CONTACT:** Paul R. Schmidt, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634—ARLSQ, 1849 C Street, NW., Washington, DC 20240, (703) 358–1714.

**SUPPLEMENTARY INFORMATION:**

### Regulations Schedule for 1997

On March 13, 1997, the Service published in the **Federal Register** (62 FR 39712) a proposal to amend 50 CFR part 20. The proposal dealt with the establishment of seasons, limits, and other regulations for migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. These regulations were proposed for certain designated members of the avian families Anatidae (ducks, geese, and swans), Columbidae (doves and pigeons), Gruidae (cranes), Rallidae (rails, coots, moorhens, and gallinules), and Scolopacidae (woodcock and snipe), designated as ''migratory game birds'' in conventions between the United States and several foreign nations for their protection and management. All other birds designated as migratory (under 10.13 of Subpart B of 50 CFR part 10) in the aforementioned conventions may not be hunted. On June 6, 1997, the Service published in the **Federal Register** (62 FR 31298) a second document providing supplemental proposals for early- and late-season migratory bird hunting regulations frameworks. The June 6 supplement also provided detailed information on the 1997–98 regulatory schedule and announced the Service Migratory Bird Regulations Committee and Flyway Council meetings.

On June 27, 1997, the Service held a public hearing in Washington, DC, as announced in the March 13 and June 6 **Federal Registers**, to review the status of migratory shore and upland game birds. The Service discussed hunting regulations for these species and for other early seasons. On July 23, 1997, the Service published in the **Federal Register** (62 FR 39712) a fourth document specifically dealing with proposed early-season frameworks for the 1997–98 season.

On August 7, 1997, the Service held a public hearing in Washington, DC, as announced in the March 13, June 6, and July 23 **Federal Registers**, to review the status of waterfowl and discuss proposed hunting regulations for late seasons. On August 20, 1997, the Service published a fifth document containing final frameworks for early migratory bird hunting seasons from which wildlife conservation agency officials from the States, Puerto Rico, and the Virgin Islands selected early-season hunting dates, hours, areas, and limits. On August 25, 1997, (62 FR 44229), the Service published a sixth document containing proposed frameworks for the 1997–98 late-season migratory bird hunting regulations. On August 29, 1997, the Service published in the **Federal Register** (62 FR 46512) a seventh document consisting of a final rule amending subpart K of title 50 CFR part 20 to set hunting seasons, hours, areas, and limits for early seasons.

The Service published final late-season frameworks for migratory game bird hunting regulations, from which State wildlife conservation agency officials selected late-season hunting dates, hours, areas, and limits for 1997–98 in an eighth document in the September 26, 1997, **Federal Register**.

The final rule described here is the ninth and final in the series of proposed, supplemental, and final rulemaking documents for migratory game bird hunting regulations for 1997–98 and deals specifically with amending subpart K of 50 CFR part 20 to set hunting seasons, hours, areas, and limits for species subject to late-season regulations and those for early seasons that States previously deferred.

### NEPA Consideration

NEPA considerations are covered by the programmatic document, ''Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14),'' filed with EPA on June 9, 1988. The Service published a Notice of Availability in the June 16, 1988, **Federal Register** (53 FR 22582). The Service published its Record of Decision on August 18, 1988 (53 FR 31341). Copies of these documents are available from the Service at the address indicated under the caption **ADDRESSES**.

### Endangered Species Act Consideration

As in the past, the Service designs hunting regulations to remove or alleviate chances of conflict between migratory game bird hunting seasons and the protection and conservation of endangered and threatened species. Consultations were conducted to ensure that actions resulting from these regulatory proposals will not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. Findings from these consultations are included in a biological opinion and may have modified some regulatory measures previously proposed. The final frameworks here reflect any such modifications. The Service's biological opinions resulting from its Section 7 consultation are public documents available for public inspection in the Service's Division of Endangered Species and Office of Migratory Bird Management, at the address indicated under the caption **ADDRESSES**.

### Executive Order (E.O.) 12866

This rule is economically significant and was reviewed by the Office of Management and Budget (OMB) under E.O. 12866.

### Congressional Review

In accordance with Section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 8), this rule has been submitted to Congress and has been declared major. Because this rule establishes hunting seasons, this rule qualifies for an exemption under 5 U.S.C. 808(1); therefore, the Department determines that this rule shall take effect immediately.

### Regulatory Flexibility Act

These regulations have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq). In the March 13, 1997, **Federal Register**, the Service reported measures it took to comply with requirements of the Act. One measure was to prepare a

Small Entity Flexibility Analysis (Analysis) in 1996 documenting the significant beneficial economic effect on a substantial number of small entities. The Analysis estimated that migratory bird hunters would spend between $254 and $592 million at small businesses in 1996. Copies of the Analysis are available upon request from the MBMO.

**Paperwork Reduction Act**

The Department examined these regulations under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Under the Act, information collections must be approved by the Office of Management and Budget (OMB). The Service uses the various information collection requirements contained in this rule to develop future migratory game bird hunting regulations. Specifically, the information collection requirements of the Migratory Bird Harvest Information Program have been approved by OMB and assigned clearance number 1018–0015. This information is used to provide a sampling frame for voluntary national surveys to improve Service harvest estimates for all migratory game birds in order to better manage these populations. The information collection requirements of the Sandhill Crane Harvest Questionnaire have been approved by OMB and assigned clearance number 1018–0023. The information from this survey is used to estimate the magnitude, the geographical and temporal distribution of harvest, and the portion it constitutes of the total population.

**Regulations Promulgation**

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, the Service intends that the public be given the greatest possible opportunity to comment on the regulations. Thus, when the proposed rulemaking was published, the Service established what it believed were the longest periods possible for public comment. In doing this, the Service recognized that when the comment period closed time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, the States and Territories would have insufficient time to establish and publicize the necessary regulations and procedures to implement their decisions. The Service therefore finds that ''good cause'' exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these regulations will, therefore, take effect immediately upon publication. Accordingly, with each conservation agency having had an opportunity to participate in selecting the hunting seasons desired for its State or Territory on those species of migratory birds for which open seasons are now prescribed, and consideration having been given to all other relevant matters presented, certain sections of title 50, chapter I, subchapter B, part 20, subpart K, are hereby amended as set forth below.

**Unfunded Mandates Reform Act**

The Service has determined and certifies in compliance with the requirements of 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 government or private entities.

**Civil Justice Reform—Executive Order 12988**

The Department, in promulgating this rule, has determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

**List of Subjects in 50 CFR Part 20**

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Dated: September 23, 1997.

**Donald J. Barry,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

For the reasons set out in the preamble, title 50, chapter I, subchapter B, part 20, subpart K is amended as follows.

1. The authority citation for part 20 continues to read as follows:

**Authority:** 16 U.S.C. 703–712; and 16 U.S.C. 742 a–j.

BILLING CODE 4310–55–F

**Note - The following annual regulations provided for by §§20.104, 20.105, 20.106, 20.107, and 20.109 of 50 CFR part 20 will not appear in the Code of Federal Regulations because of their seasonal nature.**

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS AND DELINEATIONS OF GEOGRAPHICAL AREAS. SPECIAL RESTRICTIONS MAY APPLY ON FEDERAL AND STATE PUBLIC HUNTING AREAS AND FEDERAL INDIAN RESERVATIONS.

2. Section 20.104 is amended by adding the entries for the following States in alphabetical order to read as follows:

**§20.104** Seasons, limits, and shooting hours for rails, woodcock, and common snipe.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset, except as otherwise restricted by State regulations. Area descriptions were published in the August 20 and September 26 Federal Registers.

NOTE: The following seasons are in addition to the seasons published previously in the August 29, 1997, Federal Register (62 FR 46152).

| | Sora & Virginia Rails | Clapper & King Rails | Woodcock | Common Snipe |
|---|---|---|---|---|
| Daily bag limit | 25 (1) | 15 (2) | 3 | 8 |
| Possession limit | 25 (1) | 30 (2) | 6 | 16 |
| ATLANTIC FLYWAY | | | | |
| * * * * * | | | | |
| Maryland | Sept. 1-Nov. 8 | Sept. 1-Nov. 8 | Oct. 25-Nov. 14 & Jan. 2-Jan. 10 | Sept. 17-Nov. 28 & Dec. 15-Jan. 17 |
| Massachusetts (4) | Sept. 1-Nov. 8 | Closed | Oct. 18-Nov. 15 | Sept. 1-Dec. 16 |
| * * * * * | | | | |
| Vermont | Closed | Closed | Oct. 6-Nov. 4 | Oct. 4-Dec. 7 |
| MISSISSIPPI FLYWAY | | | | |
| * * * * * | | | | |
| Tennessee | | | | |
| Reelfoot Zone | Nov. 15-Nov. 16 & Nov. 22-Jan. 18 | Closed | Oct. 11-Nov. 24 | Nov. 14-Feb. 28 |
| State Zone | Nov. 15-Nov. 22 & Nov. 28-Jan. 18 | Closed | Oct. 11-Nov. 24 | Nov. 14-Feb. 28 |
| Wisconsin | | | | |
| North Zone | Oct. 4-Dec. 2 | Closed | Sept. 20-Nov. 3 | Oct. 4-Dec. 2 |
| South Zone | Oct. 4-Dec. 2 | Closed | Sept. 20-Nov. 3 | Oct. 4-Dec. 2 |
| CENTRAL FLYWAY | | | | |
| * * * * * | | | | |
| New Mexico (15) | | | | |
| North Zone | Oct. 11-Oct. 26 & Oct. 30-Jan. 18 | Closed | Closed | Oct. 11-Oct. 26 & Oct. 30-Jan. 18 |
| South Zone | Oct. 14-Jan. 18 | Closed | Closed | Oct. 14-Jan. 18 |
| * * * * * | | | | |
| Texas | Sept. 13-Sept. 21 & Nov. 8-Jan. 7 | Sept. 13-Sept. 21 & Nov. 8-Jan. 7 | Dec. 18-Jan. 31 | Oct. 25-Feb. 8 |
| Wyoming | Sept. 13-Nov. 16 | Closed | Closed | Sept. 13-Dec. 14 |
| PACIFIC FLYWAY | | | | |
| Arizona (16) | | | | |
| North Zone | Closed | Closed | Closed | Oct. 10-Jan. 18 |
| South Zone | Closed | Closed | Closed | Oct. 10-Jan. 18 |
| California | Closed | Closed | Closed | Oct. 4-Jan. 18 |
| * * * * * | | | | |
| Nevada | | | | |
| Lincoln & Clark County | Closed | Closed | Closed | Oct. 4-Jan. 17 |
| Rest of State | Closed | Closed | Closed | Oct. 4-Jan. 17 |
| New Mexico (15) | Oct. 4-Jan. 18 | Closed | Closed | Oct. 4-Jan. 18 |

| | Sora & Virginia Rails | Clapper & King Rails | Woodcock | Common Snipe |
|---|---|---|---|---|
| Oregon | | | | |
| Zone 1 | Closed | Closed | Closed | Oct. 5-Jan. 18 |
| Zone 2 | Closed | Closed | Closed | Oct. 5-Jan. 18 |
| Utah | | | | |
| Zone 1 | Closed | Closed | Closed | Oct. 4-Jan. 18 |
| Washington | | | | |
| East Zone | Closed | Closed | Closed | Oct. 4-Jan. 17 |
| West Zone | Closed | Closed | Closed | Oct. 4-Jan. 17 |

* * * * *

(1) The bag and possession limits for sora and Virginia rails apply singly or in the aggregate of these species.
(2) All bag and possession limits for clapper and king rails apply singly or in the aggregate of the two species and, unless otherwise specified, the limits are in addition to the limits on sora and Virginia rails in all States.

* * * * *

(4) In Massachusetts, the sora bag limit is 5 daily and 5 in possession; the Virginia rail bag limit is 10 daily and 10 in possession.

* * * * *

(15) In New Mexico, the rail limits are 10 daily and 10 in possession.
(16) In Arizona, Ashurst Lake in Unit 5B is closed to common snipe hunting.

3. In Section 20.105, paragraphs (a), (b), and (f) are amended by adding the entries for the following States in alphabetical order and paragraph (e) is revised to read as follows:

**§20.105 Seasons, limits, and shooting hours for waterfowl, coots, and gallinules.**

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset, except as otherwise restricted by State regulations. Area descriptions were published in the August 20 and September 26 Federal Registers.

(a) Common Moorhens and Purple Gallinules
(Atlantic, Mississippi, and Central Flyways)

NOTE: The following seasons are in addition to the seasons published previously in the August 29, 1997, Federal Register (62 FR 46152). The zones named in this paragraph are the same as those used for setting duck seasons.

| | Season Dates | Limits Bag | Limits Possession |
|---|---|---|---|
| ATLANTIC FLYWAY | | | |
| | * * * * * | | |
| Georgia | Nov. 22-Jan. 20 | 15 | 30 |
| | * * * * * | | |
| Virginia | Oct. 8-Oct. 11 & | 15 | 30 |
| | Nov. 17-Jan. 20 | 15 | 30 |
| West Virginia | | | |
| Zone 1 | Oct. 1-Oct. 18 & | 15 | 30 |
| | Nov. 28-Jan. 17 | 15 | 30 |
| Zone 2 | Oct. 1-Oct. 18 & | 15 | 30 |
| | Nov. 14-Jan. 3 | 15 | 30 |
| MISSISSIPPI FLYWAY | | | |
| | * * * * * | | |
| Michigan | | | |
| North Zone | Oct. 4-Dec. 2 | 15 | 30 |
| Middle Zone | Oct. 4-Dec. 2 | 15 | 30 |
| South Zone | Oct. 11-Dec. 9 | 15 | 30 |
| Minnesota (2) | Oct. 4-Dec. 2 | 15 | 30 |
| | * * * * * | | |
| Tennessee | | | |
| Reelfoot Zone | Nov. 15-Nov. 16 & | 15 | 30 |
| | Nov. 22-Jan. 18 | 15 | 30 |
| State Zone | Nov. 15-Nov. 22 & | 15 | 30 |
| | Nov. 28-Jan. 18 | 15 | 30 |

| | Season Dates | Limits Bag | Limits Possession |
|---|---|---|---|
| Wisconsin | | | |
| North Zone | Oct. 4-Dec. 2 | 5 | 10 |
| South Zone | Oct. 4-Dec. 2 | 5 | 10 |
| CENTRAL FLYWAY | | | |
| New Mexico (1) | | | |
| North Zone | Oct. 11-Oct. 26 & | 1 | 2 |
| | Oct. 30-Jan. 18 | 1 | 2 |
| South Zone | Oct. 14-Jan. 18 | 1 | 2 |
| * * * * * | | | |
| PACIFIC FLYWAY | | | |
| All States | Seasons are in aggregate with coots and listed in paragraph (e). | | |

(1) The season applies to common moorhens only.
(2) In Minnesota, the daily bag limit is 15 and the possession limit is 30 coots, moorhens, and gallinules in the aggregate.

(b) Sea Ducks (scoter, eider, and oldsquaw ducks in Atlantic Flyway)

NOTE: The following seasons are in addition to the seasons published previously in the August 29, 1997, Federal Register (62 FR 46152).

Within the special sea duck areas, the daily bag limit is 7 sea ducks of which no more than 4 may be scoters. Possession limits are twice the daily bag limit. These limits may be in addition to regular duck bag limits only during the regular duck season in the special sea duck hunting areas.

| | Season Dates | Limits Bag | Limits Possession |
|---|---|---|---|
| Connecticut | Oct. 6-Jan. 20 | 7 | 14 |
| * * * * * | | | |
| Georgia | Nov. 22-Jan. 20 | 7 | 14 |
| Maine | Oct. 1-Jan. 20 | 7 | 14 |
| Maryland | Oct. 6-Jan. 20 | 5 | 10 |
| Massachusetts | Oct. 6-Jan. 20 | 7 | 14 |
| * * * * * | | | |
| North Carolina | Oct. 1-Jan. 20 | 7 | 14 |
| * * * * * | | | |
| South Carolina | Oct. 6-Jan. 20 | 7 | 14 |
| Virginia | Oct. 6-Jan. 20 | 7 | 14 |

Note: Notwithstanding the provisions of this part 20, the shooting of crippled waterfowl from a motorboat under power will be permitted in Maine, Massachusetts, New Hampshire, Rhode Island, Connecticut, New York, Delaware, Virginia, and Maryland in those areas described, delineated, and designated in their respective hunting regulations as special sea duck hunting areas.

(e) Waterfowl, Coots, and Pacific-Flyway Seasons for Common Moorhens and Purple Gallinules

Definitions

**The Atlantic Flyway:** Includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

**The Mississippi Flyway:** Includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

**The Central Flyway:** Includes Colorado (east of the Continental Divide), Kansas, Montana (Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except that the Jicarilla Apache Indian Reservation is in the Pacific Flyway), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

**The Pacific Flyway:** Includes the States of Arizona, California, Colorado (west of the Continental Divide), Idaho, Montana (including and to the west of Hill, Chouteau, Cascade, Meagher, and Park Counties), Nevada, New Mexico (the Jicarilla Apache Indian Reservation and west of the Continental Divide), Oregon, Utah, Washington, and Wyoming (west of the Continental Divide including the Great Divide Basin).

**Light Geese:** Includes lesser snow (including blue) geese, greater snow geese, and Ross' geese.

**Dark Geese:** Includes Canada geese, white-fronted geese, emperor geese, brant (except in California, Oregon, Washington, and the entire Atlantic Flyway) and all other geese except light geese.

ATLANTIC FLYWAY

Flyway-wide Restrictions

**Duck Limits:** The daily bag limit of 6 ducks may include no more than 4 mallards (2 female mallards), 3 pintails, 1 black duck, 1 canvasback, 1 mottled duck, 2 wood ducks, 2 redheads, and 1 fulvous tree duck. The possession limit is twice the daily bag limit.

**Harlequin Ducks:** All areas of the Flyway are closed to harlequin duck hunting.

**Merganser Limits:** The merganser limits include no more than 1 hooded merganser daily and 2 in possession.

| | Season Dates | Limits Bag | Limits Possession |
|---|---|---|---|
| Connecticut (1) | | | |
| Ducks (2): | | | |
| North Zone | Oct. 18-Nov. 1 & | 6 | 12 |
| | Nov. 11-Jan. 3 | 6 | 12 |
| South Zone | Oct. 18-Oct. 25 & | 6 | 12 |
| | Nov. 20-Jan. 20 | 6 | 12 |
| Mergansers | Same as for ducks | 5 | 10 |
| Coots | Same as for ducks | 15 | 30 |
| Canada Geese: | | | |
| North Zone | Closed | – | – |
| South Zone | Closed | – | – |
| (special season) | Jan. 15-Feb. 14 | State Permit Only | |
| Light Geese | Oct. 18-Jan. 31 | 10 | 30 |
| Brant: | | | |
| North Zone | Nov. 28-Dec. 27 | 2 | 4 |
| South Zone | Dec. 13-Jan. 11 | 2 | 4 |
| Delaware | | | |
| Ducks (3) | Oct. 1-Oct. 4 & | 6 | 12 |
| | Oct. 31-Nov. 8 & | 6 | 12 |
| | Nov. 27-Jan. 17 | 6 | 12 |
| Mergansers | Same as for ducks | 5 | 10 |
| Coots | Same as for ducks | 15 | 30 |
| Canada Geese | Closed | – | – |
| Light Geese: | | | |
| Bombay Hook NWR | Nov. 14-Nov. 23 | 10 | 30 |
| Statewide | Oct. 8-Oct. 11 & | 10 | 30 |
| | Oct. 20-Nov. 13 & | 10 | 30 |
| | Nov. 24-Jan. 17 & | 10 | 30 |
| | Feb. 10-Mar. 10 | 10 | 30 |
| Brant | Nov. 24-Jan. 20 | 2 | 4 |
| Florida | | | |
| Ducks | Nov. 22-Jan. 20 | 6 | 12 |
| Mergansers | Same as for ducks | 5 | 10 |
| Coots | Same as for ducks | 15 | 30 |
| Geese | Nov. 22-Nov. 30 & | 2 | 4 |
| | Jan. 10-Jan. 31 | 2 | 4 |
| Georgia | | | |
| Ducks | Nov. 22-Jan. 20 | 6 | 12 |
| Mergansers | Same as for ducks | 5 | 10 |
| Coots | Same as for ducks | 15 | 30 |
| Canada Geese (special season) (4) | Nov. 15-Nov. 30 | State Permit Only | |
| | Jan. 10-Jan. 31 | State Permit Only | |
| Light Geese | Same as for ducks | 2 | 4 |
| Brant | Closed | – | – |
| Maine | | | |
| Ducks (5): | | | |
| North Zone | Oct. 1-Nov. 22 | 4 | 8 |
| South Zone | Oct. 1-Oct. 21 & | 4 | 8 |
| | Nov. 15-Dec. 17 | 4 | 8 |
| Mergansers | Same as for ducks | 5 | 10 |
| Coots | Same as for ducks | 15 | 30 |
| Canada Geese: | | | |
| North Zone | Closed | – | – |
| South Zone | Closed | – | – |
| Light Geese | Oct. 1-Jan. 31 | 5 | 10 |
| Brant | Oct. 1-Nov. 27 | 2 | 4 |
| Maryland | | | |
| Ducks (6) | Oct. 11-Oct. 15 & | 4 | 8 |
| | Nov. 1-Nov. 28 & | 4 | 8 |
| | Dec. 15-Jan. 20 | 4 | 8 |
| Mergansers | Same as for ducks | 5 | 10 |
| Coots | Same as for ducks | 15 | 30 |
| Canada Geese | Closed | – | – |
| Western Area | Nov. 15-Nov. 28 & | 2 | 4 |
| | Dec. 15-Jan. 14 | 2 | 4 |
| (special season) | Jan. 15-Feb. 14 | 3 | 6 |
| Light Geese | Oct. 31-Nov. 28 & | 10 | 30 |
| | Dec. 4-Mar. 10 | 10 | 30 |
| Brant | Nov. 8-Nov. 28 & | 2 | 4 |
| | Dec. 15-Jan. 20 | 2 | 4 |

| | Season Dates | Limits Bag | Limits Possession |
|---|---|---|---|
| Massachusetts | | | |
| Ducks (7): | | | |
| Western Zone | Oct. 13-Dec. 20 | 6 | 12 |
| Central Zone | Oct. 14-Nov. 29 & | 6 | 12 |
| | Dec. 15-Jan. 5 | 6 | 12 |
| Coastal Zone | Oct. 14-Oct. 25 & | 6 | 12 |
| | Nov. 15-Jan. 10 | 6 | 12 |
| Mergansers | Same as for ducks | 5 | 10 |
| Coots | Same as for ducks | 15 | 30 |
| Canada Geese: | | | |
| Western Zone | Closed | – | – |
| Central Zone | Closed | – | – |
| (special season) (4) | Jan. 15-Feb. 5 | 5 | 10 |
| Coastal Zone | Closed | – | – |
| (special season) (4) | Jan. 15-Feb. 5 | 5 | 10 |
| Light Geese: | | | |
| Western Zone | Same as for ducks | 5 | 10 |
| Central Zone | Same as for ducks | 5 | 10 |
| Coastal Zone | Same as for ducks | 5 | 10 |
| Brant: | | | |
| Western & Central Zone | Closed | – | – |
| Coastal Zone | Nov. 15-Nov. 29 & | 2 | 4 |
| | Dec. 9-Jan. 20 | 2 | 4 |
| New Hampshire | | | |
| Ducks (8): | | | |
| Inland Zone | Oct. 2-Nov. 4 & | 6 | 12 |
| | Nov. 19-Dec. 14 | 6 | 12 |
| Coastal Zone | Oct. 3-Oct. 19 & | 6 | 12 |
| | Nov. 19-Dec. 31 | 6 | 12 |
| Mergansers | Same as for ducks | 5 | 10 |
| Coots | Same as for ducks | 15 | 30 |
| Canada Geese: | | | |
| Inland Zone | Closed | – | – |
| Coastal Zone | Closed | – | – |
| Light Geese: | | | |
| Inland Zone | Oct. 2-Dec. 31 | 10 | 30 |
| Coastal Zone | Oct. 3-Dec. 31 | 10 | 30 |
| Brant: | | | |
| Inland Zone | Oct. 2-Nov. 4 & | 2 | 4 |
| | Nov. 19-Dec. 4 | 2 | 4 |
| Coastal Zone | Oct. 3-Oct. 19 & | 2 | 4 |
| | Nov. 19-Dec. 21 | 2 | 4 |

| | Season Dates | Limits Bag | Limits Possession |
|---|---|---|---|
| New Jersey | | | |
| Ducks (9): | | | |
| North Zone | Oct. 11-Nov. 11 & | 4 | 8 |
| | Nov. 18-Jan. 3 | 4 | 8 |
| South Zone | Oct. 11-Oct. 25 & | 4 | 8 |
| | Nov. 11-Jan. 3 | 4 | 8 |
| Coastal Zone | Nov. 1-Nov. 15 & | 4 | 8 |
| | Nov. 18-Jan. 10 | 4 | 8 |
| Mergansers | Same as for ducks | 5 | 10 |
| Coots | Same as for ducks | 15 | 30 |
| Canada Geese: | | | |
| North Zone | Closed | – | – |
| South Zone | Closed | – | – |
| Coastal Zone | Closed | – | – |
| (special season) (3) | Jan. 15-Feb. 14 | 5 | 10 |
| Light Geese: | | | |
| North Zone | Oct. 11-Jan. 3 & | 10 | 30 |
| | Jan. 15-Feb. 14 | 10 | 30 |
| South Zone | Oct. 11-Oct. 25 & | 10 | 30 |
| | Nov. 11-Jan. 3 & | 10 | 30 |
| | Jan. 15-Mar. 9 | 10 | 30 |
| Coastal Zone | Oct. 11-Jan. 10 & | 10 | 30 |
| | Jan. 15-Feb. 14 | 10 | 30 |
| Brant: | | | |
| North Zone | Oct. 11-Nov. 1 & | 2 | 4 |
| | Nov. 18-Dec. 23 | 2 | 4 |
| South Zone | Oct. 11-Oct. 25 & | 2 | 4 |
| | Nov. 22-Jan. 3 | 2 | 4 |
| Coastal Zone | Nov. 1-Nov. 13 & | 2 | 4 |
| | Nov. 27-Jan. 10 | 2 | 4 |
| New York | | | |
| Ducks (10): | | | |
| Long Island Zone | Nov. 21-Nov. 29 & | 4 | 8 |
| | Dec. 1-Jan. 20 | 4 | 8 |
| Lake Champlain Zone | Oct. 4-Oct. 19 & | 4 | 8 |
| | Oct. 25-Dec. 7 | 4 | 8 |
| Northeastern Zone | Oct. 4-Oct. 19 & | 4 | 8 |
| | Oct. 25-Dec. 7 | 4 | 8 |
| Southeastern Zone | Oct. 11-Oct. 19 & | 4 | 8 |
| | Nov. 1-Dec. 21 | 4 | 8 |
| Western Zone | Oct. 16-Nov. 28 & | 4 | 8 |
| | Dec. 20-Jan. 4 | 4 | 8 |
| Mergansers | Same as for ducks | 5 | 10 |
| Coots | Same as for ducks | 15 | 30 |

| | Season Dates | Limits Bag | Limits Possession |
|---|---|---|---|
| New York (cont.) | | | |
| Canada Geese: | | | |
| Long Island Zone | Closed | – | – |
| Lake Champlain Zone | Closed | – | – |
| Northeastern Zone | Closed | – | – |
| Southeastern Zone | Closed | – | – |
| Western Zone | Closed | – | – |
| Southwest Unit | Nov. 15-Jan. 23 | 2 | 4 |
| Special season | Jan. 15-Feb. 15 | 5 | 10 |
| Light Geese: | | | |
| Long Island Zone | Oct. 1-Oct. 21 & | 10 | 30 |
| | Nov. 21-Nov. 29 & | 10 | 30 |
| | Dec. 1-Feb. 15 | 10 | 30 |
| Lake Champlain Zone | Oct. 4-Jan. 18 | 10 | 30 |
| Northeastern Zone | Oct. 4-Dec. 21 & | 10 | 30 |
| | Feb. 11-Mar. 10 | 10 | 30 |
| Southeastern Zone | Oct. 11-Dec. 21& | 10 | 30 |
| | Feb. 4-Mar. 10 | 10 | 30 |
| Western Zone | Oct. 16-Jan. 4 & | 10 | 30 |
| | Feb. 13-Mar. 10 | 10 | 30 |
| Brant: | | | |
| Long Island Zone | Nov. 21-Nov. 29 & | 2 | 4 |
| | Dec. 11-Jan. 20 | 2 | 4 |
| Lake Champlain Zone | Oct. 4-Nov. 22 | 2 | 4 |
| Northeastern Zone | Oct. 4-Nov. 22 | 2 | 4 |
| Southeastern Zone | Oct. 11-Nov. 29 | 2 | 4 |
| Western Zone | Oct. 16-Dec. 4 | 2 | 4 |
| North Carolina | | | |
| Ducks (11) | Oct. 1-Oct. 4 & | 6 | 12 |
| | Nov. 17-Jan. 20 | 6 | 12 |
| Mergansers | Same as for ducks | 5 | 10 |
| Coots | Same as for ducks | 15 | 30 |
| Canada Geese | Closed | – | – |
| Western Unit | Oct. 1-Nov. 15 | 2 | 4 |
| Light Geese | Oct. 24-Nov. 1 & | 10 | 30 |
| | Nov. 15-Mar. 10 | 10 | 30 |
| Brant | Nov. 24-Jan. 20 | 2 | 4 |
| Pennsylvania | | | |
| Ducks: | | | |
| North Zone | Oct. 11-Nov. 1 & | 5 | 10 |
| | Nov. 8-Dec. 25 | 5 | 10 |
| South Zone | Oct. 11-Oct. 25 & | 5 | 10 |
| | Nov. 10-Jan. 2 | 5 | 10 |
| Northwest Zone | Oct. 11-Oct. 25 & | 5 | 10 |
| | Nov. 3-Dec. 26 | 5 | 10 |
| Lake Erie Zone | Oct. 27-Nov. 8 & | 5 | 10 |
| | Nov. 13-Jan. 7 | 5 | 10 |
| Mergansers | Same as for ducks | 5 | 10 |
| Coots | Same as for ducks | 15 | 30 |

| | Season Dates | Limits Bag | Limits Possession |
|---|---|---|---|
| Pennsylvania (cont.) | | | |
| Canada Geese: | | | |
| North Zone | Closed | – | – |
| South Zone | Closed | – | – |
| Western Zone | Nov. 15-Dec. 31 | 2 | 4 |
| (special season) | Jan. 15-Feb. 14 | 5 | 10 |
| Erie, Mercer, and Butler Counties | Oct. 11-Oct. 18 & | 2 | 4 |
| | Nov. 15-Jan. 27 | 2 | 4 |
| Crawford County | Oct. 11-Oct. 18 & | 1 | 2 |
| | Nov. 3-Dec. 4 | 1 | 2 |
| Light Geese | Nov. 3-Jan. 2 & | 10 | 30 |
| | Jan. 7-Mar. 10 | 10 | 30 |
| Brant | Oct. 11-Oct. 25 & | 2 | 4 |
| | Nov. 3-Dec. 15 | 2 | 4 |
| Rhode Island | | | |
| Ducks | Oct. 10-Oct. 14 & | 6 | 12 |
| | Nov. 22-Nov. 30 & | 6 | 12 |
| | Dec. 6-Jan. 20 | 6 | 12 |
| Mergansers | Same as for ducks | 5 | 10 |
| Coots | Same as for ducks | 15 | 30 |
| Canada Geese | Closed | – | – |
| (special season) | Jan. 15-Feb. 15 | 5 | 10 |
| Light Geese | Oct. 10-Jan. 20 | 10 | 30 |
| Brant | Nov. 22-Nov. 30 & | 2 | 4 |
| | Dec. 11-Jan. 20 | 2 | 4 |
| South Carolina | | | |
| Ducks (12) | Nov. 19-Nov. 29 & | 5 | 10 |
| | Dec. 8-Jan. 20 | 5 | 10 |
| Mergansers | Same as for ducks | 5 | 10 |
| Coots | Same as for ducks | 15 | 30 |
| Canada Geese (special season) (3) | Nov. 19-Nov. 29 & | 4 | 8 |
| | Dec. 8-Jan. 24 | 4 | 8 |
| Light Geese | Same as for ducks | 5 | 10 |
| Brant | Same as for ducks | 2 | 4 |
| Vermont | | | |
| Ducks (13): | | | |
| Lake Champlain Zone | Oct. 4-Oct 19 & | 4 | 8 |
| | Oct. 25-Dec. 7 | 4 | 8 |
| Interior Zone | Oct. 4-Dec. 2 | 4 | 8 |
| Mergansers | Same as for ducks | 5 | 10 |
| Coots | Same as for ducks | 15 | 30 |
| Canada Geese | Closed | – | – |
| Light Geese | Oct. 4-Jan. 18 | 8 | 24 |
| Brant | Oct. 4-Nov. 22 | 2 | 4 |

| | Season Dates | Limits Bag | Limits Possession |
|---|---|---|---|
| Virginia | | | |
| Ducks | Oct. 8-Oct. 11 & | 5 | 10 |
| | Nov. 17-Jan. 20 | 5 | 10 |
| Mergansers | Same as for ducks | 5 | 10 |
| Coots | Same as for ducks | 15 | 30 |
| Canada Geese: | | | |
| Back Bay Area | Closed | – | – |
| Remainder of State | Closed | – | – |
| Western Unit | Dec. 22-Jan. 14 | 2 | 4 |
| (special season) | Jan. 15-Feb. 7 | 3 | 6 |
| Light Geese | Nov. 6-Mar. 10 | 10 | 30 |
| Brant | Nov. 24-Jan. 20 | 2 | 4 |
| West Virginia | | | |
| Ducks: | | | |
| Zone 1 | Oct. 1-Oct. 18 & | 6 | 12 |
| | Nov. 28-Jan. 17 | 6 | 12 |
| Zone 2 | Oct. 1-Oct. 18 & | 6 | 12 |
| | Nov. 14-Jan. 3 | 6 | 12 |
| Mergansers | Same as for ducks | 5 | 10 |
| Coots | Same as for ducks | 15 | 30 |
| Canada Geese: | | | |
| Zone 1 | Oct. 1-Oct. 18 & | 3 | 6 |
| | Nov. 17-Jan. 17 | 3 | 6 |
| Zone 2 | Oct. 1-Nov. 1 & | 3 | 6 |
| | Dec. 1-Jan. 17 | 3 | 6 |
| Light Geese: | | | |
| Zone 1 | Same as for Canada geese | 5 | 10 |
| Zone 2 | Same as for Canada geese | 5 | 10 |
| Brant | Nov. 21-Jan. 17 | 2 | 4 |

(1) In Connecticut, the shooting hours on October 18 are 7:00 a.m. to sunset.
(2) In Connecticut, the season is closed for black ducks prior to November 24 in the North Zone and prior to December 8 in the South Zone; the daily bag limit may include no more than 4 scaup and 2 pintails.
(3) In Delaware, the season on black ducks is only open November 24 through January 3.
(4) State permit required.
(5) In Maine, the season is closed for black ducks October 1 through October 10.
(6) In Maryland, the daily bag limit may include no more than 2 pintails and 1 redhead; the black duck season is closed October 11 through October 15 and November 1 through November 23; and the canvasback season is open only December 22 through January 20; in addition to the daily bag, 2 additional teal may be taken during October 11 through October 15 and November 1 through November 28.
(7) In Massachusetts, the season is closed for black ducks December 1 through December 6 and January 5 through January 10 in the Coastal Zone, and November 10 through November 22 in the Western and Central Zones; the daily bag limit may include no more than 2 pintails or 4 of any single species in addition to the flyway-wide bag restrictions.
(8) In New Hampshire, the season is closed for black duck from October 2 through October 13.
(9) In New Jersey, the season is closed for black ducks October 11 through October 25 in the South Zone and December 28 to January 10 in the Coastal Zone; the daily bag limit may include no more than 2 pintails; in addition to the daily bag limit, 2 additional teal may be taken.
(10) In New York, the season is closed for black ducks November 18 through December 7 in the Northeastern Zone, October 11 through November 11 in the Southeastern Zone, October 16 through October 31 and January 1 through January 4 in the Western Zone, and December 1 through December 10 in the Long Island Zone; the season is closed for scaup December 1 through December 10 in the Long Island Zone; in addition to the daily bag limit, 2 additional teal may be taken.
(11) In North Carolina, the season is closed for black ducks October 1 through October 4 and November 17 through November 30.
(12) In South Carolina, the daily bag limit of 5 may not exceed 4 mallards and may not exceed 1 black duck, mottled duck, or female mallard in the aggregate, and not more than 2 pintails (1 hen pintail).
(13) In Vermont, in addition to the daily bag limit, 2 additional teal may be taken.

MISSISSIPPI FLYWAY

Flyway-wide Restrictions

**Duck Limits:** The daily bag limit of 6 ducks may include no more than 4 mallards (no more than 2 of which may be females), 1 black duck, 3 pintails, 1 canvasback, 2 redheads, and 2 wood ducks. The possession limit is twice the daily bag limit.

**Merganser Limits:** The merganser limits include no more than 1 hooded merganser daily and 2 in possession.

| | Season Dates | Limits Bag | Limits Possession |
|---|---|---|---|
| Alabama | | | |
| Ducks: | | | |
| North Zone | Nov. 15-Nov. 30 & | 6 | 12 |
| | Dec. 6-Jan. 18 | 6 | 12 |
| South Zone | Nov. 13-Nov. 16 & | 6 | 12 |
| | Nov. 24-Jan. 18 | 6 | 12 |
| Mergansers | Same as for ducks | 5 | 10 |
| Coots | Same as for ducks | 15 | 30 |
| Geese: | | | |
| Dark Geese: | | | |
| North Zone: | | | |
| SJBP Zone | Dec. 15-Jan. 18 | 2 | 4 |
| Rest of North Zone | Nov. 15-Nov. 30 & | 2 | 4 |
| | Dec. 6-Jan. 28 | 2 | 4 |
| South Zone | Nov. 13-Nov. 16 & | 2 | 4 |
| | Nov. 24-Jan. 28 | 2 | 4 |
| Light Geese | Same as for dark geese | 5 | 5 |
| Arkansas | | | |
| Ducks | Nov. 15-Nov. 30 & | 6 | 12 |
| | Dec. 4-Dec. 23 & | 6 | 12 |
| | Dec. 26-Jan. 18 | 6 | 12 |
| Mergansers | Same as for ducks | 5 | 10 |
| Coots | Same as for ducks | 15 | 30 |
| Geese: | | | |
| Canada (1): | | | |
| East Zone | Jan. 17-Feb. 8 | 2 | 4 |
| West Zone | Jan. 17-Feb. 1 | 1 | 2 |
| White-fronted | Nov. 23-Jan. 31 | 2 | 4 |
| Brant | Closed | – | – |
| Light Geese | Nov. 15-Mar. 1 | 10 | 30 |

| | Season Dates | Limits Bag | Limits Possession |
|---|---|---|---|
| Illinois | | | |
| Ducks: | | | |
| North Zone | Oct. 4-Dec. 2 | 6 | 12 |
| Central Zone | Oct. 18-Dec. 16 | 6 | 12 |
| South Zone | Nov. 8-Jan. 6 | 6 | 12 |
| Mergansers | Same as for ducks | 5 | 10 |
| Coots | Same as for ducks | 15 | 30 |
| Geese: | | | |
| Canada (2): | | | |
| North Zone: | | | |
| Northern Illinois Quota Zone (2) | Oct. 4-Oct. 12 & | 2 | 10 |
| | Oct. 31-Jan. 7 | 2 | 10 |
| Rest of North Zone | Oct. 4-Oct. 12 & | 2 | 10 |
| | Oct. 31-Jan. 7 | 2 | 10 |
| Central Zone: | | | |
| Central Illinois Quota Zone (2) | Oct. 18-Oct. 19 & | 2 | 10 |
| | Nov. 15-Jan. 29 | 2 | 10 |
| Rest of Central Zone | Oct. 18-Oct. 19 & | 2 | 10 |
| | Nov. 15-Jan. 29 | 2 | 10 |
| South Zone: | | | |
| Southern Illinois Quota Zone (2)(3) | Nov. 15-Jan. 31 | 2 | 10 |
| Rend Lake Quota Zone (2)(3) | Nov. 15-Jan. 31 | 2 | 10 |
| Rest of South Zone | Nov. 15-Jan. 31 | 2 | 10 |
| White-fronted and Brant: | | | |
| North Zone | Oct. 31-Jan. 7 | 2 | 4 |
| Central Zone | Nov. 21-Jan. 29 | 2 | 4 |
| South Zone | Nov. 23-Jan. 31 | 2 | 4 |
| Light Geese: | | | |
| North Zone | Oct. 4-Jan. 7 & | 10 | 30 |
| | Feb. 28-Mar. 10 | 10 | 30 |
| Central Zone | Oct. 18-Jan. 14 & | 10 | 30 |
| | Feb. 21-Mar. 10 | 10 | 30 |
| South Zone | Nov. 15-Mar. 1 | 10 | 30 |
| Indiana | | | |
| Ducks: | | | |
| North Zone | Oct. 18-Dec. 7 & | 6 | 12 |
| | Dec. 20-Dec. 28 | 6 | 12 |
| South Zone | Oct. 25-Oct. 27 & | 6 | 12 |
| | Nov. 8-Jan. 3 | 6 | 12 |
| Ohio River Zone | Nov. 20-Jan. 18 | 6 | 12 |
| Mergansers | Same as for ducks | 5 | 10 |
| Coots | Same as for ducks | 15 | 30 |

| | Season Dates | Limits Bag | Limits Possession |
|---|---|---|---|
| Indiana (cont.) | | | |
| Geese: | | | |
| Canada (2): | | | |
| North Zone: | | | |
| SJBP Area | Oct. 18-Oct. 20 & | 2 | 4 |
| | Nov. 27-Dec. 28 | 2 | 4 |
| Rest of North Zone | Oct. 18-Oct. 26 & | 2 | 4 |
| | Nov. 8-Jan. 2 | 2 | 4 |
| South Zone: | | | |
| Posey County (2) | Nov. 28-Jan. 31 | 2 | 4 |
| Rest of South Zone | Oct. 25-Oct. 27 & | 2 | 4 |
| | Nov. 22-Jan. 22 | 2 | 4 |
| Ohio River Zone: | | | |
| Posey County (2) | Nov. 28-Jan. 31 | 2 | 4 |
| Rest of Ohio River Zone | Nov. 28-Jan. 31 | 2 | 4 |
| White-fronted and Brant | Same as for Canada geese | 2 | 4 |
| Light Geese | Nov. 15-Mar. 1 | 10 | 30 |
| Iowa | | | |
| Ducks: | | | |
| North Zone | Sept. 20-Sept. 24 & | 6 | 12 |
| | Oct. 11-Dec. 4 | 6 | 12 |
| South Zone | Sept. 20-Sept. 24 & | 6 | 12 |
| | Oct. 18-Dec. 11 | 6 | 12 |
| Mergansers | Same as for ducks | 5 | 10 |
| Coots | Same as for ducks | 15 | 30 |
| Geese: | | | |
| Canada Geese: | | | |
| North Zone | Oct. 4-Dec. 12 | 2 | 4 |
| South Zone | Oct. 4-Oct. 12 & | 2 | 4 |
| | Oct. 18-Dec. 17 | 2 | 4 |
| White-fronted: | | | |
| North Zone | Same as Canada geese | 2 | 4 |
| South Zone | Same as Canada geese | 2 | 4 |
| Brant: | | | |
| North Zone | Same as Canada geese | 2 | 4 |
| South Zone | Same as Canada geese | 2 | 4 |
| Light Geese | Oct. 4-Dec. 31 & | 10 | 30 |
| | Feb. 21-Mar. 10 | 10 | 30 |
| Kentucky | | | |
| Ducks: | | | |
| West Zone | Nov. 1-Nov. 2 & | 6 | 12 |
| | Nov. 22-Jan. 18 | 6 | 12 |
| East Zone | Nov. 1-Nov. 2 & | 6 | 12 |
| | Nov. 22-Jan. 18 | 6 | 12 |
| Mergansers | Same as for ducks | 5 | 10 |
| Coots | Same as for ducks | 15 | 30 |

| | Season Dates | Limits Bag | Limits Possession |
|---|---|---|---|
| Kentucky | | | |
| Geese: | | | |
| Canada (2): | | | |
| Western Goose Zone (2): | | | |
| Fulton County | Dec. 6-Feb. 15 | 2 | 4 |
| Ballard Reporting Area | Dec. 6-Jan. 20 | 2 | 4 |
| Rest of Zone | Dec. 6-Jan. 31 | 2 | 4 |
| Pennyroyal/Coalfield Zone | Dec. 28-Jan. 31 | 2 | 4 |
| Rest of State | Dec. 13-Jan. 31 | 2 | 4 |
| White-fronted: | | | |
| Ballard Reporting Area | Nov. 27-Jan. 20 | 2 | 4 |
| Rest of State | Nov. 27-Jan. 31 | 2 | 4 |
| Brant | Same as Whitefronts | 2 | 4 |
| Light Geese: | | | |
| Western Goose Zone: | | | |
| Fulton County | Nov. 27-Mar. 10 | 10 | 30 |
| Ballard Reporting Area | Nov. 27-Jan. 20 & | 10 | 30 |
| | Feb. 14-Mar. 10 | 10 | 30 |
| Rest of Zone | Nov. 27-Mar. 10 | 10 | 30 |
| Rest of State | Nov. 27-Mar. 10 | 10 | 30 |
| Louisiana | | | |
| Ducks: | | | |
| West Zone | Nov. 8-Nov. 30 & | 6 | 12 |
| | Dec. 13-Jan. 18 | 6 | 12 |
| East Zone: | | | |
| Catahoula Lake Area | Nov. 15-Dec. 14 & | 6 | 12 |
| | Dec. 20-Jan. 18 | 6 | 12 |
| Rest of East Zone | Nov. 15-Dec. 14 & | 6 | 12 |
| | Dec. 20-Jan. 18 | 6 | 12 |
| Mergansers | Same as for ducks | 5 | 10 |
| Coots | Same as for ducks | 15 | 30 |
| Geese: | | | |
| Canada (4) | Jan. 20-Jan. 28 | 1 | 2 |
| White-fronted (4) and Brant | Nov. 8-Nov. 30 & | 2 | 4 |
| | Dec. 13-Jan. 28 | 2 | 4 |
| Light Geese | Nov. 8-Feb. 22 | 10 | 30 |
| Michigan | | | |
| Ducks (5): | | | |
| North Zone | Oct. 4-Dec. 2 | 6 | 12 |
| Middle Zone | Oct. 4-Dec. 2 | 6 | 12 |
| South Zone | Oct. 11-Dec. 9 | 6 | 12 |
| Mergansers | Same as for ducks | 5 | 10 |
| Coots | Same as for ducks | 15 | 30 |

| | Season Dates | Limits Bag | Limits Possession |
|---|---|---|---|
| Michigan | | | |
| Geese: | | | |
| Canada (2): | | | |
| North Zone | Oct. 4-Oct. 19 | 2 | 4 |
| Middle Zone | Oct. 4-Oct. 19 | 2 | 4 |
| South Zone: | | | |
| Muskegon Wastewater Goose Management Unit (GMU) (2) | Oct. 25-Nov. 14 & | 2 | 4 |
| | Dec. 1-Dec. 21 | 2 | 4 |
| Allegan County GMU (2) | Oct. 11 only & | 1 | 2 |
| | Oct. 18-Nov. 26 | 1 | 2 |
| Saginaw County GMU (2) | Oct. 11-Nov. 29 | 1 | 2 |
| Tuscola/Huron GMU (2) | Oct. 11-Nov. 29 | 1 | 2 |
| Southern Michigan GMU | Oct. 11-Oct. 19 & | 1 | 2 |
| | Nov. 27-Dec. 7 | 2 | 4 |
| (special season) | Jan. 3-Feb. 1 | 5 | 10 |
| Central Michigan GMU | Oct. 11-Oct. 19 & | 1 | 2 |
| | Nov. 27-Dec. 7 | 2 | 4 |
| (special season) | Jan. 3-Feb. 1 | 5 | 10 |
| White-fronted and Brant | See Footnote 6 | 2 | 4 |
| Light Geese | See Footnote 6 | 10 | 30 |
| Minnesota | | | |
| Ducks | Oct. 4-Dec. 2 | 6 | 12 |
| Mergansers | Same as for ducks | 5 | 10 |
| Coots (7) | Same as for ducks | 15 | 30 |
| Geese: | | | |
| Canada (2): | | | |
| West Zone: | | | |
| West Central Zone: | | | |
| Lac qui Parle Zone (2) | Oct. 11-Nov. 9 | 1 | 2 |
| Rest of West Central Zone | Oct. 11-Nov. 9 | 1 | 2 |
| Rest of West Zone | Oct. 4-Nov. 12 | 1 | 2 |
| Northwest Zone | Oct. 4-Nov. 12 | 1 | 2 |
| Fergus Falls/Alexandria Zone: | | | |
| West Zone | Oct. 4-Nov. 12 | 1 | 2 |
| (special season) | Dec. 13-Dec. 22 | 2 | 4 |
| Rest of Fergus Falls/Alexandria Zone | Oct. 4-Dec. 12 | 2 | 4 |
| (special season) | Dec. 13-Dec. 22 | 2 | 4 |
| Twin Cities Metro Zone and Olmsted County | Oct. 4-Dec. 22 | 2 | 4 |
| Rest of State | Oct. 4-Dec. 12 | 2 | 4 |
| White-fronted and Brant: | | | |
| West Zone: | | | |
| West Central Zone (8) | Oct. 11-Nov. 9 | 2 | 4 |
| Rest of West Zone | Oct. 4-Nov. 12 | 2 | 4 |
| Northwest Zone | Oct. 4-Nov. 12 | 2 | 4 |
| Rest of State | Oct. 4-Dec. 12 | 2 | 4 |
| Light Geese (8) | Oct. 4-Dec. 22 | 10 | 20 |

| | Season Dates | Limits Bag | Limits Possession |
|---|---|---|---|
| Mississippi | | | |
| Ducks: | | | |
| Zone 1 | Nov. 15-Nov. 16 & | 6 | 12 |
| | Nov. 22-Jan. 18 | 6 | 12 |
| Zone 2 | Nov. 15-Nov. 16 & | 6 | 12 |
| | Nov. 22-Jan. 18 | 6 | 12 |
| Mergansers | Same as for ducks | 5 | 10 |
| Coots | Same as for ducks | 15 | 30 |
| Geese: | | | |
| Canada | Nov. 23-Jan. 31 | 3 | 6 |
| White-fronted and Brant | Nov. 23-Jan. 31 | 2 | 4 |
| Light Geese | Nov. 22-Mar. 8 | 10 | 30 |
| Missouri | | | |
| Ducks and Mergansers: | | | |
| North Zone | Oct. 23-Dec. 21 | 6 | 12 |
| Middle Zone | Oct. 30-Dec. 28 | 6 | 12 |
| South Zone | Nov. 13-Jan. 11 | 6 | 12 |
| Coots | Same as for ducks | 15 | 30 |
| Geese: | | | |
| Canada: | | | |
| North Zone: | | | |
| Swan Lake Zone | Oct. 23-Oct. 26 & | 2 | 4 |
| | Nov. 28-Jan. 2 | 2 | 4 |
| Rest of North Zone | Oct. 4-Oct. 12 & | 2 | 4 |
| | Oct. 23-Nov. 2 & | 2 | 4 |
| | Nov. 28-Jan. 16 | 2 | 4 |
| Middle Zone: | | | |
| Schell-Osage Zone | Nov. 28-Jan. 6 | 2 | 4 |
| Rest of Middle Zone | Oct. 30-Nov. 3 & | 2 | 4 |
| | Nov. 28-Jan. 31 | 2 | 4 |
| South Zone | Nov. 13-Nov. 17 & | 2 | 4 |
| | Nov. 28-Jan. 31 | 2 | 4 |
| White-fronted and Brant: | | | |
| North Zone: | | | |
| Swan Lake Zone | Oct. 23-Oct. 26 & | 2 | 4 |
| | Nov. 28-Jan. 16 | 2 | 4 |
| Rest of North Zone | Oct. 4-Oct. 12 & | 2 | 4 |
| | Oct. 23-Nov. 2 & | 2 | 4 |
| | Nov. 28-Jan. 16 | 2 | 4 |
| Middle Zone | Oct. 30-Nov. 3 & | 2 | 4 |
| | Nov. 28-Jan. 31 | 2 | 4 |
| South Zone | Nov. 13-Nov. 17 & | 2 | 4 |
| | Nov. 28-Jan. 31 | 2 | 4 |
| Light Geese: | | | |
| North Zone | Oct. 23-Jan. 16 & | 10 | 30 |
| | Feb. 17-Mar. 9 | 10 | 30 |
| Middle Zone | Oct. 30-Nov. 3 & | 10 | 30 |
| | Nov. 28-Mar. 9 | 10 | 30 |
| South Zone | Nov. 13-Nov. 17 & | 10 | 30 |
| | Nov. 28-Mar. 9 | 10 | 30 |

| | Season Dates | Limits Bag | Limits Possession |
|---|---|---|---|
| Ohio | | | |
| Pymatuning Area: | | | |
| Ducks (9) | Oct. 11-Oct. 25 & | 5 | 10 |
| | Nov. 3-Dec. 26 | 5 | 10 |
| Mergansers | Same as for ducks | 5 | 10 |
| Coots | Same as for ducks | 15 | 30 |
| Canada Geese | Oct. 11-Oct. 18 & | 1 | 2 |
| | Nov. 3-Dec. 4 | 1 | 2 |
| Light Geese | Nov. 3-Jan. 2 & | 10 | 30 |
| | Jan. 7-Mar. 10 | 10 | 30 |
| Brant | Oct. 11-Oct. 25 & | 2 | 4 |
| | Nov. 3-Dec. 15 | 2 | 4 |
| Rest of State: | | | |
| Ducks: | | | |
| North Zone | Oct. 18-Nov. 30 & | 6 | 12 |
| | Dec. 7-Dec. 22 | 6 | 12 |
| South Zone | Oct. 18-Nov. 2 & | 6 | 12 |
| | Dec. 6-Jan. 18 | 6 | 12 |
| Ohio River Zone | Oct. 18-Nov. 2 & | 6 | 12 |
| | Dec. 6-Jan. 18 | 6 | 12 |
| Mergansers | Same as for ducks | 5 | 10 |
| Coots | Same as for ducks | 15 | 30 |
| Geese: | | | |
| Canada: | | | |
| North Zone: | | | |
| Lake Erie SJBP Zone | Nov. 17-Nov. 30 & | 1 | 2 |
| | Dec. 13-Dec. 28 | 1 | 2 |
| Rest of North Zone | Oct. 18-Nov. 30 & | 2 | 4 |
| | Dec. 13-Jan. 7 | 2 | 4 |
| South Zone | Oct. 18-Nov. 2 & | 2 | 4 |
| | Dec. 6-Jan. 28 | 2 | 4 |
| Ohio River Zone | Oct. 18-Nov. 2 & | 2 | 4 |
| | Dec. 6-Jan. 28 | 2 | 4 |
| White-fronted and Brant | Same as for Canada geese | 2 | 4 |
| Light Geese | Same as for Canada geese | 10 | 30 |
| Tennessee | | | |
| Ducks: | | | |
| Reelfoot Zone | Nov. 15-Nov. 16 & | 6 | 12 |
| | Nov. 22-Jan. 18 | 6 | 12 |
| State Zone | Nov. 15-Nov. 22 & | 6 | 12 |
| | Nov. 28-Jan. 18 | 6 | 12 |
| Mergansers | Same as for ducks | 5 | 10 |
| Coots | Same as for ducks | 15 | 30 |
| Geese: | | | |
| Canada (2)(10): | | | |
| Northwest Zone (2) | Nov. 29-Feb. 15 | 2 | 4 |
| Southwest Zone | Nov. 29-Jan. 31 | 2 | 4 |
| Kentucky/Barkley Lakes Zone (2) | Dec. 13-Jan. 31 | 2 | 4 |
| Rest of State (10) | Oct. 4-Oct. 12 & | 2 | 4 |
| | Dec. 2-Jan. 31 | 2 | 4 |
| White-fronted and Brant | Nov. 22-Jan. 29 | 2 | 4 |
| Light Geese | Nov. 22-Mar. 7 | 10 | 30 |

| | Season Dates | Limits Bag | Limits Possession |
|---|---|---|---|
| Wisconsin | | | |
| Ducks: | | | |
| North Zone | Oct. 4-Dec. 2 | 6 | 12 |
| South Zone | Oct. 4-Dec. 2 | 6 | 12 |
| Mergansers | Same as for ducks | 5 | 10 |
| Coots | Same as for ducks | 5 | 10 |
| Geese: | | | |
| Canada (2): | | | |
| Horicon Zone | Sept. 20-Dec. 21 | Tag System--See State Regulations | |
| Collins Zone | Sept. 20-Nov. 21 & | Tag System--See State Regulations | |
| | Dec. 1-Dec. 5 | Tag System--See State Regulations | |
| Exterior Zone: | | | |
| Rock Prairie Subzone | Oct. 4-Dec. 14 | 1 | 2 |
| Mississippi River Subzone | Oct. 4-Dec. 12 | 1 | 2 |
| Rest of Exterior Zone: | | | |
| North Duck Zone | Sept. 27-Dec. 28 | 1 | 2 |
| South Duck Zone | Oct. 4-Jan. 4 | 1 | 2 |
| White-fronted and Brant: | | | |
| Horicon Zone | Sept. 20-Nov. 28 | 2 | 4 |
| Collins Zone | Sept. 20-Nov. 21 & | 2 | 4 |
| | Dec. 1-Dec. 5 | 2 | 4 |
| Exterior Zone: | | | |
| Rock Prairie Subzone | Oct. 4-Dec. 12 | 2 | 4 |
| Mississippi River Subzone | Oct. 4-Dec. 12 | 2 | 4 |
| Rest of Exterior Zone: | | | |
| North Duck Zone | Sept. 27-Dec. 5 | 2 | 4 |
| South Duck Zone | Oct. 4- Dec. 12 | 2 | 4 |
| Light Geese: | | | |
| Horicon Zone | Sept. 20-Dec. 21 | 10 | 30 |
| Collins Zone | Sept. 20-Nov. 21 & | 10 | 30 |
| | Dec. 1-Dec. 5 | 10 | 30 |
| Exterior Zone: | | | |
| Rock Prairie Subzone | Oct. 4-Dec. 14 | 10 | 30 |
| Mississippi River Subzone | Oct. 4-Dec. 12 | 10 | 30 |
| Rest of Exterior Zone: | | | |
| North Duck Zone | Sept. 27-Dec. 28 | 10 | 30 |
| South Duck Zone | Oct. 4-Jan. 4 | 10 | 30 |

(1) In Arkansas, shooting hours for Canada geese are one-half hour before sunrise to noon.
(2) Harvests of Canada geese will be limited by quotas established in the September 26, 1997, Federal Register. When it has been determined that the quota of Canada geese allotted to the Northern Illinois, Central Illinois, Southern Illinois and Rend Lake Quota Zones in Illinois, Posey County in Indiana, the Ballard and Henderson-Union Subzones in Kentucky, the Allegan County, Muskegon Wastewater, Saginaw County, and Tuscola/Huron Goose Management Units in Michigan, the Lac Qui Parle Zone in Minnesota, the Northwest and Kentucky/Barkley Lakes Zones in Tennessee, and the Exterior Zone in Wisconsin will have been filled, the season for taking Canada geese in the respective zone (and associated area, if applicable) will be closed by either the Director upon giving public notice through local information media at least 48 hours in advance of the time and date of closing, or by the State through State regulations with such notice and time (not less than 48 hours) as they deem necessary.
(3) In Illinois, shooting hours for geese in the Southern Illinois and Rend Lake Quota Zones through January 28 shall close at 3 p.m.
(4) In Louisiana, during the Canada goose season, the daily bag limit is 2 Canada and white-fronted geese in the aggregate, no more than 1 of which may be a Canada goose. The possession limit is twice the daily bag limit. A special permit is required by the State.
(5) In Michigan, the daily bag limit includes no more than 1 hen mallard.
(6) In Michigan, the seasons for white-fronted geese, brant, and light geese are as follows: In the Allegan County GMU, the season opens on October 18 and runs continuously through November 26. In the Muskegon Wastewater GMU, the season runs concurrently with the Canada goose season. In the remainder of the State, the seasons open concurrently with the duck seasons and run continuously through the end of the duck seasons.
(7) In Minnesota, the daily bag limit is 15 and the possession limit is 30, coots, moorhens, and gallinules in the aggregate.
(8) In Minnesota, in the Lac Qui Parle Zone, seasons for white-fronted geese, brant, and light geese are open only when the Canada goose season is open.
(9) In Ohio, in the Pymatuning Area, the restrictions of the duck bag limit for Pennsylvania apply.
(10) In Tennessee, see State regulations for permit requirements and additional restrictions.

## CENTRAL FLYWAY

### Flyway-wide Restrictions

**Duck Limits:** The daily bag limit of 6 ducks may include no more than 5 mallards (2 female mallards), 1 mottled duck, 3 pintails, 2 redheads, 1 canvasback, and 2 wood ducks. The possession limit is twice the daily bag limit.

**Merganser Limits:** The daily bag limit is 5 mergansers with 10 in possession and may include no more than 1 hooded merganser daily and 2 in possession.

| | Season Dates | Limits Bag | Limits Possession |
|---|---|---|---|
| Colorado | | | |
| Ducks | Oct. 4-Oct. 28 & | 6 | 12 |
| | Nov. 1-Nov. 30 & | 6 | 12 |
| | Dec. 8-Jan. 18 | 6 | 12 |
| Coots | Same as for ducks | 15 | 30 |
| Mergansers | Same as for ducks | 5 | 10 |
| Dark Geese: | | | |
| Northern Front Range Unit | Oct. 4-Oct. 18 & | 4 | 8 |
| | Nov. 1-Jan. 31 | 4 | 8 |
| South Park/San Luis Valley Unit (1) | Oct. 4-Oct. 18 & | 2 | 4 |
| | Nov. 1-Jan. 31 | 2 | 4 |
| North Park Unit (1) | Oct. 4-Oct. 18 & | 2 | 4 |
| | Nov. 1-Jan. 1 | 2 | 4 |
| Arkansas Valley Unit (2) | Nov. 15-Jan. 31 | 4 | 8 |
| Pueblo County | Dec. 13-Jan. 31 | 2 | 4 |
| Rest of State in Central Flyway | Nov. 1-Jan. 31 | 4 | 8 |
| Light Geese: | | | |
| Northern Front Range Unit | Nov. 1-Jan. 31 | 5 | 10 |
| South Park/San Luis Valley Unit (2) | Nov. 1-Jan. 31 | 2 | 4 |
| North Park Unit (1) | Nov. 1-Jan. 1 | 2 | 4 |
| Arkansas Valley Unit | Nov. 15-Jan. 31 | 5 | 10 |
| Pueblo County | Nov. 1-Jan. 31 | 5 | 10 |
| Eastern Colorado Late Light Geese Unit | Nov. 1-Jan. 31 & | 5 | 10 |
| | Feb. 22-Mar. 8 | 5 | 10 |
| Rest of State in Central Flyway | Nov. 1-Jan. 31 | 5 | 10 |

| | Season Dates | Limits Bag | Limits Possession |
|---|---|---|---|
| Kansas | | | |
| Ducks (3): | | | |
| High Plains | Oct. 4-Jan. 4 & | 6 | 12 |
| | Jan. 15-Jan. 18 | 6 | 12 |
| Low Plains: | | | |
| Early Zone | Oct. 4-Dec. 7 & | 6 | 12 |
| | Dec. 20-Dec. 28 | 6 | 12 |
| Late Zone | Oct. 25-Dec. 14 & | | |
| | Dec. 20-Jan. 11 | 6 | 12 |
| Mergansers | Same as for ducks | 5 | 10 |
| Coots | Same as for ducks | 15 | 30 |
| Dark Geese (4): | | 2 | 4 |
| Canada | Nov. 1-Jan. 25 | 2 | 4 |
| White-fronted | Nov. 1-Jan. 25 | 1 | 2 |
| Light Geese: | | | |
| Zone 1 | Nov. 22-Mar. 8 | 10 | 40 |
| Zone 2 | Oct. 25-Nov. 21 & | 10 | 40 |
| | Dec. 20-Mar. 8 | 10 | 40 |
| Montana | | | |
| Ducks: | | | |
| Zone 1 | Oct. 4-Jan. 8 | 6 | 12 |
| Zone 2 | Oct. 4-Jan. 8 | 6 | 12 |
| Mergansers | Same as for ducks | 5 | 10 |
| Coots | Same as for ducks | 15 | 30 |
| Geese: | | | |
| Dark Geese | Oct. 4-Jan. 18 | 4 | 8 |
| Light Geese | Oct. 4-Jan. 18 | 5 | 10 |
| Nebraska | | | |
| Ducks: | | | |
| High Plains | Oct. 4-Dec. 15 & | 6 | 12 |
| | Dec. 19-Jan. 11 | 6 | 12 |
| Low Plains: | | | |
| Zones 1 and 2 | Oct. 11-Dec. 21 & | 6 | 12 |
| | Dec. 27-Dec. 28 | 6 | 12 |
| Zones 3 and 4 | Oct. 4-Dec. 14 & | 6 | 12 |
| | Dec. 20-Dec. 21 | 6 | 12 |
| Mergansers | Same as for ducks | 5 | 10 |
| Coots | Same as for ducks | 15 | 30 |
| Dark Geese: | | 2 | 4 |
| North Unit: | | | |
| Canada | Oct. 11-Dec. 7 & | 2 | 4 |
| | Dec. 22-Jan. 18 | 2 | 4 |
| White-fronted | Oct. 11-Dec. 7 & | 1 | 2 |
| | Dec. 22-Jan. 18 | 1 | 2 |
| East Unit: | | | |
| Canada | Oct. 4-Dec. 28 | 2 | 4 |
| White-fronted | Oct. 4-Dec. 28 | 1 | 2 |
| West Unit: | | | |
| Canada | Oct. 4-Oct. 12 & | 2 | 4 |
| | Oct. 27-Jan. 11 | 2 | 4 |
| White-fronted | Oct. 4-Oct. 12 & | 1 | 2 |
| | Oct. 27-Jan. 11 | 1 | 2 |

| | Season Dates | Limits Bag | Limits Possession |
|---|---|---|---|
| Nebraska (cont.) | | | |
| Light Geese: | | | |
| Rainwater Basin Area - East (5) | Oct. 4-Dec. 21 & | 10 | 40 |
| | Feb. 11-Mar. 10 | 10 | 40 |
| Rainwater Basin Area - West | Oct. 4-Dec. 21 | 10 | 40 |
| Rest of State | Oct. 4-Dec. 21 & | 10 | 40 |
| | Feb. 11-Mar. 10 | 10 | 40 |
| New Mexico | | | |
| Ducks and Mergansers (6): | | | |
| North Zone | Oct. 11-Oct. 26 & | 6 | 12 |
| | Oct. 30-Jan. 18 | 6 | 12 |
| South Zone | Oct. 14-Jan. 18 | 6 | 12 |
| Coots | Same as for ducks | 15 | 30 |
| Dark Geese (7): | | | |
| Middle Rio Grande Valley Unit | Dec. 27-Jan. 4 | 1 | 1 |
| Rest of State | Oct. 17-Jan. 31 | 4 | 8 |
| Light Geese | Nov. 8-Feb. 22 | 10 | 40 |
| North Dakota | | | |
| Ducks: | | | |
| Statewide | Oct. 4-Dec. 14 | 6 | 12 |
| High Plains | Dec. 15-Jan. 4 | 6 | 12 |
| Mergansers | Same as for ducks | 5 | 10 |
| Coots | Same as for ducks | 15 | 30 |
| Dark Geese (8): | | 2 | 4 |
| Statewide: | | | |
| Canada | Oct. 4-Nov. 16 | 2 | 4 |
| White-fronted | Oct. 4-Nov. 16 | 2 | 4 |
| Missouri River Zone | Nov. 17-Dec. 28 | 2 | 4 |
| Light Geese (8) | Oct. 4-Dec. 28 | 10 | 40 |
| Oklahoma | | | |
| Ducks: | | | |
| High Plains | Oct. 11-Jan. 15 | 6 | 12 |
| Low Plains: | | | |
| Zone 1 | Oct. 25-Dec. 7 & | 6 | 12 |
| | Dec. 13-Jan. 11 | 6 | 12 |
| Zone 2 | Nov. 1-Dec. 7 & | 6 | 12 |
| | Dec. 13-Jan. 18 | 6 | 12 |
| Mergansers | Same as for ducks | 5 | 10 |
| Coots | Same as for ducks | 15 | 30 |
| Dark Geese: | | 2 | 4 |
| Canada | Nov. 1-Jan. 25 | 2 | 4 |
| White-fronted | Nov. 1-Jan. 25 | 1 | 2 |
| Light Geese | Nov. 1-Jan. 25 & | 10 | 40 |
| | Feb. 7-Feb. 27 | 10 | 40 |

| | Season Dates | Limits Bag | Limits Possession |
|---|---|---|---|
| South Dakota | | | |
| Ducks (9): | | | |
| High Plains | Oct. 4-Jan. 8 | 6 | 12 |
| Low Plains: | | | |
| North Zone | Oct. 4-Dec. 16 | 6 | 12 |
| Middle Zone | Oct. 4-Dec. 16 | 6 | 12 |
| South Zone | Oct. 11-Dec. 23 | 6 | 12 |
| Mergansers | Same as for ducks | 5 | 10 |
| Coots | Same as for ducks | 15 | 30 |
| Dark Geese (10) | | 2 | 4 |
| Unit 1 | Oct. 4-Dec. 28 | 2 | 4 |
| Unit 2 | Oct. 11-Jan. 4 | 2 | 4 |
| Unit 3 | Oct. 18-Jan. 11 | 2 | 4 |
| Light Geese | Oct. 4-Dec. 28 & | 10 | 40 |
| | Feb. 18-Mar. 10 | 10 | 40 |
| Texas | | | |
| Ducks: | | | |
| High Plains | Oct. 11-Oct. 14 & | 6 | 12 |
| | Oct. 18-Jan. 18 | 6 | 12 |
| Low Plains: | | | |
| North Zone | Oct. 25-Nov. 2 & | 6 | 12 |
| | Nov. 15-Jan. 18 | 6 | 12 |
| South Zone | Oct. 25-Nov. 30 & | 6 | 12 |
| | Dec. 13-Jan. 18 | 6 | 12 |
| Mergansers | Same as for ducks | 5 | 10 |
| Coots | Same as for ducks | 15 | 30 |
| Geese: | | | |
| East Tier: | | | |
| Dark Geese: | | 2 | 4 |
| Canada | Nov. 1-Jan. 18 & | 1 | 2 |
| | Jan. 19-Jan. 25 | 2 | 4 |
| White-fronted | Nov. 1-Jan. 25 | 1 | 2 |
| Light Geese | Nov. 1-Feb. 15 | 10 | 40 |
| West Tier: | | | |
| Dark Geese: | | 5 | 10 |
| Canada | Nov. 1-Feb. 15 | 4 | 8 |
| White-fronted | Nov. 1-Feb. 15 | 1 | 2 |
| Light Geese | Nov. 1-Feb. 15 | 10 | 40 |
| Wyoming | | | |
| Ducks: | | | |
| Zone 1 | Oct. 4-Oct. 26 & | 6 | 12 |
| | Nov. 1-Jan. 18 | 6 | 12 |
| Zone 2 | Oct. 4-Jan. 8 | 6 | 12 |
| Mergansers | Same as for ducks | 6 | 12 |
| Coots | Same as for ducks | 15 | 30 |
| Dark Geese: | | | |
| Area 1 | Oct. 4-Jan. 18 | 4 | 8 |
| Area 2 (11) | Oct. 18-Jan. 31 | 4 | 8 |
| Area 3 | Oct. 4-Jan. 18 | 4 | 8 |
| Area 4 (11) | Nov. 15-Jan. 31 | 4 | 8 |
| Wyoming (cont.) | | | |
| Light Geese | Oct. 4-Dec. 24 & | 10 | 40 |
| | Feb. 14-Mar. 10 | 10 | 40 |

(1) In Colorado, in the North Park and South Park/San Luis Valley Units, the bag limit for the November 1 through January 1 and November 1 through January 31 periods, respectively, are 2 geese. The possession limit is twice the daily bag limit.
(2) In Colorado, in the Arkansas Valley Unit, shooting hours are one-half hour before sunrise to noon November 16 through November 29.
(3) In Kansas, the daily bag limit may include no more than 1 hen mallard.
(4) In Kansas exceptions to the dark goose season are as follows: Season dates in the Marais des Cygnes Valley (Unit 1), Southeast (Unit 2), and Flint Hills (Unit 3) Units are December 20, 1997 through January 25, 1998. Dark goose permits issued by the Kansas Department of Wildlife and Parks are required to hunt dark geese in these three Units. Unlimited Permits are available in all three Units, with a maximum of one permit per individual per Unit. In the Marais des Cygnes Valley and Southeast Units six geese per permit are allowed. In the Flint Hills Unit the daily bag is two Canada or one Canada and one white-fronted goose. Shooting hours in the Marais des Cygnes Valley Unit will be one-half hour before sunrise to 1:00 p.m. Shooting hours in all other Units shall be one-half hour before sunrise to sunset.
(5) In Nebraska, see State regulations for additional restrictions during February 11 through March 10.
(6) In New Mexico, the daily bag limit for ducks and mergansers may include no more than 5 mergansers (1 hooded).
(7) In New Mexico, the season for dark geese is closed in Bernalillo, Sandoval, Sierra, Sorocco, and Valencia Counties.
(8) In North Dakota, the shooting hours for geese are one-half hour before sunrise to 1 p.m. through October 25 and until 2 p.m. the remainder of the season.
(9) In South Dakota, the daily bag limit may include no more than 1 hen mallard and 2 pintails.
(10) In South Dakota, the dark goose daily bag limit may include no more than 1 white-fronted goose or 1 brant.
(11) In Wyoming, the shooting hours for geese in Goshen County are one-half hour before sunrise to 1 p.m., except on January 3-4, 10-11, 17-18, 24-25, and 31 when shooting hours are until sunset. In Platte County, shooting hours for geese in the area east of Interstate Highway 25 and north of Wyoming Highway 160 are 1/2 hour before sunrise to sunset. In the remainder of Platte County, shooting hours for geese are 1/2 hour before sunrise to 1 p.m. except on January 3-4, 10-11, 17-18, 24-25, and 31 when shooting hours are until sunset.

PACIFIC FLYWAY

Flyway-wide Restrictions

**Duck and Merganser Limits:** The daily bag limit of 7 ducks (including mergansers) may include no more than 2 female mallards, 3 pintails, 2 redheads and 1 canvasback. The possession limit is twice the daily bag limit.

**Coot and Common Moorhen Limits:** Daily bag and possession limits are in the aggregate for the two species.

**Goose Limits:** Daily bag limits for geese may not exceed 2 white-fronted geese and 3 light geese. The possession limit is twice the daily bag limit.

Aleutian Canada Geese: The season is closed throughout the Flyway.

| | Season Dates | Limits Bag | Limits Possession |
|---|---|---|---|
| Arizona | | | |
| Ducks (1): | | | |
| North Zone | Oct. 10-Jan. 18 | 7 | 14 |
| South Zone | Oct. 10-Jan. 18 | 7 | 14 |
| Coots and moorhens | Same as for ducks | 25 | 25 |
| Geese: | | 5 | 5 |
| Dark (2): | | | |
| GMU 22 & 23 | Nov. 15-Jan. 18 | 2 | 2 |
| GMU 1 & 27 | Jan. 1-Jan. 18 | 2 | 2 |
| Balance of State | Oct. 11-Jan. 18 | 2 | 2 |
| Light (2): | | | |
| GMU 22 & 23 | Same as dark geese | 3 | 3 |
| Rest of State | Same as dark geese | 3 | 3 |
| California | | | |
| Ducks: | | | |
| Northeastern Zone | Oct. 4-Jan. 11 | 7 | 14 |
| Colorado River Zone | Oct. 10-Jan. 18 | 7 | 14 |
| Southern Zone | Oct. 11-Jan. 18 | 7 | 14 |
| Southern San Joaquin Valley Zone | Oct. 11-Jan. 18 | 7 | 14 |
| Balance-of-State Zone | Oct. 11-Jan. 18 | 7 | 14 |
| Coots and moorhens: | | | |
| Northeastern Zone | Same as for ducks | 25 | 25 |
| Colorado River Zone | Same as for ducks | 25 | 25 |
| Southern Zone | Same as for ducks | 25 | 25 |
| Southern San Joaquin Valley Zone | Same as for ducks | 25 | 25 |
| Balance-of-State Zone | Same as for ducks | 25 | 25 |
| Geese: | | | |
| Northeastern Zone: | | 3 | 6 |
| Canada Geese | Oct. 4-Jan. 4 | 2 | 4 |
| Cackling Geese | Oct. 4-Oct. 26 | 1 | 2 |
| White-fronted Geese | Oct. 4-Oct. 26 | 2 | 4 |
| Light Geese | Oct. 4-Jan. 4 | 3 | 6 |
| Colorado River Zone: | | 5 | 10 |
| Canada Geese | Oct. 11-Jan. 18 | 2 | 4 |
| White-fronted Geese | Oct. 11-Jan. 18 | 2 | 4 |
| Light Geese | Oct. 11-Jan. 18 | 3 | 6 |
| Southern Zone: | | 5 | 8 |
| Dark Geese: | | 2 | 2 |
| Canada | Oct. 18-Jan. 18 | 2 | 2 |
| Cackling Geese | Oct. 18-Jan. 18 | 1 | 2 |
| White-fronted Geese | Oct. 18-Jan. 18 | 2 | 2 |
| Light Geese | Oct. 18-Jan. 18 | 3 | 6 |
| Balance-of-State Zone: | | 3 | 3 |
| Dark Geese (3): | | 2 | 4 |
| Canada: | | | |
| Del Norte & Humboldt | Closed | – | – |
| Sacramento Valley Area | Closed | – | – |
| San Joaquin Valley Area | Nov. 1-Nov. 22 | 2 | 4 |
| Rest of Zone | Nov. 1-Jan. 18 | 2 | 4 |
| California (cont.) | | | |
| White-fronted: | | | |
| Sacramento Valley Closure | Nov. 1-Dec. 14 | 2 | 4 |
| Rest of Zone | Nov. 1-Jan. 13 | 2 | 4 |
| Light Geese | Nov. 1-Jan. 18 | 3 | 6 |
| Brant | Nov. 1-Nov. 30 | 2 | 4 |
| Colorado | | | |
| Ducks | Oct. 4-Jan. 17 | 7 | 14 |
| Coots | Same as for ducks | 25 | 25 |
| Geese: | | | |
| West Central Colorado Unit | Oct. 26-Jan. 18 | 2 | 4 |
| Rest of State | Oct. 4-Oct. 18 & | 2 | 4 |
| | Oct. 26-Jan. 17 | 2 | 4 |
| Idaho | | | |
| Ducks: | | | |
| Zone 1 | Oct. 4-Jan. 17 | 7 | 14 |
| Zone 2 | Oct. 4-Jan. 17 | 7 | 14 |
| Zone 3 | Oct. 4-Jan. 17 | 7 | 14 |
| Coots | Same as for ducks | 25 | 25 |
| Geese: | | | |
| Zone 1: | | 4 | 8 |
| Dark | Oct. 4-Jan. 11 | 4 | 8 |
| Light | Oct. 4-Jan. 11 | 3 | 6 |
| Zone 2: | | 3 | 6 |
| Dark | Oct. 4- Jan. 11 | 3 | 6 |
| Light | Oct. 4-Jan. 11 | 3 | 6 |
| Zone 3: | | 3 | 6 |
| Dark | Oct. 4-Jan. 11 | 2 | 4 |
| Light | Oct. 4-Jan. 11 | 3 | 6 |
| Zone 4 (5) | Oct. 4-Jan. 11 | 4 | 8 |
| Zone 5 | Oct. 4-Jan. 11 | 4 | 8 |
| Montana | | | |
| Ducks | Oct. 4-Jan. 17 | 7 | 14 |
| Coots | Same as for ducks | 25 | 25 |
| Geese (6): | | | |
| Dark | Oct. 4-Jan. 11 | 4 | 8 |
| Light | Oct. 4-Jan. 11 | 3 | 6 |
| Nevada | | | |
| Ducks: | | | |
| Lincoln & Clark Counties | Oct. 4-Jan. 17 | 7 | 14 |
| Rest of State | Oct. 4-Jan. 17 | 7 | 14 |
| Coots and moorhens | Same as for ducks | 25 | 25 |
| Dark Geese: | | | |
| Lincoln & Clark Counties | Nov. 15-Jan. 17 | 2 | 4 |
| Rest of State | Oct. 18-Jan. 17 | 3 | 6 |
| Light Geese: | | | |
| Lincoln & Clark Counties | Nov. 15-Jan. 17 | 3 | 6 |
| Rest of State (7) | Oct. 18-Jan. 17 | 3 | 6 |

| | Season Dates | Limits Bag | Limits Possession |
|---|---|---|---|
| New Mexico | | | |
| Ducks (8) | Oct. 4-Jan. 18 | 7 | 14 |
| Coots | Same as for ducks | 15 | 30 |
| Moorhens (9) | Same as for ducks | 1 | 2 |
| Geese: | | | |
| San Juan County (8): | | | |
| Dark | Oct. 4-Oct. 26 & | 3 | 6 |
| | Nov. 8-Jan. 18 | 3 | 6 |
| Light | Oct. 4-Oct. 26 & | 1 | 2 |
| | Nov. 8-Jan. 18 | 1 | 2 |
| Rest of State: | | | |
| Dark | Oct. 11-Jan. 18 | 2 | 4 |
| Light | Oct. 11-Jan. 18 | 1 | 2 |
| Oregon | | | |
| Ducks: | | | |
| Zone 1: | | | |
| Columbia Basin Unit | Oct. 5-Jan. 18 | 7 | 14 |
| Rest of Zone 1 | Oct. 5-Jan. 18 | 7 | 14 |
| Zone 2 | Oct. 5-Jan. 18 | 7 | 14 |
| Coots | Same as for ducks | 25 | 25 |
| Geese: | | | |
| Northwest General Goose Zone: | | | |
| Dark Geese | Oct. 11-Jan. 11 | 4 | 8 |
| Light Geese | Oct. 11-Jan. 11 | 3 | 6 |
| Northwest Special Permit Zone (10): | | | |
| Dark Geese | Dec. 1-Feb. 28 | 3 | 6 |
| Dusky Canada geese | | 1 per season | |
| Cackling Canada geese | | 2 | 4 |
| Light Geese | Dec. 1-Feb. 28 | 3 | 6 |
| Southwest General Zone (11): | | | |
| Dark Geese | Oct. 11-Jan. 18 | 4 | 8 |
| Light Geese | Oct. 11-Jan. 18 | 3 | 6 |
| Eastern Zone: | | | |
| Klamath, Harney, Lake, and Malheur Counties: | | | |
| Dark Geese | Oct. 5-Jan. 11 | 4 | 8 |
| Cackling Canada geese | | 1 | 2 |
| White-fronted geese | | 2 | 4 |
| Light Geese | Oct. 5-Jan. 11 | 3 | 6 |
| Remainder of Eastern Zone: | | | |
| Dark Geese | Oct. 11-Jan. 18 | 4 | 8 |
| Cackling Canada geese | | 1 | 2 |
| White-fronted geese | | 2 | 4 |
| Light Geese | Oct. 11-Jan. 18 | 3 | 6 |
| Brant | Dec. 27-Jan. 11 | 2 | 4 |
| Utah (12) | | | |
| Ducks: | | | |
| Zone 1 | Oct. 4-Jan. 17 | 7 | 14 |
| Zone 2 | Oct. 4-Jan. 17 | 7 | 14 |
| Coots | Same as for ducks | 25 | 25 |
| Geese: | | 5 | 6 |
| Light | Oct. 4-Jan. 11 | 3 | 6 |
| Dark: | | | |
| Washington County (13) | Oct. 11-Jan. 13 | 2 | 4 |
| Rest of State | Oct. 4-Jan. 11 | 2 | 4 |
| Washington | | | |
| Ducks: | | | |
| East Zone | Oct. 4-Jan. 17 | 7 | 14 |
| West Zone | Oct. 4-Jan. 17 | 7 | 14 |
| Coots | Same as for ducks | 25 | 25 |
| Geese (14): | | | |
| Eastern Management Areas 1, 2, and 3 (15) | Oct. 11-Jan. 18 | 4 | 8 |
| Western Management Area 1 | Oct. 11-Jan. 4 | 3 | 6 |
| Western Management Area 2 (16) | Nov. 22-Nov. 26 & Nov. 29-Jan. 17 | | |
| Regular Season Total Geese | | 4 | 8 |
| Canada geese | | 3 | 6 |
| Dusky Canada geese | | 1 | 1 |
| Cackling Canada geese | | 2 | 4 |
| Late-Season Canada Geese | Jan. 24-Mar. 9 | | |
| Canada geese | | 3 | 6 |
| Dusky Canada geese | | 1 | 1 |
| Cackling Canada geese | | 3 | 6 |
| Western Management Area 3 | Oct. 11-Jan. 18 | 4 | 8 |
| Brant (17) | Jan. 3-Jan. 18 | 2 | 4 |
| Wyoming | | | |
| Ducks | Oct. 4-Jan. 17 | 7 | 14 |
| Coots | Same as for ducks | 25 | 25 |
| Dark Geese | Oct. 4-Jan. 11 | 4 | 8 |

(1) In Arizona, the daily limit may include no more than either 2 female mallards or 2 Mexican-like ducks, or 1 of each; and not more than 4 female mallards, 4 Mexican-like ducks, or 2 of each, may be in possession.
(2) In Arizona, in Yuma County, La Paz County, Game Management Units 13B, 15, and that portion of Unit 16 lying within Mohave County, the bag and possession limit is 2 and 4 for Canada geese and 3 and 6 for light geese, respectively.
(3) In California, the daily bag limit for cacking geese is 1.
(4) State permit is required.
(5) In Idaho, the season on light geese is closed in Fremont and Teton Counties.
(6) In Montana, check State regulations for special seasons/exceptions in Freezeout Lake WMA; Canyon Ferry; Flathead; Deer Lodge County; and Missoula County.
(7) In Nevada, there is no open season on light geese in Ruby Valley within Elko and White Pine Counties, White River Valley of Nye County, and Pahranagat Valley of Lincoln County.

(8) In New Mexico, duck and goose hunting is closed in San Juan County from October 27 through November 7 and December 8 through December 19.
(9) In New Mexico, the bag limit is 1 common moorhen daily and 2 in possession; there is no open season on the purple gallinule.
(10) In Oregon, the Northwest Special Permit Zone is closed to all goose hunting, except for designated areas. See State regulations for specific boundary descriptions, times, days, and other conditions of the special permit season.
(11) In Oregon, that portion of Coos, Curry, and Douglas Counties west of US 101 is closed to all Canada goose hunting.
(12) In Utah, the shooting hours are 8:00 a.m. to sunset on October 4 and November 1.
(13) In Utah, the Washington County season is for Canada geese only.
(14) In Washington, daily bag and possession limits may include no more than 3 and 6 light geese, respectively.
(15) In Washington, in State Goose Area 1, hunting is only on Saturdays, Sundays, Wednesdays, and certain holidays. In State Goose Area 2, hunting is everyday. See State regulations for details, including shooting hours.
(16) In Washington, see State regulations for specific dates and conditions of permit hunts and closures for Canada geese.
(17) In Washington, brant may be hunted in Skagit and Pacific Counties only; see State regulations for specific dates.

(f) Youth Waterfowl Hunting Day

The following seasons are open only to youth hunters. Youth Hunters must be accompanied into the field by an adult at least 18 years of age. This adult can not duck hunt but may participate in other open seasons.

Definition

Youth Hunters: Includes youths 15 years of age or younger.

NOTE: The following seasons are in addition to the seasons published previously in the August 29, 1997, Federal Register (62 FR 46152). Bag and possession limits will conform to those set for the regular season.

| | Season Dates |
|---|---|
| ATLANTIC FLYWAY | |
| Connecticut | |
| Ducks, mergansers, and coots: | |
| Statewide | Nov. 8 |
| Delaware | |
| Ducks, mergansers, coots, moorhens, and gallinules | Oct. 25 |
| Florida | |
| Ducks, gallinules, and coots | Jan. 24 |
| Georgia | |
| Ducks, mergansers, coots, moorhens, and gallinules | Nov. 15 |
| Maine (1) | |
| Ducks, mergansers, coots, moorhens, and gallinules: | |
| Statewide | Sept. 20 |
| Maryland (2) | |
| Ducks, mergansers, and coots (3) | Oct. 25 |
| Massachusetts | |
| Ducks, mergansers, and coots: | |
| Statewide | Oct. 11 |
| New Hampshire | |
| Ducks, mergansers, and coots: | |
| Statewide | Nov. 8 |
| New Jersey | |
| Ducks, mergansers, coots, moorhens, and gallinules: | |
| Statewide | Sept. 27 |
| New York | |
| Ducks, mergansers, and coots: | |
| Long Island Zone | Nov. 30 |
| Lake Champlain Zone | Sept. 27 |
| Northeastern Zone | Sept. 28 |
| Southeastern Zone | Sept. 28 |
| Western Zone | Oct. 12 |
| North Carolina | |
| Ducks, mergansers, and coots | Jan. 24 |
| Pennsylvania | |
| Ducks, mergansers, coots, and moorhens: | |
| Statewide | Oct. 4 |
| Rhode Island | |
| Ducks, mergansers, and coots | Oct. 25 |
| South Carolina | |
| Ducks | Jan. 24 |
| Vermont | |
| Ducks, mergansers, and coots: | |
| Statewide | Sept. 27 |
| Virginia | |
| Ducks, mergansers, coots, moorhens, and gallinules: | |
| Statewide | Oct. 18 |
| MISSISSIPPI FLYWAY | |
| Alabama | |
| Ducks, mergansers, coots, moorhens, and gallinules: | |
| Statewide | Jan. 24 |
| Arkansas | |
| Ducks, mergansers, coots, moorhens, and gallinules: | |
| Statewide | Dec. 24 |

| | Season Dates |
|---|---|
| Illinois | |
| Ducks, mergansers, and coots: | |
| North Zone | Sept. 27 |
| Central Zone | Oct. 11 |
| South Zone | Nov. 1 |
| Indiana | |
| Ducks, mergansers, coots, moorhens, and gallinules: | |
| North Zone | Oct. 11 |
| South Zone | Nov. 1 |
| Ohio River Zone | Nov. 8 |
| Iowa | |
| Ducks, mergansers, and coots: | |
| Statewide | Sept. 27 |
| Kentucky | |
| Ducks, mergansers, and coots: | |
| Statewide | Oct. 11 |
| Louisiana | |
| Ducks, mergansers, coots, moorhens, and gallinules: | |
| Statewide | Jan. 24 |
| Michigan | |
| Ducks, mergansers, coots, moorhens, and gallinules: | |
| Statewide | Sept. 20 |
| Minnesota | |
| Ducks, mergansers, coots, and moorhens | Sept. 20 |
| Mississippi | |
| Ducks, mergansers, and coots: | |
| Statewide | Jan. 24 |
| Missouri | |
| Ducks, mergansers, and coots: | |
| North Zone | Oct. 18 |
| Middle Zone | Oct. 25 |
| South Zone | Nov. 8 |
| Ohio | |
| Ducks, mergansers, coots, and moorhens: | |
| Pymatuning Area | Oct. 4 |
| Rest of State | Oct. 11 |
| Tennessee | |
| Ducks, mergansers, coots, moorhens, and gallinules: | |
| Statewide | Jan. 24 |
| Wisconsin | |
| Ducks, mergansers, coots, moorhens, and gallinules: | |
| Statewide | Sept. 27 |

| | Season Dates |
|---|---|
| CENTRAL FLYWAY | |
| Colorado | |
| Ducks, mergansers, and coots | Sept. 27 |
| Kansas (4) | |
| Ducks, mergansers, and coots: | |
| High Plains | Sept. 27 |
| Low Plains: | |
| Early Zone | Sept. 27 |
| Late Zone | Oct. 18 |
| Montana | |
| Ducks, mergansers, and coots | Sept. 27 |
| Nebraska | |
| Ducks, mergansers, and coots: | |
| High Plains: | |
| Zones 1 & 2 | Oct. 4 |
| Zones 3 & 4 | Sept. 27 |
| New Mexico | |
| Ducks and coots: | |
| Zone 1 | Oct. 4 |
| Zone 2 | Oct. 11 |
| North Dakota | |
| Ducks, mergansers, and coots: | |
| Statewide | Sept. 27 |
| Oklahoma | |
| Ducks, mergansers, and coots: | |
| High Plains | Oct. 5 |
| Low Plains: | |
| Zone 1 | Oct. 19 |
| Zone 2 | Oct. 26 |
| South Dakota | |
| Ducks, mergansers, and coots: | |
| Statewide | Sept. 27 |
| Texas | |
| Ducks, mergansers, and coots: | |
| High Plains | Oct. 4 |
| Low Plains: | |
| North | Oct. 18 |
| South | Oct. 18 |
| Wyoming | |
| Ducks, mergansers, and coots: | |
| Statewide | Sept. 27 |

| | Season Dates |
|---|---|
| PACIFIC FLYWAY (5) | |
| Arizona (6) | |
| Ducks, coots, and moorhens: | |
| North Zone | Oct. 4 |
| South Zone | Jan. 24 |
| California | |
| Ducks: | |
| Northeastern Zone | Sept. 27 |
| Colorado River Zone | Jan. 24 |
| Southern Zone | Jan. 24 |
| Southern San Joaquin Valley Zone | Jan. 24 |
| Balance-of-State Zone | Jan. 24 |
| Colorado | |
| Ducks and coots | Sept. 27 |
| Idaho | |
| Ducks and coots: | |
| Statewide | Sept. 27 |
| Montana | |
| Ducks and coots | Sept. 27 |
| Nevada | |
| Ducks, coots, and moorhens: | |
| Clark and Lincoln Counties | Jan. 24 |
| Rest of State | Sept. 27 |
| Oregon | |
| Ducks and coots: | |
| Statewide | Sept. 27 |
| Utah | |
| Ducks and coots: | |
| Statewide | Sept. 27 |
| Washington | |
| Ducks and coots: | |
| Statewide | Sept. 27 |
| Wyoming | |
| Ducks and coots | Sept. 27 |

(1) In Maine, the special season is closed on black ducks; shooting hours are sunrise to sunset.

(2) In Maryland, the accompanying adult must be at least 21 years of age and possess a valid Maryland hunting license (or be exempt from the license requirement). This accompanying adult may not shoot or possess a firearm.

(3) In Maryland, the special season is closed on canvasbacks.

(4) In Kansas, the adult accompanying the youth must possess any licenses and/or stamps required by law for that individual to hunt waterfowl.

(5) In the Pacific Flyway, the daily bag limit for ducks includes mergansers.

(6) In Arizona, the youth hunter must be 14 years old or less.

4. Section 20.106 is amended by adding the entries for the following States in alphabetical order to read as follows:

**§20.106 Seasons, limits, and shooting hours for sandhill cranes.**

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits on the species designated in this section are as follows:

Shooting and Hawking hours are one-half hour before sunrise until sunset, except as otherwise restricted by State regulations. Area descriptions were published in the August 20, 1997, Federal Register (62 FR 44229).

Note: The following seasons are in addition to the seasons published previously in the August 29, 1997, Federal Register (62 FR 46152).

| | Season Dates | Limits Bag | Limits Possession |
|---|---|---|---|
| CENTRAL FLYWAY | | | |
| * * * * * | | | |
| Kansas (1)(2) | Nov. 1-Dec. 28 | 2 | 4 |
| * * * * * | | | |
| Oklahoma | Oct. 25-Jan. 25 | 3 | 6 |
| Texas (1): | | | |
| Zone A | Nov. 8-Feb. 8 | 3 | 6 |
| Zone B | Nov. 29-Feb. 8 | 3 | 6 |
| Zone C | Jan. 3-Feb. 8 | 3 | 6 |
| * * * * * | | | |

(1) Each hunter participating in a regular sandhill crane hunting season must obtain and carry in his possession while hunting sandhill cranes a valid Federal sandhill crane hunting permit available without cost from conservation agencies in the States where crane hunting seasons are allowed. The permit must be displayed to any authorized law enforcement official upon request.

* * * * *

5. Section 20.107 is revised to read as follows:

**§20.107** Seasons, limits, and shooting hours for swans.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits on the species designated in this section are as follows:

Shooting hours are one-half hour before sunrise until sunset, except as otherwise restricted by State regulations. Hunting is by State permit only.

NOTE: Successful permittees must immediately validate their harvest by that method required in State regulations.

| | Season Dates | Limits | |
|---|---|---|---|
| | | Bag | Possession |
| ATLANTIC FLYWAY | | | |
| North Carolina | Oct. 20-Jan. 31 | 1 tundra swan per season | |
| Virginia | Dec. 1-Jan. 31 | 1 tundra swan per season | |
| CENTRAL FLYWAY (1) | | | |
| Montana | Oct. 4-Jan. 4 | 1 tundra swan per season | |
| North Dakota | Oct. 4-Nov. 30 | 1 tundra swan per season | |
| South Dakota | Oct. 4-Nov. 30 | 1 tundra swan per season | |
| PACIFIC FLYWAY (1)(2) | | | |
| Montana | Oct. 18-Dec. 1 | 1 swan per season | |
| Nevada (3) (4) | Oct. 18-Jan. 4 | 1 swan per season | |
| Utah (3) | Oct. 4-Dec. 7 | 1 swan per season | |

(1) See State regulations for description of area open to swan hunting.
(2) Any species of swan may be taken.
(3) Harvests of trumpeter swans will be limited by quotas established in the September 26, 1997, Federal Register. When it has been determined that the quota of trumpeter swans allotted to Nevada and Utah will have been filled, the season for taking of any swan species in the respective State will be closed by either the Director upon giving public notice through local information media at least 48 hours in advance of the time and date of closing, or by the State through State regulations with such notice and time (not less than 48 hours) as they deem necessary.
(4) All harvested swans and tags must be checked at the Nevada Division of Wildlife within 5 days of harvest.

6. Section 20.109 is amended by adding the entries for the following States in alphabetical order to read as follows:

**§20.109** Extended seasons, limits, and hours for taking migratory game birds by falconry.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Hawking hours are one-half hour before sunrise until sunset except as otherwise restricted by State regulations. Area descriptions were published in the August 20 and September 26 Federal Registers.

Limits: The daily bag limit may include no more than 3 migratory game birds, singly or in the aggregate. The possession limit is twice the daily bag limit.

These limits apply to falconry during both regular hunting seasons and extended falconry seasons -- unless further restricted by State regulations. The falconry bag and possession limits are not in addition to regular season limits. Unless otherwise specified, extended falconry for ducks does not include sea ducks within the special sea duck areas.

Although many States permit falconry during the gun seasons, only extended falconry seasons are shown below. Please consult State regulations for details.

NOTE: The following seasons are in addition to the seasons published previously in the August 29, 1997, Federal Register (62 FR 46152)

| | Extended Falconry Dates |
|---|---|
| ATLANTIC FLYWAY | |
| Florida | |
| Ducks and coots | Nov. 1-Nov. 13 & Feb. 1-Feb. 28 |
| Georgia | |
| Sea Ducks | Nov. 15-Nov. 21 & Jan. 21-Feb. 28 |
| Ducks, mergansers, gallinules, and coots | Nov. 15-Nov. 21 & Jan. 21-Feb. 28 |
| Maine | |
| Ducks, mergansers, and coots: | |
| North Zone | Nov. 24-Jan. 31 |
| South Zone | Dec. 22-Feb. 28 |

| | Extended Falconry Dates |
|---|---|
| Maryland | |
| Ducks | Oct. 16-Oct. 21 & Jan. 21-Mar. 9 |
| Canada Geese | Closed |
| Brant | Jan. 21-Mar. 10 |
| Massachusetts | |
| Ducks, mergansers, and coots: | |
| Western Zone | Oct. 6-Oct. 12 & Dec. 21-Jan. 20 |
| Central Zone | Oct. 6-Oct. 13 & Nov. 30-Dec. 14 & Jan. 6-Jan. 20 |
| Coastal Zone | Oct. 6-Oct. 13 & Oct. 26-Nov. 14 & Jan. 11-Jan. 20 |
| New Hampshire | |
| Ducks, mergansers, and coots: | |
| Inland Zone | Nov. 5-Nov. 18 & Dec. 15-Jan. 15 |
| Coastal Zone | Jan. 24-Mar. 10 |
| New Jersey | |
| Woodcock: | |
| North Zone | Oct. 1-Oct. 9 & Oct. 19-Oct. 31 & Nov. 16-Jan. 15 |
| South Zone | Oct. 1-Nov. 7 & Nov. 23-Dec. 18 & Dec. 28-Jan. 15 |

| | Extended Falconry Dates |
|---|---|
| New Jersey (cont.) | |
| Ducks: | |
| North Zone | Oct. 1-Oct. 10 & Nov. 3-Nov. 17 & Jan. 5-Jan. 15 |
| South Zone | Oct. 1-Oct. 10 & Oct. 27-Nov. 10 & Jan. 5-Jan. 15 |
| Coastal Zone | Oct. 1-Oct. 31 & Nov. 17 only & Jan. 12-Jan. 15 |
| New York | |
| Ducks and coots: | |
| Long Island Zone | Nov. 1-Nov. 20 & Nov. 30 only & Jan. 21-Jan. 31 |
| Northeastern Zone | Oct. 1-Oct. 3 & Oct. 20-Oct. 24 & Dec. 8-Dec. 31 |
| Southeastern Zone | Oct. 1-Oct. 10 & Oct. 20-Oct. 31 & Dec. 22-Dec. 31 |
| Western Zone | Oct. 1-Oct. 15 & Nov. 29-Dec. 19 |
| Pennsylvania | |
| Ducks: | |
| North Zone | Nov. 3-Nov. 7 & Dec. 26-Feb. 5 |
| South Zone | Oct. 27-Nov. 8 & Jan. 3-Feb. 5 |
| Northwest Zone | Oct. 27-Nov. 1 & Dec. 27-Feb. 5 |
| Lake Erie Zone | Nov. 10-Nov. 12 & Jan. 8-Feb. 20 |

| | Extended Falconry Dates |
|---|---|
| Pennsylvania (cont.) | |
| Canada Geese: | |
| North Zone | Closed |
| South Zone | Closed |
| Western Zone | Jan. 1-Jan. 12 |
| Erie, Mercer, and Butler | Oct. 20-Oct. 31 |
| Crawford | Oct. 20-Nov. 1 & Dec. 5-Jan. 7 |
| Brant | Oct. 27-Nov. 1 & Dec. 16-Feb. 4 |
| South Carolina | |
| Ducks, mergansers, and coots | Oct. 7-Nov. 18 & Nov. 30-Dec. 7 |
| Virginia | |
| Ducks, mergansers, coots, moorhens, and gallinules | Nov. 1-Nov. 15 & Jan. 21-Feb. 27 |
| Canada Geese | Dec. 13-Dec. 20 & Feb. 9-Feb. 28 |
| Brant | Nov. 6-Nov. 22 & Jan. 21-Mar. 10 |
| MISSISSIPPI FLYWAY | |
| Arkansas | |
| Mourning doves | Nov. 1-Dec. 12 & Jan. 5-Jan. 9 |
| Ducks, mergansers, and coots | Dec. 24-Dec. 25 & Jan. 19-Feb. 22 |

| | Extended Falconry Dates |
|---|---|
| Illinois | |
| Ducks, mergansers, and coots: | |
| North Zone | Sept. 30-Oct. 3 & Dec. 3-Dec. 6 & Feb. 10-Mar. 10 |
| Central Zone | Oct. 14-Oct. 17 & Dec. 17-Dec. 20 & Feb. 10-Mar. 10 |
| South Zone | Nov. 4-Nov. 7 & Jan. 7-Jan. 10 & Feb. 10-Mar. 10 |
| Indiana | |
| Ducks, mergansers, and coots: | |
| North Zone | Sept. 23-Oct. 17 & Dec. 8-Dec. 19 |
| South Zone | Oct. 7-Oct. 24 & Oct. 28-Nov. 7 & Jan. 4-Jan. 11 |
| Ohio River Zone | Oct. 14-Nov. 19 |
| Iowa | |
| Ducks, mergansers, and coots: | |
| Statewide | Dec. 15-Jan. 29 |
| Dark Geese: | |
| North Zone | Dec. 13-Jan. 18 |
| South Zone | Oct. 13-Oct. 17 & Dec. 18-Jan. 18 |

| | Extended Falconry Dates |
|---|---|
| Kentucky | |
| Ducks, mergansers, and coots: | |
| Statewide | Nov. 5-Nov. 26 & Jan. 19-Jan. 31 |
| Canada Geese: | |
| Western Goose Zone | Nov. 5-Dec. 5 |
| Pennyroyal/Coalfield Zone | Nov. 5-Dec. 27 |
| Rest of State | Nov. 5-Dec. 12 |
| White-fronted geese and brant: | |
| Western Goose Zone | Nov. 5-Nov. 26 |
| Rest of State | Nov. 5-Nov. 26 |
| Light Geese | Nov. 24-Nov. 26 |
| Michigan | |
| Ducks, mergansers, coots, and moorhens: | |
| North Zone | Sept. 7-Oct. 3 & Dec. 3-Dec. 12 & Mar. 1-Mar. 10 |
| Middle Zone | Sept. 7-Oct. 3 & Dec. 3-Dec. 12 & Mar. 1-Mar. 10 |
| South Zone | Sept. 7-Oct. 10 & Dec. 10-Dec. 12 & Mar. 1-Mar. 10 |
| Minnesota | |
| Rails and snipe | Nov. 5-Dec. 16 |
| Woodcock | Nov. 4-Dec. 16 |
| Ducks, mergansers, coots, moorhens, and gallinules | Sept. 1-Oct. 3 & Dec. 3-Dec. 16 |

| | Extended Falconry Dates |
|---|---|
| Minnesota (cont.) | |
| Canada geese, white-fronted geese, and brant: | |
| West Zone: West Central Zone | Oct. 4-Oct. 10 & Nov. 10-Dec. 16 |
| Rest of West Zone | Nov. 13-Dec. 16 |
| Northwest Zone | Nov. 13-Dec. 16 |
| Rest of State | Dec. 13-Dec. 16 |
| Mississippi | |
| Mourning doves | Dec. 1-Dec. 19 & Jan. 11-Feb. 7 |
| Ducks, mergansers, and coots | Nov. 17-Nov. 21 & Feb. 7-Mar. 10 |
| Missouri | |
| Ducks, mergansers, and coots: | |
| North Zone | Sept. 13-Sept. 21 & Oct. 6-Oct. 22 & Dec. 22-Jan. 11 |
| Middle Zone | Sept. 13-Sept. 21 & Oct. 6-Oct. 29 & Dec. 29-Jan. 11 |
| South Zone | Sept. 13-Sept. 21 & Oct. 6-Nov. 12 |
| Ohio | |
| Ducks, mergansers, and coots: | |
| Pymatuning Area | Oct. 27-Nov. 1 & Dec. 27-Jan. 15 |
| North Zone | Dec. 6 only & Dec. 23-Jan. 18 |
| South Zone | Nov. 3-Nov. 30 |
| Ohio River Zone | Nov. 3-Nov. 30 |

| | Extended Falconry Dates |
|---|---|
| Tennessee | |
| Ducks, mergansers, and coots: | |
| Statewide | Sept. 18-Oct. 28 |
| Wisconsin | |
| Rails, snipe, moorhens, and gallinules: | |
| North Zone | Sept. 1-Oct. 3 & Dec. 3-Dec. 16 |
| South Zone | Sept. 1-Oct. 3 & Dec. 3-Dec. 16 |
| Woodcock | Sept. 1-Sept. 19 & Nov. 4-Dec. 16 |
| Ducks, mergansers, and coots: | |
| Statewide | Sept. 13-Oct. 3 & Dec. 3-Dec. 9 & Feb. 20-Mar. 10 |
| CENTRAL FLYWAY | |
| Kansas | |
| Ducks, mergansers, and coots: | |
| Low Plains: | |
| Early Zone | Dec. 8-Dec. 14 & Feb. 21-Mar. 8 |
| Late Zone | Oct. 10-Oct. 17 & Oct. 19-Oct. 24 & Feb. 28-Mar. 8 |
| Montana (4) | |
| Ducks, mergansers, and coots: | |
| Zone 1 | Sept. 24-Sept. 26 & Sept. 28-Oct. 3 |
| Zone 2 | Sept. 24-Sept. 26 & Sept. 28-Oct. 3 |

| | Extended Falconry Dates |
|---|---|
| Nebraska | |
| Ducks, mergansers, and coots: | |
| High Plains | Sept. 28-Oct. 3 & Dec. 16-Dec. 18 |
| Low Plains: | |
| Zones 1 and 2 | Sept. 28-Oct. 10 & Dec. 22-Dec. 26 & Dec. 29-Jan. 11 |
| Zones 3 & 4 | Sept. 28-Oct. 3 & Dec. 15-Dec. 19 & Dec. 22-Jan. 11 |
| Oklahoma | |
| Ducks, mergansers, and coots: | |
| Low Plains: | |
| Zone 1 | Oct. 6-Oct. 18 & Oct. 20-Oct. 24 & Dec. 8-Dec. 12 |
| Zone 2 | Dec. 8-Dec. 12 & Jan. 19-Feb. 5 |
| South Dakota | |
| Ducks, mergansers, and coots: | |
| Low Plains: | |
| North Zone | Sept. 4-Sept. 26 & Sept. 28-Oct. 3 & Dec. 17-Dec. 19 |
| Middle Zone | Sept. 4-Sept. 26 & Sept. 28-Oct. 3 & Dec. 17-Dec. 19 |
| South Zone | Sept. 8-Sept. 26 & Sept. 28-Oct. 10 |
| High Plains | Sept. 4-Sept. 12 |

| | Extended Falconry Dates |
|---|---|
| Texas | |
| Ducks, mergansers, and coots: | |
| Low Plains | Jan. 19-Feb. 10 |
| Woodcock | Nov. 24-Dec. 17 & Feb. 1-Mar. 10 |
| PACIFIC FLYWAY | |
| Arizona | |
| Ducks and mergansers: | |
| North Zone | Oct. 5-Oct. 9 |
| South Zone | Jan. 25-Jan. 29 |
| California | |
| Ducks, mergansers, and coots: | |
| Northeastern Zone | Jan. 12-Jan. 17 |
| Colorado River Zone | Jan. 25-Jan. 29 |
| Southern Zone | Jan. 19-Jan. 25 |
| Balance-of-State Zone | Jan. 19-Jan. 25 |
| Southern San Joaquin Zone | Jan. 19-Jan. 25 |
| Canada Geese: | |
| Northeastern Zone | Jan. 5-Jan. 17 |
| Southern Zone | Oct. 11-Oct. 17 Jan. 19-Jan. 25 |
| Balance-of-State Zone (5): San Joaquin Valley Area | Oct. 11-Oct. 31 & Nov. 23-Jan. 25 |
| Rest of Zone | Oct. 11-Oct. 31 & Jan. 19-Jan. 25 |

| | Extended Falconry Dates |
|---|---|
| California (cont.) | |
| White-fronted Geese: | |
| Northeastern Zone | Oct. 27-Jan. 17 |
| Southern Zone | Oct. 11-Oct. 17 & Jan. 19-Jan. 25 |
| Balance-of-State Zone: Sacramento Valley Closure | Oct. 11-Oct. 31 & Dec. 15-Jan. 25 |
| Rest of Zone | Oct. 11-Oct. 31 & Jan. 9-Jan. 25 |
| Brant | Oct. 4-Oct. 31 & Dec. 1-Jan. 17 |
| Light Geese: | |
| Northeastern Zone | Jan. 5-Jan. 17 |
| Southern Zone | Oct. 11-Oct. 17 & Jan. 19-Jan. 25 |
| Balance-of-State Zone (5) | Oct 11-Oct. 31 Jan. 19-Jan. 25 |
| Montana (2) | |
| Geese | Jan. 12-Jan. 18 |
| New Mexico (2) | |
| Geese (6) | Oct. 4-Oct. 10 |
| Utah | |
| Light Geese | Jan. 12-Jan. 18 |
| Dark Geese: Washington County | Oct. 4-Oct. 10 |
| Rest | Jan. 12-Jan. 18 |
| Wyoming | |
| Rails | Sept. 1-Sept. 12 & Nov. 17-Dec. 14 |

* * * * *

(5) In California, the falconry season for Canada geese is closed in Del Norte and Humbolt Area, and the Sacramento Valley Area.

(6) In New Mexico, the daily bag limit for light geese is 1 and the possesion limit is 6.

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Tuesday
September 30, 1997

# Part VI

# Department of Transportation

## Coast Guard

**46 CFR Part 170, et al.**

**Small Passenger Vessel Inspection and Certification; Final Rule**

**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**46 CFR Parts 170, 171, and 173 and Chapter I, Subchapters K and T**

**[CGD 85–080]**

**RIN 2115–AC 22**

## Small Passenger Vessel Inspection and Certification

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is adopting, as a final rule with some changes, the interim final rule which completely revised the regulations affecting small passenger vessels of less than 100 gross tons. This rule creates a separate subchapter for small passenger vessels carrying more than 150 passengers or having overnight accommodations for more than 49 passengers, provides additional alternatives to certain required lifesaving equipment, adopts additional industry standards, and establishes new upper-limit breakpoints above which a passenger vessel of less than 100 gross tons must comply with the same construction and outfitting requirements applicable to a passenger vessel of 100 gross tons or more. It also updates the regulations to accommodate the advanced technology, larger size, and increased passenger-carrying capacity of small passenger vessels.

**DATES:** This rule is effective October 30, 1997. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register on October 30, 1997.

**ADDRESSES:** Documents as indicated in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G–LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street SW., room 3406, Washington, DC 20593–0001 between 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:** Lieutenant Eric P. Christensen, Project Manager, Office of Operating and Environmental Standards, (G–MSO–2), phone 202–267–1181, telefax 202–267–4570.

**SUPPLEMENTARY INFORMATION:**

### Regulatory History

A Notice of Proposed Rulemaking (NPRM), published in the **Federal Register** (54 FR 4412) of January 30, 1989, contained a proposed revision of 46 CFR chapter I, subchapter T, concerning the inspection and certification of small passenger vessels. The NPRM also proposed a revision to those portions of 46 CFR chapter I, subchapter S, affecting the subdivision and stability of small passenger vessels. The NPRM comment period was originally scheduled to expire on May 31, 1989, but was extended to July 31, 1989. Public meetings were held on the NPRM in Washington, DC, St. Louis, New Orleans, San Francisco, Chicago, and Boston. Over 225 people attended and 116 presented their views at the meetings.

The Coast Guard received over 300 comment letters on the NPRM providing both support and criticism of the various proposed changes. Based on the comments received, the Coast Guard published a Supplemental Notice of Proposed Rulemaking (SNPRM) (59 FR 1994) on January 13, 1994. The SNPRM significantly changed the NPRM by proposing (1) the creation of a separate, new subchapter (46 CRF chapter I, subchapter K) just for small passenger vessels carrying more than 150 passengers or having overnight accommodations for more than 49 passengers; (2) alternatives to certain required lifesaving equipment; (3) greater recognition of industry standards; and (4) the establishment of new upper limits above which a vessel would have to comply with the construction and outfitting requirements applicable to a passenger vessel of more than 100 gross tons. During the 150 day comment period, the Coast Guard received over 160 letters raising over 900 separate issues. Public meetings were held on the SNPRM in New London, Seattle, Chicago, Annapolis, Tampa, Cincinnati, and Long Beach. Over 225 persons attended and 80 presented their views at the meetings.

On January 10, 1996, the Coast Guard published an Interim Final Rule (IFR) in the **Federal Register** (61 FR 864). During the 150 day comment period, the Coast Guard received 37 letters containing over 350 comments. Public meetings were held on the IFR in St. Louis, Oakland, Mobile, and New Haven. Over 130 persons attended and 36 members of the public presented their views on the IFR at the meetings.

### Background and Purpose

Subchapter T contained the regulations for the inspection and certification of small passenger vessels, including requirements for construction, outfitting of lifesaving and fire protection equipment, machinery and electrical installations, and operations. Since the subchapter's last major revision in 1963, significant changes have occurred affecting the small passenger vessel fleet, including (1) statutory changes, (2) increases in vessel size and passenger carrying capacity,(3) increases in the services offered by the owners and operators of small passenger vessels, (4) expansions of vessel routes, and (5) technological advances. Consequently, this rulemaking is necessary to respond to these changes.

### Summary of Changes to the IFR

This final rule adopts, as is, the interim final rule published on January 10, 1996, with the following notable changes:

(1) Small passenger vessels are no longer grouped into three categories for regulatory purposes, as provided in the IFR. Separate treatment of small passenger vessels carrying more than 600 passengers or having overnight accommodations for more 150 passengers (the group known as ''$K^1$'' or ''K prime'') has been removed. In this final rule, all small passenger vessels are grouped into two categories. Vessels carrying more than 150 passengers or having overnight accommodations for more than 49 passengers are under subchapter K (46 CFR parts 114 through 122). All other small passenger vessels are under subchapter T (46 CFR parts 175 through 185).

(2) The only change to the IFR that could have a substantial economic impact results from the removal of the $K^1$ category. It is the requirement for stairtowers landing areas, which is restored for vessels having overnight accommodations for more than 49 passengers. However, because this type of vessel was built to the guidelines in Coast Guard NVIC 11–83 (''Regulations for Very Large 46 CFR Subchapter T Vessels''), which called for stairtower landing areas in accordance with subchapter H, this change will have no affect on existing vessels. In addition, it will provide consistency for boat builders who have built this type of vessel for the past 13 years.

The remaining changes, for the most part, are made to realign the text after the removal of the $K^1$ category, to correct errors in the Code of Federal Regulations, and to fine-tune the IFR in response to comments.

### Discussion of Comments and Changes

(a) *General.*

(1) Eleven comments recommended that the breakpoint between subchapter K and K′ be raised from 600 to 1,000 passengers to be in line with two compartment subdivision. Two comments noted that over the course of the rulemaking process, several vessels have been built which would fall into

the K′ category (600+ passengers). Though not required to be built to the extensive subchapter H standards (passenger vessels of 100 gross tons or more) called for in K′ these vessels have operated safely for years, and it was recommended that the breakpoint for these vessels be increased to 1,000 passengers.

The Coast Guard partially agrees. Two-compartment subdivision begins at 600 passengers. Of the 450 subchapter K vessels identified in the IFR, only 35 carried over 600 passengers. Some of these vessels were built as far back as 1944. The operating record of these vessels is satisfactory. However, the Coast Guard is concerned with the trend of building larger vessels by manipulating the exemptions to the tonnage rules. The Coast Guard has determined that additional requirements for vessels carrying overnight or large numbers of passengers are appropriate. However, the Coast Guard agrees that adherence to all of the requirements in subchapters H, F, and J is not warranted on small passenger vessels.

NVIC 11–83, ''Regulations for very large 46 CFR Subchapter T vessels,'' identified additional safety requirements for vessels carrying more than 49 overnight passengers that could be applied by the OCMI based on the increased size of the vessel. These additional requirements were taken from subchapters F, H, J and S. In July, 1995, Change 1 to the NVIC added vessels carrying more than 600 passengers to the NVIC's applicability. Many of the recommendations contained in the NVIC were incorporated into subchapter K under the SNPRM and IFR. The Coast Guard stated that subchapter K was to be the middle ground between traditional small passenger vessels under subchapter T and large passenger vessels under subchapter H.

In order to determine a course of action, the Coast Guard compared the recommendations of NVIC 11–83, including Change 1, to the regulations contained in the IFR for subchapter K and K′ vessels. In addition, vessels identified in the Marine Safety Information System (MSIS) as carrying more than 600 passengers and admeasuring less than 100 gross tons had their systems and equipment compared to the NVIC. Based upon these reviews, the Coast Guard decided to eliminate the K′ thresholds and place, in subchapter K, additional requirements on vessels carrying more than 600 passengers to focus on the safety concerns of larger vessels. The elimination of 200 feet and 150 overnight passenger thresholds from subchapter K was based on the data collected by the Coast Guard. Only 3 of the vessels identified were over 200 feet in length. This equates to less than a tenth of one percent of the total small passenger vessel fleet of over 5,500 vessels. Clearly, it is not the industry standard to build vessels over 200 feet that admeasure less than 100 gross tons. As for the elimination of the 150 overnight passenger threshold, the Coast Guard has determined that the additional requirements, formerly applied in accordance with NVIC 11–83 to vessels carrying more than 49 overnight passengers and now included in this rule, are appropriate for small passenger vessels carrying more than 150 overnight passengers. The Coast Guard has identified only one vessel, the QUEEN OF THE WEST, that is a subchapter K vessel carrying more than 150 overnight passengers.

Specific changes to the subchapter K regulations include the requirements for an independently-driven fire pump, two electrical generating sets, exit lights, floodlights for lifeboat and liferaft embarkation stations, and emergency lighting for vessels carrying more than 600 passengers. These requirements already exist in the IFR for vessels carrying more than 49 overnight passengers. In addition, stairtower landing area requirements for vessels carrying more than 600 passengers have been placed in § 116.438, and fire hydrant requirements have been placed in § 118.310. The fire hydrant valve requirement was believed to be omitted from the IFR and is considered good marine practice.

Both the stairtower and fire main requirements were contained in NVIC 11–83. Therefore, the Coast Guard has determined that the changes in the final rule should have no impact on vessels carrying more than 49 overnight passengers because this type of vessel has been designed and built to the NVIC for over 13 years.

The Coast Guard has determined that by specifically addressing the additional requirements in subchapter K, rather than referring to part 72 in subchapter H for structural fire protection or to applicable parts of subchapters F and J for machinery and electrical requirements, a consistent minimum level of safety is achieved. It also eliminates confusion in interpreting the word ''applicable.'' In addition, the Coast Guard has determined that although this is a relatively significant change to the regulations, the overall impact to the subchapter K vessel fleet is a reduction in regulations for constructing vessels carrying more than 600 passengers.

(2) Two comments recommended that indices for subchapters K and T be added to title 46, Code of Federal Regulations. They appear in the October 1, 1996, edition of title 46.

(3) Two comments noted that these regulations have not used grandfathering as extensively as in previous regulations despite the absence of specific dangers to public safety.

As discussed in the preambles of the NPRM and SNPRM, the Coast Guard considers the use of grandfathering and phase-in periods in this rule appropriate. The Coast Guard uses grandfathering extensively in this rule. Existing vessels are grandfathered for construction and arrangement, electrical, and machinery requirements unless the vessel undergoes a major conversion or adds new equipment. Additional requirements in firefighting, lifesaving, and vessel operations (crew training) are considered appropriate. The Coast Guard acknowledges that the small passenger vessel industry is safe; however, casualties still occur and life and property are lost as a result. The revised regulations contained in the IFR and final rule will result in an increased level of safety for passengers and crew alike.

(4) Two comments asked for a list of all documents, such as Navigation and Vessel Inspection Circulars (NVIC's), Policy File Memorandums from G–MCO (formerly G–MVI), Coast Guard Headquarters (HQ) policy letters, and Marine Safety Manual (MSM) sections, that are canceled or revised as a result of this rule. They are:

NVIC 11–83 with Change 1 ''Regulations for Very Large 46 CFR Subchapter T Passenger Vessels'' (Canceled).

G–MVI Policy letter 13–86 ''Certificated Small Passenger Vessels Carrying Six or Less Passengers'' (Canceled).

G–MVI Policy letter 22–89 ''Watertight Doors in Subdivision Bulkheads on Small Passenger Vessels'' (Canceled).

G–MVI Policy letter 16–93 ''Drydock Extensions for Small Passenger Vessels (T-Boats)'' (Canceled).

G–MVI Policy letter 05–95 ''Policy on Rail Heights for Passenger Vessels and Small Passenger Vessels'' (Revised).

Policy File Memorandum (PFM) 1–94 on very low fire load options (still in effect and will be incorporated into NVIC 6–80 on structural fire protection).

(5) Two comments concerned 46 CFR chapter I, subchapter Q, which contains requirements for the specification and approval of equipment, construction, and materials and which is referenced in subchapters K and T. They

recommend that subchapter Q be repealed because the practice of approving equipment is outdated in this age of comprehensive consensus standards, corporate quality control, and the rapidly evolving technology in materials and innovative equipment.

The Coast Guard disagrees that subchapter Q is unnecessary. Where certain items of equipment are required by statute or regulation to be carried on a vessel, the Coast Guard equipment approval system is an invaluable resource for ship operators who would otherwise be uncertain if a particular item would be acceptable. It ensures that requirements are applied uniformly to all vessels and eliminates the need for case-by-case evaluations by an Officer in Charge, Marine Inspection (OCMI). Some specifications in subchapter Q are outdated and in need of revision. However, acceptance standards are still needed to ensure that critical materials and equipment meet minimum national or international safety standards. As resources allow, the Coast Guard intends to revise subchapter Q to maximize the use of performance standards and suitable industry consensus standards. The Coast Guard is very active in encouraging and assisting in the development of industry and international standards.

(6) Two comments suggested that the recommendations of the National Transportation Safety Board (NTSB) (M–95–37 through 39) resulting from the ARGO COMMODORE casualty should be implemented before publishing a final rule.

The Coast Guard has provided a response to the NTSB regarding those recommendations. The recommendations were considered in developing these regulations; however, problems surrounding the onboard firefighting efforts in this casualty were more related to personnel and training than to equipment.

(7) Two comments asked why there were 55 outstanding NTSB requirements concerning the safety of small passenger vessels.

The Coast Guard has resolved virtually all of the previously outstanding NTSB recommendations concerning small passenger vessels.

(8) Six comments stated that there were too many new regulations; industry cannot take any more.

The Coast Guard notes that many of the rulemaking projects published in the last year have centered around the adoption of industry standards and the removal of obsolete regulations. These regulations are designed to ease the burden on industry. Other new rulemakings, such as the implementation of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW) and the revision of 46 CFR chapter I, subchapter W, (Lifesaving Appliances) are in response to changes in the International Convention for the Safety of Life at Sea, 1974, (SOLAS) and are mandated by international treaty. Where possible, the Coast Guard tries to minimize the impact of SOLAS amendments on the domestic fleet. The small passenger vessel rulemaking has been in development since 1985 and industry has commented on three different versions of proposed and interim regulations. Because of the extensive public participation in this rulemaking at the 17 public meetings and by the submission of written comments, the new small passenger vessel regulations will be a viable, flexible standard for the next 30 years.

(9) One comment recommended that the operators of passenger vessels be held accountable for the safety of the passengers who consume alcoholic beverages on the vessels.

The master is already responsible for the safety of the passengers and crew on board the vessel. The Coast Guard has determined that additional regulations are not required to clarify this point.

(10) One comment noted that accident and risk analysis criteria needed to be better developed if used in developing regulations. The comment also noted that the statistics for passenger vessel casualties included foreign flag vessels. The comment stated that 35 percent of casualties occurred on diving boats where the casualty had nothing to do with the vessel's equipment. In addition, a number of casualties were dockside and had nothing to do with the operation of the vessel. It recommended that the Coast Guard rethink how it handles casualties. Just because vessels are getting bigger does not mean that they are not as safe.

The Coast Guard notes that there are several related efforts that have been undertaken to improve risk analysis. They are as follows:

(a) A Risk-Based Technologies (RBT) Management Team has been established to guide risk analysis development. The RBT Management Team is coordinating the risk activities of the Coast Guard Headquarter's Office of Marine Safety with reference to other government agencies and the International Maritime Organization (IMO).

(b) A Marine Board study entitled ''Risk Assessment and Management of Marine Systems'' and is slated to be completed in mid 1997. The goal of this project is to learn to understand and use the different risk assessment methodologies.

(c) An internal instruction providing guidance in risk-based decision-making to the Captain of the Port (COTP), due in December 1997, will provide technical and administrative guidance to the field on how risk assessment and management can and should be used in support of Commandant (G–M)'s Business Plan goals.

(d) The Marine Safety Evaluation Program (MSTEP) is based on the use of risk-based technologies and is designed to improve the current process of assessing the safety of marine systems that are within the Coast Guard's regulatory domain.

In formulating these regulations, the Coast Guard focused on casualties to small passenger vessels. The Coast Guard has commended the industry throughout the rulemaking process on its history of safe-operations and tried to keep new requirements narrowed to the areas of most concern.

(b) *Comments on and Changes to Particular Provisions of the IFR*

*Sections 114.110 and 175.110 General Applicability*

(1) One comment recommended that the breakpoint for subchapter T boats carrying overnight passengers needs to be increased from 49 to 100 passengers based on the safe operating record of these vessels.

The Coast Guard disagrees. Many of the requirements for subchapter K vessels with 50 or more overnight passengers were in existence under the old small passenger vessel policy in the form of NVIC 11–83. The safe operating record of this segment of the industry may be the result of Coast Guard guidelines that have been in place for years.

(2) One comment suggested that 200 feet not be used as a breakpoint for limit for subchapter K′. Tonnage is the self limiting criteria. One comment stated that the American Bureau of Shipping (ABS) rules for vessels less than 200 feet will be revised to apply to vessels less than 300 feet.

The Coast Guard has determined that gross tonnage is not a self-limiting criteria. While the Coast Guard agrees that an upper size-limit is necessary to address manning and passenger safety concerns, historically, small passenger vessels rarely exceed 200 feet in length. According to Coast Guard data, the longest subchapter K vessel is 230 feet. The Coast Guard has determined that the requirements applicable to vessels carrying more than 600 passengers or more than 49 overnight passengers adequately address the minimum

construction and equipment requirements for larger, small passenger vessels. Future rulemakings regarding alternate tonnage will set a size threshold for subchapter K vessels and maintain the subchapter-K-class vessel as the middle ground between vessels under subchapters T and H. Once the ABS Rules are published, the Coast Guard will consider incorporating the new rules by reference in these regulations.

(3) One comment recommended that the applicability sections of these regulations be aligned with the Passenger Vessel Safety Act of 1993.

The Coast Guard agrees and the regulations in §§ 114.110 and 175.110 have been so aligned.

*Sections 114.400 and 175.400 Definitions of Terms Used in This Subchapter*

(1) One comment recommended that the definition of ''accommodation space'' be revised to allow space-heating equipment with an element temperature in excess of 250 °F (121 °C).

The Coast Guard concurs. The intent of the 121 °C temperature limitation was to ensure that cooking equipment normally associated with a galley would not be installed in an accommodation space. The definition of ''accommodation space'' has been amended to use the same terminology as the definition of ''galley.''

(2) One comment suggested that the definition of ''cold water'' allow for more OCMI discretion for vessels that operate in cold water for only a couple of months of the year.

The Coast Guard disagrees because the OCMI has adequate authority under § 114.550 to give special consideration to the application of the cold water requirements if warranted by the circumstances.

(3) Four comments noted that, under the definition of ''exposed waters,'' the definition for winter season in the Great Lakes infers that all waters inside 20 nautical miles are partially protected waters. The definition of ''partially protected waters'' does not contradict this. The comment asked if the change was intended.

The definition of ''exposed waters'' for the Great Lakes did not change with the publication of the IFR. OCMI's have always had the authority to declare certain waters within 20 miles of a harbor of safe refuge exposed for the purpose of stability.

(4) One comment noted that the definition of ''hardwood,'' as used in the wood industry, is not based on specific gravity. The performance intended is the resistance to fire and hardwoods normally possess good fire-resistance qualities. In general, hardwoods have specific gravity between 0.5 and 0.8. Coast Guard policy, written in 1980 (NVIC 6–80), states ''oak or similar hardwood.'' The word ''similar'' refers to properties involving the material's resistance to fire. Although it can reasonably be concluded that dense woods such as those with a specific gravity in excess of 0.66 would be resistant to fire, such a definition is not necessary for regulatory purposes and has not presented a problem for at least the past 16 years.

The Coast Guard has revised the definition to specifically mention oak and its fire resistant properties.

(5) One comment noted that the definition of ''hazardous condition'' includes illness of a person on board. Though seasickness is not considered an illness by most people in the sport fishing community, prolonged seasickness can have a profound effect on a person's ability to think clearly and to maintain balance.

The Coast Guard agrees that seasickness can be quite debilitating and create a hazardous condition. If an individual can no longer function, possibly due to dehydration, the master should consider either providing medical attention on board or removing the individual from the vessel.

(6) Four comments requested that the definition of ''High Speed Craft'' (HSC) be clarified. They asked if the IMO HSC Code applies only to international conventions? Could STCW bring in the HSC criterion? What does the phrase ''the aforementioned generality'' mean? Could a basic, every-day, mono-hull boat under subchapters K and T that is in domestic service and equipped with extra horsepower for prolonged engine life or operating conditions be considered an HSC? Sections 114.540 and 175.540 state that the IMO HSC Code can be used as an equivalent to the requirements contained in subchapters K and T, respectively.

The Coast Guard does not make a determination on whether a vessel is an HSC without the owner of the vessel applying for HSC Code equivalency. The requirements under STCW contain no additional requirements for vessels meeting the HSC Code definition. Vessels operating on domestic voyages are allowed to apply for the HSC equivalency, but do not necessarily need to receive SOLAS HSC certification. However, once the Coast Guard has granted HSC equivalency to a small passenger vessel, the code must be complied with in its entirety. In order to avoid confusion and make the HSC Code definition more readable, the term ''aforementioned generality'' has been removed.

(7) Twelve comments recommended that paragraph (3) of the definition ''major conversion'' be deleted. The comments remarked that operators should not be discouraged from doing things to substantially prolong the life of their vessels. Normal maintenance itself prolongs the life of a vessel. The comments also noted that the definition is too broad. One comment recommended the definition be changed to mean a conversion of a vessel that, as determined by the Commandant, substantially adds to the length, beam, height, or draft of the vessel in order to accommodate an increase of more than 15 percent of the passengers currently authorized.

The definitions of ''major conversion'' are based upon statute. The Coast Guard agrees that normal maintenance prolongs a vessel's life and supports continuous maintenance. Normal maintenance does not constitute a major conversion. However, the Coast Guard does not agree that an arbitrary 15 percent should be added to the definition. The Coast Guard will continue to use the current definition and apply it to vessels on a case-by-case basis.

(8) One comment recommended that the last sentence of the definition of ''means of escape'' be deleted because the terms ''exit,'' ''exit access,'' and ''exit discharge'' are not familiar to the maritime community. The terms are used in National Fire Protection Association (NFPA) 101.

The Coast Guard agrees in part. A key difference between the means of escape under subchapters K and T and under subchapter H is that protected escape routes are not required in vessels constructed to subchapter T. However, vessels constructed to subchapters K or H must have protected escape routes culminating at protected areas where passengers are separated from the effects of fire or flooding. The terms ''exit,'' ''exit access,'' and ''exit discharge'' are intended to indicate that protected escape routes are made up of many differing components, including corridors, stairways, and stairtowers, which must provide continuously protected access from a space to an area of refuge. The last sentence of the definition in subchapter T has been deleted.

(9) Six comments recommended that the definition of ''new vessel'' be changed to allow vessels started before March 11, 1996, to be completed after September 11, 1996.

The Coast Guard advises that this practice has been done on a case-by-case

basis. Extending the date would only cause confusion and another round of appeals. By the time this rule is published, this issue will be moot.

(10) Three comments recommended that the definition of ''pantry'' be aligned with the IMO definition of pantry, which refers to a space that does not contain heat sources with temperatures exceeding 425°F.

The Coast Guard disagrees. The IMO definition, as contained in SLS.17/Circ.3, uses terms such as ''appliances consuming small amounts of electrical power'' and ''hot plates for keeping food warm.'' Since these terms are somewhat vague, they are more difficult to apply and enforce. No changes were made to the definition.

(11) One comment requested that definitions for the following terms be added to allow for better use of the regulations and to assist personnel in answering questions on Coast Guard exams. The terms include ''enclosed space,'' ''partially enclosed space,'' ''fire station,'' ''floodable length,'' ''bulkhead deck,'' ''collision bulkhead,'' ''coaming,'' ''hull strainer,'' ''hydrostatic release unit,'' ''pendant,'' ''lifeline'' (by revising 46 CFR 160.010–3(g) and 160.027 to correct problems with life float and buoyant apparatus lifelines and pendants), ''positive action valve'' (defined so a store clerk can understand), ''pressure vessel,'' and ''ships service.''

The Coast Guard has determined that adding these definitions would not add any value to the regulation. Instead of adding a definition for ''fire station,'' the Coast Guard has changed the term ''fire station(s)'' to ''fire hydrant(s)'' throughout the rule. The Coast Guard is unclear as to what the ''problems'' with lifelines and pendants are; the current specifications have been used successfully since 1982. Changes to the buoyant apparatus and lifefloat specification subparts in subchapter Q are beyond the scope of this rulemaking.

(12) Based on a working review and use of the IFR, the Coast Guard has made the following additional changes to this section in order to correct any errors and make it more readable. The definition of ''atrium'' has been modified by removing ''escalator opening'' from the list of purposes an atrium could not be used for to resolve a conflict with § 116.440. Section 116.440 allows an escalator to be installed in an atrium, provided that the footprint of the escalator is subtracted from opening area computations.

(13) The Coast Guard has amended the definition of ''auxiliary machinery space'' to include spaces that contain refrigeration equipment.

Accordingly, spaces that contain refrigeration equipment are removed from the definition of ''machinery space.''

(14) Definitions of ''low risk service space'' and ''high risk service space'' are amended to change motion picture rooms from high risk to low risk. Motion picture rooms have not posed a significant fire risk since nitrocellulose film was phased out several years ago. Additionally, the break point for cleaning gear lockers has been changed from a fire load basis to a size and contents basis to be consistent with the interpretation of subchapter H. Additionally, ''small'' cleaning gear lockers (less than 5 square meters) may be considered type 6 spaces if they do not contain flammable liquids.

(15) Changes are made to the definitions of ''accommodations space,'' ''high risk accommodations space,'' ''overnight accommodations or overnight accommodations space,'' and ''passenger accommodations space'' to recognize the addition of a type 6 space. See the discussion on § 116.415 in this preamble for information on the addition of type 6 spaces.

*Sections 114.540 and 175.540 Equivalents*

The Coast Guard is amending §§ 114.540(b) and 175.540(b) by removing the word ''pending'' because IMO adopted the HSC code on May 20, 1994.

*Sections 114.560 and 175.560 Appeals*

Nine comments recommended that the Coast Guard be required to answer industry appeals within 30 days of receipt.

The Coast Guard acknowledges that recent appeals, such as that for the SCHOONER AMERICA, illustrate that short-turnaround appeals can be completed within 24 hours. The Coast Guard has determined that 30 days is an appropriate length of time for responding to most industry inquiries or appeals. Internally, the Coast Guard places a 30-day due date on correspondence received from the public. In such a case, the respondent should receive a response within 45 days, including mail delays. However, some issues are more complex and require more research and time to arrive at an appropriate response. Conversely, some appeals come up out of the blue and need an immediate resolution. Like any concern with over 10,000 customers, the Coast Guard prioritizes tasks and accomplishes them as resources allow. As stated in the preamble to the IFR, a revision to 46 CFR 1.03 is beyond the scope of this rulemaking.

*Sections 114.600 and 175.600 Incorporation by Reference*

Several standards incorporated by reference have been changed to reference the most recent edition. In addition, based on revisions to §§ 116.300, 177.300, and 177.410, the ABS Guide for High Speed Craft and MIL-R–21607E(SH) ''Resins, Polyester, Low Pressure Laminating, Fire Retardant'' have been added.

*Sections 114.800 and 175.800 Approved Equipment and Material.*

The statement regarding equipment approvals in §§ 114.800 and 175.800 has been deleted by the Coast Guard, because this practice has not been done in years.

*Sections 115.107 and 176.107 Period of Validity.*

Eight comments expressed concern over inspection creep. The comments recommended that the Certificate of Inspection (COI) should expire on the last day of the month and year of inspection. An additional comment suggested that, with the three-year inspection interval, operators have an opportunity to enter into a trial streamline-inspection program. Reinspections could be done by the company and the Coast Guard could monitor the effectiveness of the inspection program during the vessel's triennial exam.

The Coast Guard notes that the three-year inspection interval is statutory in nature. The Coast Guard's Compliance Division (G-MOC) is examining the feasibility of establishing policies to reduce inspection creep. The streamlined-inspection program is being addressed under a separate Coast Guard rulemaking (CGD 96–055) and is beyond the scope of the this rulemaking.

*Sections 115.113 and 176.113 Passengers Permitted*

Two comments stated that existing vessels would suffer capacity losses under the criteria which establishes additional exceptions to the rail and area rules of thumb. They stated that, because there was no problem with the old system of determining passenger capacity, there is no need for change.

The prohibition of length of rail criteria used in conjunction with either fixed seating or deck area is not understood. The Coast Guard states that the new sections merely clarify what has been accepted practice by the Coast Guard for many years. Length of rail criteria was not allowed to be combined

with deck area or fixed seating under old § 176.01–25(b). Existing vessels should not be affected by this clarification of the old requirement.

*Sections 115.114 and 176.114 Alternative Requirements for a Vessel Operating as Other Than a Small Passenger Vessel*

(1) Three comments stated that, to be of any value to the industry, the ability to operate as other than an inspected vessel must come without the route, manning, and other restrictions in paragraph (c) of these sections.

The Coast Guard disagrees. The operating endorsements required under paragraphs (c) are placed on the COI to ensure the vessel meets the requirements for the intended uninspected service.

(2) Two comments stated that the wording is confusing and the intent of these sections needs to be explained in the preamble.

As stated in the preambles of the NPRM, SNPRM, and IFR, the intent of this section is to allow an inspected small passenger vessel to operate as an uninspected or recreational vessel by an endorsement on the vessel's COI. Under 46 U.S.C. 3313(a), a small passenger vessel must be in compliance with its COI at all times. Sections 115.114 and 176.114 are intended to provide for alternatives and allow small passenger vessels to remain competitive with uninspected vessels.

(3) Three comments recommended that the Coast Guard automatically endorse vessel COI's with an endorsement to operate under subchapter C.

The Coast Guard disagrees with automatic endorsement. As stated in the SNPRM preamble, by requiring an owner to request an endorsement, the Coast Guard can better ensure that the owner is aware of the implications of the endorsement and the applicable uninspected vessel requirements in 46 CFR chapter I, subchapter C, or recreational boat requirements in 33 CFR chapter I, subchapter S.

(4) One comment stated that paragraph (b)(2) is confusing with regard to minimum manning specified on the vessel's COI. According to the comment, minimum manning is always above what an owner may be requesting in accordance with this section.

The intent of paragraph (b)(2) is to allow the OCMI to state, on the COI, the required manning on the vessel based upon the type of operation and number of passengers carried. For example, many COI's have an endorsement stating that, when carrying less than 6 passengers, a deckhand is not required.

(5) Two comments asked why freight service is excluded. Freight service is less prone to safety issues than passenger service.

Freight service is not excluded. A small passenger vessel of more than 15 gross tons must meet the requirements of subchapters K or T as appropriate when carrying freight for hire. A vessel of 15 gross tons or less is an uninspected vessel when carrying freight for hire and, therefore, must meet the applicable requirements for an uninspected vessel.

*Sections 115.204 and 176.204 Permit to Carry Excursion Party*

Three comments recommended removing paragraph (c) so that the only limits on loading a vessel with an excursion permit are sufficient stability and appropriate lifesaving equipment. One comment noted that there has been a change to the old regulations that requires that the number of passengers be limited based on seating, deck area, and rail space.

The Coast Guard disagrees. The purpose of the excursion permit is to allow a passenger vessel to carry additional passengers or operate on a more severe route, or both, for a limited period of time, if the cognizant OCMI believes it can be done safely. The OCMI will not normally allow a vessel to carry more passengers than there is space available, regardless of sufficient stability. Overcrowding a vessel presents unique hazards, such as inadequate crowd control. The Coast Guard has determined that this is an unacceptable operating condition.

Many vessel operators limit the number of passengers carried on a routine basis for various reasons including survival-craft capacity, fire-pump requirements, and operator comfort. The vessel may have adequate stability and space available for additional passengers, but the operator may choose to carry fewer than the maximum calculated. In this case, an excursion permit would allow the operator to carry additional passengers without overcrowding the vessel and to stay within stability limitations.

The requirement to base passenger load on the passengers permitted criteria is taken from the Coast Guard's Marine Safety Manual. This practice has been in effect since 1960 and was placed in the SNPRM as a result of comments to the NPRM.

*Sections 115.310 and 176.310 Certification Expiration Date Stickers*

Four comments recommended that the Coast Guard eliminate the prohibition of operating in the event that the Certification Expiration Date Sticker is damaged or lost.

The Coast Guard disagrees. In the event the sticker is damaged, the owner should call the Coast Guard for another sticker. The function of the sticker is clearly defined in the regulations. Operating without a visible sticker may result in an at-sea Coast Guard boarding to verify the legality of the charter.

*Sections 115.402 and 176.402 Initial Inspection for Certification*

One comment recommended that builders be allowed to submit plans as well as owners.

The Coast Guard agrees. It is common practice for a builder to submit plans, on behalf of an owner, to the Coast Guard. However, it is the owner's responsibility to request an initial inspection for certification, which is the basis of the requirement. Once the application package is sent to the Coast Guard (including the plans from the builder), the owner may inform the Coast Guard to deal directly with the builder, as appropriate.

*Sections 115.404 and 176.404 Subsequent Inspections for Certification*

Two comments asked why language was added to this section allowing the OCMI to require the vessel to get underway. The comments also noted that this is not required of other inspected vessels.

The Coast Guard advises that the practice of getting vessels underway as part of the COI exam is common in many Marine Safety Office (MSO) zones. The language merely reaffirms the OCMI's authority to use an underway test to verify the condition of the vessel's internal structure, as well as machinery and steering. In addition, any drills the inspector may wish to conduct must be as if an actual emergency is taking place. A man-overboard drill at the dock lacks realism and is not as effective as an underway drill.

*Sections 115.500 and 176.500 When Required*

Two comments recommended that the wording be changed to reflect that a reinspection can take place 60 days on either side of the COI anniversary date, if that is the intent of the paragraph.

The Coast Guard advises that it is their practice to allow a 60 day window on either side of the COI date. No changes were made to these sections based on comments.

*Sections 115.600 and 176.600 Drydock and Internal Structural Examination Intervals*

(1) One comment noted that the drydock and internal structural examinations are written as if they are two separate examinations.

The Coast Guard advises that internal structural exams can be done with the vessel in or out of the water. In the past, some operators have hauled their vessels out of the water for only a short period of time and continued the internal exam back in the water. This option remains in place with the wording in the IFR.

(2) One comment stated that vessels less than 65 feet carrying less than 12 passengers on an international voyage are being adversely affected by the new annual drydock and internal exam requirement required by paragraph (b).

It is not the Coast Guard's intent to require vessels, not subject to SOLAS requirements, to meet standards derived from international standards. Language is added to the rule to indicate vessels subject to SOLAS requirements are to be hauled out annually.

*Sections 115.610 and 176.610 Scope of Drydock and Internal Structural Examinations*

One comment recommended that propeller shafts should not be examined and rudders should not be removed, unless there is obvious damage or the inspector can otherwise justify the action.

The Coast Guard agrees. These sections were revised as a result of comments to the SNPRM. Since these sections do not contradict the comment, no changes have been made to the rule.

*Sections 115.612 and 176.612 Notice and Plans Required*

Four comments stated that the wording in paragraph (b) is constrictive and is contrary to good maintenance practice in the field and in industry. The comments recommended that the words ''but not limited to'' be added after the word ''maintenance.''

The Coast Guard agrees and has added these words in both sections.

*Sections 115.630 and 176.630 Tailshaft Examinations*

Four comments recommended that tailshafts not be drawn, unless there is obvious damage or the inspector can otherwise reasonably justify the action.

The Coast Guard agrees. These sections were revised as a result of comments to the SNPRM. Since these sections do not contradict the comment, no changes have been made to the rule.

*Sections 115.700 and 176.700 Permission for Repairs and Alterations*

Five comments recommended that repairs in kind to maintain a vessel's material state should not require the permission of the OCMI.

Only repairs that involve altering a vessel's substantive characteristics or the safety of passengers must be reported to the OCMI for approval. The Coast Guard has determined that the language of this section satisfactorily addresses the comment. Repairs involving the replacement of plating, refastening, or other items covered in paragraph (a) require Coast Guard involvement because they affect passenger safety.

*Sections 115.802 and 176.802 Hull*

Six comments recommended that specific wording be added to paragraph (c) to reference the working of ''wood'' hulls. One comment queried that if underway inspections were not required for large vessels, then why are they required on small vessels other than wood vessels? Two comments stated that seasonal vessels do not keep crews on board year round so the personnel are not normally present for inspections. If personnel were required to be on hand, then it would be an added cost burden to an already overburdened industry. Two comments recommended that underway drills should be confined to dinner-cruise and excursion vessels, where passengers tend to be less aware of vessel operations than they are on fishing and dive boats.

As stated previously, underway inspections are commonplace at many MSO's regardless of hull material. Underway inspections verify the integrity of the hull structure regardless of hull material. Secondary bonds in fiberglass reinforced plastic (FRP) vessels and welds in aluminum and steel vessels can fail, resulting in an unsafe condition. Because the term ''working of the hull'' is more geared to wood hulls, the Coast Guard has deleted the words ''working of'' and added the words ''and internal structure'' to paragraph (c) to clarify the requirements. In addition, the operation of the main engines and steering gear under normal operating load can only be done underway. Performance of man overboard drills can also be better determined underway. With the new drill and crew training requirements in place, there should be a crew member on board during an inspection. The Coast Guard has determined that the days of inspections during ''winter lay-up'' are over. The owner will have to schedule an inspection when the vessel is completely ready for inspection. The Coast Guard has not determined that there is a significant cost burden to industry in order to comply with an underway inspection at the vessel's inspection for certification.

*Sections 115.808 and 176.808 Lifesaving*

In order to correct inconsistencies contained in the IFR, the Coast Guard has amended these sections to include the term ''inflatable buoyant apparatus.''

*Sections 115.812 and 176.812 Pressure Vessels and Boilers*

Four comments stated that referencing § 61.05 of subchapter F for pressure valves has reduced the inspection interval from three years to two. It was recommended that pressure vessel examinations be eliminated altogether due to the lack of casualty data and the cost to industry.

The Coast Guard notes that items not inspected become neglected. To say that, because there have been no problems with pressure vessels, they no longer need to be inspected, does not take into consideration the idea that it is the inspection that has reduced the risk. However, the Coast Guard has determined that the three-year interval is appropriate for the types of air receivers found on small passenger vessels and has amended these sections accordingly.

*Sections 115.920 and 176.920 Exemptions*

Two comments recommended that the Coast Guard add exemptions to the STCW-driven regulations.

This request is beyond the scope of this rulemaking but may be addressed under the Coast Guard's on-going rulemaking on STCW (CGD 95–062).

*Sections 116.202 and 177.202 Plans and Information Required*

(1) Five comments suggested that, with the Coast Guard's initiatives to streamline vessel inspections, plan approval will, most likely, be delegated to third parties. It was recommended that a time frame within which plans must be approved by the Coast Guard or a third-party organization be added to the rule.

The Coast Guard does not intend to delegate all plan review functions to third parties. However, depending on the type of vessel and plan, there may be options available for the use of classifications societies or professional engineers. The Coast Guard notes that time-frames are dependent on the number of plans submitted and personnel available for review. In

addition, requirements for plan approval were relaxed in the IFR by requiring that only basic scantling plans be approved before construction. By reducing the number of plans that require approval before construction and by enabling classification societies and professional engineers to review construction plans, the delays experienced in the past should be minimized.

(2) Two comments stated that cross curves of stability are not appropriate for subchapter T boats and are generally no longer used because of computers.

The Coast Guard notes that cross curves contain the calculation of righting arms for the various angles of heel. This data is necessary for evaluating the stability of a vessel. However, the Marine Safety Center (MSC) may accept, on a case-by-case basis, computer tabulated righting arm data, if calculated at a close enough interval to accurately approximate the righting arm curves.

(3) Two comments noted that electrical plant analysis is a new and time-consuming requirement for T-boats.

The Coast Guard advises that electrical plant load analysis is not necessarily required on T-boats. Section 177.202(b) contains the plans and information that may be required by an OCMI or MSC. For the electrical plant load analysis requirement, sufficient capacity of the electrical system needs to be determined by the Coast Guard. If the Coast Guard cannot determine that sufficient capacity exists, then the owner is required to provide evidence that the electrical system is of sufficient capacity.

(4) Two comments asked what constitutes reasonable destructive testing?

Reasonable destructive testing includes burnout tests for fiberglass reinforced plastic laminates to determine resin content and bend tests on welding coupons, when required.

*Sections 116.300 and 177.300 Structural Design*

One comment recommended that the ABS 1990 High Speed Craft guide be acceptable for scantlings of aluminum.

The Coast Guard agrees and has added this to the rule. In addition, the ABS rules are also acceptable for vessels constructed of fiberglass reinforced plastic.

*Sections 116.340 and 177.340 Alternate Design Considerations*

Four comments wondered what happened to the five-year rule.

The Coast Guard advises that the five-year rule has been retained from the SNPRM in § 177.310 of subchapter T.

*Section 116.405 General Arrangement and Outfitting*

(1) The requirements for plastic pipe in concealed spaces, as written in the IFR, are inaccurate and contradict subchapter F and current Coast Guard policy. As a result, the current text in § 116.405 (f)(1) and (f)(2) has been deleted and § 116.405(f) has been rewritten, requiring plastic pipe to be regulated in accordance with subchapter F and current Coast Guard policy.

(2) Seven comments to § 116.405(i) stated that heavy-duty, plastic waste receptacles are the industry standard, because they are non-rusting and lightweight. The comments requested that the use of plastic waste receptacles be authorized.

The Coast Guard states that the requirement for waste receptacles to be constructed of noncombustible materials is consistent with subchapter H and the old subchapter T. The new regulations in the IFR state the desired performance. This provides vessel owners with potential options by not explicitly restricting the use of plastics, as long as an equivalent level of safety can be achieved.

*Section 116.415 Fire Control Boundaries*

(1) The Coast Guard provides the following comments on Type 6 spaces. Tables 116.415(b) and (c) were modified in the IFR to be more consistent with subchapter H. However, for ease of application, the three types of accommodations spaces in subchapter H were simplified to two in subchapter K. Specifically, type 6 and type 7 spaces in subchapter H were consolidated into a single category (type 7) in subchapter K. This consolidation increased the boundary requirements for a number of spaces that would have been classified as type 6 in subchapter H. Therefore, the type 6 category has been added to subchapter K. Additionally, the bulkhead requirement in table 116.415(b) for a boundary between a type 5 and 7 space has been reduced from A–15 to B–15, in order to be consistent with subchapter H.

(2) Table 116.415(b) is amended to clarify that distinct stairtowers must be separated with A–0 bulkheads.

*Section 116.422 Ceilings, Linings, Trim, Interior Finish, and Decorations*

(1) Three comments recommended restoring the provision from the NPRM that allowed the use of gypsum wall board in boundaries not required to be structural fire control boundaries.

This issue was addressed in the preamble to the IFR. The regulations explicitly state the performance without making detailed reference to specific construction materials. Approved, noncombustible-faced gypsum board is available from several suppliers at a comparable cost to paper-faced gypsum board.

(2) One comment suggested that the term ''combined area of the bulkheads'' in § 116.422(c)(2) include the ceiling.

The Coast Guard agrees and has changed this section to include the ceiling.

*Section 116.423 Furniture and Furnishings*

(1) Four comments questioned that, if CAL TB 133 is the same as UL 1056, then why is CAL TB 133 not included in the regulations or incorporated by reference? Commercial sources recognize and rely on CAL TB 133.

The Coast Guard advises that CAL TB 133 is acceptable as discussed in the preamble of the IFR. It is not incorporated by reference because it applies to a particular State. UL 1056 was developed to provide a national standard and, thus, there is no need to reference any particular, local government requirement. However, revised NVIC 6–80 will state that CAL TB 133 is an acceptable alternative to UL 1056.

(2) Three comments recommended that carpet should be allowed on bulkheads because of its sound and acoustical control. The comments stated that the use of rated carpet should not be a problem. The Coast Guard was reminded that airlines use carpeting on bulkheads. The comments pointed out that carpeting is easier to maintain than a painted surface. As a minimum, one comment recommended that it be allowed at least on chair rails.

The Coast Guard disagrees. The issue of carpeting on bulkhead walls was adequately addressed in the preamble to the IFR.

*Section 116.427 Fire Load of Accommodation and Service Spaces*

The Coast Guard advises that paragraph (a) of this section has been amended to indicate that fire load calculations are not required for low risk service spaces.

*Section 116.433 Windows and Air Ports in Fire Control Boundaries*

The Coast Guard has concluded that the use of glass in staircases needs some clarification and text is added to this section, accordingly. A-class doors

should include limitations on glass consistent with those in subchapter H. The text is amended to read similar to subchapter H, § 72.05–25(b)(4). Along with this change, § 116.435(c)(9) is amended to allow unrestricted use of glass in doors opening out onto open decks.

*Section 116.435 Doors*

(1) One comment requested that the Coast Guard consider using ASTM F 1384 instead of UL 10B as the standard for fire testing doors.

The Coast Guard stated that the regulations, which contain prescriptive requirements for doors, do not specifically call out UL 10B. NVIC 6–80 discusses acceptable tests, such as UL 10B. Revised NVIC 6–80 will state that test requirements, such as ASTM F 1384 and UL 10B, are available as options to the minimum requirements in the regulations.

(2) Four comments recommended that the Coast Guard not ban horizontal doors and consider gravity neutral hatches.

Horizontal doors are not banned. They simply cannot be used in passenger areas. Horizontal doors are not appropriate for use by passengers because of the awkward situation caused by opening or closing these devices during egress.

*Section 116.438 Stairtowers, Stairways, Ladders, and Elevators*

(1) Two comments suggested that, for vessels in domestic service, appropriately located and protected exterior stairways should be equivalent to stairtowers.

The Coast Guard states that, in addition to protection from the effects of fire, indoor stairtowers afford protection from severe weather. No changes were made to this section.

(2) One comment recommended that this section include a maximum vertical height on intermediate stairway landings similar to subchapter H requirements.

The Coast Guard disagrees. Because of the nature of vessels, particularly vessels constructed to subchapter K, inherent limitations on vessel construction make it impractical to install stairways which have large flights uninterrupted by landings. No changes were made to this section.

(3) After further review of § 116.438, the Coast Guard revised this section as follows. Paragraph (k)(2) is revised to require that stairtowers give access to either an embarkation station, as opposed to an embarkation deck, or an area of refuge. The term ''embarkation station'' was used for consistency with the term used in § 116.510. Paragraph (k)(3) is revised to clarify which spaces constitute ''enclosed spaces in which a fire is likely to originate.'' Paragraph (l)(6) is revised for clarity by deleting the words ''satisfactory'' and ''vertical.'' By deleting these words, the paragraph requires that, in the absence of stairtowers, stairs must provide a means of escape, which refers back to the definition of ''means of escape'' in § 114.400.

*Section 116.439 Balconies*

Paragraph (d) is revised to require that sprinkler systems be designed in accordance with NFPA 13 (which has recently been modified to address marine sprinkler systems) as opposed to § 76.25. Paragraph (e) is reworded to clarify that the open area in a balcony space must be at least 93 square meters (1,000 square feet), unless other provisions are installed.

*Section 116.440 Atriums*

Paragraph (c) is revised to require that sprinkler systems be designed in accordance with NFPA 13 (which has recently been modified to address marine sprinkler systems) as opposed to § 76.25.

*Section 116.500 Means of Escape*

Paragraph (a) is revised to indicate that a ladder and a deck scuttle are acceptable as a second means of egress for crew spaces on any vessel, regardless of length. Difficulty has been encountered in the application of paragraph (h). In the IFR, this paragraph indicates that the maximum allowable travel distance to a means of egress could not exceed 46 meters (150 ft). Means of egress is (and was in the IFR) defined as ''a continuous and unobstructed way of exit travel from any point in a vessel to an embarkation station or area of refuge.'' The intent of § 116.500(h) is to limit the distance of travel to a protected area, such as a stairway, area of refuge, or embarkation station. Section 116.500(h) is revised to clarify that travel distance to an exit may not exceed 46 meters, measured as actual walking distance. A definition was added to § 114.400 to define ''exit'' as either an area protected as a stairway, or a door which leads to an area of refuge or an embarkation station. Paragraph (p)(1) is amended to change the maximum dimension for a space that is permitted to have a single means of escape from 3.6 meters to 30 square meters to be consistent with other subchapters.

*Section 116.520 Emergency Evacuation Plan*

Paragraph (b) is amended to clarify that evacuation procedures must be developed for all possible casualty scenarios determined as required by paragraph (a). Since promulgation of the IFR, some difficulties have been encountered in determining acceptable standards for refuge areas. The preamble to the IFR indicated that standards for a refuge area are intended to be performance based. In the absence of a systematic approach which considers plausible fire scenarios and methods used to protect passengers while the crew attempts fire suppression or passengers await embarkation of lifesaving appliances, the Coast Guard considers the following minimum provisions acceptable: (1) minimum separation from other spaces other than voids, cofferdams, and tanks of A–60 integrity; (2) ventilation systems shall only service a single area of refuge, unless separated from other spaces by smoke and fire dampers; and (3) the refuge area shall be located in a public space above the bulkhead deck.

*Sections 116.600 and 177.600 Ventilation of Enclosed and Partially Enclosed Spaces*

One comment queried about requirements for ventilation of passenger accommodation spaces.

The Coast Guard acknowledges that reference to passenger accommodation spaces was inadvertently deleted during the revision of this section for the IFR. Wording is added to the final rule.

*Section 116.610 Ventilation Ducts*

Four comments stated that Heating Ventilation and Air Conditioner (HVAC) return air should not require ducting if there is adequate air grille area near the HVAC unit, and does not require penetration of a Class A barrier. Another comment stated that the enclosed ceiling area should be able to be used as a return plenum.

The Coast Guard advises that there are numerous arrangements for ventilation which may meet the intended performance. There are current Coast Guard policies on this issue and the revision of NVIC 6–80 on structural fire protection will formally incorporate many of these. It is not realistic to include all of this information in the text of the regulations. The text of the regulations includes only the basic requirements which permit flexibility for the designer. The Coast Guard has changed the regulations by removing the requirement that non-steel ducts must be fitted with steel sleeves at each A-

Class or B-Class fire control boundary penetrated. In addition, the regulations prohibiting a stairway or stairtower to serve as an air return for another space; a duct in a bulkhead or overhead designed for the passage of air from one space to another; or the use of concealed spaces as return ventilation plenums or ducts have been removed.

*Sections 116.820 and 177.820 Seating*

Two comments recommended restoring the SNPRM wording ''by permanent or temporary means.'' This option permits the rearranging of furnishings for different functions.

The Coast Guard notes that the wording in the SNPRM was removed due to a comment that stated the wording was confusing and unnecessary. The change was considered editorial in nature and did not affect the section. The Coast Guard has not determined that paragraph(d)(4) precludes operators from moving furniture to accommodate a particular charter. The bottom line is that the seats must be secured to prevent injury to passengers.

*Section 177.900 Deck Rails*

(1) One comment questioned whether the requirements of paragraph (g)(1) applied to a vessel applying for an excursion permit. The comment noted that the cost of installing new rails, chain link fence, or bars may be prohibitive.

The Coast Guard states that paragraph (g)(1) does apply. Small passenger vessels should already meet the requirements for rail course spacing.

(2) One comment suggested that as older vessels come up for recertification, the new rail height requirements should be applied. Another comment recommended that Commandant institute a change to 46 CFR 177.35–1(d) and require sport fishing vessels that travel ocean routes be required to have rails at least 42 inches high, or sea rails from 30 to 42 inches. This will increase safety by requiring higher rails on vessels that encounter heavier sea conditions. A third comment recommended that all rail heights on passenger carrying vessels should be at least 40 inches. Where angling equipment requires a lower rail, a ten inch hinged section can be incorporated.

The Coast Guard's position since the NPRM in 1989 is that 1 meter rails are consistent with SOLAS standards, and appropriate for small passenger vessels. Retrofitting railing on existing vessels was considered in the original cost benefit analysis, but the cost could not be justified based on the casualty statistics. Therefore, no changes were made to these sections.

*Section 116.960 Guards for Exposed Hazards*

Three comments addressed a question posed by the Coast Guard in the IFR regarding non-skid surfaces on stairs and open hatch protection. The comments stated the need for non-skid surfaces on stairways, and open hatch protection are best left to the operators. Common sense is a better guide than prescriptive standards.

The Coast Guard thanks the industry for providing this input. No further action will be taken at this time.

*Section 116.1030 Operating Station Visibility*

One comment urged the Coast Guard to make a clear, non-technical statement concerning the use of tinted glass in the operating station.

The Coast Guard advises that the use of industry standards is intended to aid the industry in complying with the regulations. Owners and operators wishing to tint their pilothouse windows must communicate the standards to the vendor who will make sure the correct products are used.

*Section 116.1160 Watertight Integrity*

The Coast Guard received eight comments regarding the 6″ coaming requirement. The requirement for 6″ coamings is a problem for some vessels, especially vessels that are designed with a small aft cockpit used as a boarding area. It is difficult to let people know that there is a coaming to negotiate as they enter the vessel. It should be noted that more than 65% of passenger injuries occur in this area of a vessel. The comment desired to know if there is some way to minimize the coaming in this area. The comment understands the requirement for fore deck areas, but an aft cockpit area may have better than 40″ of bulwark. Two comments also understand downflooding, but passenger injuries should take precedence. The Coast Guard notes that § 171.122 only applies to vessels of at least 100 gross tons. These comments were considered in developing § 179.360. Ensuring that passengers and crew are aware of potential trip and fall hazards is the responsibility of the vessel owner/operator. Warning signs, safety instructions and adequate embarking and disembarking points should assist in accommodating these issues. The Coast Guard reminds owners and operators of small passenger vessels that 46 CFR subparts 114.540 and 175.540 accommodate the issue of equivalents for subchapter K and T vessels respectively. ''The Commandant may approve any arrangement * * * which provides a level of safety equivalent to that established * * *'' may assist an owner or operator in determining equivalent or alternative coaming requirements.

*Section 177.410 Structural Fire Protection*

Internal review by the Coast Guard identified possible misinterpretation of the requirements for fiber reinforced plastic, specifically the text of § 177.410(b) in the IFR. Coast Guard policy has allowed resin systems that do not meet MIL–R–21607 to be accepted as fire retardant resins if they have a flame spread rating of 25 or less when tested to ASTM Standard E–84 (per NVIC 8–87 with Change 1). This policy was changed with the publication of the IFR which raised the maximum E–84 flame spread rating to 100 for qualifying fire retardant resins. The text of § 177.410(b) of this rule is amended to retain the allowance of fire retardant resins meeting MIL–R–21607 that was previously in subchapter T regulations for vessels that carry 150 passengers or less. For polyester resins that have not been accepted under MIL–R–21607 or other resin types such as epoxy, phenolic, and vinyl ester, alternate acceptance criteria using ASTM E–84 have been established. The end result is that the spirit of NVIC 8–87 requirements for fire retardant resins has been effectively incorporated into the regulation. In order to qualify resin systems using ASTM E–84, either the resin manufacturer or the shipbuilder must submit test results of the resin system as tested in a glass fiber laminate form. The regulation does not specify a laminate schedule for testing, but rather specifies a range of laminate thickness and a minimum resin content by percent weight. The glass fiber reinforcement may be in any form (i.e., chopped strand mat, woven roving, cloth, chopped fiberglass) as long as the test laminate contains a minimum of 40 percent resin content by weight. This resin content was chosen in order to be consistent with the requirements of MIL–R–21607 which specifies a resin content between 38 and 44 percent. A resin system that passes the ASTM E–84 requirements may be used in any laminate, of any thickness, resin content, and with any type of fiber reinforcement including glass fiber, polymer fiber, and carbon fiber. The Coast Guard has determined that this provides an acceptable equivalent to the MIL–R–21607 requirements for a fire retardant rating. Note that the 1 year weathering criteria is not required for

laminates tested to ASTM E–84. If a builder, using a certain lay-up process and laminate schedule, is able to attain the required flame spread rating even though the particular resin system used has not previously qualified as fire retardant, then a request for consideration for qualifying that specific laminate schedule in a particular vessel may be submitted to the MSC.

*Section 178.310 Applicability Based on Length and Passenger Capacity*

One comment noted that following references to three or four different regulations is extremely complicated for individuals with limited reading skills.

The Coast Guard appreciates the concern with the complicated nature of the regulations, and agrees that they can be confusing. However, continuous efforts are being made to simplify the format. The regulatory cites in paragraphs (a) and (b) provide options for compliance with intact stability standards. To repeat wording on the same page or out of subchapter S would be redundant and make the regulations more confusing.

*Section 178.325 Intact Stability Requirements for a Sailing Vessel*

One comment questioned why sailing school vessel stability standards are included in this part.

The Coast Guard states that part 169 refers to subchapter S, parts 170–174, for stability requirements, as does § 178.325. Sailing school vessels can also be inspected as subchapter T boats. For this reason, reference to them must be included in this subchapter.

*Section 178.330 Simplified Stability Proof Test*

The Coast Guard has reevaluated this section. The simplified stability test on passenger vessels less than 65 feet is done in accordance with § 178.330 (§ 171.030 in old subchapter T). The vessel is to be loaded as described in § 178.330(a)(4). The traditional method for conducting the simplified test is provided on Coast Guard form, CG–4006 (Rev. 8–79). This form dates back to ''Ancient'' subchapter T in § 179.10–1, but the verbiage in new subchapter T is quite similar. Basically, the total weight of all persons and other loads are to be on board and ''distributed so as to provide normal operating trim and to simulate the vertical center of gravity (VCG), causing the least stable condition that is likely to occur in service.'' Form CG–4006 goes one step further. On page 2 of 8, paragraph (2), the weight distribution on board a vessel ''having one upper deck above the main deck available to passengers . . .,'' has an additional safety factor thrown in that is not currently taken from or referenced in the regulations. The weight located on the one upper deck is the equivalent of 1.33 times the actual weight of passengers to be located there. The rationale for doing so is understood, however, one problem is it appears ''arbitrary'' with no reference in the regulations and no other apparent basis. It certainly does help to ensure the conservatism of the test, which has been proven by the test of time since it appears no subchapter T boats have been lost due to stability who have performed this simple stability test. The Coast Guard affirms keeping the 1.33 safety factor for weight distribution on the upper deck, and put it in § 178.330(a)(4) of the new regulation. The simplified stability test is written in accordance with § 171.030, and all other test parameters are referenced in this section. Although there does not appear to be any formal explanation as to the origin of the ⅓ safety factor applied to the passenger weight distribution on the upper deck, the simplified stability test has clearly withstood the test of time. It has been double checked and validated in numerous casualty investigations, and this change will be made in subchapter S, under § 171.030(c).

*Section 179.212 Watertight Bulkheads for Subdivision*

Two comments supported the watertight division requirements for wooden hull vessels.

The Coast Guard thanks the industry for this input.

*Section 179.230 Damage Stability Requirements*

One comment noted that in the new regulations, vessels demonstrating intact stability through calculation were no longer required to meet damage stability requirements, and urged the Coast Guard to reinstate the requirement.

The Coast Guard agrees. The damage stability requirements for vessels less than 19.8 meters (65 feet) carrying more than 49 passengers and vessels carrying more than 12 passengers on an international voyage were inadvertently deleted in the SNPRM. In order to remain consistent with subchapter S, reference to § 179.212(b) has been removed. This will ensure that any vessel required to meet intact stability and Type II subdivision standards in subchapter S will also have to meet damage stability.

*Section 179.240 Foam Flotation Material*

One comment questioned why there is a length limitation of 65 feet for the use of foam flotation in subchapter T when there is no such limitation in subchapter S (§ 170.245). It was recommended that the length limitation from subchapter T be removed and leave the decision to the OCMI.

The Coast Guard agrees that the regulations should be consistent. The NPRM originally proposed the limit on foam flotation for small passenger vessels, understanding that proper subdivision for larger vessels should not be an issue. When subchapter K was created in the SNPRM, subchapter K vessel stability was addressed in subchapter S. Subchapter S should have been revisited to address the use of foam flotation for subchapter K vessels. However, since approval of the use of foam as flotation material remains with the cognizant OCMI and/or the MSC, and in view of MSC experiences, the length restriction of subchapter T is removed and does not weaken the intent of the regulation. In addition, the text in § 179.240(b)(1) to meet the requirements for fire resistance in MIL–P–21929 has been removed. The Coast Guard approval process for flotation foams does not currently require these materials to meet the fire resistance criteria in MIL–P–21929.

*Section 179.350 Openings in the Side of a Vessel Below the Bulkhead or Weather Deck*

One comment wanted to know if a flap-operated check valve would be considered a positive action valve.

The Coast Guard says no. Positive action valves are gate, ball, barrel, or globe valves.

*Section 179.360 Watertight Integrity*

One comment recommended that the Coast Guard reconsider six inch coaming requirements due to trips and falls of passengers. Another comment recommended that the Coast Guard consider the use of removable coamings that could be used in the event of severe weather to minimize downflooding.

The coaming issue has been previously discussed under § 116.1160. The use of removable coamings is not specifically prohibited in the regulations. However, the Coast Guard has determined that a coaming installed only part of the time would add to passenger confusion and injuries in the event of an emergency such as rough weather.

*Sections 117.10 and 180.10 Applicability to Vessels on an International Voyage*

One comment asked what subchapter W is? Another comment recommended a vessel less than 65 feet carrying less

than 12 passengers on an international voyage should not have to meet SOLAS requirements and carry life rafts.

The Coast Guard advises that reference to subchapter W (46 CFR chapter I, subchapter W) was a proactive step designed to minimize the number of revisions to the final rule. Subchapter W was published as an interim rule on May 20, 1996. The Coast Guard also states that it was not its intention to require vessels, not subject to SOLAS, to meet requirements based upon international standards. Both sections are revised to indicate requirements for vessels subject to SOLAS.

*Sections 117.15 and 180.15 Applicability to Existing Vessels*

Two comments stated that all existing vessels should have the option of a ten year phase-in period regarding survival craft installation.

The Coast Guard disagrees. The Coast Guard's stand on grandfathering has not changed since the publication of the SNPRM and the IFR.

*Sections 117.64 and 180.64 Emergency Position Indicating Radiobeacons (EPIRB)*

One comment stated that the Coast Guard should not require EPIRBs until a cost benefit analysis shows the need for these devices.

In the report ''A Study of Lifesaving Systems,'' the Coast Guard determined that more lives would have been saved if the vessels involved would have had EPIRBs rather than inflatable survival craft. The successes seen in the fishing vessel industry as a result of the required 406MHz satellite EPIRB supports the need for the small passenger vessel industry to upgrade to the more accurate and reliable device.

*Sections 117.68 and 180.68 Distress Flares and Smoke Signals*

(1) One comment questioned the exemption of not requiring vessels on short runs to carry distress signals. The comment noted that recreational vessels are required to carry distress signals.

The Coast Guard advises that the exemption is designed for ferries and other vessels on set schedules and operating not far from shore. No changes have been made to these sections.

(2) After review of the IFR, the Coast Guard has included ''limited coastwise'' as an applicable route in paragraph (a) of both sections.

*Section 180.70 Ring Life Buoys*

(1) One comment recommended that the term ''ring life buoy'' be used in the title for subpart C.

The Coast Guard agrees. In both subchapters K and T, the heading for subpart C reads ''Ring Life Buoys and Life Jackets.''

(2) After review of §§ 117.70(c)(5) and 180.70(c)(5), the Coast Guard has changed the term ''510 kilograms'' to ''5 kilonewtons'' to indicate force units.

*Sections 117.71 and 180.71 Life Jackets*

(1) Six comments stated that the allowance for additional personal flotation devices (PFDs) to be carried for a temporary need and not marked with a vessel's name, but with another name or a company's name, needs to be addressed in this section.

This change would reduce the amount of confusion and misinterpretation within the Coast Guard and industry. The Coast Guard agrees. Language is included in § 122.604 to allow another vessel's name or a company's name to be on life jackets used to meet a temporary need.

(2) One comment recommended that all passengers be required to wear an inflatable life vest which fits the body and can be, in an emergency, inflated by pulling a string.

The Coast Guard has not determined that this is a practical solution for reducing the number of fatalities due to an individual falling overboard. The master of a vessel is responsible for the passengers and crew of that vessel. In instances of rough weather or other potentially dangerous situations, the master is responsible for ensuring that the passengers and crew are properly outfitted for an emergency.

*Section 180.75 Life Jacket Lights*

One comment recommended that ferries and vessels operating within 20 miles from a harbor of safe refuge be required to carry life jacket lights.

The Coast Guard disagrees. The Coast Guard has determined that vessels operating within 20 miles from a harbor of safe refuge are close enough to search and rescue resources so that, by the time assistance arrives on scene, persons in the water should not become separated too far from survival craft (inflatable buoyant apparatus (IBA), life floats, and buoyant apparatus) equipped with marker lights. This is especially true with the rapid distress notification proven with the Category 1, 406 MHz, satellite EPIRB that is required for vessels operating on a limited coastwise route.

*Sections 117.130 and 180.130 Stowage of Survival Craft*

After review of the IFR, the Coast Guard amends these sections by referring to the approval series 160.062 and 160.162 for hydrostatic release units.

*Sections 117.150 and 180.150 Survival Craft Embarkation Arrangements*

The Coast Guard revises §§ 117.150(a) and 180.150(a) to correct a discrepancy noted when trying to apply the survival craft embarkation standards. A launching appliance approved under the approval series 160.032 is not suitable for liferafts. For davit-launched liferafts, a liferaft launching appliance approved under the 160.163 series (with an automatic release hook approved under the 160.070 or 160.170 series) is the appropriate requirement. For throw-over liferafts and inflatable buoyant apparatus where the embarkation station is greater than four and one-half meters (15 feet) above the waterline, a marine evacuation system approved under the 160.175 series is the appropriate requirement.

*Sections 117.175 and 180.175 Survival Craft Equipment*

One comment suggested that the wording ''12-thread manila'' is confusing and outdated. Another comment stated that inflatable buoyant apparatus equipment packs are not the same as rigid buoyant apparatus.

The Coast Guard agrees. Wording is changed to reflect a ⅜ inch lanyard made of ultraviolet resistant material. Additionally, these sections are revised to state that an equipment pack in an inflatable buoyant apparatus is required to meet standards set by the manufacturer.

*Sections 117.200 and 180.200 Survival Craft—General*

(1) One comment noted that the reference to § 160.151 is not appropriate because it does not exist in 46 CFR. Another comment stated that there is no reference to inflatable buoyant apparatus in § 160.010, and IBAs are not defined in § 175.400.

The Coast Guard states that the approval series in § 160.151 has been used for years to indicate liferafts approved as complying with SOLAS. An upcoming revision to subchapter Q will contain the approval series in § 160.151. However, a change to the text in subchapters K and T, referring to the approval series, would be more appropriate. As for inflatable buoyant apparatus and other survival craft, the same reference to approval series should remove the confusion.

(2) Three comments stated that subchapter K and K'' vessels are their own best survival craft. The comments also stated that there should be no

difference between the survival craft requirements between subchapters K and T. Two comments suggested that since subchapter T boats can install watertight bulkheads to avoid carrying IBAs, subchapter K vessels should have the benefit of the lesser requirement.

The Coast Guard disagrees. The Coast Guard's concern is putting large numbers of passengers in cold water offshore. Warm water requirements are similar between subchapters K and T. The Coast Guard recognizes that subchapter K vessels are built to more stringent standards; however, survival craft standards are driven by the number of passengers on board. The industry should recognize that there is a difference between carrying 100 passengers, 20 miles offshore and 400 passengers on the same route. All things being equal (i.e., Steel vessel of similar dimensions), a subchapter K vessel requires structural fire protection and out of the water survival craft for 67 percent of the passenger capacity (will accommodate 100 percent of passengers). The Coast Guard considers these increased requirements necessary to address the vessels operating environment, proximity to adequate rescue resources, and number of passengers carried.

(3) Three comments noted that three miles is used as a breakpoint for survival craft operating on a limited, coastwise route. Offshore casino vessels operate beyond three miles, but no further, and should receive the same treatment. The comments recommended moving the breakpoint to five miles.

The Coast Guard disagrees. The three mile breakpoint resulted from new EPIRB requirements. The EPIRB provides an equivalent level of safety for vessels electing to not carry additional survival craft within three miles. Vessels operating beyond three miles and not wanting to carry required survival craft must convince the OCMI that they have provided an equivalent level of safety.

(4) One comment noted that in Table 117.200, Footnote 9, § 117.207(e) should read § 117.207(f).

The Coast Guard agrees and the change is made. In addition, Footnote 8 is changed to read § 117.207(e).

(5) The Coast Guard deletes the term ''citation in brackets'' in paragraph (c) in both sections.

*Section 180.202 Survival Craft—Vessels Operating on Oceans Routes*

One comment stated that 67 percent inflatable buoyant apparatus does not provide enough capacity for all passengers carried.

The Coast Guard disagrees. As stated in the preamble to the IFR, IBAs are tested to a 150 percent overload capacity. This means that a vessel with 67 percent IBA capacity can accommodate 100 percent of the persons on board.

*Section 180.204 Survival Craft—Vessels Operating on Coastwise Routes*

(1) One comment recommended that life floats be phased out because they do not provide adequate out of the water hypothermia protection.

As stated in the preamble to the IFR, the Coast Guard reduced survival craft requirements from those proposed in the SNPRM due to the casualty history of the small passenger vessel industry. Even the Coast Guard's own study of subchapter T boat casualties concluded that more people would have been saved if the vessels were equipped with EPIRBs rather than inflatable survival craft.

(2) One comment stated that life floats do not provide adequate shark protection.

The OCMI has the latitude to require additional survival craft in areas considered hazardous. This may include shark infested waters. However, casualty statistics do not indicate a trend in fatalities due to shark attacks.

*Sections 117.205 and 180.205 Survival Craft—Vessels Operating on Limited Coastwise Routes*

(1) Two comments recommended that the Coast Guard authorize vessels to reduce the number of IBAs required during winter months when fewer passengers are carried.

The Coast Guard advises that the OCMI has the authority to endorse the COI with a cold water restriction.

(2) One comment suggested that the reference to § 180.204(d) is confusing. It was recommended that the requirements be spelled out in each section.

The Coast Guard disagrees. The Coast Guard is trying to reduce redundant wording in the regulation.

(3) One comment stated that wood vessels less than 65 feet operating on limited coastwise (LCW) routes are just as safe as FRP vessels in cold water and should not be required to carry inflatable buoyant apparatus.

The Coast Guard advises that wood vessels account for over 90% of the loss of vessel/loss of life casualties over the past 20 years. Statistics indicate that the route of a vessel did not matter. Existing wood vessels less than 65 feet also have the option of installing watertight bulkheads in lieu of carrying inflatable survival craft.

*Section 117.207 Survival Craft—Vessels Operating on Lakes, Bays, and Sounds Routes*

One comment recommended that vessels meeting paragraph (f) should use the existing 30 percent life float requirement. The comment further recommended changing the wording in paragraph (f) ''may be granted a reduction* * *'' to ''be provided with life floats of an aggregate capacity that will accommodate at least 30 percent of the total number of persons on board.''

The Coast Guard disagrees. The wording in the IFR appropriately allows the OCMI latitude in reducing the amount of primary lifesaving equipment on board a certain vessel.

*Sections 117.208 and 180.208 Survival Craft—Vessels Operating on River Routes*

(1) One comment recommended the Coast Guard revisit the issue of not requiring vessels operating within one mile of shore on a rivers route to carry survival craft.

The Coast Guard states that the one mile exemption is carried over from the old small passenger vessels regulations. Casualty statistics do not warrant increased survival craft requirements on vessels operating in such close proximity to shore.

(2) Two comments recommended adding a three mile equivalent or alternative to the 15 minute radio communication schedule.

The Coast Guard states that the three mile distance criteria applied to other bodies of water is not practical in a rivers route. Most vessels will be exempt from survival craft requirements because they will operate within one mile of shore. For vessels that do operate beyond one mile from shore, a 15 minute communications schedule or participation in a Vessel Traffic Service (VTS) allows the vessel to quickly notify the Coast Guard in the event of a casualty.

*Sections 117.210 and 180.210 Rescue Boats*

One comment stated that rescue boat is not well defined. It also stated that the reference to subchapter H is not specific as to which part. Two comments stated that the subchapter Q standard for a rescue boat ignores 50 years of experience. They noted that even the Coast Guard uses rigid hull inflatable boats with great success. The comments recommended that the Coast Guard consider the use of rescue boats other than those approved by subchapter Q. The Coast Guard agrees that rescue boats of the rigid-hull

inflatable type can provide satisfactory service. In the past, OCMIs have approved boats such as rigid-hull inflatables as ''equivalents'' to straight 160.056 rowboat-type rescue boats. This practice will not change. With the publication of subchapter W on May 20, 1996 (61 FR 25272), the reference to subchapter H in §§ 117.810 and 180.810 is no longer appropriate since § 75.10–5(e) no longer exists. In order to maintain the intent of the rescue boat section, performance language from the old subchapter H requirement has been added to both subchapters K and T. In addition, the approval series 160.056 has been retained for vessels operating on protected waters. The 160.156 approval series cited as the rescue boat standard in subchapter W allows the use of rigid-hull inflatable and entirely inflatable rescue boats. The Coast Guard has determined that by adding performance language, retaining the 160.056 standard for vessels operating on protected waters, and adding the 160.156 approval series for vessels operating on exposed and partially protected waters, the intent of the former subchapter H cross reference is maintained.

As resources allow, rescue boat requirements in subchapter Q will be updated to reflect the variety of available, suitable boats.

*Sections 118.300 and 181.300 Fire Pumps*

(1) One comment noted that the word ''manual'' is confusing when discussing local operation of the fire pump. The comment wanted clarification as to what is meant and is it the intent of the Coast Guard to require a manual electric switch at the pump? Two comments recommended the section be reworded to read ''A fire pump must be capable of operation from both the control station and the pump location.''

The Coast Guard acknowledges that the intent is to be able to operate the pump from the operating station and locally at the pump. How that is to be accomplished is up to the owner or operator of the vessel. In order to reduce confusion, the word ''manual'' is deleted.

(2) Two comments suggested that the fire pump required in § 181.300(b) for vessels less than 65 feet carrying more than 49 passengers is excessive and should be reconsidered using casualty data. In addition, fixed extinguishing systems will be required, so the fires encountered will be put out with portable extinguishers.

The Coast Guard disagrees. Subchapter T previously required a fire pump on vessels that carry over 49 passengers. Casualty history available to the Coast Guard may not accurately reflect the number of fires on these vessels, since fires which were extinguished using the fire pump may not have been reported. The Coast Guard has determined that vessels which carry more than 49 passengers represent a risk that warrants requiring a fire pump, regardless of vessel size. No changes were made to this section.

(3) With regard to the comment about fires encountered being put out with portable extinguishers, the Coast Guard disagrees, in that portable extinguishers are not an acceptable replacement for a firemain system. Portable extinguishers are adequate only for small incipient fires, have limited amount of agent, and provide the fire fighting agent for a short duration. On the other hand, hose streams off of a firemain system provide unlimited water supply.

*Sections 118.310 and 181.310 Fire Main and Hydrants*

As previously discussed in §§ 114.400 and 175.400, the Coast Guard amends § 118.310 by adding a new paragraph (d) requiring vessels carrying more than 600 passengers or with overnight accommodations for more than 49 passengers to meet subchapter H fire main and hydrant standards. This is already required under the IFR for vessels carrying more than 600 passengers, and was a recommended and accepted practice in NVIC 11–83 for vessels with overnight accommodations for more than 49 passengers. In addition, §§ 118.310 and 181.310 are amended by adding paragraph (c) that requires isolation valves on fire hydrants to allow damaged hoses to be removed and replaced while the fire main is charged. This is a common marine design practice that the Coast Guard has determined must be maintained.

*Sections 118.320 and 181.320 Fire Hoses and Nozzles*

As previously discussed in §§ 114.400 and 175.400, the Coast Guard amends §§ 118.320(a) and 181.320(a) by replacing ''fire stations'' with ''fire hydrants.''

*Section 181.400 Where Required*

(1) One comment recommended that the documentation for a fixed $CO^2$ fire extinguishing system be retained. The comment reiterated the NTSB recommendation M–95–37 from the ARGO COMMODORE fire casualty requiring that plan approval records for fixed fire extinguishing systems be maintained for the life of the vessel.

The Coast Guard has not determined that it is necessary to issue a regulation requiring vessel owners to retain plan approval records for their vessels. NVIC 13–83 encourages vessel owners and operators to keep a complete set of vessel plans, including fixed firefighting system plans.

(2) Four comments stated that the industry is still concerned over automatic shutdown of main engines and ventilation, and recommended that fire and heat detectors are a better alternative.

The Coast Guard advises that detection systems are required by § 181.400. It is true that manual systems are still required to shutdown machinery and ventilation, because one of the keys to fighting a fire is keeping the extinguishing agent in the space protected.

(3) Three comments stated that fire extinguishing systems should not be retrofitted to all existing wood and FRP vessels. They stated the casualties do not justify the cost to the industry.

As for justification and cost, the Coast Guard's position has not changed since the SNPRM and IFR. The vessels most at risk are wood and FRP.

(4) One comment noted that by definition a wheelhouse is a control space. The comment asked if § 118.400(e)(1) and (e)(2) require a smoke activated and manual fire detection system in the wheelhouse?

The Coast Guard acknowledges that the wording used in the IFR would lead someone to believe that a detection system is required in the wheelhouse. However, from a practical standpoint, the Coast Guard has determined that placing an automatic and manual fire detection system in a continuously manned operating station is unnecessary. This section is revised accordingly.

*Sections 118.410 and 181.410 Fixed Gas Fire Extinguishing Systems*

(1) After further review of the IFR, the Coast Guard has determined that paragraph (b)(2) of these sections needed to be revised to clarify when release of an extinguishing agent requires two distinct operations. The reference to paragraph (c)(2) may be confusing to the reader. The Coast Guard has amended these sections by removing any confusing references.

(2) Section 118.410(d)(7)(ii) has been revised to be consistent with § 181.410(d)(7)(ii), which requires the distribution lines to undergo a test similar to that conducted on the manifold system. This correction is needed to allow for the 300 PSI pressure

drop that is indicated in paragraph (d)(7)(i).

*Sections 118.500 and 181.500 Required Number, Type, and Location*

One comment recommended that the regulations should better describe the different types of extinguishers or define portable or semi-portable; the old regulations did.

The Coast Guards states that the new regulations contain the same information as the old regulations, but in a slightly different format.

*Sections 119.320 and 182.320 Water Heaters*

One comment stated that the requirements for water heaters are confusing. It was recommended that the Coast Guard reduce the amount of technical data. Hooking up a water heater is not a difficult task.

The Coast Guard partially agrees that the language is confusing. Most water heater installations will meet the exception criteria in paragraph (b). The Coast Guard has determined that there also needs to be a reference to larger, higher capacity installations. The Coast Guard redesignates paragraph (b) as (a) and vice versa in order to reduce any confusion.

*Section 182.415 Carburetors*

One comment noted that Coast Guard Approval Numbers 162.015, 162.042, and 162.043 are not in the current subchapter Q. In addition, Approval Number 162.043 cannot be found in the Coast Guard's Equipment lists (COMDTINST M16714.3E) and is confusing.

The Coast Guard agrees that the referenced Approval Numbers are old, and were used prior to SAE and UL standards. The intent is that older gas engine installations can remain in service using previously approved equipment as long as that equipment is in good and serviceable condition.

*Section 119.425 Engine Exhaust Cooling*

One comment recommended allowing the injection of engine exhaust cooling water farther down stream if the exhaust line forward of the cooling water injection is properly insulated. This has been accepted by MSC in the past.

The Coast Guard partially agrees. Equivalencies are granted on a case by case basis, and this practice will continue. If the designer is concerned about water injection, consider a dry horizontal system.

*Sections 119.430 and 182.430 Engine Exhaust Pipe Installation*

Two comments stated that check valves installed in exhaust lines impede the flow of exhaust. They recommended changing the wording to read ''deter or minimize the in flow of water.''

The Coast Guard partially agrees. The intent of paragraph (d) is to prevent cold water from entering the exhaust system. There is no requirement for a check valve to be installed. However, in the interest of clarity, the Coast Guard has determined that paragraph (c) provides enough guidance as to the exhaust installation, and has removed paragraph (d).

*Section 182.435 Integral Fuel Tanks*

In the recent past, the Coast Guard has been asked to make this section performance based, rather than limited to strictly closed cell polyvinyl chloride (PVC).

The Coast Guard agrees this should be done, and has revised this section to allow for equivalents to closed cell PVC foam.

*Section 182.445 Fill and Sounding Pipes for Fuel Tanks*

Four comments stated that paragraph (b) of this section is entirely unnecessary. The comments also stated that sounding pipes are not always practical, and gages are expensive and troublesome. Small passenger vessels, especially ferries, operate on scheduled runs so fueling is done on a schedule corresponding to that vessel. Recordkeeping should be an acceptable alternative.

The Coast Guard disagrees. Fuel tank level monitoring is an indispensable part of not only fuel management, but also damage control. If a tank is in communication with the sea, bilge, cargo, or any other tank, no matter what the contents, the proper level must be able to be determined for stability and environmental protection concerns.

*Sections 119.458 and 182.458 Portable Fuel Systems*

One comment questioned whether the prohibition against the use of portable fuel systems also restricts the carriage of emergency gasoline-operated pumps and generators.

The Coast Guard states that generators that use gasoline or any other fuel must meet the requirements of parts 119 and 120 or 182 and 183 in subchapters K and T, respectively. As for emergency dewatering pumps, the Coast Guard has determined that their use should not be prohibited. Sections 119.458 and 182.458 are revised to allow dewatering pumps. Additional guidance on the carriage of spare fuel is in Volume II, page 10–3, of the Coast Guard MSM.

*Section 119.465 Ventilation of Spaces Containing Diesel Machinery*

The Coast Guard notes that the prohibition of dampers in machinery space supply air ducts in paragraph (f) is contradictory to § 116.610(f) which requires automatic fire dampers in ducts serving machinery spaces.

The Coast Guard has determined that the requirements designed to contain a fire within a machinery space take precedence over the damper prohibition. Paragraph (f) in § 119.465 is revised to reflect the requirements in § 116.610(f).

*Section 182.465 Ventilation of Spaces Containing Diesel Machinery*

One comment asked what if there is only one exhaust outlet for multiple ventilation intakes? Does the area of the exhaust have to be proportionally increased with the number of inlets?

The Coast Guard advises that paragraph (c) of this section requires at least two intake and two exhaust ventilation ducts. Each duct must have the open area indicated in the paragraph. Where additional ducts are installed, each additional duct must meet the requirements of this section.

*Section 182.520 Bilge Pumps*

(1) One comment stated that bilge pumps are not dewatering pumps. They are used for the maintenance removal of accumulated water. A 25 gallon per minute (GPM) pump is larger than needed on vessels less than 65 feet carrying more than 49 passengers. The comment suggested a ten GPM pump.

The Coast Guard states that a 25 GPM pump has been the standard for 30 years, and the Coast Guard sees no reason to change to a less conservative standard.

(2) One comment recommended that the discharge hose mentioned in paragraph (b)(2) of this section be long enough to discharge the water over the side of a vessel.

The Coast Guard agrees. The wording in paragraph (b)(2) is revised to read the same as § 119.520(b)(2).

*Sections 119.530 and 182.530 Bilge High Level Alarms*

(1) One comment suggested that bilge alarms are okay for vessels without one compartment subdivision, but excessive for other vessels.

The Coast Guard disagrees that only vessels without one compartment subdivision need a high bilge level alarm. The time to discover that your vessel has taken on water is not when

you start to ''feel'' the vessel move differently. In an emergency situation, time is everything and can mean the difference between life and death.

(2) Two comments suggested a bilge pump resettable counter in lieu of an indicator light. Sometimes, the bright sunlight makes it hard to see the indicator light, and the operator may not be aware of how many times the bilge pump has cycled on and off.

The Coast Guard states that the regulation only calls for a visual indicator. The intent of the requirement is to give the operator an indication when the automatic bilge pumps are running. Where lights are not practical, the OCMI considers alternatives proposed by the owner or operator.

(3) One comment questioned if a separate light is required to indicate that the automatic pump is running. This point is not clear.

The Coast Guard states that a separate indicating light is required because a ''pump running'' light is not an alarm as required by paragraph (a). No additional clarification is required.

*Section 182.610 Main Steering Gear*

One comment noted that paragraph (f)(1) of this section references 46 CFR 111.93–11(d). This cite does not exist. The comment also questioned why is overload protection prohibited for steering gear systems?

The Coast Guard acknowledges that the reference to § 111.93–11 is outdated. The new subchapter F cite of § 58.25–55(d) is added to subchapter T. The Coast Guard advises that overload protection is prohibited on steering gear systems to ensure that the steering gear will continue to run until failure in an emergency. Only short-circuit protection is allowed for the reasons of preventing catastrophic damage to motors, wiring, and the possibility of fire.

*Section 182.720 Nonmetallic Piping Materials*

(1) Two comments noted that this regulation means that the operator cannot replace a fuel or hydraulic hose with make up fittings. Ordinary practice is to assemble replacement hoses using material that far exceeds the pressure demands of the system. If a hose is replaced in an 80 pound per square inch (psi) system with a 1000 psi hose, the proof test, at twice the rated pressure, is not possible.

The Coast Guard agrees. The wording in paragraph 182.720(e)(1) is changed to ''twice the maximum operating pressure of the system.''

(2) After review, the Coast Guard has revised paragraph 182.720(e)(3)(ii) to include watertight decks in addition to watertight bulkheads.

*Section 183.322 Multiple Generators*

One comment noted that the revision of subchapter J is complete. The IFR references subchapter J prior to its revision. Which version is to be used?

The Coast Guard states that a review of the newly revised subchapter J has been done to ensure that the referenced cites are still accurate and appropriate. The cites listed in this rule are appropriate.

*Sections 120.340 and 183.340 Cable and Wiring Requirements*

One comment noted that the revision to subchapter J allows the use of wire nuts for wire and cable connections. Subchapters K and T specifically prohibit the use of wire nuts. The regulations need to be consistent and not allow the use of wire nuts.

The Coast Guard states that wire nuts are allowed in subchapter J subject to very specific conditions outlined in § 111.60–17. The Coast Guard has determined that reiterating those conditions in paragraph (i) of these sections is appropriate in order to be consistent with subchapter J.

*Section 183.376 Grounded Distribution Systems (Neutral Grounded)*

One comment noted that this cite correctly assumes that there could be a dual voltage system not fed by a dual voltage generator and, therefore, could be of the ungrounded or floating neutral type. Because this is possible, a reference needs to be made to § 111.05–25 of subchapter J for ground detection of ungrounded systems. This will avoid confusion during the plan approval process for both the Coast Guard and industry.

The Coast Guard agrees. Text in subchapter J is added to subchapters K and T under new §§ 120.378 and 183.378 entitled ''Ungrounded Systems.''

*Section 183.430 Portable Lights*

One comment suggested that small (30 feet or less), outboard powered, open boat (or small boat with no enclosed engine space) should be required to carry only one operable, portable light.

The Coast Guard advises that this type of request should be made to the OCMI. It is reasonable to assume that, if the vessel is not equipped with a separate machinery space, then the portable light required to be outside that space is not required. A regulatory change is not necessary.

*Sections 120.432 and 183.432 Emergency Lighting*

Two comments stated that the requirement for an emergency light to have a continuous operating capacity of six hours is excessive. Standard industrial units have a two hour capacity.

The Coast Guard agrees. Emergency lighting used to escape from below deck spaces on a small passenger vessel should not need to run more than two hours. The six hour criterion is reduced to two hours.

*Sections 121.220 and 183.220 Cooking Equipment*

One comment recommended that the Coast Guard require UL approval on cooking appliances, and the requirement for heavy duty hinges is unclear.

The Coast Guard has determined that the general requirements contained in this section adequately address the safety concerns regarding cooking equipment on board vessels. UL, NFPA, and American Boat and Yacht Council (ABYC) standards were considered in drafting this requirement in 1989. The Coast Guard agrees that the words ''heavy duty'' add no value to the requirement and has removed those words from both § 121.220 in subchapter K and § 184.220 in subchapter T.

*Section 184.402 Compasses*

One comment asked if existing vessels were supposed to be exempt from the illuminated compass requirement.

The Coast Guard acknowledges that existing vessels are exempt unless the OCMI decides that due to the route or service of the vessel an illuminated compass is required. All new vessels, unless exempted by paragraph (b), are required to have an illuminated compass.

*Section 121.404 Radars*

Three comments wanted to know who decides if a radar is suitable. There are no criteria to determine a standard. How can a designer or builder know what to look for? Different Coast Guard Districts may have different standards. The Coast Guard should either set performance standards or let the master decide what is appropriate, and hold the master responsible for the safe operation of the vessel.

The Coast Guard agrees that performance standards are needed to determine if a radar is suitable. As stated in the SNPRM preamble, the Radio Technical Commission for Maritime Services (RTCM) was developing recommended standards for

radar on small vessels. The Coast Guard received those recommendations after the drafting and publication of the IFR and, therefore, could not publish them for public comment. The Coast Guard has determined that the recommendations of the RTCM are acceptable for determining the suitability of radar on towing vessels (61 FR 35064) and that the same standards should apply to small passenger vessels. However, the recommended standards cannot be incorporated into the Final Rule without public comment. Therefore, the Coast Guard will establish policy guidance for owners, operators, builders, and OCMIs to help determine the suitability of radar installations on small passenger vessels. The policy will be based on the RTCM standards, but will also allow flexibility in the event that certain recommended standards are impractical for small passenger vessels. Based upon feedback to the policy, the Coast Guard will consider revising the radar requirements for small passenger vessels in a future rulemaking.

*Sections 121.420 and 184.420 Charts and Nautical Publications*

Two comments stated that charts and nautical publications are not necessary for ferries which run from point A to B and back day after day.

The Coast Guard agrees that not all vessels require the same charts and nautical publications. The OCMI has discretion as provided by the words ''As appropriate...'' in paragraph (a) to allow relaxation of certain requirements based on a particular vessel's operation.

*Sections 121.506 and 184.506 Emergency Broadcast Placard*

Two comments stated that the emergency broadcast placard is unnecessary. Federal Communications Commission (FCC) licensed radio operators and the crews are aware of the contents of a distress call. Even if an individual was unaware of the proper procedures, in an emergency, correct procedure does not take precedence; saving time and lives do.

The Coast Guard disagrees. A lack of proper procedure in an emergency may be the difference between a quick and a delayed response by the Coast Guard. In many emergencies, a vessel's crew has one chance to get a distress call off. Valuable information regarding the location, number of passengers, or conditions on scene could be left out and thus hamper rescue efforts. The Coast Guard has determined that the placard serves a real purpose as a memory jogger for individuals using the radio in an emergency.

*Sections 121.702 and 184.702 Oil Pollution Prevention Equipment and Procedures*

Even though the text of these sections refers to 33 CFR part 155, the title of these sections does not take into consideration the garbage plan requirements of 33 CFR 155.540. The Coast Guard amends the title of these sections to read ''Pollution prevention equipment and procedures.''

*Sections 121.710 and 184.710 First Aid Kits*

Four comments stated that the rule on first aid kits is unacceptable and must be withdrawn. The subchapter Q approval must be rewritten before it can be used as a standard for subchapter T vessels. The approval is 46 years old and outdated. Two comments noted that the requirement to have or dispense drugs, even the over-the-counter variety, needs careful consideration. Many vessels will not dispense aspirin, sea-sick pills, etc., but might have them available for sale to reduce or remove their liability. One comment suggested that the routes and missions of vessels need to be considered when determining the type of first-aid kit required. Two comments recommended that the ''Good Samaritan'' provision is needed in the rewrite of § 160.041 of subchapter Q. OSHA approved first aid kits should be an approved substitute instead of the Coast Guard approved kits.

The Coast Guard agrees that the approval published in subchapter Q is outdated and should not be used as the basis of a required first aid kit. As a matter of policy, the Coast Guard provides manufacturers seeking approval of first-aid kits under approval series 160.041 with much more basic guidelines. The following is a list of items required to be in a Coast Guard Approved first-aid kit under approval series 160.041:

(2) Units of Adhesive Bandage Compresses (16 per unit).
(2) Units of 5 cm (2 in.) Bandage Compresses (4 per unit).
(3) Units of 10 cm (4 in.) Bandage Compresses (1 per unit).
(2) Units of Triangular Bandages (1 per unit).
(2) Units of Absorbent Gauze Compresses (1 per unit).
(2) Units of 10 cm (4 in.) Gauze Roller Bandages (1 per unit).
(1) Aluminum Splint.
(1) Tourniquet.
(1) Unit of Eye Dressing Packet (Pads and Strips) (4 per unit).
(2) Units of 30 ml (1 oz) Eye Wash Solution.
(1) Unit of Ammonia Inhalants (10 per unit).
(1) Unit of Antiseptic Swabs (10 per unit).
(2) Units of 3.0 gram (0.11 oz) Burn Treatment Compound (6 per unit).
(2) Units of 324 milligram (5 grain) Aspirin Tablets (48 per unit).

This list is provided for operators who wish to build an equivalent kit as allowed by the regulations. The Coast Guard has determined that a first aid kit is important as an initial response tool for major and minor injuries on board small passenger vessels. The Coast Guard notes that some state marine boards required first aid kits above and beyond the old Coast Guard regulations. These kits were basic, yet afforded the master an opportunity to effectively respond to cuts, fish hooks and other minor injuries. The Coast Guard has revised the wording in subchapters K and T to reference the approval series 160.041, instead of citing the specification in subchapter Q.

*Sections 122.202 and 185.202 Notice of Casualty*

Eleven comments suggested that the term ''treatment beyond first aid'' be better defined. The comments recommended that the Coast Guard adopt the ''Report of the Quality Action Team (QAT) on Marine Safety Investigations.''

The Coast Guard agrees that ''treatment beyond first aid'' could be better defined. The Coast Guard has initiated a rulemaking project to address the recommendations in the QAT report. It is beyond the scope of this rulemaking to make changes to 46 CFR Part 4.

*Section 185.280 Official Logbook for Foreign Voyages*

(1) One comment asked where an individual could obtain official logbooks. The comment noted that they could not be obtained from the Government Printing Office.

The Coast Guard advises that the ''Official Logbook, Merchant Marine'' (CG–706B) can be obtained free of charge to the public through the General Services Administration (GSA). The supply number for the form is 753000F010040. In addition, the publication is not subject to copyright; it may be reproduced by anyone who desires to do so. However, care should be given not to create the appearance that the Coast Guard approves of an individual, entity, or group of either, as the appropriate source to obtain an official logbook. This can be done by including a statement in the book that

the official logbook can be obtained for free from the GSA.

(2) One comment stated that the laws cited in official logbooks are outdated; 46 CFR was revised in 1983.

As for the out of date regulatory cites, the Coast Guard does not guarantee either that the citations are all inclusive or current. The Coast Guard expressly retains the discretion to allocate limited resources to perform tasks that preclude the updating of the statutory and regulatory authorities governing the matters addressed in the logbook.

(3) One comment suggested that logbooks needed to include the number of hours a crewmember is on watch. Crews on passenger vessels should not be allowed to work upwards of 30+ hours in a single stint.

The Coast Guard states that the updating of logbooks is beyond the scope of this rulemaking. Besides, small passenger vessels are required to carry alternate crews when operating more than 12 hours in any 24 hour period.

*Sections 122.304 and 185.304 Navigation Underway*

(1) One comment recommended that senior deckhands should be allowed to control the movement of the vessel.

The Coast Guard states that the master of a vessel has ultimate responsibility for the operation of that vessel. If the master places a deckhand, senior or otherwise, in control of the vessel, the master is still responsible for the deckhand's actions while at the helm.

(2) One comment recommended that paragraph (a)(6) of these sections be reworded with ''visual and/or radar contacts'' so that visual contacts are not ignored.

The Coast Guard agrees that a clarification is warranted and revises these paragraphs.

*Sections 122.335 and 185.335 Loading Doors*

One comment noted that paragraph (a) of these sections requires loading doors to be closed watertight. The comment noted that vessels with Load Lines are only required watertight hatches below the freeboard deck. It was recommended that the paragraphs be revised to allow for weathertight loading doors.

The Coast Guard agrees. The reference to watertight is removed. Loading doors that are required to be watertight should be watertight when closed and secured. The same goes for weathertight hatches.

*Sections 122.410 and 185.410 Watchmen*

One comment recommended that these sections be expanded to include language that a watchman shall provide assistance and protection to ill passengers located in deck areas. Another comment recommended that Commandant institute a change to 46 CFR 185.22 and require that at all times during which bunks in passenger areas below the main deck are occupied, the vessel's patrolman be required to guard against missing passengers as well as fire and other dangers. This will increase safety by minimizing the possible length of time before a passenger is discovered missing.

The Coast Guard agrees. Any passenger at risk of falling overboard should be identified and dealt with properly by the crew in order to prevent a man overboard situation. The sections are revised to include guarding against a man overboard situation.

*Sections 122.420 and 185.420 Crew Training*

(1) Two comments recommended the words ''once every three months'' be removed from paragraph (a). Sections 122.520 and 122.524 require monthly drills and training.

The Coast Guard disagrees. Certain aspects of the emergency instruction placard and Station Bill are not covered in the monthly drills. In addition, the once every three month requirement is intended to be used as a refresher and review of the vessel's safety procedures. Drills need not be carried out during this crew training.

(2) Five comments noted that many companies operate sister or comparably equipped vessels. The term ''sister vessel'' should be incorporated into this section.

The Coast Guard agrees that sister vessels within a fleet should be considered for crew training and drill purposes. A new paragraph (b) is added to address training on sister vessels.

(3) Two comments suggested paragraph (a) is contrary to good crew training. To bring a fresh, new crew member up to par, especially in a multiple boat fleet, is impossible without on the job training. Experience and shepherding from senior crew members are the best training methods, especially when backed up by company training sessions. The Coast Guard states that as with any job, new crew members will have fewer responsibilities than the more senior crew members. The Coast Guard does not see how requiring a company to indoctrinate new employees is contrary to good crew training. If individuals are going to be placed in a position of responsibility during an emergency, then they should have the requisite level of training.

(4) One comment stated that drill documentation needs to be better explained in §§ 122.420, 122.520, and 122.524. One comment recommended that language should be revised or added to state that when a vessel gets underway with passengers on board, the crew shall have sufficient training to handle an emergency. Three comments agreed with drill documentation; one disagreed. One comment stated that crew training requirements are too costly, especially for seasonal operations.

The Coast Guard considers the language of the crew training sections of subchapters K and T to be appropriate and does not see the need to shorten or further generalize the language.

(5) One comment suggested that crew training should be amended to include the identification of seasickness, with extreme nausea, as a hazardous condition.

The Coast Guard has not determined that additional language regarding seasickness is appropriate under the crew training sections. Sections covering man overboard, rough seas, and the revised Watchman sections provide adequate guidance to the master concerning their responsibilities and that of their crew to prevent or respond to a man overboard situation.

(6) One comment stated that logging drills is common sense, however, there is no requirement to keep attendance records on who has been trained. It was recommended that this requirement be added to the rule.

The Coast Guard notes that it is the master's responsibility to provide training to all members of a vessel's crew. The Coast Guard agrees that attendance records would be beneficial in determining compliance with the crew training requirements. However, the Coast Guard does not want to limit the compliance options currently open to vessel operators. During the comment period other options such as training cards carried by each crewmember were discussed.

*Sections 122.504 and 185.504 Passenger Count*

Seven comments stated that passenger counts are not accurate. The intent of these sections is understood, but the problem is with compliance for some operators, especially ferry vessel operators. One comment suggested that the requirement to keep a count of disembarking passengers should not be required for ferry vessels. Another comment recommended that a passenger count should not be required on vessels traveling less than a mile or on a run of less than 30 minutes.

The Coast Guard's position on passenger lists and counts has not changed from what was stated in the IFR. The Coast Guard needs to be informed of the number of people on board a vessel in the event of a casualty or other emergency requiring Coast Guard assistance. The requirements leave compliance methods up to the operator. The Coast Guard has determined that the maximum amount of flexibility has been built into the requirements while still maintaining the integrity of the law in 46 U.S.C. 3502.

*Sections 122.506 and 185.506 Passenger Safety Orientation*

(1) Two comments stated that passengers do not listen to the passenger safety orientation presentation. Eight comments recommended that the use of placards on bulkheads, especially on ferries and vessels in short (less than 30 minutes) and multiple stop service, be authorized. One comment stated that placards and handouts would only be read by those who read the PFD placards, that is, no one.

The Coast Guard advises that the intent of the regulation is to inform passengers of basic safety equipment locations and emergency procedures in the event of an emergency. This will help reduce the amount of confusion among passengers when crew members are trying to maintain control in an emergency.

(2) Two comments recommended authorizing the use of a tape recording on orientation when §§ 121.610 and 184.610 become mandated. Another comment recommended authorizing the use of handouts on vessels operating on oceans and coastwise routes. The Coast Guard agrees that all vessels should be able to use the alternative announcement in paragraph (b).

(3) One comment suggested that paragraph (b)(2) is counterproductive, would alarm passengers, and prove to be a boon to ambulance chasers. One comment stated that the requirement for overnight passengers to don PFDs and receive a safety orientation in paragraph (d) trickled down from subchapters H and K and should be eliminated from subchapter T.

The Coast Guard disagrees. Some operators commented that the announcement is not practical due to vessel design, operating environment, duration of voyage, or other restrictions. The Coast Guard agrees that the requirement could be more flexible, especially for ferries on short (less than 15 minute) runs. A new paragraph (c) has been added to allow the OCMI latitude in the use of bulkhead placards for ferries under unique operating conditions.

(4) Two comments recommended changing the language in paragraph (a) to read ''as soon as possible after getting underway'' to allow for some flexibility in the passenger orientation requirement.

The Coast Guard agrees. Paragraph (a) is changed to allow flexibility in when the orientation is given.

(5) One comment recommended adding zero tolerance language to safety orientation.

The Coast Guard indicates there are no plans to add zero tolerance language to safety orientation. However, vessel operators are not precluded from adding their company's zero tolerance language to the passenger orientation.

(6) One comment recommended that the Coast Guard should emphasize that seasickness is a hazardous condition, and that ill passengers should notify the crew, find a ''buddy'' to assist them during the illness, and don a PFD.

The Coast Guard agrees that all passengers who become ill have the right to contact a crewmember or the master. It is the master's responsibility to look after the passengers on his or her vessel. Afterall, this is a service industry and passengers should expect to be taken care of once on board a vessel. However, the Coast Guard has not determined that it is necessary to require the master of a vessel to announce that if passengers are ill, to report to a crewmember.

(7) One comment recommended that operators of older vessels, with lower than legal handrails.

The Coast Guard states since grandfathered vessels are allowed to have rails at a height previously approved, they are not illegal.

(8) Two comments suggested that the welcome aboard speech should not contain language that states that the master will require passengers to don PFDs in the event of a hazardous condition. Sea conditions that would require the donning of PFDs are avoided by operators.

The Coast Guard disagrees. The language is consistent with §§ 122.508 and 185.508. Informing passengers that in an emergency, they shall be required to don life jackets as directed by the Captain should not put them under any undue duress.

*Section 185.508 Wearing of Life Jackets*

(1) One comment suggested that crewmembers should be required to wear type 5 inflatable PFDs on deck when the master determines it is necessary due to weather or other extreme operating conditions. ''The failure of the master to give such an order under such circumstances is gross negligence.''

The Coast Guard emphasizes that the master of a vessel has the authority to require the crew to don PFDs due to operating or weather conditions. Inflatable PFDs are allowed as per § 117.73 (c) and (d), and § 180.73 (c) and (d) as work vests as long as they are approved as such under the 160.053 or 160.077 series.

(2) One comment was uncomfortable with the wording that the master shall require passengers to don life jackets under certain circumstances including ''severe weather.'' Severe weather needs to be better defined or the word ''shall'' be changed to ''may.''

The Coast Guard states that replacing ''shall'' with ''may'' defeats the purpose of the requirement. This section outlines the master's responsibility for getting passengers and crew into life jackets under certain circumstances. No changes to this section were made.

(3) One comment stated that paragraph (a)(4) requires passengers to don PFDs when the vessel is under tow. This wording should be changed to ''disabled vessels under tow'' in order to avoid the interpretation that when the vessel is using an assist tug to come alongside a pier, the passengers must don PFDs.

The Coast Guard disagrees that paragraph (a)(4) should be clarified with the proposed language in the comment.

(4) One comment recommended adding paragraph (c) ''The master of the vessel shall strongly recommend that if passengers become seasick and remain on deck, they should don a lifejacket.''

The Coast Guard agrees with the intent of the comment about seasick passengers donning life jackets. However, the master of the vessel is responsible for safety of the passengers while on board his or her vessel. A prudent mariner, noting a passenger in distress to the point of being in danger of falling overboard, will take the appropriate action to ensure that passenger's safety. The Coast Guard has determined that no changes to this section of the regulations are required at this time.

*Section 185.510 Emergency Instructions*

One comment recommended including seasickness with nausea in the emergency instructions and indicate appropriate cautionary actions to be undertaken by the crew. The emergency instructions are geared toward emergencies affecting the entire vessel.

The Coast Guard has not determined that it is appropriate to address individual seasickness in this section.

*Section 122.520 Abandon Ship and Man Overboard Drills and Training*

Three comments stated that the requirement that a vessel cannot get underway if more than 25% of the crew has not received training is burdensome. Abandon ship and man overboard drill techniques, once mastered, are transferable. It is recommended that paragraph (2) be deleted as written. Restate as a goal that the master shall ensure that each crewmember is trained to respond in an emergency. Four comments recommended allowing for crossover training on sister vessels. As stated previously, the Coast Guard modified the paragraph's language to allow for sister vessel training. However, paragraph (b)(2) will be retained so that new employees will receive the proper indoctrination prior to getting underway with passengers.

The Coast Guard agrees that certain drill techniques are transferable, however, vessel specific items such as fire hydrant location and survival craft type are not.

*Section 122.524 Fire Fighting Drills and Training*

Three comments stated that fire fighting drills are supported as long as the master's duty is cast as a goal instead of a prescriptive standard.

The Coast Guard contends that the requirements are appropriate as written.

*Sections 122.602 and 185.602 Hull Markings*

One comment stated that the hull marking requirements, specifically, the loading and draft mark requirements, are not necessary. Another comment noted that paragraph (c)(2) requires three draft marks. It was recommended that the rule define the center mark as the limiting draft, and that the fore and aft marks are the limiting trim in either direction.

The Coast Guard's position on hull markings has not changed. The Coast Guard agrees that paragraph (c)(2) could be better written. Both sections have been rewritten to clarify the hull marking requirements.

*Section 122.604 Lifesaving Equipment Markings*

Two comments stated that referencing IMO resolutions is not practical for small passenger vessel owners. These publications are difficult to locate and expensive to purchase. It was recommended to not cite the reference, but quote the specific language.

The Coast Guard advises that the referenced IMO publication for lifesaving equipment markings is used as an alternative to the standards spelled out in §§ 122.604(f) and 185.604(f). These symbols can be obtained at the local MSO, and it is not necessary to purchase the publication.

*Sections 122.730 and 185.730 Servicing of Inflatable Liferafts, Inflatable Buoyant Apparatus, Inflatable Life Jackets, and Inflated Rescue Boats*

After review, the Coast Guard has determined that liferafts and IBAs should be required to be serviced at a facility approved, by the Commandant, to service that particular brand. The reference in the IFR to the procedures in § 160.151 is troublesome because § 160.151 does not exist. A reference to § 160.051, which does exist, would be obsolete and require revision soon. However, both current and proposed rules require that approved servicing facilities perform approved servicing in accordance with the applicable regulations.

*Section 170.173 Criterion for Vessels of Unusual Proportion and Form*

One comment recommended that this section be revised to incorporate intact stability standards and policy (NVICs, PFMs, and MTNs) currently used by the MSC for vessels that operate on protected and partially protected waters.

The Coast Guard agrees. Criteria used successfully in the past and listed in MSC's PFM 1–89 are incorporated into this rule.

Part 171—Special Rules Pertaining to Vessels Carrying Passengers

Public comments brought to the Coast Guard's attention that certain sections regarding bulkhead penetrations, watertight integrity, and deck drainage for vessels less than 100 gross tons had mistakenly been deleted from subchapter S. The Coast Guard has determined that the error occurred during the creation of subchapter K. When the NPRM was published in 1989, the Coast Guard proposed that the stability requirements in subchapter S for vessels less than 100 gross tons be moved back into subchapter T for the convenience of the reader. The proposal also involved the removal of redundant language in subchapter S. When subchapter K was proposed in the 1994 SNPRM, language was added to part 116 requiring subchapter K vessels to meet applicable stability standards in subchapter S with some exceptions noted in subpart K. However, the proposed revisions to subchapter S deleting certain requirements for vessels of less than 100 gross tons were not removed from the rulemaking document. In February, 1997, the MSC sent out bulletin 01–97 to naval architects, designers, and boat builders throughout the United States explaining the error and providing interim guidance until publication of the final rule. The Coast Guard has amended part 171 in this final rule by reinstating §§ 171.110, 171.114, 171.115, 171.119, 171.120, 171.122, 171.124, 171.130, 171.140, 171.145, 171.150, and 171.155 as published in the October 1, 1995 edition of 46 CFR parts 166 to 199. The Coast Guard apologizes for any confusion this error may have caused to the small passenger vessel industry.

**Incorporation by Reference**

The Director of the Federal Register has approved the material in §§ 114.600 and 175.600 for incorporation by reference under 5 U.S.C. 552 and 1 CFR part 51. Copies of the material are available from the sources listed in those sections.

**Regulatory Evaluation**

This Final rule is a significant regulatory action under section 3(f) of Executive order 12866 and has been reviewed by the Office of Management and Budget (OMB) under that Order. It is significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11040; February 26, 1979). A regulatory evaluation, with addendum, is available in the docket for inspection and copying where indicated under **ADDRESSES.**

A draft regulatory evaluation was prepared for the SNPRM based on comments to the NPRM and placed in the rulemaking docket. The evaluation contained information on the methodology and data sources used in determining costs and benefits, details on the costs and benefits of over 70 changes, alternatives to proposed changes, costs for sample small passenger vessels, and a profile of the small passenger fleet and its casualty history. The Coast Guard received several comments stating that the draft evaluation for contained outdated costs and objecting to the risk-assessment methodology used and the cost/benefit analysis.

The SNPRM identified the three most significant monetary cost/benefit items of this rulemaking as—

1. Liferafts or inflatable buoyant apparatus for certain vessels;
2. Passenger/crew lists; and
3. Fixed fire extinguishing systems in machinery spaces.

As a result of the comments received on the draft evaluation and the SNPRM

as a whole, the Coast Guard significantly reduced the cost of the rulemaking by incorporating the following changes in the IFR:

1. Reduced the number of vessels required to carry inflatable survival craft.

2. Revised the passenger and crew list requirements.

In addition, the Coast Guard made other significant changes in the IFR that resulted in reduced costs to the small passenger vessel industry. For example, the IFR—

1. Provided more options to meet structural fire protection requirements;

2. Eliminated the requirement to install overspeed trip devices for main propulsion engines and generators; and

3. Deleted the requirement to have wooden vessels more than 20 years old drydocked annually.

In order to address the impact of these changes, the Coast Guard provided an addendum to the draft regulatory evaluation prepared for the SNPRM. The addendum updated the changes in cost associated with the elimination of some of the inflatable lifesaving equipment and of the requirements to maintain passenger and crew list for certain vessels. In order to provide consistency with the draft evaluation, the addendum used the same methods of calculating the total and Average Annual Cost (AAC) of the requirements. However, the information used to calculate the number of vessels affected and the cost of required equipment were updated to provide an accurate estimate.

The Coast Guard determined that by adopting these changes, the overall costs of this rule to the industry was reduced by 63 percent. The comments from industry on the IFR confirmed the significant cost reductions and applauded the Coast Guard's efforts.

The Coast Guard has determined that the changes made by this final rule, including the elimination of the K′ threshold, will not change the impact of this rule significantly. As a result, no further changes were made to the final regulatory evaluation adopted in the IFR.

## Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

As discussed at length in Small Entities section of the preamble to the IFR (61 FR 883), this rule will affect the operators of small passenger vessels. These firms come under the Standard Industrial Code (SIC) categories 4489 (Water Transportation of Passengers) and 4482 (Ferries), both of which are considered small entities if they have 500 or less employees.

We received numerous comments pointing out an error in the Small Entities section in the IFR. The comments disagreed with the statement that few small entities operate the 405 vessels carrying more than 150 passengers. In fact, nearly all owners and operators of small passenger vessels, including vessels carrying more than 150 passengers, constitute small entities under the SIC. Owners and operators of vessels carrying more than 150 passengers are subject to higher costs than other small passenger vessels due to additional requirements, such as structural fire protection. The Coast Guard contends that, despite these additional requirements, this rule still should not have a significant economic impact on owners and operators vessels carrying more than 150 passengers because of the size of their operations and volume of their business.

As very likely all of the entities affected by this rulemaking are small entities, the entire regulatory evaluation prepared for this rulemaking is applicable to small entities. For a discussion of the impacts of this rulemaking, see the Regulatory Evaluation section in this preamble.

The only potential impact that the changes to the IRF will have results from the removal of the $K^1$ category. The requirement for stairtowers landing areas is restored for vessels having overnight accommodations for more than 49 passengers. However, because this type of vessel was built to the guidelines in NVIC 11–83, which required stairtower landing areas in accordance with subchapter H, this change will have no effect on existing vessels. In addition, it will provide consistency for boat builders who have built this type of vessel for the past 13 years. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

## Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard will answer questions by small entities concerning information on, and advice about, compliance with statutes and regulations, interpreting and applying the law to specific sets of facts supplied by the small entity. For questions concerning this rule, contact the Vessel Compliance Division (G-MOC–2) at 202–267–1464.

## Collection of Information

This final rule provides for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). As required by 5 U.S.C. 3507(d), the Coast Guard submitted a copy of this rule to the Office of Management and Budget (OMB) for review of the collection of information. OMB has approved the collection. The sections providing for a collection are listed in the discussion of collection of information in the preamble to the interim final rule (61 FR 884). The corresponding approval number from OMB is OMB Control Number 2115–0578, which expires on August 13, 1999. The collections concern the inspection and certification of vessels, including the preparation and submittal of applications and plans for certificates and the marking vessels and equipment.

Persons are not required to respond to a collection of information unless it displays a currently valid OMB control number.

## Federalism

The Coast Guard has analyzed this final rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

## Environment

The Coast Guard considered the environmental impact of this final rule and concluded that, under paragraphs 2.B.2.e.(34)(c) through (e) of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. This rule concerns the inspection, certification, and equipping of vessels and the training of maritime personnel. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

## List of Subjects

*46 CFR Parts 114 and 175*

Incorporation by reference, Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

*46 CFR Parts 115 and 176*

Fire prevention, Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

*46 CFR Parts 116, 117, 119, 171, 178, 179, 180, and 182*

Marine safety, Passenger vessels.

*46 CFR Parts 118 and 181*

Fire prevention, Marine safety, Passenger vessels.

*46 CFR Parts 120 and 183*

Electric power, Marine safety, Passenger vessels.

*46 CFR Parts 121 and 184*

Communications equipment, Marine safety, Navigation (water), Passenger vessels.

*46 CFR Parts 122 and 185*

Alcohol and alcoholic beverages, Drugs, Hazardous materials, Marine safety, Navigation (water), Passenger vessels, Reporting and recordkeeping requirements.

*46 CFR Part 170*

Marine safety, Reporting and recordkeeping requirements, Vessels.

*46 CFR Part 173*

Marine safety, Vessels.

*46 CFR Part 177*

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Coast Guard adopts the interim rule amending 46 CFR parts 114 through 122, 170, 171, 173, and 175 through 185, which was published at 61 FR 864 on January 10, 1996, as a final rule with the following changes:

## Subchapter K—Small Passenger Vessels Carrying More Than 150 Passengers or With Overnight Accommodations for More Than 49 Passengers

## PART 114—GENERAL PROVISIONS

1. The authority citation for part 114 is revised to read as follows:

**Authority:** 46 U.S.C. 2103, 3306, 3703; 49 U.S.C. App. 1804; 49 CFR 1.45, 1.46. Sec. 114.900 also issued under 44 U.S.C. 3507.

2. In § 114.110, revise paragraph (a) to read as follows; remove paragraphs (b) and (c); redesignate paragraph (f) as paragraph (b); redesignate paragraphs (d) and (e) as paragraphs (c) and (d), respectively; and remove paragraph (g) and table 114.110(g):

**§ 114.110 General applicability.**

(a) Except as in paragraph (b) of this section, this subchapter applies to each vessel of less than 100 gross tons that carries more than 150 passengers, or has overnight accommodations for more than 49 passengers, and that—

(1) Carries at least one passenger for hire;

(2) Is chartered with or without a crew provided or specified by the owner or the owner's representative; or

(3) If a submersible vessel, carries at least one passenger for hire.

**Note to paragraph (a)**: For a vessel of less than 100 gross tons that carries 150 or less passengers or has overnight accommodations for 49 or less passengers, see subchapter T of this chapter.

* * * * *

3. In § 114.400, in paragraph (b), revise the definitions for ''accommodation space'' introductory text, ''atrium,'' ''auxiliary machinery space,'' ''cold water,'' ''hardwood,'' ''high risk accommodation space,'' ''high risk service spaces,'' ''High Speed Craft,'' ''low risk service spaces,'' ''machinery space,'' ''overnight accommodations or overnight accommodation space,'' and ''passenger accommodation space'' and add, in alphabetical order, a definition for ''approval series'' and ''exit'' to read as follows:

**§ 114.400 Definitions of terms used in this subchapter.**

* * * * *

(b) * * *

*Accommodation space* (5, 6, or 7 depending on size, fire load, and furnishings) means a space that does not contain any cooking appliance other than a microwave oven or other low heat (maximum heating element temperature less than 121°C (250°F)) appliance used as a—

* * * * *

*Approval series* means the first six digits of a number assigned by the Coast Guard to approved equipment. Where approval is based on a subpart of subchapter Q of this chapter, the approval series corresponds to the number of the subpart. A listing of approved equipment, including all of the approval series, is published periodically by the Coast Guard in Equipment Lists (COMDTINST M16714.3 series), available from the Superintendent of Documents.

* * * * *

*Atrium* (5 or 7 depending on fire load and furnishings) means a continuous deck opening connecting more than two deck levels within an accommodation space that is covered at the top of the series openings and is used for purposes other than an enclosed stairway, or a utility trunk for pipe, cable, or ductwork.

*Auxiliary machinery space* (12) means a space containing only pumps, tanks, electrical machinery, ventilation or air conditioning equipment, refrigeration machinery, resistors steering machinery, etc., with not more than 2.5 kilograms per square meter (0.5 pounds per square foot) of combustible storage.

* * * * *

*Cold water* means water where the monthly mean low water temperature is normally 15 degrees Celsius (59 degrees Fahrenheit) or less.

* * * * *

*Exit* means—

(1) A stairtower or a stairway which terminates at an area of refuge or embarkation station; or

(2) A door which leads directly to an area of refuge or embarkation station.

* * * * *

*Hardwood* means oak or a similar wood with a specific gravity of approximately 0.6 and having fire resistant properties similar to oak.

* * * * *

*High risk accommodation space* (6 or 7 depending on size) means an accommodation space that contains a fire load greater than 15 kilograms per square meter (3 pounds per square foot), or a cleaning gear locker which contains storage space for materials other than flammable liquids and which has a deck area less than 5 square meters.

*High risk service spaces* (9) include—

(1) Galley;

(2) Large laundry or drying room;

(3) Garbage or trash disposal storage area;

(4) Paint or lamp locker;

(5) Cleaning gear locker or small storeroom in an accommodation area;

(6) Mail or baggage room; and

(7) Pantries and storerooms which contain flammable liquids or have a deck area not less than 5 square meters including connecting alleyways and stairs.

* * * * *

*High Speed Craft* means a craft that is operable on or above the water and has characteristics so different from those of conventional displacement ships, to which the existing international conventions, particularly SOLAS, apply, that alternative measures should be used to achieve an equivalent level of safety. In order to be considered a high speed craft, the craft must be capable of a maximum speed equal to or exceeding $V=3.7 \times displ^{1667}$ h, where ''V'' is the maximum speed and ''displ'' is the vessel displacement corresponding to the design waterline in cubic meters.

*Low risk service spaces* (8) include—

(1) Cleaning gear lockers which have a deck area less than 5 meters containing only slop sinks, and having no room for stowing materials other than brooms, mops, or soap;

(2) Small laundries or drying rooms containing only a tub, washing machine, and/or household type electric dryer;

(3) Workshops that are not part of a machinery space;

(4) Washrooms and toilet spaces; and

(5) Motion picture projection rooms.

* * * * *

*Machinery space* (10) means a space, including a trunk, alleyway, stairway, or duct to such a space, that contains—

(1) Propulsion machinery of any type;

(2) Steam or internal combustion machinery;

(3) Oil transfer equipment;

(4) Electrical motors of more than 10 hp;

(5) One or more oil-fired boilers or heaters; or

(6) Electrical generating machinery.

* * * * *

*Overnight accommodations or overnight accommodation space* (5, 6 or 7 depending on size, fire load and furnishings) means an accommodation space for use by passengers or by crew members, that has one or more berths, including beds or bunks, for passengers or crew members to rest for extended periods. Staterooms, cabins, and berthing areas are normally overnight accommodation spaces. Overnight accommodations do not include spaces that contain only seats, including reclining seats.

* * * * *

*Passenger accommodation space* (5, 6 or 7 depending on size, fire load, and furnishings) means an accommodation space designated for the use of passengers.

* * * * *

**§ 114.540 [Amended]**

4. In § 114.540(b), remove the word ''pending''.

5. In § 114.600(b), under the entry for American Bureau of Shipping, add a new entry for ''Guide for High Speed Craft'' at the end and, under the entry for National Fire Protection Association, remove the words ''NFPA 13–1994'', ''NFPA 70–1993'', ''NFPA 92B–1991'', and ''NFPA 701–1989'' and add, in their place, the words ''NFPA 13–1996'', ''NFPA 70–1996'', ''NFPA 92B–1995'', and ''NFPA 701–1996'', respectively:

**§ 114.600 Incorporation by reference.**

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(b) * * *

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*American Bureau of Shipping (ABS)*

* * * * *

| | |
|---|---|
| Guide for High Speed Craft, 1997 | 116.300 |

* * * * *

6. Revise § 114.800(b) to read as follows:

**§ 114.800 Approved equipment and material.**

* * * * *

(b) Coast Guard publication COMDTINST M16714.3 (Series) ''Equipment Lists, Items Approved, Certificated or Accepted under Marine Inspection and Navigation Laws,'' lists approved equipment by type and manufacturer. COMDTINST M16714.3 (Series) may be obtained from New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

## PART 115—INSPECTION AND CERTIFICATION

7. The authority citation for part 115 continues to read as follows:

**Authority:** 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3306; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 743; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

8. In § 115.600(b), revise the first sentence to read as follows:

**§ 115.600 Drydock and internal structural examination intervals.**

* * * * *

(b) A vessel making an international voyage subject to SOLAS requirements must undergo a drydock examination at least once every 12 months. * * *

* * * * *

**§ 115.612 [Amended]**

9. In § 115.612(b), remove the words ''such as'' and add, in their place, the words ''including, but not limited to,''.

**§ 115.802 [Amended]**

10. In § 115.802(c), remove the words ''the working of the hull'' and add, in their place, the words ''the hull and internal structure''.

**§ 115.808 [Amended]**

11. In § 115.808, in paragraph (a)(1), remove the words § 71.25–15 in subchapter H (Passenger Vessels) of this chapter'' and add, in their place, the words ''§ 122.520 of this chapter'' and, in paragraph (a)(4), after the word ''liferaft'', add the words, inflatable buoyant apparatus,''.

**§ 115.810 [Amended]**

12. In § 115.810(b), in table 115.810(b), in the ''Test'' column, in the fourth sentence for the entry ''Carbon dioxide'', remove the word ''Inspection'' and add, in its place, the word ''Inspect''.

13. Revise § 115.812(a) to read as follows:

**§ 115.812 Pressure vessels and boilers.**

(a) Pressure vessels must be tested and inspected in accordance with part 61, subpart 61.10, of this chapter; except that, they must be inspected once every 3 years instead of at the intervals in § 61.10–5(a), (b), and (d) of this chapter.

* * * * *

## PART 116—CONSTRUCTION AND ARRANGEMENT

14. The authority citation for part 116 continues to read as follows:

**Authority:** 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

15. In § 116.300, in paragraph (b)(1)(ii), remove the words ''Aluminum Vessels;'' and add in their place, the words ''Aluminum Vessels; or'' and add paragraph (b)(2) to read as follows:

**§ 116.300 Structural design.**

* * * * *

(b) * * *

(2) ABS Guide for High Speed Craft.

* * * * *

16. Revise § 116.405(f) to read as follows:

**§ 116.405 General arrangement and outfitting.**

* * * * *

(f) Nonmetallic piping in concealed spaces. The use of nonmetallic (plastic) pipe within a concealed space in a control space, accommodation space, or service space is permitted in nonvital service only if the piping material has a flame spread rating of not more than 20 and a smoke developed rating of not more than 10 when tested in accordance with ASTM E–84 or UL 723 by an independent laboratory.

* * * * *

17. In § 116.415, revise paragraph (a)(1), table 116.415(b), and table 116.415(c) to read as follows:

**§ 116.415 Fire control boundaries.**

(a) * * *

(1) Major hull structure—The hull, structural bulkheads, columns and stanchions, superstructures, and deckhouses must be composed of steel or equivalent material.

* * * * *

TABLE 116.415(b)—BULKHEADS

| Spaces | (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) | (10) | (11) | (12) | (13) |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Control Space (1) | B–0 | A–0 | A–0 | A–0 | A–15 | A–60 | A–60 | A–0 | A–60 | A–60 | A–60 | A–0 | A–0 |
| Stairway (2) | | A–0 [4] | A–0 | A–0 | A–0 | A–60 | A–60 | A–0 | A–15 | A–15 | A–15 | A–0 | A–0 |
| Corridor (3) | | | C | A–0 | B–0 | B–0 | A–0 | B–0 | A–0 | A–0 | A–0 | A–0 | A–0 |
| Embarkation Station (4) | | | | C | A–0 | A–0 | A–0 | A–0 | A–0 | A–0 | A–0 | C' [1] | C |
| Low Risk Accommodation (5). | | | | | B–0 | B–15 | B–15 | B–0 [2] | A–15 | A–15 | A–15 | A–0 | A–0 |
| High Risk Accommodation (6) (≤50 sq. m.). | | | | | | B–15 | A–30 | B–0 [2] | A–60 | A–60 | A–60 | A–0 | A–0 |
| High Risk Accommodation (7) (>50 sq. m.). | | | | | | | A–60 | B–0 [2] | A–60 | A–60 | A–60 | A–0 | A–0 |
| Low Risk Service Spaces (8). | | | | | | | | C | A–0 | A–0 | A–0 | A–0 | A–0 |
| High Risk Service Spaces (9). | | | | | | | | | C [3] | A–0 | A–0 | A–0 | A–0 |
| Machinery Spaces (10) | | | | | | | | | | C | A–0 | A–0 | A–0 |
| Cargo Spaces (11) | | | | | | | | | | | A–0 | A–0 | A–0 |
| Auxiliary Machinery spaces, voids, fuel and water tanks (12). | | | | | | | | | | | | C' [1] | C' [1] |
| Open decks (not safety areas) (13). | | | | | | | | | | | | | C |

[1] Boundaries of fuel tanks, auxiliary machinery spaces, and voids that contain a fire load in excess of 2.5kg/m [2] (0.5 pounds per square foot) must be minimum A–0 Class construction.
[2] Toilet space boundaries may be reduced to C'–Class.
[3] C–Class bulkheads may be used between two similar spaces, such as between two storerooms; however, an A–0 Class bulkhead shall be used between two dissimilar spaces, such as a storeroom and a workshop.
[4] Separation is not required within a single stairtower. A–0 construction is required between two distinct stairtowers.

* * * * * * *

TABLE 116.415(c)—DECKS

| Space Above | (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) | (10) | (11) | (12) | (13) |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Space Below: | | | | | | | | | | | | | |
| Control Space (1) | A–0 | A–0 | A–15 | A–0 | A–0 | A–15 | A–30 | A–0 | A–0 | A–0 | A–0 | A–0 | A–0 |
| Stairway (2) | A–0 | C | A–0 | A–0 | A–0 | A–0 | A–0 | A–0 | A–0 | A–0 | A–0 | A–0 | A–0 |
| Corridor (3) | A–0 | A–0 | A–0 | A–0 | A–0 | A–0 | A–15 | A–0 | A–0 | A–0 | A–0 | A–0 | A–0 |
| Embarkation Station (4). | A–0 | A–0 | A–0 | C | A–0 | A–0 | A–0 | A–0 | A–0 | A–0 | A–0 | C' [1] | C |
| Low Risk Accommodation (5). | A–15 | A–15 | A–0 | A–0 | A–0 | A–0 | A–15 | A–0 | A–0 | A–0 | A–0 | A–0 | A–0 |
| High Risk Accommodation(6) (≤50 sq. m.). | A–60 | A–60 | A–30 | A–15 | A–0 | A–30 | A–60 | A–0 | A–0 | A–0 | A–0 | A–0 | A–0 |
| High Risk Accommodation (7) (>50 sq. m.). | A–60 | A–60 | A–60 | A–30 | A–15 | A–60 | A–60 | A–0 | A–0 | A–0 | A–0 | A–0 | A–0 |
| Low Risk Service Spaces (8). | A–0 | A–0 | A–0 | A–0 | A–0 | A–0 | A–0 | A–0 | A–0 | A–0 | A–0 | A–0 | A–0 |
| High Risk Service Spaces (9). | A–60 | A–30 | A–30 | A–30 | A–15 | A–60 | A–60 | A–0 | A–0 | A–0 | A–0 | A–0 | A–0 |
| Machinery Spaces (10) | A–60 | A–60 | A–60 | A–30 | A–15 | A–60 | A–60 | A–0 | A–0 | C | A–0 | A–0 | A–0 |
| Cargo Spaces (11) | A–60 | A–30 | A–30 | A–30 | A–15 | A–60 | A–60 | A–0 | A–0 | A–0 | A–0 | A–0 | A–0 |
| Auxiliary Machinery Spaces, voids, fuel and water tanks (12). | A–0 | A–0 | A–0 | C' [1] | A–0 | A–0 | A–0 | A–0 | A–0 | A–0 | A–0 | C' [1] | A–0 [1] |
| Open decks (not safety areas) (13). | A–0 | A–0 | A–0 | C | A–0 | A–0 | A–0 | A–0 | A–0 | A–0 | A–0 | A–0 [1] | C |

[1] Boundaries of fuel tanks, auxiliary machinery spaces, and voids that contain a fire load in excess of .025 kPa (0.5 pounds per square foot) must be minimum A–0 Class construction.

**§ 116.422 [Amended]**

18. In § 116.422, in paragraphs (b)(2) and (c)(1), remove the words ''20 millimeters'' and add, in their place, the words ''2 millimeters'' and, in paragraph (c)(2), add, after the word ''bulkheads'', the words ''and ceiling''.

19. Revise § 116.427(a)(1) to read as follows:

**§ 116.427 Fire load of accommodation and service spaces.**

(a) * * *

(1) A space is designated as a low risk accommodation space by the owner; or

* * * * *

20. In § 116.433, add paragraph (g) to read as follows:

**§ 116.433 Windows and air ports in fire control boundaries.**

* * * * *

(g) Windows complying with paragraphs (a) through (d) of this section may be installed in the external boundaries of stairtowers if there are no unprotected openings in the side of the vessel below the windows and if the windows are not exposed to any other parts of the vessel at an angle of less than 180 degrees.

21. In § 116.435, add two sentences at the end of paragraph (c)(9) and add paragraph (c)(10) to read as follows:

**§ 116.435 Doors.**

* * * * *

(c) * * *

(9) * * *. In any case, no restriction as to the area of glass will be made for the doors insofar as this subpart is concerned. Only glass of the wire-inserted type may be fitted in the doors.

(10) Except as noted in paragraph (c)(9) of this section, doors may be fitted with not more than 0.065 square meters (100 square inches) of glass, which must be of the wire-inserted type.

* * * * *

22. In § 116.438, redesignate paragraphs (a) through (m) as paragraphs (b) through (n) respectively; add new paragraph (a); and revise newly redesignated paragraphs (m)(2), (m)(3), and (m)(6) to read as follows:

**§ 116.438 Stairtowers, stairways, ladders, and elevators.**

(a) A vessel carrying more than 600 passengers or with overnight accommodations for more than 49 passengers must meet the requirements for stairways, ladders, and elevators in § 72.05–20 of this chapter.

* * * * *

(m) * * *

(2) Each stairtower must give access to an embarkation station or an area of refuge identified in the emergency escape plan required by § 116.520.

(3) Stairtowers must not give direct access to overnight accommodations or spaces of type 9, 10, 11, or 12.

* * * * *

(6) For vessels in which a stairtower is not required, a stairway must provide a means of escape for each deck of the main vertical zone.

* * * * *

23. In § 116.439, in paragraph (d), remove the words ''the requirements of § 76.25 in subchapter H of this chapter'' and add, in their place, the words ''NFPA 13'' and revise paragraph (e) to read as follows:

**§ 116.439 Balconies.**

* * * * *

(e) If the unobstructed balcony opening area is less than 93 square meters (1,000 square feet), the opening must be protected in accordance with NFPA 13 or other standard specified by the Commandant. The horizontal projection area of stairs, escalators, statues, etc. must be subtracted from the total balcony opening area for purposes of computation of unobstructed balcony opening area.

**§ 116.440 [Amended]**

24. In § 116.440(c), remove the words ''the requirements of § 76.25 in subchapter H of this chapter'' and add, in their place, the words ''NFPA 13'.

25. In § 116.500, revise paragraph (h); in paragraph (k)(1), remove the words ''space; and'' and add, in their place, the words ''space; or''; and revise paragraph (p)(1) to read as follows:

**§ 116.500 Means of escape.**

* * * * *

(h) The maximum allowable travel distance, measured as actual walking distance from the most remote point in a space to the nearest exit, must not be more than be 46 meters (150 feet).

* * * * *

(p) * * *

(1) The space has a deck area less than 30 square meters (322 square feet);

* * * * *

26. In § 116.520, revise the introductory text of paragraph (b) to read as follows:

**§ 116.520 Emergency evacuation plan.**

* * * * *

(b) Provide procedures for evacuating all affected spaces for each casualty identified as required by paragraph (a) of this section without abandoning the vessel, including—

* * * * *

**§ 116.600 [Amended]**

27. In § 116.600(c), after the word ''enclosed'', add the words ''passenger or''.

**§ 116.610 [Amended]**

28. In § 116.610, remove paragraphs (f)(3), (i), (j), and (k) and redesignate paragraphs (f)(4) through (f)(8) as paragraphs (f)(3) through (f)(7), respectively.

**§ 116.810 [Amended]**

29. In § 116.810, in paragraph (b), remove the word ''millimeter'' and add, in its place, the word ''millimeters'' and, in paragraph (c), after the number ''1,065'', add the word ''millimeters''.

## PART 117—LIFESAVING EQUIPMENT AND ARRANGEMENTS

30. The authority citation for part 117 continues to read as follows:

**Authority:** 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

31. Revise § 117.10 to read as follows:

**§ 117.10 Applicability to vessels on an international voyage.**

A vessel on an international voyage subject to the International Convention for Safety of Life at Sea, 1974, as amended, (SOLAS) must meet the requirements in subchapter W of this chapter for passenger vessels in the same service, instead of the requirements of this part.

32. In § 117.68, revise the paragraph heading and introductory text of paragraph (a) to read as follows:

**§ 117.68 Distress flares and smoke signals.**

(a) *Oceans, coastwise, limited coastwise, and Great Lakes routes.* A vessel on an oceans, coastwise, limited coastwise, or Great Lakes route must carry—

* * * * *

33. In subpart C, revise the subpart heading to read as follows:

### Subpart C—Ring Life Buoys and Life Jackets

**§ 117.70 [Amended]**

34. In § 117.70(c)(5), remove ''510 kilograms'' and add, in its place, ''5 kilonewtons''.

35. Add § 117.71(e) to read as follows:

**§ 117.71 Life jackets.**

* * * * *

(e) Each life jacket carried on board the vessel must be marked in accordance with § 122.604 of this chapter.

**§ 117.130 [Amended]**

36. In § 117.130(b), remove the words ''in accordance with § 160.062 in subchapter Q of this chapter, or other'' and add, in their place, the words ''under part 160, subparts 160.062 or 160.162, of this chapter or a''.

37. Revise § 117.150(a) introductory text to read as follows:

**§ 117.150 Survival craft embarkation arrangements.**

(a) A launching appliance approved under part 160, subpart 160.163, of this chapter or a marine evacuation system approved under part 160, subpart 160.175, of this chapter must be provided for each inflatable liferaft and

inflatable buoyant apparatus when either—

* * * * *

38. In § 117.175, redesignate paragraphs (c) through (f) as paragraphs (d) through (g), respectively; add a new paragraph (c); and revise newly redesignated paragraph (f)(4) to read as follows:

**§ 117.175 Survival craft equipment.**

* * * * *

(c) *Inflatable buoyant apparatus.* Each inflatable buoyant apparatus must be equipped in accordance with the manufacturer's approved servicing manual.

* * * * *

(f) * * *

(4) *Light.* The light must be a floating waterlight approved under part 161, subpart 161.010, of this chapter or a standard specified by the Commandant. The floating waterlight must be attached around the body of the life float or buoyant apparatus by a 10 mm (3/8 inch) lanyard, resistant to deterioration from ultraviolet light, and at least 5.5 meters (18 feet) in length.

* * * * *

39. In § 117.200, in paragraph (a)(1), remove the words ''Subpart 160.151 in subchapter Q'' and add, in their place, the words ''Approved under part 160, subpart 160.151,''; in paragraph (a)(2), remove the words ''Subpart 160.027 in subchapter Q'' and add, in their place, the words ''Approved under part 160, subpart 160.027,''; in paragraphs (a)(3) and (a)(4), remove the words ''Subpart 160.010 in subchapter Q'' and add, in their place, the words ''Approved under part 160, subpart 160.010,''; in paragraph (b), remove the words ''buoyant apparatus or''; in paragraph (c), remove the last sentence; and, in table 117.200(c), revise footnotes 8 and 9 to read as follows:

**§ 117.200 Survival craft—general.**

* * * * *

(c) * * *

Table 117.200(c)

* * * * *

Footnotes:

* * * * *

[8] Shallow water exception—§ 117.207(e).

[9] OCMI may reduce survival craft requirements based upon the route, communications schedule, and participation in VTS—§ 117.207(f) and § 117.208(e).

* * * * *

40. In § 117.210, redesignate paragraph (b) as paragraph (c); add a new paragraph (b); and revise newly redesignated paragraph (c) to read as follows:

**§ 117.210 Rescue boats.**

* * * * *

(b) In general, a rescue boat must be a small, light-weight boat with built-in buoyancy and be capable of being readily launched and easily maneuvered. In addition, it must be of adequate proportion to permit taking an unconscious person on board without capsizing.

(c) On a vessel of more than 19.8 meters (65 feet) in length operating on protected waters, a rescue boat complying with part 160, subpart 160.056, of this chapter is acceptable in meeting the intent of this section. On a vessel of more than 19.8 meters operating on exposed or partially protected waters, a rescue boat approved under part 160, subpart 160.156, of this chapter is acceptable in meeting the intent of this section. On a vessel of not more than 19.8 meters (65 feet) in length, a required rescue boat must be acceptable to the cognizant OCMI.

## PART 118—FIRE PROTECTION EQUIPMENT

41. The authority citation for part 118 is revised to read as follows:

**Authority:** 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

42. In § 118.300, revise paragraph (c) to read as follows and, in paragraph (e), remove the '', manual'':

**§ 118.300 Fire pumps.**

* * * * *

(c) On a vessel carrying more than 600 passengers or with overnight accommodations for more than 49 passengers, the fire pump must meet § 76.10–5 of this chapter.

* * * * *

43. In § 118.310, revise paragraph (a) and add paragraphs (c) and (d) to read as follows:

**§ 118.310 Fire main and hydrants.**

(a) Except as required by paragraph (d) of this section, a vessel must have a sufficient number of fire hydrants to reach any part of the vessel using a single length of fire hose.

* * * * *

(c) Each fire hydrant must have a valve installed to allow the fire hose to be removed while the fire main is under pressure.

(d) On a vessel carrying more than 600 passengers or with overnight accommodations for more than 49 passengers, the fire main and hydrants must meet § 76.10–10 of this chapter.

**§ 118.320 [Amended]**

44. In § 118.320, in paragraph (a), remove the words ''fire stations located an'' and add, in their place, the words ''fire hydrants located on'' and, in paragraph (c)(1), remove ''§ 162.027 in subchapter Q'' and add, in its place ''part 162, subpart 162.027,''.

**§ 118.400 [Amended]**

45. In § 118.400(e), after the word ''Except'', add the words ''for continuously manned operating stations''.

46. In § 118.410, revise paragraphs (b)(2) and (c)(2)(ii); in paragraph (d)(1), remove the words ''fitting or'' and add, in their place, the words ''fitting of''; in paragraph (d)(7)(i), remove the word ''value'' and add, in its place, the word ''valve''; revise the first sentence of paragraph (d)(7)(ii) to read as follows; in paragraph (d)(8)(iii), remove the word ''value'' and add, in its place, the word ''valve''; in paragraph (f)(4)(v), remove the words ''millimeters is determined'' and add, in their place, the words ''millimeters (inches) is determined'' and, after the word ''kilograms'', add the word ''(pounds)''; and, in paragraph (f)(5)(i), after the word ''kilograms'', add the word ''(pounds)''.

**§ 118.410 Fixed gas fire extinguishing systems.**

* * * * *

(b) * * *

(2) Except for a normally unoccupied space of less than 170 cubic meters (6000 cubic feet), release of an extinguishing agent into a space must require two distinct operations.

* * * * *

(c) * * *

(2) * * *

(ii) Have manual controls in compliance with paragraph (b) of this section except for paragraph (b)(3) of this section.

* * * * *

(d) * * *

(7) * * *

(ii) A distribution line to a space protected by the system must be subjected to a test similar to that described in paragraph (d)(7)(i) of this section, except that the pressure used must be 4,136 kPa (600 psi). * * *

* * * * *

**§ 118.500 [Amended]**

47. In § 118.500(a), in table 118.500(a), in the column entitled ''Min. size'', remove the entry ''2.3 kg (5 lb)'' and add, in its place, the entry ''4.5 kg (10 lb)''.

## PART 119—MACHINERY INSTALLATION

48. The authority citation for part 119 continues to read as follows:

**Authority:** 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

### § 119.320 [Amended]

49. In § 119.320, redesignate paragraph (a) as paragraph (b) and paragraph (b) as paragraph (a).

### § 119.430 [Amended]

50. In § 119.430, remove paragraph (d) and redesignate paragraphs (e) through (l) as paragraphs (d) through (k), respectively.

### § 119.458 [Amended]

51. In § 119.458(a), add, after the word ''for'', the words ''portable dewatering pumps or''.

52. Revise § 119.465(f) to read as follows:

### § 119.465 Ventilation of spaces containing diesel machinery.

* * * * *

(f) Except as required by § 116.610(f) of this chapter, dampers may not be fitted in a supply duct.

* * * * *

## PART 120—ELECTRICAL INSTALLATION

53. The authority citation for part 120 continues to read as follows:

**Authority:** 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

### § 120.312 [Amended]

54. In § 120.312, in the introductory text, after the word ''length'', add the words ''carrying more than 600 passengers or''.

### § 120.320 [Amended]

55. In § 120.320(b)(2), after ''40°'', add the letter ''C''.

56. In § 120.340(i), revise the last sentence and add new paragraphs (i)(1) and (i)(2) to read as follows:

### § 120.340 Cable and wiring requirements.

* * * * *

(i) * * *. The use of twist-on type wire nuts is permitted under the following conditions:

(1) The connections must be made within an enclosure and the insulated cap of the connector must be secured to prevent loosening due to vibration.

(2) Twist-on type connectors may not be used for making joints in cables, facilitating a conductor splice, or extending the length of a circuit.

* * * * *

57. Add § 120.378 to read as follows:

### § 120.378 Ungrounded systems.

Each ungrounded system must be provided with a suitably sensitive ground detection system, located at the respective switchboard, that provides continuous indication of circuit status to ground with a provision to momentarily remove the indicating device from the reference ground.

### § 120.380 [Amended]

58. In § 120.380(f), before ''§ 111.93–11'', add the word ''of''.

### § 120.432 [Amended]

59. In § 120.432(b)(4), remove the number ''6'' and add, in its place, the number ''2'' and, in paragraph (c), after the word ''length'', add the words ''carrying more than 600 passengers or''.

### § 120.434 [Amended]

60. In § 120.434, after the word ''length'', add the words ''carrying more than 600 passengers or''.

## PART 121—VESSEL CONTROL AND MISCELLANEOUS SYSTEMS AND EQUIPMENT

61. The authority citation for part 121 continues to read as follows:

**Authority:** 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

### § 121.220 [Amended]

62. In § 121.220(a), remove the words ''heavy duty''.

### § 121.240 [Amended]

63. In § 121.240, in paragraph (c)(3), remove the word ''mut'' and add, in its place, the word ''must'' and, in paragraph (c)(4), remove the word ''secgion'' and add, in its place, the word ''section''.

64. Revise the section heading to § 121.702 to read as follows:

### § 121.702 Pollution prevention equipment and procedures.

65. Revise § 121.710 to read as follows:

### § 121.710 First-aid kits.

A vessel must carry either a first-aid kit approved under part 160, subpart 160.041, of this chapter or a kit with equivalent contents and instructions. For equivalent kits, the contents must be stowed in a suitable, watertight container that is marked ''First-Aid Kit''. A first-aid kit must be easily visible and readily available to the crew.

## PART 122—OPERATIONS

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

**Authority:** 46 U.S.C. 2103, 3306, 6101; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

### § 122.304 [Amended]

67. In § 122.304(a)(6), remove the words ''each closing radar contact'' and add, in their place, the words ''radar contact''.

### § 122.335 [Amended]

68. In § 122.335(a), remove the word ''watertight''.

### § 122.356 [Amended]

69. In § 122.356, remove the number ''179'' and add, in its place, the number ''176''.

### § 122,410 [Amended]

70. In § 122.410, remove the words ''or other danger'' and add, in their place, the words '', a man overboard, or other dangerous situation''.

71. In § 122.420, redesignate paragraph (b) as paragraph (c) and add a new paragraph (b) to read as follows:

### § 122.420 Crew training.

* * * * *

(b) Training conducted on a sister vessel may be considered equivalent to the initial and quarterly training requirements contained in paragraph (a) of this section.

* * * * *

72. In § 122.506, revise the introductory text of paragraphs (a) and (b); redesignate paragraphs (c) and (d) as paragraphs (d) and (e), respectively; and add a new paragraph (c) to read as follows:

### § 122.506 Passenger safety orientation.

(a) Except as allowed by paragraphs (b) and (c) of this section, before getting underway on a voyage or as soon as practicable thereafter, the master of a vessel shall ensure that suitable public announcements are made informing all passengers of—

* * * * *

(b) As an alternative to an announcement that complies with paragraph (a) of this section, the master or other designated person may—

* * * * *

(c) Ferries operating on short runs of less than 15 minutes may substitute bulkhead placards or signs for the announcement required in paragraphs (a) and (b) of this section if the OCMI determines that the announcements are not practical due to the vessel's unique operation.

* * * * *

**§ 122.518 [Amended]**

73. In § 122.518(b), remove the words ''or other standard specified by the Commandant,''.

**§ 122.520 [Amended]**

74. In § 122.520(b)(2), after the words ''particular vessel'', add the words ''or sister vessel''.

75. Revise § 122.524(c)(3) to read as follows:

**§ 122.524 Fire fighting drills and training.**

* * * * *

(c) * * *

(3) Instructions in the use and location of fire alarms, extinguishers, and any other fire fighting equipment on board.

* * * * *

76. Section 122.602 is revised to read as follows:

**§ 122.602 Hull markings.**

(a) Each vessel must be marked as required by part 67, subpart I, of this chapter.

(b) Paragraphs (c) through (g) of this section apply to each vessel that fits into any one of the following categories:

(1) A vessel of more than 19.8 meters (65 feet) in length.

(2) A vessel authorized to carry more than 12 passengers on an international voyage.

(3) A vessel with more than one deck above the bulkhead deck exclusive of a pilot house.

(c) Each vessel that complies with the stability requirements of §§ 170.170, 170.173, 171.050, 171.055, and 171.057 of this chapter or with § 178.310 of this chapter must—

(1) Have permanent draft marks at each end of the vessel; or

(2) Have permanent loading marks placed on each side of the vessel forward and aft to indicate the maximum allowable trim and amidships to indicate the maximum allowable draft.

(d) A loading mark required by paragraph (c)(2) of this section must be a horizontal line of at least 205 millimeters (8 inches) in length and 25 millimeters (1 inch) in height, with its upper edge passing through the point of maximum draft. The loading mark must be painted in a contrasting color to the sideshell paint.

(e) On a vessel that has a load line, the amidships marks required by paragraph (c)(2) of this section must be those required by the International Convention on Load Lines, 1966.

(f) In cases where draft marks are obscured due to operational constraints or by protrusions, the vessel must be fitted with a reliable draft indicating system from which the bow and stern drafts can be determined.

(g) On a vessel on which the number of passengers permitted on upper decks is limited by stability criteria, as indicated by the vessel's stability letter, the maximum number of passengers allowed on an upper deck must be indicated by a durable marking of at least 25 millimeters (1 inch) numbers and letters at the entranceway to that deck.

**§ 122.604 [Amended]**

77. In § 122.604(b), remove the words ''vessel marked'' and add, in their place, the words ''vessel or company marked'.

**§ 122.612 [Amended]**

78. In § 122.612(b), remove the words ''in clearly legible letters'' and remove the word ''ALARMS'' and add, in its place, the word ''ALARM'' and, in paragraph (f), remove the word ''cleared'' and add, in its place, the word ''clearly'.

79. Revise § 122.730(b)(2) to read as follows:

**§ 122.730 Servicing of inflatable liferafts, inflatable buoyant apparatus, inflatable life jackets, and inflated rescue boats.**

* * * * *

(b) * * *

(2) At a servicing facility approved by the Commandant to service that particular brand.

* * * * *

## Subchapter S—Subdivision and Stability

## PART 170—STABILITY REQUIREMENTS FOR ALL INSPECTED VESSELS

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

**Authority:** 43 U.S.C. 1333; 46 U.S.C. 2130, 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

81. Add § 170.173(e) to read as follows:

**§ 170.173 Criterion for vessels of unusual proportion and form.**

* * * * *

(e) For the purpose of demonstrating acceptable stability on the vessels described in § 170.170(d) as having unusual proportion and form, compliance with paragraphs (a) through (d) of this section or the following criteria is required:

(1) For partially protected routes, there must be—

(i) Positive righting arms to at least 35 degrees of heel;

(ii) No down flooding point to at least 20 degrees; and

(iii) At least 15 foot-degrees of energy to the smallest of the following angles:

(A) Angle of maximum righting arm.

(B) Angle of down flooding.

(C) 40 degrees.

(2) For protected routes, there must be—

(i) Positive righting arms to at least 25 degrees of heel;

(ii) No down flooding point to at least 15 degrees; and

(iii) At least 10 foot-degrees of energy to the smallest of the following angles:

(A) Angle of maximum righting arm.

(B) Angle of down flooding.

(C) 40 degrees.

## PART 171—SPECIAL RULES PERTAINING TO VESSELS CARRYING PASSENGERS

82. The authority citation for part 171 continues to read as follows:

**Authority:** 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

83. In § 171.110, designate the text as paragraph (a) and add paragraph (b) to read as follows:

**§ 171.110 Specific applicability.**

* * * * *

(b) Section 171.114 applies to each vessel under 100 gross tons.

84. Add § 171.114 to subpart E to read as follows:

**§ 171.114 Penetrations and openings in watertight bulkheads in a vessel less than a 100 gross tons.**

(a) Penetrations and openings in watertight bulkheads must—

(1) Be kept as high and as far inboard as practicable; and

(2) Have means to make them watertight.

(b) Watertight bulkheads must not have sluice valves.

(c) Each main traverse watertight bulkhead must extend to the bulkhead deck.

85. In § 171.115, designate the text as paragraph (a) and add paragraph (b) to read as follows:

**§ 171.115 Specific applicability.**

* * * * *

(b) Section 171.119 applies to each vessel under 100 gross tons.

86. Add § 171.119 to subpart F to read as follows:

**§ 171.119 Openings below the weather deck in the side of a vessel less than 100 gross tons.**

(a) If a vessel operates on exposed or partially protected waters, an opening port light is not permitted below the weather deck unless—

(1) The sill is at least 30 inches (76.2 centimeters) above the deepest subdivision load line; and

(2) It has an inside, hinged dead cover.

(b) Except for engine exhausts, each inlet or discharge pipe that penetrates the hull below a line drawn parallel to and at least 6 inches (15.2 centimeters) above the deepest subdivision load line must have means to prevent water from entering the vessel if the pipe fractures or otherwise fails.

(c) A positive action valve or cock that is located as close as possible to the hull is an acceptable means for complying with paragraph (b) of this section.

(d) If an inlet or discharge pipe is inaccessible, the means for complying with paragraph (b) of this section must be a shut-off valve that is—

(1) Operable from the weather deck or other accessible location above the bulkhead deck; and

(2) Labeled at the operating point for identity and direction of closing.

(e) Any connecting device or valve in a hull penetration must not be cast iron.

(f) Each plug cock in an inlet or discharge pipe must have a means, other than a cotter pin, to prevent its loosening or removal from the body.

87. Revise § 171.120 to read as follows:

**§ 171.120 Specific applicability.**

Each vessel that is 100 gross tons or more must comply with § 171.122 and each vessel under 100 gross tons must comply with § 171.124.

**§ 171.122 [Amended]**

88. In § 171.122, in paragraph (f)(1), remove ''Table 171.122'' and add, in its place, ''table 171.124(d)'' and, following paragraph (g), remove table 171.122.

89. Add § 171.124 to subpart G to read as follows:

**§ 171.124 Watertight integrity above the margin line in a vessel less than 100 gross tons.**

(a) Each hatch exposed to the weather must be watertight; except that, the following hatches may be weathertight:

(1) Each hatch on a watertight trunk that extends at least 12 inches (30.5 centimeters) above the weather deck.

(2) Each hatch in a cabin top.

(3) Each hatch on a vessel that operates only on protected waters.

(b) Each hatch cover must—

(1) Have securing devices; and

(2) Be attached to the hatch frame or coaming by hinges, captive chains, or to other devices to prevent its loss.

(c) Each hatch that provides access to crew or passenger accommodations must be operable from either side.

(d) Except as provided in paragraph (e) of this section, a weathertight door with permanent watertight coamings that comply with the height requirements in table 171.124(d) must be provided for each opening located in a deck house or companionway that—

(1) Gives access into the hull; and

(2) Is located in—

(i) A cockpit;

(ii) A well; or

(iii) An exposed location on a flush deck vessel.

TABLE 171.124(d)

| Route | Height of coaming |
|---|---|
| Exposed or partially protected. | 6 inches (15.2 centimeters). |
| Protected ..... | 3 inches (7.6 centimeters). |

(e) If an opening in a location specified in paragraph (d) of this section is provided with a Class 1 watertight door, the height of the watertight coaming need only be sufficient to accommodate the door.

90. In § 171.130, designate the text as paragraph (a) and add paragraph (b) to read as follows:

**§ 171.130 Specific applicability.**

* * * * *

(b) Sections 171.140, 171.145, 171.150, and 171.155 apply to each vessel under 100 gross tons.

91. Add § 171.140 to read as follows:

**§ 171.140 Drainage of a flush deck vessel.**

(a) Except as provided in paragraph (b) of this section, the weather deck on a flush deck vessel must be watertight and have no obstruction to overboard drainage.

(b) Each vessel with a flush deck may have solid bulwarks in the forward one-third length of the vessel if—

(1) The bulwarks do not form a well enclosed on all sides; and

(2) The foredeck of the vessel has sufficient sheer to ensure drainage aft.

92. Add § 171.145 to read as follows:

**§ 171.145 Drainage of a vessel with a cockpit.**

(a) Except as follows, the cockpit must be watertight:

(1) A cockpit may have companionways if they comply with § 171.124(d).

(2) A cockpit may have ventilation openings along its inner periphery if—

(i) The vessel operates only on protected or partially protected waters;

(ii) The ventilation openings are located as high as possible in the side of the cockpit; and

(iii) The height of the ventilation opening does not exceed 2 inches (5 centimeters).

(b) The cockpit must be designed to be self-bailing.

(c) Scuppers installed in a cockpit must be located to allow rapid clearing of water in all probable conditions of list and trim.

(d) Scuppers must have a combined area of at least the area given by either of the following equations:

A=0.1(D) square inches.

A=6.94(D) square centimeters.

Where—

A = the combined area of the scuppers in square inches (square centimeters).

D = the area of the cockpit in square feet (square meters).

(e) The cockpit deck of a vessel that operates on exposed or partially protected waters must be at least 10 inches (24.5 centimeters) above the deepest subdivision load line, unless the vessel complies with—

(1) The intact stability requirements of § 171.150;

(2) The Type II subdivision requirements in §§ 171.070, 171.072, and 171.073; and

(3) The damage stability requirements in § 171.080.

(f) The cockpit deck of all vessels that do not operate on exposed or partially protected waters must be located as high above the deepest subdivision load line as practicable.

93. Add § 171.150 to read as follows:

**§ 171.150 Drainage of a vessel with a well deck.**

(a) Each well deck on a vessel must be watertight.

(b) Except as provided in paragraphs (c) and (d) of this section, the area required for freeing ports in the bulwarks that form a well must be determined as follows:

(1) If a vessel operates on exposed or partially protected waters, it must have at least 100 percent of the freeing port area derived from table 171.150.

(2) If a vessel operates only on protected or partially protected waters and complies with the requirements in the following sections for a vessel that operates on exposed waters, it must have at least 50 percent of the freeing port area derived from table 171.150:

(i) The intact stability requirements of §§ 171.030 or 171.050 and § 171.170.

(ii) The subdivision requirements of §§ 171.040, 171.043, or 171.070.

(iii) The damage stability requirements of § 171.080.

(3) If a vessel operates only on protected waters, the freeing port area

must be at least equal to the scupper area required by § 171.145(d) for a cockpit of the same size.

(c) The freeing ports must be located to allow rapid clearing of water in all probable conditions of list and trim.

(d) If a vessel that operates on exposed or partially protected waters does not have free drainage from the foredeck aft, then the freeing port area must be derived from table 171.150 using the entire bulwark length rather than the bulwark length in the after two-thirds of the vessel as stated in the table.

TABLE 171.150

| Height of solid bulwark in inches (centimeters) | Freeing port area [1 2] |
|---|---|
| 6(15) | 2(42.3) |
| 12(30) | 4(84.7) |
| 18(46) | 8(169.3) |
| 24(61) | 12(253.9) |
| 30(76) | 16(338.6) |
| 36(91) | 20(423.2) |

[1] Intermediate values of freeing port area can be obtained by interpolation.

[2] In square inches per foot (square centimeters per meter) of bulwark length in the after ⅔ of the vessel.

94. Add § 171.155 to read as follows:

**§ 171.155 Drainage of an open boat.**

The deck within the hull of an open boat must drain to the bilge. Overboard drainage of the deck is not permitted.

## SUBCHAPTER T—SMALL PASSENGER VESSELS (UNDER 100 GROSS TONS)

## PART 175—GENERAL PROVISIONS

95. The authority citation for part 175 is revised to read as follows:

**Authority:** 46 U.S.C. 2103, 3306, 3703; 49 U.S.C. App. 1804; 49 CFR 1.45, 1.46. Sec. 175.900 also issued under 44 U.S.C. 3507.

96. In § 175.110, revise paragraph (a) to read as follows; remove paragraph (b); redesignate paragraph (c) as paragraph (b); and remove paragraph (d) and table 175.100(d):

**§ 175.110 General applicability.**

(a) Except as in paragraph (b) of this section, this subchapter applies to each vessel of less than 100 gross tons that carries 150 or less passengers, or has overnight accommodations for 49 or less passengers, and that—

(1) Carries more than six passengers, including at least one for hire;

(2) Is chartered with a crew provided or specified by the owner or the owner's representative and is carrying more than six passengers;

(3) Is chartered with no crew provided or specified by the owner or the owner's representative and is carrying more than 12 passengers; or

(4) If a submersible vessel, carries at least one passenger for hire.

**Note to § 175.110:** For a vessel of less than 100 gross tons that carries more than 150 passengers or has overnight accommodations for more than 49 passengers, see subchapter K of this chapter.

* * * * *

97. In § 175.400, revise the definitions for ''cold water'', ''High Speed Craft'', ''means of escape'', and ''weather deck'' and add, in alphabetical order, a definition for ''approval series'' to read as follows:

**§ 175.400 Definitions of terms used in this subchapter.**

* * * * *

*Approval series* means the first six digits of a number assigned by the Coast Guard to approved equipment. Where approval is based on a subpart of subchapter Q of this chapter, the approval series corresponds to the number of the subpart. A listing of approved equipment, including all of the approval series, is published periodically by the Coast Guard in Equipment Lists (COMDTINST M16714.3 series), available from the Superintendent of Documents.

* * * * *

*Cold water* means water where the monthly mean low water temperature is normally 15 degrees Celsius (59 degrees Fahrenheit) or less.

* * * * *

*High speed craft* means a craft that is operable on or above the water and has characteristics so different from those of conventional displacement ships, to which the existing international conventions, particularly SOLAS, apply, that alternative measures should be used to achieve an equivalent level of safety. In order to be considered a high speed craft, the craft must be capable of a maximum speed equal to or exceeding $V=3.7 \times displ^{1667}$ h, where ''V'' is the maximum speed and ''displ'' is the vessel displacement corresponding to the design waterline in cubic meters.

* * * * *

*Means of escape* means a continuous and unobstructed way of exit travel from any point in a vessel to an embarkation station. A means of escape can be both vertical and horizontal, and include doorways, passageways, stairtowers, stairways, and public spaces. Cargo spaces, machinery spaces, rest rooms, hazardous areas determined by the cognizant Officer in Charge Marine Inspection, escalators, and elevators must not be any part of the means of escape.

* * * * *

*Weather deck* means a deck that is partially or completely exposed to the weather from above or from at least two sides, except that for the purposes of parts 178 and 179 of this chapter, ''weather deck'' means the uppermost deck exposed to the weather to which a weathertight sideshell extends.

* * * * *

98. In § 175.600(b), under the entry for American Bureau of Shipping, add a new entry for ''Guide for High Speed Craft'; under the entry for National Fire Protection Association, remove the words ''NFPA 70–1993'' and add, in their place, the words ''NFPA 70–1996'; and, under the entry for Naval Publications and Forms Center, remove the number ''21929B (1970)'' and add, in its place, the number ''21929C (1991)'' and add a new entry for ''Military Specification MIL–R–21607E'' to read as follows:

**§ 175.600 Incorporation by reference.**

* * * * *

(b) * * *

* * * * *

*American Bureau of Shipping (ABS)*

* * * * *

Guide for High Speed Craft, 1997 177.300

* * * * *

*Naval Publications and Forms Center*

* * * * *

Military Specification MIL-R–21607E(SH) (1990)

Resins, Polyester, Low Pressure Laminating, Fire Retardant ..... 177.410

* * * * *

99. Revise § 175.800(b) to read as follows:

**§ 175.800 Approved equipment and material.**

* * * * *

(b) Coast Guard publication COMDTINST M16714.3 (Series) ''Equipment Lists, Items Approved, Certificated or Accepted under Marine Inspection and Navigation Laws'' lists approved equipment by type and manufacturer. COMDTINST M16714.3 (Series) may be obtained from New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

## PART 176—INSPECTION AND CERTIFICATION

100. The authority citation for part 176 is revised to read as follows:

**Authority:** 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3306; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p.

743; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

**§ 176.105 [Amended]**

101. In the section heading to § 176.105, remove the section number ''170.105'' and, add in its place, the number ''176.105''.

**§ 176.400 [Amended]**

102. In § 176.400(a), remove the word ''Certification'' and add, in its place, the word ''Certificate''.

103. In § 176.600(b), revise the first sentence to read as follows:

**§ 176.600 Drydock and internal structural examination intervals.**

* * * * *

(b) A vessel making an international voyage subject to SOLAS requirements must undergo a drydock examination at least once every 12 months. * * *

* * * * *

**§ 176.612 [Amended]**

104. In § 176.612(b), remove the words ''such as'' and add, in their place, the words ''including, but not limited to,''.

**§ 176.802 [Amended]**

105. In § 176.802(c), remove the words ''the working of the hull'' and add, in their place, the words ''the hull and internal structure''.

**§ 176.808 [Amended]**

106. In § 176.808, in paragraph (a)(1), remove the words ''§ 71.25–15 in subchapter H of this chapter'' and add, in their place, the words ''§ 185.520 of this chapter''; and, in paragraph (a)(4), after the word ''liferaft'', add the words '', inflatable buoyant apparatus,''.

**§ 176.810 [Amended]**

107. In § 176.810(b), in table 176.810(b), in the ''Test'' column, in the fourth sentence for the entry ''Carbon dioxide'', remove the word ''Inspection'' and add, in its place, the word ''Inspect''.

108. Revise § 176.812(a) to read as follows:

**§ 176.812 Pressure vessels and boilers.**

(a) Pressure vessels must be tested and inspected in accordance with part 61, subpart 61.10, of this chapter; except that, they must be inspected once every 3 years instead of at the intervals in § 61.10–5(a), (b), and (d) of this chapter.

* * * * *

## PART 177—CONSTRUCTION AND ARRANGEMENT

109. The authority citation for part 177 continues to read as follows:

**Authority:** 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

110. In § 177.300,in paragraph (c)(2), after the word ''ABS;'', add the word ''or''; add a new paragraph (c)(3); in paragraph (d)(1)(ii), after the words ''Aluminum Vessels;'', add the word ''or''; and add a new paragraph (d)(2) to read as follows:

**§ 177.300 Structural design.**

* * * * *

(c) * * *

(3) ABS Guide for High Speed Craft;

(d) * * *

(2) ABS Guide for High Speed Craft;

* * * * *

111. In § 177.410, revise paragraph (b) and the introductory text for paragraph (c) to read as follows:

**§ 177.410 Structural fire protection.**

* * * * *

(b) *Composite materials.* When the hull, bulkheads, decks, deckhouse, or superstructure of a vessel is partially or completely constructed of a composite material, including fiber reinforced plastic, the resin used must be fire retardant as accepted by the Commandant as meeting MIL–R–21607. Resin systems that have not been accepted as meeting MIL–R–21607 may be accepted as fire retardant if they have an ASTM E–84 flame spread rating of not more than 100 when tested in laminate form. The laminate submitted for testing the resin system to ASTM E–84 must meet the following requirements:

(1) The test specimen laminate total thickness must be between 3.2 and 6.4 millimeters (⅛ to ¼ inch).

(2) The test specimen laminate must be reinforced with glass fiber of any form and must have a minimum resin content of 40 percent by weight.

(3) Tests must be performed by an independent laboratory.

(4) Test results must include, at a minimum, the resin manufacturer's name and address, the manufacturer's designation (part number) for the resin system including any additives used, the test laboratory's name and address, the test specimen laminate schedule, and the flame spread index resulting from the ASTM E–84 test.

(5) Specific laminate schedules, regardless of resin type, that have an ASTM E–84 flame spread rating of not more than 100 may be considered as equivalent to the requirement in this section to use a fire retardant resin. Requests for qualifying a specific laminate schedule as fire retardant for use in a particular vessel may be submitted for consideration to the Commanding Officer, U.S. Coast Guard Marine Safety Center, 400 Seventh Street, SW., Washington, DC 20590–0001.

(c) *Use of general purpose resin.* General purpose resins may be used instead of fire retardant resins if the following additional requirements are met:

* * * * *

**§ 177.600 [Amended]**

112. In § 177.600(c), after the word ''enclosed'', add the words ''passenger or''.

## PART 178—INTACT STABILITY AND SEAWORTHINESS

113. The authority citation for part 178 continues to read as follows:

**Authority:** 43 U.S.C. 1333; 46 U.S.C. 2103, 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

**§ 178.310 [Amended]**

114. In § 178.310(b) introductory text, remove the word ''ad'' and add, in its place, the word ''and''.

115. In § 178.330, add paragraph (a)(4)(v) to read as follows and, in paragraph (d)(2), remove the word ''freebound'' and add, in its place, the word ''freeboard'':

**§ 178.330 Simplified stability proof test.**

(a) * * *

(4) * * *

(v) On vessels having one upper deck above the main deck available to passengers, the weight distribution must not be less severe than the following:

Total Test Weight (W) = ____

Passenger Capacity of Upper Deck: ____

$$\text{Weight on Upper Deck} = \frac{\quad}{\#\ \text{of Passengers on Upper Deck}} \times \frac{\quad}{\text{Wt/Passenger}} \times 1.33$$

Weight on Main Deck = Total Test Weight—Weight on Upper Deck

* * * * *

**§ 178.410 [Amended]**

116. In § 178.410(a), after the words ''flush deck'', add the word ''vessel''.

## PART 179—SUBDIVISION, DAMAGE STABILITY, AND WATERTIGHT INTEGRITY

117. The authority citation for part 179 is revised to read as follows:

**Authority:** 43 U.S.C. 1333; 46 U.S.C. 2103, 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

118. Revise the part heading to read as shown above.

**§ 179.230 [Amended]**

119. In § 179.230, remove ''§ 179.212(b)'' and add, in its place, ''§ 179.212''.

120. Revise § 179.240(a) and (b) (1) to read as follows:

**§ 179.240 Foam flotation material.**

(a) Foam may only be installed as flotation material on a vessel when approved by the cognizant OCMI.

(b) * * *

(1) All foam must comply with MIL–P–21929C. The fire resistance test is not required.

* * * * *

## PART 180—LIFESAVING EQUIPMENT AND ARRANGEMENTS

121. The authority citation for part 180 continues to read as follows:

**Authority:** 46 U.S.C. 2104, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

122. Section 180.10 is revised to read as follows:

**§ 180.10 Applicability to vessels on an international voyage.**

A vessel on an international voyage subject to the International Convention for the Safety of Life at Sea, 1974, (SOLAS) must meet the requirements in subchapter W of this chapter for passenger vessels in the same service, instead of the requirements of this part.

123. In § 180.68(a), revise the paragraph heading and the introductory text to read as follows:

**§ 180.68 Distress flares and smoke signals.**

(a) *Oceans, coastwise, limited coastwise, and Great lakes routes.* A vessel on an oceans, coastwise, limited coastwise, or Great Lakes route must carry—

* * * * *

124. In subpart C, revise the subpart heading to read as follows:

### Subpart C—Ring Life Buoys and Life Jackets

**§ 180.70 [Amended]**

125. In § 180.70(c)(5), remove the words ''510 kilograms'', and add, in their place, ''5 kilonewtons''.

126. Add § 180.71(e) to read as follows:

**§ 180.71 Life jackets.**

* * * * *

(e) Each life jacket carried on board the vessel must be marked in accordance with § 185.604 of this chapter.

**§ 180.130 [Amended]**

127. In § 180.130(b), remove the words ''in accordance with § 160.062 in subchapter Q of this chapter,'' and add, in their place, the words ''under part 160, subparts 160.062 or 160.162, of this chapter''.

128. Revise § 180.150(a) introductory text to read as follows:

**§ 180.150 Survival craft embarkation arrangements.**

(a) A launching appliance approved under approval series 160.163 or a marine evacuation system approved under approval series 160.175 must be provided for each inflatable liferaft and inflatable buoyant apparatus when either—

* * * * *

129. In § 180.175, redesignate paragraphs (c) through (f) as paragraphs (d) through (g), respectively; add a new paragraph (c); and revise newly redesignated paragraph (f)(4) to read as follows:

**§ 180.175 Survival craft equipment.**

* * * * *

(c) *Inflatable buoyant apparatus*. Each inflatable buoyant apparatus must be equipped in accordance with the manufacturer's approved servicing manual.

* * * * *

(f) * * *

(4) *Light*. The light must be a floating waterlight approved under approval series 161.010 or other standard specified by the Commandant. The floating waterlight must be attached around the body of the life float or buoyant apparatus by a 10 mm (3/8 inch) lanyard, resistant to deterioration from ultraviolet light, and at least 5.5 meters (18 feet) in length.

**§ 180.200 [Amended]**

130. In § 180.200, in paragraph (a)(1), remove the words ''Subpart 160.151 in subchapter Q of this chapter,'' and add, in their place, the words ''Approved under approval series 160.151''; in paragraph (a)(2), remove the words ''Subpart 160.027 in subchapter Q of this chapter,'' and add, in their place, the words ''Approved under approval series 160.027''; in paragraphs (a)(3)and (a)(4), remove the words ''Subpart 160.010 in subchapter Q of this chapter,'' and add, in their place, the words ''Approved under approval series 160.010''; in paragraph (b), remove the words ''the buoyant apparatus or''; in paragraph (c) remove the last sentence; and, in table 180.200(c), in the ''Survival craft requirements'' column for the entry ''Oceans'', remove ''(c) warm'' and add, in its place, ''(b) warm''.

**§ 180.202 [Amended]**

131. In § 180.202, in the section heading, remove the word ''an'' and add, in its place, the word ''on''.

**§ 180.206 [Amended]**

132. In § 180.206, in paragraph (a), remove the word ''§ 180.204'' and add, in its place, the word ''§ 180.205'' and, in paragraph (b), remove the words ''craft is'' and add, in their place, the words ''craft if''.

133. In § 180.210, redesignate paragraph (c) as paragraph (d); add a new paragraph (c); and revise newly redesignated paragraph (d) to read as follows:

**§ 180.210 Rescue boats.**

* * * * *

(c) In general, a rescue boat must be a small, lightweight boat with built-in buoyancy and capable of being readily launched and easily maneuvered. In addition, it must be of adequate proportion to permit taking an unconscious person on board without capsizing.

(d) On a vessel of more than 19.8 meters (65 feet) in length operating on protected waters, a rescue boat approved under approval series 160.056 is acceptable in meeting the intent of this section. On a vessel of more than 19.8 meters operating on exposed or partially protected waters, a rescue boat complying with approval series 160.056 is acceptable in meeting the intent of this section. On a vessel of not more than 19.8 meters (65 feet) in length, a required rescue boat must be acceptable to the cognizant OCMI.

## PART 181—FIRE PROTECTION EQUIPMENT

134. The authority citation for part 181 is revised to read as follows:

**Authority:** 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

**§ 181.300 [Amended]**

135. In § 181.300(e), remove the word ‘‘, manual’’.

136. Add § 181.310(c) to read as follows:

**§ 181.310 Fire main and hydrants.**

* * * * *

(c) Each fire hydrant must have a valve installed to allow the fire hose to be removed while the fire main is under pressure.

**§ 181.320 [Amended]**

137. In § 181.320, in paragraph (a), remove the words ‘‘fire stations’’ and add, in their place, the words ‘‘fire hydrants’’; and, in paragraph (d)(1), remove ‘‘§ 160.027 in subchapter Q of this chapter’’ and add, in its place ‘‘approval series 162.027’’.

**§ 181.400 [Amended]**

138. In § 181.400(b)(5)(i), remove the word ‘‘Cylinders’’ is removed and add, in its place, the words ‘‘The cylinder’’.

**§ 181.410 [Amended]**

139. In § 181.410, in paragraph (b)(2), remove the words ‘‘Except as provided in paragraph (c)(2) of this section’’ and add, in their place, the words ‘‘Except for a normally unoccupied space of less than 170 cubic meters (6000 cubic feet)’’; in paragraph (b)(10), remove the word ‘‘agency’’ and add in its place, the word ‘‘agent’’; in paragraph (c)(2)(ii), remove the words ‘‘paragraphs (b)(2) and’’ and add, in their place, the word ‘‘paragraph’’; in paragraph (f)(4)(v), after the first occurrence of the word ‘‘millimeters’’, add the word ‘‘(inches)’’ and, after the word ‘‘kilograms’’, add the word ‘‘(pounds)’’; and, in paragraph (f)(5)(i), after the word ‘‘kilograms’’, add the word ‘‘(pounds)’’.

**§ 181.500 [Amended]**

140. In § 181.500, in table 181.500(a), under the column entitled ‘‘Minimum No. required’’, remove the number ‘‘2.500’’ and add, in its place, the number ‘‘2,500’’; under the column entitled ‘‘Medium’’, remove ‘‘C02’’, wherever it appears, and add, in its place, ‘‘CO2’’; and under the column entitled ‘‘Min size’’, remove ‘‘2.3 kg (5 lb)’’ and add, in its place, ‘‘4.5 kg (10 lb)’’.

**§ 181.610 [Amended]**

141. In § 181.610, remove the number ‘‘181.610’’ and add, in its place, the number ‘‘181.300’’.

## PART 182—MACHINERY INSTALLATION

142. The authority citation for part 182 continues to read as follows:

**Authority:** 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

**§ 182.320 [Amended]**

143. In § 182.320, redesignate paragraph (a) as paragraph (b) and paragraph (b) as paragraph (a).

**§ 182.430 [Amended]**

144. In § 182.430, remove paragraph (d) and redesignate paragraphs (e) through (l) as paragraphs (d) through (k), respectively.

**§ 182.435 [Amended]**

145. In § 182.435, in paragraph (b)(3)(ii), after the word ‘‘chloride’’, add the words ‘‘or equivalent’’ and, in paragraph (c), remove the word ‘‘that’’ and add, in its place, the word ‘‘which’’.

**§ 182.458 [Amended]**

146. In § 182.458(a), after the word ‘‘for’’, add the words ‘‘portable dewatering pumps or’’.

147. Revise § 182.520(b)(2) to read as follows:

**§ 182.520 Bilge pumps.**

* * * * *

(b) * * *

(2) Provided with suitable suction hose capable of reaching the bilge of each watertight compartment and discharging overboard.

* * * * *

**§ 182.610 [Amended]**

148. In § 182.610(f)(1), remove ‘‘§§ 111.93–11(d) and (e) in subchapter J’’ and add, in its place, ‘‘§ 58.25–55(d)’’.

**§ 182.610 [Amended]**

149. In § 182.720, in paragraph (e)(1), remove the words ‘‘rated pressure stamped thereon’’ and add, in their place, the words ‘‘maximum operating pressure of the system’’ and, in paragraph (e)(3)(ii), after the word ‘‘watertight’’, add the words ‘‘decks or’’.

## PART 183—ELECTRICAL INSTALLATION

150. The authority citation for part 183 continues to read as follows:

**Authority:** 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

151. In § 183.340, in paragraph (i), revise the last sentence and add paragraphs (i)(1) and (i)(2) to read as follows; in paragraph (p), after the word ‘‘Conductors’’, add the words ‘‘for direct current systems’’; and, in paragraph (q)(3), remove the word ‘‘and’’ and add, in its place, the word ‘‘end’’.

**§ 183.340 Cable and wiring requirements.**

* * * * *

(i) * * * The use of twist-on type wire nuts is permitted under the following conditions:

(1) The connections must be made within an enclosure and the insulated cap of the connector must be secured to prevent loosening due to vibration; and

(2) Twist-on type connectors may not be used for making joints in cables, facilitating a conductor splice, or extending the length of a circuit.

* * * * *

152. Add § 183.378 to read as follows:

**§ 183.378 Ungrounded systems.**

Each ungrounded system must be provided with a suitably sensitive ground detection system located at the respective switchboard that provides continuous indication of circuit status to ground with a provision to momentarily remove the indicating device from the reference ground.

**§ 183.432 [Amended]**

153. In § 183.432(b)(4), remove the number ‘‘6’’ and add, in its place, the number ‘‘2’’.

## PART 184—VESSEL CONTROL AND MISCELLANEOUS SYSTEMS AND EQUIPMENT

154. The authority citation for part 184 continues to read as follows:

**Authority:** 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

**§ 184.220 [Amended]**

155. In § 184.220(a), remove the words ‘‘heavy duty’’.

**§ 184.410 [Amended]**

156. In § 184.410, remove the word ‘‘fixed’’ and add, in its place, the word ‘‘fixes’’.

**§ 184.420 [Amended]**

157. In § 184.420(a), remove the word ‘‘intend’’ and add, in its place, the word ‘‘intended’’.

**§ 184.506 [Amended]**

158. In § 184.506, remove the word ‘‘mut’’ and add, in its place, the word ‘‘must’’.

159. Revise the section heading to § 184.702 to read as follows:

**§ 184.702 Pollution prevention equipment and procedures.**

160. Revise § 184.710 to read as follows:

**§ 184.710 First-aid kits.**

A vessel must carry either a first-aid kit approved under approval series 160.041 or a kit with equivalent contents and instructions. For equivalent kits, the contents must be stowed in a suitable, watertight container that is marked ''First-Aid Kit''. A first-aid kit must be easily visible and readily available to the crew.

## PART 185—OPERATIONS

161. The authority citation for part 185 continues to read as follows:

**Authority:** 46 U.S.C. 2103, 3306, 6101; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

**§ 185.304 [Amended]**

162. In § 185.304(a)(6), remove the words ''each closing radar contact'' and add, in their place, the words ''radar contact''.

**§ 185.335 [Amended]**

163. In § 185.335(a),remove the word ''watertight''.

**§ 185.356 [Amended]**

164. In § 185.356, remove the number ''179'' and add, in its place, the number ''176''.

**§ 185.410 [Amended]**

165. In § 185.410, remove the words ''or other danger'' and add, in their place, the words '', man overboard, or other dangerous situation''.

166. In § 185.420, redesignate paragraph (b) as paragraph (c) and add a new paragraph (b) to read as follows:

**§ 185.420 Crew training.**

* * * * *

(b) Training conducted on a sister vessel may be considered equivalent to the initial and quarterly training requirements contained in paragraph (a) of this section.

* * * * *

167. In § 185.506, revise the introductory text of paragraphs (a) and (b); redesignate paragraphs (c) and (d) as paragraphs (d) and (e), respectively; and add a new paragraph (c) to read as follows:

**§ 185.506 Passenger safety orientation.**

(a) Except as allowed by paragraphs (b) and (c) of this section, before getting underway on a voyage or as soon as practicable thereafter, the master of a vessel shall ensure that suitable public announcements are made informing all passengers of the following:

* * * * *

(b) As an alternative to an announcement that complies with paragraph (a) of this section, the master or other designated person may—

* * * * *

(c) Ferries operating on short runs of less than 15 minutes may substitute bulkhead placards or signs for the announcement required in paragraphs (a) and (b) of this section if the OCMI determines that the announcements are not practical due to the vessel's unique operation.

* * * * *

**§ 185.518 [Amended]**

168. In § 185.518(b), remove the words ''in subchapter Q of this chapter, or other standard specified by the Commandant'' and add, in their place, the words ''of this chapter''.

**§ 185.524 [Amended]**

169. In § 185.524(b)(3), remove the words ''of fire extinguishers'' and add, in their place, the words ''and location of fire alarms, extinguishers,''.

170. Revise § 185.602 to read as follows:

**§ 185.602 Hull markings.**

(a) Each vessel must be marked as required by part 67, subpart I, of this chapter.

(b) Paragraphs (c) through (g) of this section apply to each vessel that fits into any one of the following categories:

(1) A vessel of more than 19.8 meters (65 feet) in length.

(2) A vessel authorized to carry more than 12 passengers on an international voyage.

(3) A vessel with more than 1 deck above the bulkhead deck exclusive of a pilot house.

(c) Each vessel that complies with the stability requirements of §§ 170.170, 170.173, 171.050, 171.055, and 171.057 of this chapter, or in accordance with § 178.310 of this chapter, must—

(1) Have permanent draft marks at each end of the vessel; or

(2) Have permanent loading marks placed on each side of the vessel forward and aft to indicate the maximum allowable trim and amidships to indicate the maximum allowable draft.

(d) A loading mark required by paragraph (c)(2) of this section must be a horizontal line of at least 205 millimeters (8 inches) in length and 25 millimeters (1 inch) in height, with its upper edge passing through the point of maximum draft. The loading mark must be painted in a contrasting color to the sideshell paint.

(e) On a vessel that has a load line, the amidships marks required by paragraph (c)(2) of this section must be those required by the International Convention on Load Lines, 1966.

(f) In cases where draft marks are obscured due to operational constraints or by protrusions, the vessel must be fitted with a reliable draft indicating system from which the bow and stern drafts can be determined.

(g) On a vessel on which the number of passengers permitted on upper decks is limited by stability criteria, as indicated by the vessel's stability letter, the maximum number of passengers allowed on an upper deck must be indicated by a durable marking of at least 25 millimeters (1 inch) numbers and letters at the entranceway to that deck.

**§ 185.604 [Amended]**

171. In § 185.604(b), remove the words ''vessel marked'' and add, in their place, the words ''vessel or company marked''.

172. In § 185.730, paragraph (b)(2) is revised to read as follows:

**§ 185.730 Servicing of inflatable liferafts, inflatable buoyant apparatus, inflatable life jackets, and inflated rescue boats.**

* * * * *

(b) * * *

(2) At a servicing facility approved by the Commandant to service that particular brand.

* * * * *

Dated: September 19, 1997.

**Robert E. Kramek,**

*Admiral, U.S. Coast Guard Commandant.*

[FR Doc. 97–25599 Filed 9–29–97; 8:45 am]

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federal register

Tuesday
September 30, 1997

# Part VII

# The President

**Proclamation 7027—Austrian-American Day, 1997**

**Proclamation 7028—Gold Star Mother's Day, 1997**

Federal Register
Vol. 62, No. 189
Tuesday, September 30, 1997

# Presidential Documents

**Title 3—**

**The President**

**Proclamation 7027 of September 25, 1997**

## Austrian-American Day, 1997

**By the President of the United States of America**

**A Proclamation**

For more than 200 years, the life of our Nation has been enriched and renewed by the many people who have come here from around the world, seeking a new life for themselves and their families. Austrian Americans have made their own unique and lasting contributions to America's strength and character, and they continue to play a vital role in the peace and prosperity we enjoy today.

As with so many other immigrants, the earliest Austrians came to America in search of religious freedom. Arriving in 1734, they settled in the colony of Georgia, growing and prospering with the passing of the years. One of these early Austrian settlers, Johann Adam Treutlen, was to become the first elected governor of the new State of Georgia.

In the two centuries that followed, millions of other Austrians made the same journey to our shores. From the political refugees of the 1848 revolutions in Austria to Jews fleeing the anti-Semitism of Hitler's Third Reich, Austrians brought with them to America a love of freedom, a strong work ethic, and a deep reverence for education. In every field of endeavor, Austrian Americans have made notable contributions to our culture and society. We have all been enriched by the lives and achievements of such individuals as Supreme Court Justice Felix Frankfurter; Joel Elias Spingarn, who helped to found the NAACP; psychiatrist and educator Alexandra Adler; lyricist Frederick Loewe, who helped to transform American musical theater; and architects John Smithmeyer and Richard Neutra.

Americans of Austrian descent have also helped to nurture the strong ties of friendship between the United States and Austria, a friendship that has survived the upheaval of two World Wars and the subsequent division of Europe between the forces of East and West. On September 26, 1945, a conference was convened in Vienna among the nine Austrian Federal States that helped to unify the nation and paved the way for recognition by the United States and the Allied Forces of the first postwar Provisional Austrian Government. Setting the date for the first free national elections, this important meeting laid the foundation for the strong, prosperous, and independent Austria we know today.

In recognition of the significance of this date to the relationship between our Nation and the Federal Republic of Austria, and in gratitude for the many gifts that Austrian Americans bring to the life of our country, it is appropriate that we pause to celebrate Austrian-American Day.

NOW, THEREFORE, I, WILLIAM J. CLINTON, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim Friday, September 26, 1997, as Austrian-American Day. I encourage all Americans to recognize and celebrate the important contributions that millions of Americans of Austrian descent have made—and continue to make—to our Nation's strength and prosperity.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fifth day of September, in the year of our Lord nineteen hundred and ninety-seven, and of the Independence of the United States of America the two hundred and twenty-second.

William J. Clinton

[FR Doc. 97–26120
Filed 9–29–97; 10:59 am]
Billing code 3195–01–P

# Presidential Documents

**Proclamation 7028 of September 25, 1997**

## Gold Star Mother's Day, 1997

**By the President of the United States of America**

**A Proclamation**

As a free people, Americans have always sought to live our lives in peace; but history's harsh lessons have taught us that to remain free, we must be prepared for war. At many times and in many ways throughout the year, we remember the millions of selfless Americans whose wartime service helped preserve our freedom and the values we hold dear; and it is fitting that we should do so. But we must also remember that not all of the sacrifices that sustained us were made on the battlefield.

Long after the devastation of war ceases, the destruction left in its wake continues to afflict those who survive. For America's Gold Star Mothers—who have lost a child in the service of our country—the grief is particularly acute. The sons and daughters they cherished through the years, whom they guided and comforted through all the joys and heartaches of childhood and adolescence, were torn from their lives forever with cruel and sudden force. These mothers must live the rest of their lives knowing that the talents and ambitions of their children will never be fulfilled, that each family gathering or celebration will be shadowed by the absence of a dearly loved son or daughter.

Yet despite the enormity of their loss, America's Gold Star Mothers have continued to do what comes naturally to mothers: to comfort, to nurture, to give of themselves for the benefit of others. Through their devotion to our disabled veterans and their families, their generous community service, and their dedication to preserving the memory of the fallen, Gold Star Mothers remind us in so many poignant ways that true love of country often calls for both service and sacrifice.

For these reasons and more, and in recognition of the special burden that Gold Star Mothers bear on behalf of all of us, we set aside this day each year to honor and thank them and to rededicate ourselves to creating a world in which the kind of sacrifice they have been called upon to make need never be repeated. The Congress, by Senate Joint Resolution 115 of June 23, 1936 (49 Stat. 1895), has designated the last Sunday in September as ''Gold Star Mother's Day'' and has authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim Sunday, September 28, 1997, as Gold Star Mother's Day. I call upon all government officials to display the United States flag on government buildings on this solemn day. I encourage the American people also to display the flag and to hold appropriate meetings in their homes, places of worship, or other suitable places as a public expression of the sympathy and respect that our Nation holds for our Gold Star Mothers.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fifth day of September, in the year of our Lord nineteen hundred and ninety-seven, and of the Independence of the United States of America the two hundred and twenty-second.

William J. Clinton

[FR Doc. 97–26121
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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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Irish potatoes grown in—
Colorado; published 9-26-97

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Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Carfentrazone-ethyl; published 9-30-97

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Hearing aid compatible wireline telephones in workplaces, confined settings, etc.
Correction; published 9-30-97

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Conflict of interest references removed and authority delegation clarified; published 9-30-97

**FEDERAL TRADE COMMISSION**

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Consumer reporting agencies; consumer rights and duties; published 7-1-97

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**Fish and Wildlife Service**

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Seasons, limits, and shooting hours; establishment, etc.; published 9-30-97

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**Immigration and Naturalization Service**

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Visa waiver pilot program—
Slovenia and Ireland; published 9-30-97

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Permanent residence status adjustment applications; adjudication completion; published 9-30-97

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**Agricultural Marketing Service**

Eggs and egg products:
Pasteurized shell eggs (in-shell eggs); comments due by 10-10-97; published 8-11-97

**AGRICULTURE DEPARTMENT**

**Animal and Plant Health Inspection Service**

Exportation and importation of animals and animal products:
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**AGRICULTURE DEPARTMENT**

**Commodity Credit Corporation**

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**National Oceanic and Atmospheric Administration**

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Emission standard provisions for gaseous fueled vehicles and engines; test procedures; comments due by 10-6-97; published 9-5-97

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Air quality implementation plans; approval and promulgation; various States:
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National priorities list update; comments due by 10-6-97; published 9-5-97
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Radiofrequency emissions; environmental effects; State and local regulations; procedures for reviewing requests for relief; comments due by 10-9-97; published 9-12-97

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**HEALTH AND HUMAN SERVICES DEPARTMENT**

**Health Care Financing Administration**

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**Fish and Wildlife Service**

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**INTERIOR DEPARTMENT**

**Minerals Management Service**

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**INTERIOR DEPARTMENT**

**Surface Mining Reclamation and Enforcement Office**

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**Agency for International Development**

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