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# federal register

Thursday
August 25, 1988

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**WHO:** The Office of the Federal Register.

**WHAT:** Free public briefings (approximately 3 hours) to present:

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2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

**WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

### WASHINGTON, DC

**WHEN:** September 13; at 9:00 a.m.
**WHERE:** Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC
**RESERVATIONS:** Doris Tucker, 202–523–3419

### CHICAGO, IL

**WHEN:** September 19; at 9:15 a.m.
**WHERE:** Room 3320, Federal Building, 230 S. Dearborn St., Chicago, IL
**RESERVATIONS:** Call the Federal Information Center, Chicago 312–353–5692

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# Rules and Regulations

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## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Parts 870, 871, 872, 873, and 890

### Federal Employees Group Life Insurance and Health Benefits Programs; Coverage After Retirement Under FERS

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing a regulation to implement amendments to the Federal Employees Health Benefits (FEHB) law enacted by Pub. L. 99–335, as amended, which established the Federal Employees Retirement System (FERS). This regulation describes the conditions under which individuals entitled to immediate or survivor annuities and lump sum death benefits under FERS and former spouses entitled to annuity payments, or a portion of a retiree's annuity, under FERS may receive FEHB coverage. The regulation also allows FERS annuitants to make direct payment of premiums for their FEHB and Federal Employees' Group Life Insurance (FEGLI) coverages when their annuity is too low to cover the insurance premiums.

**EFFECTIVE DATE:** January 1, 1987.

**FOR FURTHER INFORMATION CONTACT:** Mary Ann Mercer, (202) 632–4634.

**SUPPLEMENTARY INFORMATION:** Section 207(1) of the Federal Employees Retirement System Act, Pub. L. 99–335, provides that individuals entitled to immediate or survivor annuities under FERS may continue their health benefits coverage, and former spouses entitled to annuity payments, or a portion of the retiree's annuity, under FERS may obtain health benefits coverage in the FEHB Program under the same conditions that apply to individuals under the Civil Service Retirement System (CSRS). Further, the Federal Employees' Retirement System Technical Corrections Act of 1986, Pub. L. 99–556, authorizes widows or widowers entitled to receive basic employee death benefits under FERS to continue health benefits coverage under the FEHB Program. FERS annuitants may also continue their life insurance coverage in retirement under the same conditions that apply to annuitants under CSRS. On October 22, 1987, OPM published an interim regulation in the **Federal Register** (52 FR 39493) that implements these provisions of law by describing the conditions and procedures for continuing health benefits coverage after retirement and after dissolution of marriage, and for paying FEHB and FEGLI premiums directly to the retirement system.

OPM received six written responses to the interim regulation, two from Government agencies, two from associations of Government employees, one from an association representing a number of FEHB Program plans, and one from an association of nurses. Telephone comments were also received from several Federal agencies. While the comments were favorable, four written comments and all of the telephone comments concerned one specific issue. Under the regulation, FERS annuitants, widows or widowers, and surviving children may pay health benefits and life insurance premiums directly to the retirement system when their premiums exceed the amount of their annuity. Direct premium payment is not available to annuitants, widows or widowers, or children under CSRS.

We are aware of the different treatment of FERS and CSRS annuitants in this regard. The FEHB law (5 U.S.C. 8906(d)) specifically addresses the mode of payment for CSRS annuities and mandates the withholding from a CSRS annuity. We continue to believe that this practice operates in the best interests of CSRS annuitants and especially of survivor annuitants.

In addition to fostering low-cost, efficient administration of the health insurance program, annuity withholding protects annuitants from the loss of coverage that would ensue from a failure on their part to forward the necessary premium amounts. For an elderly person, a loss of coverage could have serious financial consequences. The current requirement for annuity withholding guarantees continuous coverage, and in our opinion, avoids some potentially tragic situations.

The requirement for annuity withholding also encourages some retirees to select a higher survivor benefit amount to ensure coverage of the premium. While there is no minimum survivor annuity beneift under CSRS, FERS survivor annuities must be at least 25% of the retiree's annuity benefit. If direct premium payments were allowed, we could see an increased number of minimal CSRS survivor annuitants.

OPM would have preferred to apply the same requirement for annuity withholding consistently to FERS annuitants, but the design of the FERS law made such application infeasible.

The FERS law included certain survivors under the definition of "annuitant" for health insurance purposes even though they are not entitled to an annuity. These survivors receive only lump sum death benefits. Thus, since these survivors have no annuity from which premiums can be withheld but are eligible for health insurance, a different payment mechanism is required than under the CSRS.

Further, since some FERS benefits are offset by Social Security (disability and surviving children), there may be no FERS payment from which premiums can be withheld even though the individual has title to an annuity. For this group as well, a payment system independent of annuity is required.

Finally, FERS is a three-tiered system consisting of a basic annuity plan, a Thrift savings plan, and Social Security. Even though, in contrast to CSRS, FERS has a minimum survivor benefit of 25 percent of annuity, FERS basic annuity benefits (exclusive of Social Security and the Thrift plan) are significantly smaller than CSRS benefits. Hence, there is a greater likelihood, particularly with regard to survivor benefits, that the basic benefit would not be large enough to cover health insurance premiums.

Thus, the difference in annuity withholding between CSRS and FERS proceeds from the difference in the system themselves. The different systems simply drive different solutions to the same problem.

We have added language in §§ 870.601(c)(4), 871.501(d), 872.501(d) and 873.501(d) to bring them into

conformance with the changes made in the interim regulation.

*Waiver of the 30-day Delay in Effective Date of Final Regulation*

Pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists to make this amendment effective in less than 30 days. The regulation is effective immediately because the entitlements conferred by Pub. L. 99–335 and Pub. L. 99–556 addressed in this regulation were effective beginning January 1, 1987.

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

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

**Regulatory Flexibility Act**

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it simply extends FEHB and FEGLI coverage to qualified annuitants.

**List of Subjects**

*5 CFR Parts 870, 871, 872, and 873*

Administrative practice and procedure, Government employees, Life insurance, Retirement.

*5 CFR Part 890*

Administrative practice and procedure, Government employees, Health insurance, Retirement.

Office of Personnel Management.

**Constance Horner,**

*Director.*

Accordingly, OPM is adopting its interim rules published October 22, 1987 (52 FR 39493), as final rules with the following changes:

1. The authority citations for Parts 870, 871, 872, and 873 continue to read as follows:

**Authority:** 5 U.S.C. 8716.

## PART 870—BASIC LIFE INSURANCE

2. Section 870.601 is amended by revising the last sentence in paragraph (c) (concluding text) to read as follows:

**§ 870.601 Eligibility for life insurance.**

* * * * *

(c) * * *

(4) * * *

* * * Except as provided in § 870.401(j) of this part, an election under paragraph (c)(3) or (c)(4) of this section is automatically canceled effective at the end of the month in which it is determined that annuity payments are insufficient to cover the deductions required by the election.

* * * * *

## PART 871—STANDARD OPTIONAL LIFE INSURANCE

3. Section 871.501 is amended by revising paragraph (d) to read as follows:

**§ 871.501 Termination and conversion of insurance.**

* * * * *

(d) Except as provided in § 871.401(i), the standard optional insurance of an insured person who remains in a pay status stops, subject to a 31-day extension of coverage, at the end of the pay period in which it is determined that his/her periodic pay, compensation, or annuity after all other deductions, is insufficient to cover the full cost of the standard optional insurance.

* * * * *

## PART 872—ADDITIONAL OPTIONAL LIFE INSURANCE

4. Section 872.501 is amended by revising paragraph (d) to read as follows:

**§ 872.501 Termination and conversion of insurance.**

* * * * *

(d) Except as provided in § 872.401(i), the additional optional insurance of an insured person who remains in a pay status stops, subject to a 31-day extension of coverage, at the end of the pay period in which it is determined that his/her periodic pay, compensation, or annuity after all other deductions, is insufficient to cover the full cost of the additional optional insurance.

* * * * *

## PART 873—FAMILY OPTIONAL LIFE INSURANCE

5. Section 873.501 is amended by revising paragraph (d) to read as follows:

**§ 873.501 Termination and conversion of insurance.**

* * * * *

(d) Except as provided in § 873.401(g), the family optional insurance of an insured person who remains in a pay status stops, subject to a 31-day extension of coverage, at the end of the pay period in which it is determined that his/her periodic pay, compensation, or annuity after all other deductions, is insufficient to cover the full cost of the family optional insurance.

* * * * *

[FR Doc. 88–19292 Filed 8–24–88; 8:45 am]

BILLING CODE 6325–01–M

## 5 CFR Part 890

## Federal Employees Health Benefits Program; Continuation of Coverage During Military Service

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management (OPM) is revising its Federal Employees Health Benefits (FEHB) Program regulations to permit an employee or annuitant who enters the military on active duty or active duty for training to continue his or her FEHB enrollment for up to 12 months. OPM is taking this action to make the FEHB Program consistent with the Federal Employees' Group Life Insurance (FEGLI) Program.

**EFFECTIVE DATE:** September 26, 1988.

**FOR FURTHER INFORMATION CONTACT:** Bob MacKinnon, (202) 632–1990.

**SUPPLEMENTARY INFORMATION:** Current FEHB regulations require an employing office to terminate the FEHB enrollment of an employee placed in leave without pay to enter the military on active duty or active duty for training in excess of 30 days. The regulations also apply to annuitants. On March 10, 1988, OPM published proposed regulations in the **Federal Register** (53 FR 7763) that would permit an employee to continue his or her FEHB coverage while in leave without pay for active duty military service for up to 12 months, unless he/she elects to have the enrollment terminated as of the day before entering active duty. A similar choice would be permitted for an annuitant in the same situation, except that a continued enrollment would not terminate after 12 months if the annuity continues while he or she is on active duty.

We received written comments from four Federal agencies and five individuals. All were greatly in favor of the proposed regulations. One commenter requested a clarification and another made a suggestion.

A Federal agency was concerned that an employee's written request to terminate the enrollment would have the same effect a voluntary cancellation would have on the employee's right to a temporary extension of coverage and on his or her eligibility to continue coverage after retirement. Because the written request would be for the enrollment to be *terminated*, rather than cancelled, the same rights would apply as for any other reason for a termination of coverage. The employee would have a 31-day temporary extension of coverage, and the break in coverage would not

count against the employee in meeting the five-year coverage requirement prior to retirement.

An individual suggested that the employee who continues the enrollment be allowed to retain the coverage indefinitely beyond the twelve-month cut-off date, while continuing to pay the employee share of the premiums. We cannot adopt this suggestion because we feel it would be treating a small group of employees more favorably than other employees in leave-without-pay status.

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

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

**Regulatory Flexibility Act**

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they primarily affect Federal employees, annuitants, and former spouses.

**List of Subjects in 5 CFR Part 890**

Administrative practice and procedures, Government employees, Health insurance.

U.S. Office of Personnel Management.

**Constance Horner,**

*Director.*

Accordingly, OPM amends 5 CFR Part 890 as follows:

## PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority citation for Part 890 continues to read as follows:

**Authority:** 5 U.S.C. 8913; § 890.102 also issued under 5 U.S.C. 1104.

2. In § 890.304, paragraphs (a)(5) and (b)(2)(iii) are amended by adding the text set forth below to the end of the respective paragraphs:

**§ 890.304 Termination of enrollment.**

(a) * * *

(5) * * *, provided the employee elects, in writing, to have the enrollment so terminated.

* * * * *

(b) * * *

(2) * * *

(iii) * * *, provided the annuitant elects, in writing, to terminate the enrollment.

* * * * *

[FR Doc. 88-19291 Filed 8-24-88; 8:45 am]

BILLING CODE 6325-01-M

## DEPARTMENT OF AGRICULTURE

### Economic Research Service

### 7 CFR Parts 3700 and 3701

### Organization, Functions, and Availability of Information to the Public

**AGENCY:** Economic Research Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule explains the organization and functions of the Economic Research Service (ERS) and the procedures for requesting records from ERS under the Freedom of Information Act (FOIA). It supplements the Department's regulations at 7 CFR Part 1, Subpart A.

**EFFECTIVE DATE:** August 25, 1988.

**FOR FURTHER INFORMATION CONTACT:** Laura B. Snow, Economics Agencies FOIA Officer, Economics Management Staff, USDA, Room 4310, South Building, 12th and Independence Avenue, SW., Washington, DC 20250-3500. Telephone (202) 447-7590.

**SUPPLEMENTARY INFORMATION:** This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required and this rule may be made effective in less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12291. Also, this rule will not cause a significant economic impact or other substantial effect on small entities. Therefore, the requirements of the Regulatory Flexibility Act, 5 U.S.C. 605(b), do not apply.

**List of Subjects**

*7 CFR Part 3700*

Organization and functions (Government agencies).

*7 CFR Part 3701*

Freedom of information.

Accordingly, 7 CFR is amended by adding a new Chapter XXXVII and Parts 3700 and 3701, reading as follows:

## CHAPTER XXXVII—ECONOMIC RESEARCH SERVICE

## PART 3700—ORGANIZATION AND FUNCTIONS

Sec.



**Authority:** 5 U.S.C. 301 and 552, and 7 CFR 2.84, except as otherwise stated.

**§ 3700.1 General.**

The Economic Research Service (ERS) was reestablished as an agency of the U.S. Department of Agriculture on September 30, 1981 (46 FR 47747), in response to Secretary's Memorandum 1000-1 of June 17, 1981, entitled "Reorganization of Department." The primary responsibility of ERS is to produce economic and other social science information as a service to the general public and to aid Congress and the Executive Branch in developing, administering, and evaluating agricultural and rural policies and programs.

**§ 3700.2 Organization.**

ERS maintains its offices at 1301 New York Avenue, NW., Washington, DC 20005-4788. The organization consists of:

(a) The Administrator;

(b) Associate Administrator;

(c) Four Divisions; Commodity Economics Division, Agriculture and Trade Analysis Division, Resources and Technology Division, and Agriculture and Rural Economy Division; and

(d) Data Services Center.

**§ 3700.3 Functions.**

(a) *Administrator and Associate Administrator.* The Administrator and Associate Administrator are responsible for formulating current, intermediate, and long-range policies and plans for conducting economic and other social science research, analysis, and information programs related to U.S. and world agricultural production, demand, and marketing systems; natural resources; and rural communities.

(b) *Director, Commodity Economics Division.* The Director, Commodity Economics Division, is responsible for conducting a program of economic outlook and intelligence, research, analysis, and associated work relating to domestic and international aspects of agricultural commodities and food and fiber markets. General functions are:

(1) Providing current intelligence on domestic and international commodity and food developments and forecasts of domestic and worldwide supply of and demand for agricultural commodities, food, and other agricultural products.

(2) Preparing special commodity and market analyses for policy officials as input into agricultural policy formulation and into the development and operation of programs to implement those policies.

(3) Performing research on the structure, conduct, and performance of domestic and international agricultural

commodity production, marketing, and trade sectors.

(4) Coordinating the broader ERS outlook program and integrating ERS activities into the Department's outlook program.

(c) *Director, Agriculture and Trade Analysis Division.* The Director, Agriculture and Trade Analysis Division, is responsible for conducting a program of economic research and analysis on the economic conditions and the agricultural and trade policies that shape the agricultural sectors of major countries and on agricultural trade and development relationships between foreign countries and the United States. General functions are:

(1) Providing ongoing assessment of the technical, economic, political, and institutional forces affecting the structure and performance of world agricultural markets.

(2) Preparing special analyses for policy officials as input to agricultural policy formulation and the development and operation of programs to implement those policies.

(3) Conducting economic research to identify and empirically estimate the interrelationships between the domestic and world agricultural food systems.

(d) *Director, Resources and Technology Division.* The Director, Resources and Technology Division, is responsible for conducting a national program of research and analysis, statistical programs, and associated service work on agricultural resource and input issues, including soil, water, land, manufactured inputs, and technology and their contribution to local, regional, and national economic growth and the implications of environmental policies on agricultural production and resource use.

(e) *Director, Agriculture and Rural Economy Division.* The Director, Agriculture and Rural Economy Division, is responsible for conducting a national program of research and analysis, statistical programs, and associated service work designed to improve the public's understanding of national and regional rural and agricultural trends and conditions.

(f) *Director, Data Services Center.* The Director, Data Services Center, is responsible for managing the various aspects of automation as they pertain to the information-processing capabilities of ERS programs. This includes providing computer support services needed to carry out the required data processing and operations research capabilities.

**§ 3700.4 Authority to act for the Administrator.**

In the absence of the Administrator, the following officials are designated to serve as Acting Administrator in the order indicated:

Associate Administrator
Director, Agriculture and Rural Economy Division
Director, Agriculture and Trade Analysis Division
Director, Resources and Technology Division
Director, Commodity Economics Division

## PART 3701—AVAILABILITY OF INFORMATION TO THE PUBLIC

Sec.
3701.1 General.
3701.2 Public inspection, copying, and indexing.
3701.3 Requests for records.
3701.4 Denials.
3701.5 Appeals.
3701.6 Requests for published data and information.

**Authority:** 5 U.S.C. 301 and 552; 7 CFR 1.1 through 1.23 and Appendix A.

**§ 3701.1 General.**

This part is issued in accordance with the regulations of the Secretary of Agriculture in §§ 1.1 through 1.23 of this title and Appendix A thereto, implementing the Freedom of Information Act (FOIA) (5 U.S.C. 552), and governs the availability of records of the Economic Research Service (ERS) to the public.

**§ 3701.2 Public inspection, copying, and indexing.**

5 U.S.C. 552(a)(2) requires that certain materials be made available for public inspection and copying and that a current index of these materials be published quarterly or otherwise be made available. ERS does not maintain any materials within the scope of these requirements.

**§ 3701.3 Requests for records.**

Requests for records of ERS shall be made in accordance with § 1.6 (a) and (b) of this title and addressed to: Economics Agencies FOIA Officer, Economics Management Staff, USDA, Room 4310, South Building, 12th and Independence Avenue SW., Washington, DC 20250–3500. This official is delegated authority to make determinations regarding such requests in accordance with § 1.3(a)(3) of this title.

**§ 3701.4 Denials.**

If the Economics Agencies FOIA Officer determines that a requested record is exempt from mandatory disclosure and that discretionary release would be improper, the Economics Agencies FOIA Officer shall give written notice of denial in accordance with § 1.8(a) of this title.

**§ 3701.5 Appeals.**

Any person whose request is denied shall have the right to appeal such denial. Appeals shall be made in accordance with § 1.6(e) of this title and addressed to the Administrator, Economic Research Service, U.S. Department of Agriculture, 1301 New York Avenue NW., Washington, DC 20005–4788.

**§ 3701.6 Requests for published data and information.**

Information on published data from ERS programs is contained in the ERS "Reports" newsletter, available without cost from the Director, Information Division, Economics Management Staff, U.S. Department of Agriculture, 1301 New York Avenue NW., Washington, DC 20005–4789.

Done at Washington, DC, this 3rd day of August, 1988.

**John E. Lee, Jr.,**

*Administrator, Economic Research Service.*

[FR Doc. 88–19349 Filed 8–24–88; 8:45 am]

BILLING CODE 3410–18–M

## SMALL BUSINESS ADMINISTRATION

### 13 CFR Part 121

### Definition of Small Business for Dredging

**AGENCY:** Small Business Administration (SBA).

**ACTION:** Final Rule and Withdrawal of Previously Published Final Rule.

**SUMMARY:** The SBA is amending its size standard for the Dredging Industry from the present $9.5 million in annual gross receipts to $13.5 million. This is the size standard which was utilized over the December 9, 1985, to November 3, 1986 period. The $9.5 million size standard which has been utilized since November 3, 1986, resulted from an order from the District Court for the District of Columbia dated November 3, 1986, setting aside the then current dredging size standard of $13.5 million, but restoring the previous size standard of $9.5 million spending SBA's completion of a review of the remanded rulemaking effort. SBA has now completed its review as directed by the Court order and is restoring the size standard of $13.5 million which SBA has determined to be the appropriate size standard for the dredging industry.

**EFFECTIVE DATE:** September 15, 1988.

**FOR FURTHER INFORMATION CONTACT:** Robert N. Ray, Economist, Size Standards Staff, (202) 653–6373.

**SUPPLEMENTARY INFORMATION:** SBA is withdrawing its previously published final rule for the dredging industry size standard (53 FR 30668), which was published on August 15, 1988. In its place SBA is promulgating this final rule which better describes factors involved in the decision process.

On November 3, 1986, the United States District Court for the District of Columbia declared invalid the SBA's size standard for the dredging industry and remanded the administrative record of the rulemaking to the Agency for further consideration. The Court recognized that the previous size standard for the dredging industry of $9.5 million was not challenged and remained in effect pending SBA's completion of its review of the issues raised in the remanded rulemaking record. The Court cited SBA's failure to consider regional size standards, after first recognizing the presence of regional differences in structure and in procurement patterns, as sufficient cause in itself to invalidate the size standard.

In addition, on October 15, 1986 Congress passed the National Defense Authorization Act of 1987 (Pub. L. 99–661). Section 921 of this Act contained a mandate that SBA review the size standard of certain industries including dredging. The purpose of the review was to ensure that small business set-asides accounted for no more than approximately 30 percent of the total Federal contract dollar value for those industries. If SBA were to find as a result of its review that the 30 percent threshold was exceeded for any industry under review, the Agency was required to reduce the size standard for that industry accordingly.

The Act also authorized SBA to further divide industry categories when it received evidence that such division is warranted due to special capital needs, or special labor, or geographic requirements, or to recognize a new industry. New size standard would then be established for these new industry categories.

The Act, moreover, provided three prerequisites which Congress considered must all be present in order for segmentation on a regional basis to occur in an industry. These three prerequisites are: (1) The Government must typically designate the area where work for such contracts is to be performed: (2) Government purchases comprise the major portion of the entire domestic market for such goods and services; and (3) Due to the fixed location of facilities, high mobilization costs, or similar economic factors, it is unreasonable to expect competition from business concerns located outside of the general areas where such concerns are located.

Using these three prerequisites, SBA examined the question as to whether the dredging industry merited segmentation of its size standard in an Advanced Notice of Proposed Rulemaking which was published on March 17, 1987 (52 FR 8261). This notice explored the possibility of segmenting the industry for light and heavy projects for the Northeast, Southeast, Gulf Coast, West Coast, and Great Lakes regions.

A majority of those commenting on this notice did not support segmented size standard for dredging. The comments included one dredging firm and one association that favored the concept of a regional standard, while four firms, two associations, and the U.S. Corps of Engineers were opposed. The respondents raised several concerns regarding the proposed segmentation. The most important issue from the standpoint of complying with the legislation, however, opposed the idea of segmented size standards based on the nature of competition within the industry. In particular, several respondents argued that dredges are mobile, and therefore, the statutory prerequisite that competition could not be expected from outside the region was not met.

As a result of these comments, SBA examined the question further. Specifically, it requested the views of the Army Corps of Engineers, the agency responsible for the great majority of Federal procurement activities in this industry. The Corps responded by stating its view that this third requirement for segmentation was not present and, that therefore, the concept of segmentation should not be applied to the dredging industry. SBA also reviewed available data sources to determine whether there is a pattern of dredging firms operating in more than one region of the Nation. It found, for example, a pattern in which both large and small firms in the industry often operate in more than one region of the Nation. Of the 40 most active firms in the industry during the 1980–83 period, for example, 17 firms operated to a significant degree in more than one region of the Nation. These 17 firms include both large and small firms. As a whole they were responsible for almost 55 percent of all Federal dredging contracts.

Moreover, during the April–June 1988 period in which drought conditions prevailed throughout the upper Midwest, the U.S. Army Corps of Engineers considered mobilizing dredgers from the Eastern seaboard to meet the threat to transportation on the Mississippi.

It concluded that dredgers from as far away as New York State could provide assistance. This study thus provides evidence that dredging competition across regions is not simply limited to adjacent regions, but also applies to noncontiguous, geographically separated regions as well. Thus there is strong evidence for the view that competition does occur across regions and that firms in the activity of dredging are not inherently limited in operations to one region of the country.

After careful review of this issue, SBA concluded that the third statutory requirement for geographic or regional segmentation was not present in the dredging industry. Accordingly, it did not propose segmented size standards for this industry in its Proposed Rule of December 17, 1987 (52 FR 47937) and does not recommend segmented size standards in this Final Rule.

This process in which SBA in an advance notice of proposed rulemaking first solicited public response to the concept of regional size standards, and then rejected the idea after appropriate review in a proposed rule fulfills the Court's requirement that the SBA seriously consider the viability of regional size standards in the dredging industry prior to making a decision on the proper size standard(s). SBA in this Final Rule is, therefore, focusing its attention on a nationally structured size standard. Specifically, it is reinstituting the $13.5 million size standard in preference to the present size standard of $9.5 million which was restored by Court Order.

The decision to move to a size standard of $13.5 million which was made during 1985 was based on a number of factors relating to the industry structure of the dredging industry. Some of these factors cannot be updated because the data at that time were obtained through a special survey of dredging firms which was costly and time consuming. However, some information is presently available from the Corps of Engineers, and therefore, SBA has evaluated whether the industry has changed significantly since the 1985 decision.

In the final dredging size standard rule of November 8, 1985, (50 FR 46418), SBA based it's recommendation to raise the size standard in dredging on six factors. These are: concentration ratio (percent of Federal procurement dollars received by the four largest firms in the

industry), average firm size, cost increases over time, the proportion of firms defined as small, the average size of Federal contracts, and the proportion of Federal contract dollars received by small firms. Of the six variables in question, four supported a higher size standard than the present $9.5 million. These four were average firm size, cost increases over time, the proportion of firms defined as small, and the average size of contracts. The remaining two factors—the concentration ratio and the proportion of contract dollars received by large firms—provided ambiguous results.

In reviewing more recent data, SBA was only able to gather information on the concentration ratio (proportion of sales in the industry generated by the four largest firms in the industry), the average size of Federal contract, and the proportion of contract dollars received by small firms. In general, SBA views high indexes for both the concentration ratio and average size of contract as indicators that an industry's size standard should be relatively high. Conversely, it views a relative low proportion of contract dollars awarded to small firms as an indicator that an industry's size standard might be too low. In this case, SBA wanted to compare the situation in the dredging industry during 1987 with the situation in the earlier period to assure itself that a need continued for a higher size standard. Data for FY 1987 are compared with the 1980–83 data in the following table:

| Factor | FY 1980–83 | FY 1987 |
|---|---|---|
| Concentration Ratio (percent of Federal contracts awarded the 4 largest firms in industry) | [1] 26% | 63% |
| Average Size of Total Federal Contracts | [2] 1.60M | 1.69M |
| Proportion of Federal Dollars Awarded Small Firms | [2] 35.3% | 15.8% |

[1] Average over 1980–83 period. ($9.5 million size standard in effect)
[2] 1983 data. ($9.5 million size standard in effect)

These statistics indicate that the situation in the dredging industry involves a greater concentration of economic activity among a few large firms in the dredging industry than occurred in 1983. There is a need to restore the previous size standard of $13.5 million based on the fact that four very large firms received almost two-thirds of Federal dredging contract dollars, while firms defined as small (less than $9.5 million in gross annual receipts) received only 16 percent of all Federal dredging contract dollars. These low percentages for small firms in the industry also indicate that there is little likelihood that the 30 percent set-aside threshold incorporated in section 921 of Pub. L. 99–661 would be exceeded by a restoration of the $13.5 million size standard.

Based on these considerations and the fact that SBA has extensively considered regional size standards in the dredging industry as directed by Court Order, SBA is restoring the national size standard of $13.5 milion for dredging as appropriate for the reasons described in the published rule change in 1985 (50 FR 46418) and due to the results of the analysis of more current data.

This regulation is promulgated as a final rule without prior notice and opportunity to comment in accordance with 5 U.S.C. 553(b). Because SBA has already received and considered public comment on both the issue of geographical distribution (see 52 FR 8261 and 52 FR 47937), and the size standard increase (see 50 FR 46418 and 49 FR 47412), it is not in the public interest to delay the rule further in order to receive further public comment.

**Compliance With Executive Order 12291, Regulatory Flexibility Act, and Paperwork Reduction Act**

SBA certifies that this regulation is a major rule as defined by Executive Order 12291. Over the fiscal year 1987 period, annual Federal outlays for dredging activities exceeded $340 million. Thus the annual economic effect criteria of $100 million used to measure a major rule change could be exceeded as a result of this rule. Potentially, any firm in the industry could be affected in the future by a higher size standard, since the eligibility of a firm could impact on its competitive situation for any set-aside contract and on the decision whether or not to set-aside a contract. This regulation, however, is not likely to result in a major increase in costs, or prices, or in significant adverse effects on the United States economy.

This regulation is unlikely, however, to have a significant economic impact on a substantial number of small entities. (There are no known firms currently active in the dredging industry in the $9.5 to $13.5 million range and only five firms are estimated to be in the $7.0 to $9.5 million range.) Therefore, in compliance with Executive Order 12291, SBA offers this final regulatory impact analysis. SBA has considered regulatory action in this instance in response to intense public comment on the size standard in this particular industry. The purpose of this final rule is to update the size standard for the dredging industry, which has remained at the same level as 1974, to reflect both inflation and changes in industry structure over a 14-year time period. This final rule change is authorized by section 3(a) of the Small Business Act (15 U.S.C. 632(a)), which mandates that SBA define small business concerns on an industry-by-industry basis.

The dredging industry is comprised of approximately 250 companies of which 70 participated in the Federal procurement process during fiscal year 1987. Of these firms, however, only five would likely be significantly affected by a higher size standard. These are firms whose annual receipts usually fall in the $7.0 to $9.5 million range. Clearly, a higher size standard would remove a major constraining factor on expansion for these five firms.

Assuming these five firms are capable of and choose to expand into the $9.5 to $13.5 million range, other firms could be affected by the new higher size standard. There could be some additional competition for contracts, since these five firms could bid for more contracts without exceeding the new size standard limitation of $13.5 million. Similarly, the competition for unrestricted contracts could be expected to be enhanced, since small firms would be less concerned that winning a contract would push them over the size standard. In addition, Federal contracting officials would be able to set aside some additional contracts, and thus a slightly higher proportion of contract dollars would probably be set aside. Although more contracts will probably be set aside, SBA considers it highly unlikely that the set-aside percentage would exceed 30 percent given the low incidence of set-asides in this industry during 1987 (10 percent), and the fact that only five firms are estimated to be in the $7.0 to $9.5 million range.

Overall, anyone of the 250 firms active in the dredging industry might be affected by the increased size standard if it were to bid on a dredging procurement that was set aside for small business, or if the higher size standard freed small firms to bid on unrestricted contracts. The net benefits of this rule change, therefore, are a closer relationship between the size standard and the industry structure and an easing of constraints on expansion for firms within the industry.

In deciding that a size standard of $13.5 million most accurately reflects the current dredging industry, SBA also considered the alternatives of raising the size standard above $13.5 million, lowering it below $9.5 million, or

maintaining it at $9.5 million. SBA rejected raising the standard above the $13.5 million level because of the concern that a higher size standard than $13.5 million would more likely result in a set-aside plus 8(a) percentage of Federal contracting in the industry which exceeds the 30 percent level prohibited by Public Law 99-661. Lowering the size standard was rejected because of the industry's dominance by large firms, the relatively large size of contracts in the industry, and the inflationary trends since 1974 when the $9.5 million size standard was established. Thus there are no significant alternatives which would accomplish the stated objectives of minimizing the economic impact on small firms.

SBA certifies that there are no relevant Federal rules which would duplicate, overlap, or conflict with this Final Rule. SBA also certifies that this regulation contains no reporting or recordkeeping requirements which are subject to the Paperwork Reduction Act, 44 U.S.C., Chapter 35.

**List of Subjects in 13 CFR Part 121**

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Loan programs—business, Reporting and recordkeeping requirements, Small business.

Accordingly, SBA is amending Part 121 of 13 CFR as follows:

## PART 121—[AMENDED]

1. The authority citation of Part 121 of 13 CFR is revised to read as follows:

**Authority:** Secs. 3(a) and 5(b)(6) of the Small Business Act, 15 U.S.C. 632(a) and 634(b)(6), and Public Laws 99-591 and 99-661.

**§ 121.1 [Amended]**

2. In table 2 in § 121.2(d)(2), for Major Group 16—Construction, Other Than Building Construction—General Contractors, the last item in the table, Item 1629—Dredging and Surface Cleanup Activities is revised to read as follows: (Item 1629 Heavy Construction, Except Dredging, N.E.C., is set forth for the convenience of the reader and is not changed).

| SIC | Description (N.E.C.=not elsewhere classified) | Size standards in number of employees or millions of dollars |
|---|---|---|
| | | Final rule |
| 1629 | Heavy Construction, Except Dredging, N.E.C. | $17.0 |
| 1629 | Dredging and Surface Cleanup Activities [2]. | 13.5 |

[2] To be considered small, a firm must perform the dredging of at least 40 percent of the yardage with its own dredging equipment or equipment owned by another small dredging concern.

**James Abdnor,**

*Administrator, U.S. Small Business Administration.*

[FR Doc. 88-19290 Filed 8-24-88; 8:45 am]

BILLING CODE 8025-01-M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## 18 CFR Part 271

**[Docket No. RM80-53]**

## Natural Gas Policy Act; Maximum Lawful Prices

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Order of the Director, OPPR.

**SUMMARY:** Pursuant to the authority delegated by 18 CFR 375.307(c)(1), the Director of the Office of Pipeline and Producer Regulation revises and publishes the maximum lawful prices prescribed under Title I of the Natural Gas Policy Act (NGPA) for the months of August, September, and October, 1988. Section 101(b)(6) of the NGPA requires that the Commission compute and publish the maximum lawful prices before the beginning of each month for which the figures apply.

**EFFECTIVE DATE:** August 1, 1988.

**FOR FURTHER INFORMATION CONTACT:** Richard P. O'Neill, Director, OPPR, (202) 357-8500.

**SUPPLEMENTARY INFORMATION:**

**Order of the Director, Office of Pipeline and Producer Regulation**

Issued July 28, 1988.

Section 101(b)(6) of the Natural Gas Policy Act of 1978 (NGPA) requires that the Commission compute and make available maximum lawful prices and inflation adjustments prescribed in Title I of the NGPA before the beginning of any month for which such figures apply.

Pursuant to this requirement and § 375.307(c)(1) of the Commission's regulations, which delegates the publication of such prices and inflation adjustments to the Director of the Office of Pipeline and Producer Regulation, the maximum lawful prices for the months of August, September, and October, 1988, are issued by the publication of the price tables for the applicable quarter. Pricing tables are found in § 271.101(a) of the Commission's regulations. Table I of § 271.101(a) specifies the maximum lawful prices for gas subject to NGPA sections 102, 103(b)(1), 105(b)(3), 106(b)(1)(B), 107(c)(5), 108 and 109. Table II of § 271.101(a) specifies the maximum lawful prices for sections 104 and 106(a) of the NGPA. Table III of § 271.102(c) contains the inflation adjustment factors. The maximum lawful prices and the inflation adjustment factors for the periods prior to August, 1988 are found in the tables in §§ 271.101 and 271.102.

**List of Subjects in 18 CFR Part 271**

Natural gas.

**Raymond A. Beirne,**

*Deputy Director, Office of Pipeline and Producer Regulation.*

## PART 271—[AMENDED]

1. The authority citation for Part 271 continues to read as follows:

**Authority:** Natural Gas Act, 15 U.S.C. 717-717w (1982); Department of Energy Organization Act, 42 U.S.C. 7101-7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142; Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432 (1982).

2. Section 271.101(a) is amended by adding the maximum lawful prices for August, September, and October, 1988, in Table I and II as follows:

**§ 271.101 [Amended]**

* * * * *

TABLE I—NATURAL GAS CEILING PRICES

[Other Than NGPA Sections 104 and 106(a)]

[Maximum lawful price per MMBtu for deliveries in]

| Subpart of part 271 | NGPA section | Category of gas | Aug. 1988 | Sept. 1988 | Oct. 1988 |
|---|---|---|---|---|---|
| B | 102 | New Natural Gas, Certain OCS Gas [1] | $4.957 | $4.990 | $5.023 |
| C | 103(b)(1) | New Onshore Production Wells [2] | 3.309 | 3.321 | 3.333 |
| E | 105(b)(3) | Intrastate Existing Contracts | 4.793 | 4.821 | 4.849 |
| F | 106(b)(1)(B) | Alternative Maximum Lawful Price for Certain Intrastate Rollover Gas [3] | 1.892 | 1.899 | 1.906 |
| G | 107(c)(5) | Gas Produced from Tight Formations | 6.618 | 6.642 | 6.666 |
| H | 108 | Stripper Gas | 5.308 | 5.343 | 5.379 |
| I | 109 | Not Otherwise Covered [4] | 2.741 | 2.751 | 2.761 |

[1] Commencing January 1, 1985, the price of natural gas finally determined to be new natural gas under section 102(c) was deregulated. (See Part 272 of the Commission's regulations.)

[2] Commencing January 1, 1985, and July 1, 1987, the price of some natural gas finally determined to be natural gas produced from a new, onshore production well under section 103 was deregulated. (See Part 272 of the Commission's regulations.) Thus, for all months succeeding June 1987 publication of a maximum lawful price per MMBtu under NGPA section 103(b)(2) is discontinued.

[3] Section 271.602(a) provides that for certain gas sold under an intrastate rollover contract the maximum lawful price is the higher of the price paid under the expired contract, adjusted for inflation or an alternative Maximum Lawful Price specified in this Table. This alternative Maximum Lawful Price for each month appears in this row of Table I. Commencing January 1, 1985, the price of some intrastate rollover gas was deregulated. (See part 272 of the Commission's regulations.)

[4] The maximum lawful price for tight formation gas is the lesser of the negotiated contract price or 200% of the price specified in Subpart C of Part 271. The maximum lawful price for tight formation gas applies on or after July 16, 1979. (See § 271.703 and § 271.704.)

TABLE II—NATURAL GAS CEILING PRICES: NGPA SECTIONS 104 AND 106 (a)

[Subpart D, Part 271]

[Maximum lawful price per MMBtu for deliveries made in:]

| Category of natural gas and type of sale or contract | Aug. 1988 | Sept. 1988 | Oct. 1988 |
|---|---|---|---|
| Post-1974 gas: | | | |
| All producers | $2.741 | $2.751 | $2.761 |
| 1973–1974 Biennium gas: | | | |
| Small producer | 2.314 | 2.322 | 2.330 |
| Large producer | 1.771 | 1.777 | 1.783 |
| Interstate Rollover gas: | | | |
| All producers | 1.016 | 1.020 | 1.024 |
| Replacement contract gas or recompletion gas: | | | |
| Small producer | 1.300 | 1.305 | 1.310 |
| Large producer | 0.996 | 0.999 | 1.003 |
| Flowing gas: | | | |
| Small producer | 0.658 | 0.660 | 0.662 |
| Large producer | 0.555 | 0.557 | 0.559 |
| Certain Permian Basin gas: | | | |
| Small producer | 0.775 | 0.778 | 0.781 |
| Large producer | 0.684 | 0.686 | 0.688 |
| Certain Rocky Mountain gas: | | | |
| Small producer | 0.775 | 0.778 | 0.781 |
| Large producer | 0.658 | 0.660 | 0.662 |
| Certain Appalachian Basin gas: | | | |
| North subarea contracts dated after 10-7-69 | 0.624 | 0.626 | 0.628 |
| Other contracts | 0.579 | 0.581 | 0.583 |
| Minimum rate gas [1]: | | | |
| All producers | 0.344 | 0.345 | 0.346 |

[1] Prices for minimum rate gas are expressed in terms of dollars per Mcf, rather than MMBtu.

3. Section 271.102(c) is amended by adding the inflation adjustment for the months of August, September, and October, 1988, in Table III as follows:

**§ 271.102 [Amended]**

TABLE III—INFLATION ADJUSTMENT

| Month of delivery 1988 | Factor by which price in preceding month is multiplied |
|---|---|
| Aug | 1.00351 |
| Sept | 1.00351 |
| Oct | 1.00351 |

* * * * *

[FR Doc. 88-19164 Filed 8-24-88; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 178

**[Docket No. 86F-0484]**

### Indirect Food Additives; Adjuvants, Production Aids, and Sanitizers

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the food additive regulations to extend existing uses and to provide for additional uses of tetrakis [methylene(3,5-di-*tert*-butyl-4-hydroxyhydrocinnamate)] methane (CAS Reg. No. 6683-19-8) as an antioxidant and stabilizer for polymers intended for use in contact with food. This action responds to a petition filed by Ciba-Geigy Corp.

**DATES:** Effective August 25, 1988; objections and requests for a hearing by September 26, 1988.

**ADDRESS:** Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Richard H. White, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5690.

**SUPPLEMENTARY INFORMATION:** In a notice published in the Federal Register of December 30, 1986 (51 FR 47061), FDA announced that a petition (FAP 6B3966) had been filed by Ciba-Geigy Corp., Three Skyline Dr., Hawthorne, NY 10532, proposing that § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) be amended to extend existing uses and to provide for additional uses of tetrakis [methylene(3,5-di-*tert*-butyl-4-hydroxyhydrocinnamate)]methane (CAS Reg. No. 6683-19-8) as an antioxidant and stabilizer for polymers.

FDA has evaluated the data in the petition and other relevant material in response to the petitioner's request. The agency concludes that these data and material establish the safety of using the additive in additional food-contact polymers, increasing the levels of use of the additive in certain polymers, and removing certain limitations on the conditions of use of the additive in polymers in contact with food. Additionally, because of numerous changes adopted for the new uses of this additive, FDA is reorganizing in this final rule the 20 existing uses of the

additive that are now listed in 21 CFR 178.2010(b).

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

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. Under FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25), an action of this type would require an environmental assessment under 21 CFR 25.31a(b)(1).

Any person who will be adversely affected by this regulation may at any time on or before September 26, 1988, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

**List of Subjects in 21 CFR Part 178**

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director of the Center for Food Safety and Applied Nutrition, Part 178 is amended as follows:

## PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR Part 178 continues to read as follows:

**Authority:** Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 178.2010 is amended in the table of paragraph (b) by revising entries under the heading "Limitations" for the entry "Tetrakis [methylene(3,5-di-*tert*-butyl-4-hydroxyhydrocinnamate)]methane (CAS Res. No. 6683–19–8)" to read as follows:

**§ 178.2010 Antioxidants and/or stabilizers for polymers.**

* * * * *

(b) * * *

| Substances | Limitations |
|---|---|
| * | * * * |
| Tetrakis [methylene(3,5-di-*tert*-butyl-4-hydroxyhydrocinnamate)] methane (CAS Reg. No. 6683–19–8). | For use only:<br>1. At levels not to exceed 0.5 percent by weight of all polymers used as indirect additives in food packaging, except as specified below.<br>2. At levels not to exceed 0.1 percent by weight of petroleum wax or synthetic petroleum wax complying with § 176.170(a)(5) of this chapter.<br>3. At levels not to exceed 1.0 percent by weight of: (a) Pressure sensitive adhesives complying with § 175.125 of this chapter.<br>(b) Can end cement formulations complying with § 175.300(b)(3)(xxxi) of this chapter.<br>(c) Petroleum alicyclic hydrocarbon resins complying with § 175.320(b)(3) of this chapter, § 176.170(b)(2) of this chapter, or their hydrogenated products complying with § 176.170(b)(2) of this chapter.<br>(d) Rosin and rosin derivatives used in accordance with Parts 175 through 178 of this chapter.<br>(e) Terpene resins complying with § 175.300(b)(2)(xi) of this chapter when such terpene resins are used in accordance with § 176.170(b) of this chapter.<br>(f) Resins and polymers complying with § 176.180 of this chapter.<br>(g) Closures with sealing gaskets complying with § 177.1210 of this chapter.<br>(h) Polyoxymethylene copolymer as provided in § 177.2470(b)(1) of this chapter.<br>(i) Petroleum hydrocarbon resin complying with § 178.3800.<br>(j) Reinforced wax complying with § 178.3850. |

* * * * *

Dated: August 18, 1988.

**Richard J. Ronk,**

*Acting Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 88–19332 Filed 8–24–88; 8:45 am]

BILLING CODE 4160–01–M

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### 23 CFR Part 1309

**[Docket No. 82–18; Notice 13]**

**RIN 2127–AC70**

### Incentive Grant Criteria for Alcohol Traffic Safety Programs

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT

**ACTION:** Final rule.

**SUMMARY:** This final rule revises the agency's regulation implementing

section 408 of the Highway Safety Act of 1966, relating to the criteria States must meet to be eligible for alcohol incentive grants. The agency believes some portions of the regulation are unnecessarily restrictive in defining the manner in which a State may demonstrate compliance with the statutory criteria. This action is intended to increase flexibility for the States, by establishing alternative methods of demonstrating compliance with the section 408 criteria to qualify for alcohol incentive grant funds.

**EFFECTIVE DATE:** The amendments made by this final rule are effective on August 25, 1988.

**FOR FURTHER INFORMATION CONTACT:** Mr. George Reagle, Associate Administrator for Traffic Safety Programs, NTS–01, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590, (202) 366–1755; or Ms. Heidi L. Coleman, Office of Chief Counsel, National Highway Traffic Safety Administration, (202) 366–1834.

**SUPPLEMENTARY INFORMATION:** The 408 program was enacted in 1982, under 23 U.S.C. 408 (Pub. L. 97–364), as a two-tier grant program, providing Federal funds (basic and supplemental grants) to States that qualify by implementing certain programs designed to reduce the drunk driving problem. The amount received as a basic grant equals 30 percent of the State's FY 1983 highway safety grant (section 402) apportionment. The amount received as a supplemental grant may not exceed 20 percent of the State's FY 1983 section 402 apportionment. Section 402 apportionments are made to the State under a grant program established by the Highway Safety Act of 1966, 23 U.S.C. 402, to aid the States in conducting highway safety programs.

In 1984, section 408 was amended, Pub. L. 98–363, to expand the scope of the 408 program to include programs to combat drugged driving as well as drunk driving and to establish a third grant for which States may qualify (special grants) to encourage the States to enact tough minimum sentencing standards. The amount received as a special grant may not exceed 5 percent of the State's FY 1984 section 402 and 408 apportionments.

Under the 1982 Act, States could receive section 408 incentive grants in no more than three fiscal years. (The 1984 amendment did not affect this period.) Section 203 of the Surface Transportation and Uniform Relocation Assistance Act of 1987, Pub. L. 100–17, amended section 408 by extending from three to five, the number of fiscal years in which a State may receive section 408 incentive grants.

### Section 408 Criteria

To be eligible for funding under section 408 of the Act, each State must meet certain requirements. The statutory criteria include, for basic grants, that the State provide "for the prompt suspension, for a period not less than ninety days in the case of a first offender and not less than one year in the case of any repeat offender of the driver's license of any individual who a law enforcement officer has probable cause under State law to believe has committed an alcohol-related traffic offense, and (i) to whom is administered one or more chemical tests to determine whether the individual was intoxicated while operating the motor vehicle and who is determined, as a result of such tests, to be intoxicated, or (ii) who refuses to submit to such a test as proposed by the officer."

The State must also provide that: Persons convicted more than once in five years receive a mandatory sentence of 48 consecutive hours imprisonment or 10 days of community service; a blood alcohol content (BAC) of 0.10% is established as illegal per se (meaning that it is a violation of law to operate a motor vehicle with a BAC at that or a higher level); and increased efforts or resources are dedicated to the enforcement of alcohol-related laws and increased efforts are used to inform the public of this enforcement.

Under the statute, a State is not eligible for a supplement grant unless it is first eligible for a basic grant, and in addition provides for some or all of the criteria established by the Secretary of Transportation. By regulation, a total of twenty-two supplemental criteria have been promulgated.

To be eligible for a special grant, section 408 of the Act requires that a State must enact a statute which provides for specific minimum sentencing requirements with regard to both license suspensions and terms of imprisonment or community service.

The agency has promulgated regulations, which are codified in 23 CFR Part 1309, to define the statutory criteria and to specify how States are to demonstrate compliance with the criteria.

The section 408 program has had a significant impact on the legislative and operational progress in State programs. Through their efforts to qualify for section 408 funding and the activities funded with alcohol incentive grants, States have made progress in terms of both program improvements and reductions in the proportion of fatalities that involve intoxicated drivers. No State has been able to qualify for funding under the section 408 program, however, since November 1985. While many States have faced difficulties in qualifying for section 408 grants due to the stringency of the statutory criteria, others have had difficulties with the details of the regulatory requirements for demonstrating compliance.

Although the agency is not authorized to modify the statutory criteria, we can consider amending certain requirements that have been established by regulation.

For this reason, on April 8, 1988, the agency published a Notice of Proposed Rulemaking (NPRM) in the Federal Register, proposing to increase flexibility for the States, by establishing alternative methods of demonstrating compliance with the section 408 criteria to qualify for alcohol incentive grant funds. The notice requested comments from the public and, in particular, from States that are currently participating in, or that believe they may be able to become qualified for funding under, the section 408 program.

The agency received approximately 50 comments. Commenters included either the Governor, the Governor's Highway Safety Representative, the State Highway Safety Coordinator, or a designee of these officials representing 20 States. In the remainder of this notice, comments from any of these officials will be referred to as the State's comments. In addition to these, we also received comments from a number of State agencies, including departments of motor vehicles and law enforcement agencies. We also received comments from General Motors, the Department of Interior's United States Park Police, Congressmen Kyl, Rhodes and Udall of Arizona, and several national organizations, including the Insurance Institute for Highway Safety, the National Head Injury Foundation, and the American Trauma Society. NHTSA appreciates the time taken by these commenters to provide their thoughtful suggestions and recommendations. The comments have been valuable and instructive to the agency in developing this final rule.

### General Comments

In the NPRM, NHTSA indicated that the proposed changes were designed to provide as much flexibility to the States as the statute permits, while maintaining the statutory criteria to ensure that States that qualify under the section 408 program have effective programs to reduce traffic safety problems resulting from persons driving while under the

influence of alcohol or a controlled substance. We stated that it would be particularly helpful for the agency to receive comments from States interested in qualifying for section 408 funds, regarding whether the changes being proposed would in fact help them to qualify. We indicated also that we are interested in receiving comments from interested parties regarding whether it is believed the proposed changes would alter the effectiveness of States' programs to reduce drunk and other drug impaired driving.

With regard to these issues, the comments of the National Head Injury Foundation are representative, stating that, "[t]he proposed changes will increase a state's flexibility and eligibility for 408 funds *without* reducing the effectiveness of the programs or altering the goal of the original statutes." [Emphasis in text.] All comments addressing these issues echoed this sentiment. Most importantly, several States, including Connecticut, Illinois, New Jersey, Oklahoma and Texas, indicated that the proposed changes will help them to qualify for funding under the section 408 program. Others remarked that, although they will not yet qualify, the changes will move them closer to meeting the statutory criteria. Kansas said that it would submit an application for section 408 funding in the near future. The application has since been submitted, and is undergoing review.

In the remainder of this notice, we will discuss the changes proposed in the NPRM, the comments received by the agency regarding the proposed changes and the revisions that NHTSA has decided to make to its regulation after having fully considered the comments.

## Regulatory Changes

### *(1) Definition of Imprisonment*

In the NPRM, the agency proposed to amend the definition of the term "imprisonment" to acknowledge that, in order to overcome problems involving overcrowded prisons, some States resort to using somewhat unconventional quarters, such as community corrections facilities, converted hotels or other buildings, as minimum security facilities. We stated that as long as individuals are in fact detained in them for the requisite period of time, the agency considers confinement in these quarters to meet the definition of "imprisonment." We went further, to state that the agency does not consider time spent at work under a work release program, to constitute detention or confinement. In other words, an individual must serve 48 consecutive hours within the confines of the work release center to meet the requirement that the State provide that persons convicted of driving while intoxicated more than once in any five year period, and sentenced to imprisonment (rather than community service), must be *confined* for a 48 *consecutive* hour period. NHTSA received no objections to this proposed change, and has decided to revise the regulation accordingly.

NHTSA invited comments on whether "house arrest", or at home detention, by electronic or other means should constitute imprisonment under the agency's regulation. The State of New Jersey indicates that it uses house arrest programs only as "parole or probation programs involving convicted criminals." It goes on to recommend that, since "[i]t is not likely that individuals who need intervention with drinking problems will find it at home where alcohol is likely to be available," pilot house arrest programs should be reviewed before they are accepted under the section 408 criteria. All other commenters who addressed this issue, including seven States and the Insurance Institute for Highway Safety (IIHS), support the inclusion of house arrest within the definition of imprisonment.

NHTSA agrees with New Jersey that rehabilitation, or treatment programs for drunk driving offenders can be effective, particularly when these programs are conducted in an in-patient facility and accompany traditional sanctions. The agency's current regulation already accepts these programs in lieu of a jail term by defining the term "imprisonment" to mean confinement in either a jail, minimum security facility, or "in-patient rehabilitation or treatment center." 23 CFR 1309.3(c). This portion of the regulation is not being changed in this final rule. The agency strongly encourages States to establish in-patient rehabilitation programs as either an alternative to a prison term or an additional element of the State's alcohol countermeasures program. Some States have found that these programs can reduce recidivism rates, and we note that their use may relieve overcrowded conditions in jail facilities. However, a term of imprisonment need not incorporate a rehabilitation program to be accepted by the agency under the regulation.

While NHTSA has an interest in the use of house arrest programs as an alternative method of imprisonment, we agree with New Jersey that we do not at this time have sufficient information regarding the alternative to accept it under our definition. The agency believes it must first consider, for example, the effectiveness of these programs, the manner in which programs are conducted and the period of time States are detaining offenders under house arrest. In the NPRM, NHTSA requested particular information regarding the manner in which house arrest programs are currently being conducted. These questions, however, were not addressed in the comments.

We note also that under the current regulation, a person is required to serve a mandatory sentence of only 48 consecutive hours to meet the section 408 criteria. The agency does not believe a house arrest for a period of 48 consecutive hours would serve as a sufficient deterrent to a repeat offender. We encourage those States with overcrowded prisons to use alternative sentences currently accepted under the regulation, such as confinement in a community corrections facility, converted hotel or other building used as a minimum security facility, confinement in an in-patient rehabilitation or treatment center, or 10 days of community service.

### *(2) Use of a Restricted, Provisional or Conditional License*

Under the definition of the terms "suspension" or "revocation" in the agency's regulation, 23 CFR 1309.3(f), a first offender's 90 day suspension may include "a minimum of 60 days of a restricted, provisional or conditional license" as long as the offender is temporarily debarred of all driving privileges for a minimum of the first 30 days. No period of the 90 day license suspension for a first refuser, or of the one year license suspension for repeat offenders or repeat refusers may be subject to a restricted, provisional or conditional license.

The regulation limits the purposes for which a restricted, provisional or conditional license may be issued to first offenders. For example, a conditional license may be issued for individuals to drive between their residence and place of employment, but may not be issued for individuals to drive between their residence and place of study. In the NPRM, the agency proposed to eliminate the limitation.

In response to this proposed change, the Illinois Secretary of State suggests that the conditions under which such a license may be issued should be modified to include "driving to and from medical care and educational purposes" rather than eliminated. He states that their elimination "could possibly

undermine the effectiveness of the suspension imposed." The State of Kansas also requests that driving during a medical emergency be permitted, and states that, in addition, driving under emergency situations and employment-related driving should be recognized.

The agency recognizes that individual States have different needs and concerns. A review of current State laws reveals that there are a number of conditions which are recognized by the States but not by our regulation. If we were to attempt to name each condition individually, the agency would surely again run the risk of omitting a condition viewed as necessary and valid by a particular State. In our effort to afford the States with increased flexibility, the agency believes it is appropriate for each State to define the conditions under which an offender is permitted to drive with a restricted license. To ensure that the availability of restricted, provisional or conditional licenses does not undermine license suspension requirements in a State, we will retain, as proposed, the condition that these licenses can be issued in accordance with Statewide published guidelines developed by the State, and in exceptional circumstances specific to the offender.

In its comments, Louisiana objects to this requirement if it calls for publication of regulations. The State suggests that such an action could result in publicity and a surge of applications from attorneys and suspended drivers for conditional licenses. As we stated in the NPRM, the regulation does not require that guidelines need be published where the State has a law, regulation or binding policy directive establishing the conditions under which a restricted, provisional or conditional license may be issued. Likewise, if the State has a binding policy directive in effect, it need not pass a law or issue regulations.

New York requests that the agency permit States to issue conditional licenses to first offenders and refusers immediately where recipients must undergo mandatory screening for an alcohol and drug problem and are required to participate in an alcohol, drug and traffic safety education program of at least 15 hours. California requests that States be allowed to issue conditional licenses in some circumstances for first offenders and for repeat offenders if their license is restricted for a period of 18 months.

NHTSA has decided not to adopt these recommendations. While States may be able to show some success associated with license suspension programs which allow conditional licenses immediately under certain circumstances, the agency views the certainty of a suspension or revocation of a driver's license, which is not subject to the issuance of a conditional license, to be among the most effective means of reducing the incidence of alcohol and drug involvement in motor vehicle accidents. For this reason, the agency's regulation will continue to require a hard suspension for the first 30 days of a first offender's 90 day suspension, for the full 90 day suspension for a first refuser, and for the full one year suspension for repeat offenders and repeat refusers. (As explained below, we will permit States to show compliance with this requirement through the use of averages.) We would encourage States, however, to develop screening and education programs for both offenders and refusers. Such programs have been implemented successfully in States which also impose hard suspensions.

Although comments were not requested on the issue in the NPRM, three commenters state their views on the use of In-Vehicle Alcohol Testing Devices (IVATs), also known as ignition interlock devices. Briefly, these devices, when installed in vehicles, require the driver to pass either a breath alcohol measurement test or a performance test before he or she may operate the vehicle. General Motors and the State of Idaho both suggest that IVATs be recognized by the agency's regulation as a sanction that a State may use *in lieu of* a mandatory license suspension. Kansas recommends instead that the agency permit States to use IVATs as an *additional* court-ordered restriction. Recently, NHTSA submitted a report to Congress entitled, "Potential for Application of Ignition Interlock Devices to Prohibit Operation of Motor Vehicles by Intoxicated Individuals." The agency reported:

> Ignition interlock technology based on breath alcohol test devices for detecting and preventing alcohol impaired driving does appear feasible at this time. Devices that measure a driver's BAC level are currently being marketed and used. * * * Current interest has focused on applying this technology to convicted DWI offenders as a condition of probation or to obtain a restricted driving privilege. * * * There is not yet enough evidence available to judge how effective these devices will be in deterring alcohol impaired driving and related crashes. In the absence of evidence that these devices are effective it is *not* appropriate for these devices to be used *in lieu of* other sanctions that have evidence of beneficial effects (e.g., license suspension). Use of this technology as an *additional* condition of probation or for reinstatement of a restricted driving privilege does appear appropriate [Emphasis added.]

Based on these findings, the agency encourages States to explore the use of IVATs as an additional restriction, which may accompany, for example, a conditional license after the first 30 days of a first offender's 90 day license suspension. However, NHTSA will not accept the use of an ignition interlock device as a substitute for the suspension requirements under the regulation.

*(3) Certification Requirements*

The agency proposed in the NPRM to eliminate two procedural barriers which were established by regulation. Specifically, we proposed to strike from § 1309.4(a)(2)(i), the requirement that States must provide information showing active implementation of criteria during the four years prior to applying for a grant when the certification is based upon prior adoption of a criterion. The agency also proposed to delete the word "existing" from § 1309.4(a)(2)(iii), thereby permitting States to maintain aggregate expenditures, in accordance with the statute, based not only on existing alcohol traffic safety programs, but also on innovative activities.

The agency also proposed to amend § 1309.4(a)(2) to reflect that State certifications are to be addressed simply to NHTSA, rather than to the Director, Office of Alcohol and State Programs.

We received only supporting comments in response to these proposed changes. Therefore, this final rule revised the regulation accordingly.

*(4) Demonstrating Compliance With the Prompt Suspension Requirement*

Section 408 of the Act requires that, to be eligible for a basic grant, each State must provide, among other things, for the prompt suspension of the driver's license of any person who commits an alcohol-related offense, including the refusal to submit to a chemical test. The license suspension must be for a period of not less than 90 days for first offenders. First offenders include both individuals who are determined to be intoxicated while operating a motor vehicle as a result of a chemical test and those who refuse to submit to a chemical test. The suspension must be not less than one year for repeat offenses (including both repeat failures and repeat refusals). The agency's regulation implementing this requirement provides in § 1309.3(f) that, for first offenses (other than refusals), the first 30 of the 90 days must be a "hard" suspension, under which no conditional license may be made available; for first refusals, all of the 90 days must be a "hard" suspension.

Subsection 1309.5(a)(2) of the regulation provides that, to demonstrate compliance, a State must submit both a copy of the law or regulation implementing this requirement and a statistically valid sample providing certain necessary data.

The agency proposed, in the NPRM, to adopt a new format for demonstrating compliance with this criterion, which would allow each State to choose whether to base its application on either the text of a complying law, regulation or binding policy directive, or data demonstrating that the State in fact complies with the prompt suspension criterion. The amount of information would also depend upon whether the State is applying for first or subsequent year funding.

The format was described in detail in the NPRM. Those interested in reviewing this more detailed description should consult that notice (53 FR 11679, 11681). The agency has decided to adopt the new format, as proposed. The agency will consider a State to be a "Law" State, for purposes of complying with the prompt suspension requirement, if the terms of the State's statutes, regulations, or binding policy directives, on their face, meet each element of the prompt suspension criterion. Other States will be considered to be "Data" States.

Louisiana states, in its comments, that if a State has a complying law, it should not be required to also issue a binding policy directive. The agency agrees. It did not mean to give this impression in the NPRM. Our regulation requires that the State have *either* a law, regulation *or* a binding policy directive that complies on its face. If a State has a binding policy directive that complies with the criteria, it need not also have a law or regulation. Similarly, if a State has a complying law or regulation, it need not also issue a binding policy directive to comply.

One commenter argues that the agency should accept as a law a measure that has been accepted in one house of a State legislature. However, such a measure would not be binding in the State, and clearly does not conform to the plain meaning of the term "law." In addition, it would not meet the statutory requirement that the States "provide for" each of the section 408 criteria.

In response to a request from Illinois, we wish to clarify that a State can be a Law State for purposes of the prompt suspension requirement and a Data State for purposes of the mandatory sentencing requirement, or vice versa. (See, *infra*, for a further discussion on demonstrating compliance with that criterion.)

A Law State will not be required to submit data to comply with the prompt suspension requirement in the first year it receives a basic grant, only its law, regulation or binding policy directive. It will be required to submit both data and its law, regulation or binding policy directive to show continued compliance in subsequent years. A Data State will be required to submit both data and its law, regulation or binding policy directive to show compliance with the prompt suspension requirement in the first and in subsequent years.

A number of respondents commend the agency for proposing, in this and in other sections of the regulation, to reduce the amount of data required. Others suggest that we have not gone far enough. Mississippi, for example, expresses its opinion that data should not be required of Law States with administrative suspension requirements for more than two years. Illinois asserts that no State should be required to submit data to provide that it complies with an element of the prompt suspension requirement that can be supported by the State's law, regulation or binding policy directive.

NHTSA has decided not to adopt either of these recommendations. Under the prompt suspension criterion, States must demonstrate that licenses are suspended "promptly" and they must submit data regarding the length of license suspension terms. The agency believes the information required under this criterion should not be difficult for States to collect, since it should be available from the licensing agency in each State. More importantly, we believe collection of this information is essential for States, so they can ensure that the elements of the prompt suspension criterion continue to be met. We have observed that both the length of suspension and promptness requirements often prove difficult for States to maintain, even when they are established by State law. The availability of this data should alert both the States and the agency to any compliance problems before they become irreversible. This data is particularly important, as New Jersey suggests, now that the agency is permitting States to demonstrate compliance through the use of averages. (See discussion below.)

Illinois recommends that § 1309.5(a)(3)(i) be further amended to clearly provide that States must demonstrate compliance with each license suspension term separately. It was indeed the intent of the agency to require that States provide data on each of the following terms: 30-day hard suspension and 60-day suspension with a conditional license (or 90-day hard suspension) for first offenders; 90-day hard suspension for first refusers; one-year hard suspension for repeat offenders and one-year hard suspension for repeat refusers. Paragraphs 1309.5 (a)(2)(ii) and (a)(3)(i) of the regulation are amended to clarify this requirement.

Paragraph 1309.5(a)(3)(i) is also amended to clarify that a Data State must submit a copy of its law, regulation or binding policy directive as well as data to demonstrate compliance with this criterion. This requirement was inadvertantly omitted from the amendatory language in the NPRM. The agency has a need to review a State's law to understand its alcohol countermeasures program and to interpret the data that is provided. The submission of this information (which States provide under the current regulation) should not impose any burden on the States. This amendment should not be viewed as a requirement that the law of a Data State must provide for each element of the prompt suspension requirement. This is required only for States that qualify as Law States under the regulation.

The agency did not propose in the NPRM to change the definition of the term "prompt" for basic grants. To demonstrate compliance with the promptness requirement, the regulation provides that a State must show that the average time from arrest to suspension cannot exceed 45 days, or the average time from arrest to suspension cannot exceed 90 days and the State must submit a plan showing how it intends to achieve a 45 day average.

New York proposes that the 45 and 90 day periods should be changed to 90 and 180 days, respectively. The Insurance Institute for Highway Safety (IIHS) proposes that the periods of time should be made progressively shorter to encourage States to pass administrative suspension statutes. The agency has decided not to adopt either of these proposals. We believe that the 90 and 180 day periods proposed by the State of New York are unreasonably long for deterrence purposes. With regard to the change proposed by IIHS, the agency believes it would serve as an unnecessary burden, which is exactly what the agency is attempting to remove in this rulemaking action.

The promptness requirement has proved to be a difficult element for many States to meet, and we do not wish to impose unreasonable regulatory requirements under the section 408 program. The agency agrees that States

should be encouraged to improve their alcohol countermeasures programs; however, improvement is already required under the regulation. Moreover, different States are capable of improving their programs in different ways. IIHS urges that its proposal is designed to encourage States to enact administrative suspension statutes. The agency encourages States to pass administrative suspension statutes, recognizing that these laws have been effective in States that have enacted them. However, we also realize that enactment of a new statutory scheme can require a substantal effort on the part of the State. Some States may be able to achieve considerable results using other methods that would not require legislative change, and we do not wish to discourage innovation. We believe it could be detrimental to the overall alcohol countermeasures programs in the States if we were to dictate that this one aspect of their programs must be improved at the expense of all others. As NHTSA asserted in its June 29, 1988 statement before the Subcommittee on Water Resources, Transportation and Infrastructure of the Senate Committee on Environment and Public Works regarding S. 2367, a bill which was also designed to encourage States to enact administrative suspension statutes, it is our view that a revocation or suspension within 45 days of arrest, along with other section 408 requirements, creates the desired deterrent effect.

In the NPRM, the agency proposed to increase flexibility by permitting States to show compliance with the prompt suspension requirement through the use of averages. (The element of this prompt suspension requirement that we are referring to here is the length of time for which a license is suspended.) The regulation already permits States to use averages to show compliance with the promptness requirement, i.e., the requirement that States must show that the suspension period begins promptly. In particular, we proposed to accept from Law States "data showing that the State meets an average of [the license suspension] terms, or a plan to achieve these averages." For Data States, NHTSA proposed to accept "data showing that the State meets an average of the terms. A Data State would not have the option of submitting a plan showing how it intends to achieve these averages." (For a more detailed explanation of this proposal, readers should consult the NPRM, 53 FR 11679, 11682.)

With the exception of the Insurance Institute for Highway Safety, all commenters addressing the issue support this aspect of the proposal. Some, in fact, find it to be the most important. IIHS, on the other hand, asserts in its comments that NHTSA does not have discretion to accept averages. Section 408 of the Highway Safety Act requires that each State must provide "for the prompt suspension, for a period *not less than* ninety days in the case of a first offender and *not less than* one year in the case of any repeat offender * * *." [Emphasis added.] IIHS argues that, based on this language, NHTSA does not have discretion to "permit a state to impose * * * suspensions that are less than the required minimum of 90 days or one year."

The agency does not agree with the position of the Insurance Institute on this issue. If NHTSA were to interpret the statutory language to require that States must show that each and every offender completes the time periods for suspensions established in the law, then it is very likely that few, if any States would comply with the statutory criteria. This was clearly not intended by Congress. While we expect that the vast majority of offenders will lose their license for the requisite period of time, this rule is intended to provide flexibility by not penalizing otherwise complying States merely because some offenders receive shorter license suspension terms in special cases, while others receive longer terms than mandated by the Federal law. Moreover, the agency believes that Congress did afford NHTSA with flexibility in this section of the statute.

While we recognize that the Act does establish minimum suspension periods, we note that it does not specify how States must demonstrate compliance with these periods. In addition, Congress did not include in the prompt suspension requirement of 408, the types of restrictions it imposed for the sentencing criterion. The statute requires that each State must provide "for a *mandatory* sentence which *shall not be subject to* suspension or probation." [Emphasis added.] Due to the use of this more restrictive language relating to sentencing, the agency did not consider permitting States to use averages to demonstrate compliance with this criterion.

Finally, by permitting the States to demonstrate that their suspension terms comply with the statute through the use of averages, we are making this section of the regulation more uniform. As indicated above, the current regulation already permits States to use averages to demonstrate compliance with the promptness requirement. Although the statute does not define the term prompt, the legislative history discusses both elements of the prompt suspension requirement as if they are to be treated alike. It provides:

> The key is that, within a matter of days after a drunk driver has been apprehended, his license has been suspended for at least 90 days for the first incident and 1 year for the second * * *. Too often, months and months are allowed to pass * * *

For these reasons, the agency will adopt its proposal and permit States to demonstrate compliance with the prompt suspension requirement of 408 through the use of averages. However, as we stated in the NPRM, since the agency is providing increased flexibility by permitting States to show compliance through averages, we will accept absolutely no deviations from States that qualify based on data. For example, to demonstrate compliance with the 90 day hard license suspension term for first refusers, a State submitting data which shows a 89 day average would not be eligible for funding.

As the agency explained in the NPRM, the average license suspension terms must include only the period of time actually ordered by the State. Plus, the data must include license suspension terms only to the extent they are actually completed. Illinois' Secretary of State asserts that suspension terms should not be limited in this way. He urges the agency to allow States to include the time the individual was actually off the road rather than the minimum period of the suspension. There may be circumstances, such as when a court or licensing agency extends a suspension term, which would justify including a period of time longer that the term *originally* ordered by the State. However, terms must still be limited to the periods of time actually ordered. Otherwise, cases may be considered that would skew the data. For example, an individual whose license is suspended or revoked and moves from the State and obtains a drivers license elsewhere may be included in the sample for an indefinite period of time. The Secretary of State is correct when he asserts that revocations should be used in the calculation of license suspension terms. The agency does not distinguish between suspensions and revocations under the section 408 program. See, § 1309.3(f). Of course, the limitations cited above would continue to apply.

Amendments are made to §§ 1309.3(d), 1309.3(f) and 1309.5(a) to incorporate the changes described above.

*(5) Demonstrating Compliance with the Mandatory Sentence Requirement*

Section 408 of the Act requires that, to be eligible for a basic grant, each State must provide, among other things, for a mandatory sentence, which shall not be subject to suspension or probation, of any person convicted of driving while intoxicated more than once in any five-year period. The mandatory sentence must consist of either imprisonment for not less than 48 consecutive hours or not less than ten days of community service. The agency's regulation implementing this requirement provides in § 1309.5(b)(2) that, to demonstrate compliance, a State must submit both a copy of the law implementing this requirement and a statistically valid sample providing certain necessary data.

The agency proposed to adopt an approach for demonstrating compliance with this criterion, similar to the one described above with regard to the prompt suspension criterion. We received no objections to this proposed approach, and have therefore decided to adopt the proposal, as it was described in the NPRM. (For a more detailed discussion of the proposal, readers should consult the notice, 53 FR 11679, 11682.)

To summarize these changes, each State may choose whether to base its application on either the text of a complying law, regulation or binding policy directive alone or a combination of the State's law and data demonstrating that the State in fact complies with certain aspects of the mandatory sentence criterion. However, the agency will not permit States to demonstrate compliance with this criterion by means of overall averages.

NHTSA will consider a State to be a "Law" State under this criterion if the terms of the State's statutes, regulations, or binding policy directives, on their face, meet each element of the mandatory sentence criterion. Other States will be considered to be "Data" States under this criterion if the State has a law, regulation or binding policy directive which meets each element of the mandatory sentence criterion, with one exception: It need not provide specifically that the 48 hour term of imprisonment must be served consecutively. (As stated in the previous section of this final rule, a State can be a Law State for purposes of the prompt suspension requirement and a Data State for purposes of the mandatory sentencing requirements, or vice versa.)

To comply with this criterion both in the first and in subsequent years it receives a basic grant, a "Law" States will not be required to submit data, only its law, regulation or binding policy directive. In both the first and subsequent years, a "Data" State will be required to submit its law, regulation or binding policy directive, plus data demonstrating substantial compliance with the consecutiveness requirement.

A number of respondents, all representing the State of Arizona, noted that Arizona has had difficulty re-qualifying for section 408 funds under the mandatory sentencing requirement. The State's law provides for a 60-day mandatory sentence, but does not require that 48 hours of that sentence be served consecutively. Each of these respondents supports modification to the statutory requirements to address this problem, and some ask the agency to use this rulemaking action to recommend consideration of statutory changes. The agency cannot modify the statute in this rulemaking action; nor is this rule the appropriate document in which to recommend statutory changes. However, we will retain these comments and carefully consider them when amendments to section 408 of the Highway Safety Act are being contemplated. (We will do the same with the comments of the Governor's Representative for the Commonwealth of Virginia, who also requests that NHTSA support certain statutory changes to the section 408 criteria.)

*(6) Promptness Requirement for Supplemental Grants*

NHTSA proposed, in the NPRM, to amend its regulation to make the promptness requirement for supplemental grants consistent with the promptness requirement for basic grants. Oklahoma and New Jersey concur with this change. No one objected. This final rule amends the regulation accordingly.

The State of Washington urges NHTSA to allow States that qualify for basic grants to automatically be eligible for a supplemental grant. NHTSA does not have authority to make this change. Rather than establishing criteria for a 50% alcohol incentive grant, the statute defines certain criteria for a 30% basic grant plus additional criteria for a supplemental grant of up to 20%. This suggestion therefore will not be adopted.

In a final rule published In the **Federal Register** on May 18, 1988 (53 FR 17692), NHTSA revised portions of the agency's regulation implementing section 408, relating to supplemental alcohol incentive grants, to reflect the statutory extension from three to five, the number of fiscal years in which a State may receive alcohol incentive grants. We identified, in the preamble to the final rule, the qualifications for States to receive alcohol incentive grants in a fourth and fifth fiscal year. We indicated that States would not have to adopt any additional supplemental criteria (but must maintain at least the same number as the year before), and must demonstrate improved performance in its overall alcohol countermeasures program. In order to ensure that there is no confusion in the regulatory language, the agency is amending § 1309.6(e) to clarify these requirements.

*Miscellaneous Comments and Amendments*

The agency also proposed two miscellaneous amendments to correct typographical errors which currently appear in the regulation. These proposed changes were not challenged and will, therefore, be adopted.

Additional recommendations were submitted in the comments, regarding issues that were not addressed in the NPRM. Each of these recommendations will be addressed in this section of the final rule.

Louisiana found our proposal difficult to understand, and requested that the final rule be more concise. The State does not specify, however, which sections it believes should be abbreviated, or whether the State is referring to the regulation itself or the preamble to the NPRM. The agency has avoided repeating, in the preamble to this final rule, many of the details of the revisions that were described in the NPRM. It is our hope that Louisiana will find this preamble clearer. We believe the regulation was clear as originally drafted.

The State of Kansas urges that model legislation would be helpful to States that wish to qualify for section 408 funds. While NHTSA has often prepared model legislation in other areas, it does not believe that the amendments to State laws contemplated by section 408 lend themselves to a single model law. State laws differ greatly in their treatment of drunk driving, and vary widely in the way they are organized. Thus, a model law that recommends appropriate amendments for one State's laws would likely not be appropriate in another State. Also, NHTSA does not wish to limit State flexibility, even by implication, by appearing to prefer one type of legislation over another. If States wish to use a model for drunk driving legislation, we suggest that they consult the Uniform Vehicle Code or the laws of a State that has already qualified for section 408 funding. In addition, States should not hesitate to contact NHTSA

for specific assistance in reviewing proposed State legislation

Michigan requests a statistically sound analysis of the benefits of the individual section 408 criteria, in order that such information can be presented to its legislature. NHTSA is conducting an analysis of the effectiveness of the section 408 program. The study is nearing completion. The agency intends to forward copies of the study to the States once it has been completed. In addition, a number of studies already exist which address the effectiveness of particular countermeasures. Any State that has an immediate need for information, or needs help locating studies, is invited to contact NHTSA's Office of Alcohol and State Programs for assistance.

The United States Park Police suggest several technical amendments, specifically that: (1) The definition of "prompt" in §§ 1309.3(d) and 1309.5(a)(2)(ii) should be determined based on the period of time from arrest to the first judicial appearance, rather than to suspension; (2) in § 1309(f) (1) and (3), the term "conviction" should be used instead of "offense" to ensure that individuals later found not guilty of alcohol-related offenses are not still required to lose their driving privileges; (3) in § 1309.3(f) (2) and (3), the term "chemical test" should be expanded to include "other quantitative tests"; and (4) NHTSA should clarify whether the term "fiscal year" in § 1309.5(a)(2)(i) refers to the Federal or the State fiscal year.

NHTSA is unable to adopt the Park Police's first two recommendations due to statutory requirements. Section 408 of the Highway Safety Act requires an eligible State to provide for a "prompt suspension." A prompt judical appearance, or notice of intent to suspend, as suggested by the Park Police, will not suffice under the statute. While other statutory criteria for basic and special grants specifically pertain to persons who have been "convicted" of alcohol-related offenses, the prompt suspension criterion pertains to a "first offender" and any "repeat offender." The agency agrees with the commenter, and has found on previous occasions, that the statute permits a State to reinstate driving privileges to a person charged with an alcohol-related offense, who is later found not guilty. However, we are unable to replace the word "offenses"with "convictions". Such a change would be interpreted to require a license suspension only after a person was convicted, and the authors of the Act specifically contemplated that a driver's license would be suspended before that time. See, Cong. Rec. S S13198, October 1, 1982.

Prior to the issuance of the NPRM, Mr. Peter B. Higgins, Assistant Attorney General of the State of Oregon, wrote to the agency in connection with Oregon's application for section 408 funding. In this letter, which has been placed in the public docket for this rulemaking, he points out that the agency's regulation currently defines the term "repeat offender" as "any person *convicted* of an alcohol-related traffic offense more than once in five years." [Emphasis added.] For the reason cited above, the agency believes that defining this term as a function of convictions is not consistent with the statutory scheme or the legislative history of the section 408 program and, in fact, the agency has been interpreting the term without regard to convictions. The Advanced Notice of Proposed Rulemaking (ANPRM), which first proposed the definition for "repeat offender," noted that the definition "appears most consistent with Congress' directive * * * that such persons [those who have been convicted more than once in five years] be treated as repeat offenders for sentencing purposes." 47 FR 51152, 51153 [emphasis added]. Neither the ANPRM nor subsequent notices indicate an intent to define a "repeat offender" with reference to convictions for suspension purposes. Since the term "repeat offender" is used only in the prompt suspension criterion of the regulation, and not in the regulation's sentencing criterion, NHTSA has amended the definition of this term to delete references to conviction in order to more accurately reflect Congressional intent and to conform with our interpretations.

The term "chemical test" also comes from section 408 of the Highway Safety Act. The U.S. Park Police suggests expanding this term to include other quantitative tests, to allow for future technological advances in testing for alcohol/drug-related offenses. We believe the respondent is referring to the recent increased used of breath testing instruments which use a technique known as infrared light absorption, and challenges to their use in State courts. In a recent decision in the State of Florida, a court found that use of the term "chemical test" in its statute does not preclude the State from using evidence of "nonreaction physical tests regarded as equally reliable by experts in the scientific field. We think the phrase 'chemical analysis' is commonly used to include tests which identify chemical compounds by their physical properties." *Curry v. State*, 522 So.2d 887, 889 (Fla.App.2 Dist.1988). See also, *Com. v. Smythe*, 5502 N.E.2d 162 (Mass.App.Ct. 1987); *State v. Nichols*, 718 P.2d 1261 (Idaho App. 1986). NHTSA agrees with the court. The key is not whether the test employs chemical reactions, but rather whether a test used to identify chemical compounds is regarded as reliable. We consider any instrument that conforms to the agency's Model Specifications for Evidential Breath Testing Devices (EBT's), and is included on the agency's Conforming Products List (CPL), to be a "chemical test."

In response to the final comment of the U.S. Park Police, we wish to clarify that, wherever the term "fiscal year" appears, the Federal fiscal year applies.

**Effective Date**

The amendments made by this final rule are designed to increase flexibility for the States, and to help them qualify for section 408 funding. In order to assist States to qualify for alcohol incentive grants before the end of the fiscal year, these amendments are effective immediately upon publication in the **Federal Register.**

**Federalism Assessment**

This rulemaking action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that it has no federalism implication that warrants the preparation of a federalism assessment.

**Economic and Other Effects**

NHTSA has analyzed the effect of this action and has determined that it is not "major" within the meaning of Executive Order 12291 or "significant" within the meaning of Department of Transportation regulatory policies and procedures. State participation in the 408 program is voluntary. In addition, the agency has determined that this rule will not have an annual impact of $100 million on the economy, and will not involve either a substantial effect on State and local governments or a substantial change in policy. The agency is simply providing for alternative methods of demonstrating compliance with the statutory criteria for obtaining section 408 funds. Accordingly, neither a Regulatory Impact Analysis nor a Regulatory Evaluation is required.

When the agency first promulgated the initial regulations to implement the section 408 program on February 7, 1983 (48 FR 5545), it determined that the rulemaking should be classified as significant under the Department's regulatory policies and procedures since we were initiating, at that time, a new

regulatory program. A regulatory evaluation was prepared and placed in the public docket (Docket No. 82–18; Notice 5). Persons interested in reviewing this document, should request it from the docket section.

In compliance with the Regulatory Flexibility Act, the agency has evaluated the effects of this rule on small entities. Based on the evaluation, I certify that this rule will not have a significant economic impact on a substantial number of small entities. States, which are not small entities, will be recipients of any funds awarded under the regulation and, accordingly, the preparation of an Initial Regulatory Flexibility Analysis is unnecessary.

The requirements in this action that States retain and report to the Federal government information which demonstrates compliance with alcohol incentive grant criteria, are considered to be information collection requirements as that term is defined by the Office of Management and Budget (OMB) in 5 CFR Part 1320. Accordingly, these requirements have been submitted to and approved by OMB, pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). These requirements have been approved through April 30, 1990; OMB No. 2127–0501.

The agency has also analyzed this action for the purpose of the National Environmental Policy Act. The agency has determined that this action will not have any effect on the human environment.

List of Subjects in 23 CFR Part 1309

Alcohol, Drugs, Grant programs, Transportation, Highway safety.

In accordance with the foregoing, NHTSA amends Part 1309 of Title 23 of the Code of Federal Regulations as follows:

## PART 1309—[AMENDED]

1. The authority citation for Part 1309 continues to read as follows:

Authority: 23 U.S.C. 408; delegation of authority at 49 CFR 1.50.

### § 1309.3 [Amended]

2. Section 1309.3(c) is revised to read as follows:

* * * * *

(c) "Imprisonment" means confinement in a jail, minimum security facility, community corrections facility, in-patient rehabilitation or treatment center, or other facility, provided the individual under confinement is in fact being detained. It does not include house arrest.

* * * * *

3. Section 1309.3(d) is revised to read as follows:

* * * * *

(d) "Prompt" means that the period of time from arrest to suspension of a driver's license does not exceed 45 days.

* * * * *

4. Section 1309.3(e) is revised to read as follows:

* * * * *

(e) "Repeat offender" means any person who a law enforcement officer has probable cause under State law to believe has committed an alcohol-related traffic offense, and

(1) To whom is administered one or more chemical tests to determine whether the individual was intoxicated while operating the motor vehicle and who is determined, as a result of such tests, to be intoxicated, or

(2) Who refuses to submit to such a test as proposed by the officer, more than once in five years.

* * * * *

5. Section 1309.3(f)(1) is revised to read as follows:

* * * * *

(f) * * *

(1) For first offenses (other than refusals), the temporary debarring of all driving privileges for a term of not less than 90 days, or not less than 30 days followed immediately by a term of not less than 60 days of a restricted, provisional or conditional license. A restricted, provisional or conditional license may be issued only in accordance with a State law, regulation or binding policy directive establishing the conditions under which a restricted, provisional or conditional license may be issued or with Statewide published guidelines and in exceptional circumstances specific to the offender.

* * * * *

6. Section 1309.3(f)(2) is revised to read as follows:

* * * * *

(f) * * *

(2) For refusal to take a chemical test for first offenses, the temporary debarring of all driving privileges for a term of not less than 90 days.

* * * * *

7. Section 1309.3(f)(3) is revised to read as follows:

(f) * * *

(3) For second and subsequent offenses, including the refusal to take a chemical test, the temporary debarring of all driving privileges for a term of not less than one year or longer, subject to the requirements of § 1309.5, or § 1309.7 as appropriate.

### § 1309.4 [Amended]

8. Section 1309.4(a)(2) introductory text is amended by removing the phrase "Office of Alcohol and State Programs, NTS–20" which appears before the word "NHTSA". Paragraph (a)(2)(i) of that section is amended by removing the period at the end of the first sentence, and in its place inserting a comma, and by removing in its entirety the second sentence which begins "If the certification" and ends with the words "application for a grant,". Paragraph (a)(2)(iii) of that section is amended by removing the word "existing" which appears prior to the phrase "alcohol traffic safety programs".

### § 1309.5 [Amended]

9. Section 1309.5(a)(2) is revised to read as follows:

* * * * *

(a) * * *

(2)(i) To demonstrate compliance in the first fiscal year the State receives a basic grant, a Law State shall submit a copy of the law, regulation or binding policy directive implementing or interpreting the law or regulation, which provides for each element of the prompt license suspension requirement.

(ii) To demonstrate compliance in subsequent fiscal years the State receives a basic grant, a Law State shall submit, in addition to the information identified in paragraph (a)(2)(i) of this section, data showing the number of licenses suspended, that the average length of the suspension terms for first offenders, first refusers, repeat offenders and repeat refusers meets the terms defined in § 1309.3(f) and that the average number of days it took to suspend the licenses from date of arrest meets the definition for promptness in § 1309.3(d). The State can provide the necessary data based on a representative sample. Data on the average length of the suspension term must not include license suspension periods which exceed the terms actually prescribed by the State, and must reflect terms only to the extent that they are actually completed. If the State's data do not meet the average license suspension terms defined in § 1309.3(f), the State can demonstrate compliance with this element by submitting a plan showing how it intends to achieve these averages. If the State's data do not meet the average promptness requirement defined in § 1309.3(d), the State can demonstrate compliance with this element by submitting data showing that the average time from arrest to suspension of a driver's license does not exceed 90 days and a plan showing how it intends to achieve a 45 day average.

(iii) For the purpose of this paragraph, "Law State" means a State that has a law, regulation or binding policy directive implementing or interpreting an existing law or regulation which provides for each element of the prompt license suspension criterion.

* * * * *

10. A new § 1309.5(a)(3) is added to read as follows:

* * * * *

(b) * * *

(3)(i) To demonstrate compliance in the first and in subsequent fiscal years the State receives a basic grant, a Data State shall submit a copy of the law, regulation or binding policy directive implementing or interpreting the law or regulation, which provides for the prompt license suspension requirement and data showing the number of licenses suspended, that the average length of the suspension terms for first offenders, first refuser, repeat offenders and repeat refusers meets the terms defined in § 1309.3(f) and that the average number of days it took to suspend the licenses from date of arrest meets the definition for promptness in § 1309.3(d). The State can provide the necessary data based on a representative sample. Data on the average length of the suspension term must not reflect license suspension periods which exceed the terms actually prescribed by the State, and must only reflect terms to the extent that they are actually completed. If the State's data do not meet the average promptness requirement defined in § 1309.3(d), the State can demonstrate compliance with this element by submitting data showing that the average time from arrest to suspension of a driver's license does not exceed 90 days and a plan showing how it intends to achieve a 45 day average.

(ii) For the purpose of this paragraph, "Data State" means a State that does not meet the definition of "Law State" in paragraph (a)(2)(iii) of this section.

* * * * *

11. Section 1309.5(b)(2) is revised to read as follows:

* * * * *

(b) * * *

(2)(i) To demonstrate compliance in the first and in subsequent fiscal years the State receives a basic grant, a Law State shall submit a copy of the law, regulation or binding policy directive implementing or interpreting the law or regulation, which provides for each element of the mandatory sentence criterion.

(ii) For the purpose of this paragraph, "Law State" means that the State has a law, regulation or binding policy directive implementing or interpreting an existing law or regulation which provides for each element of the mandatory sentence criterion, including the requirement that the 48 hour term of imprisonment must be served consecutively.

* * * * *

12. A new § 1309.5(b)(3) is added to read as follows:

* * * * *

(b) * * *

(3)(i) To demonstrate compliance in the first and in subsequent fiscal years the State receives a basic grant, a Data State shall submit, in addition to the information identified in paragraph (b)(2)(i) of this section, data showing that it substantially complies with the consecutiveness requirement. The State can provide the necessary data based on a representative sample.

(ii) For the purpose of this paragraph, "Data State" means a State that has a law, regulation or binding policy directive implementing or interpreting an existing law or regulation which provides for each element of the mandatory sentence criterion, except that it need not specifically provide that the 48 hour term of imprisonment must be served consecutively.

* * * * *

13. Section 1309.5(b)(1) is amended by removing the word "or" the second place it appears, and by inserting in its place the word "of".

**§ 1309.6 [Amended]**

14. Sections 1309.6(a) and 1309.6(c)(1) are amended by removing the words which appear in each paragraph following the phrase "license suspension system", and by inserting in their place the words "which meets the requirements of § 1309.5, and".

15. Section 1309.6(b) introductory text is amended by removing the word "a" which appears after the phrase "Have in place", and by inserting in its place the word "and".

16. Section 1309.6(e) is revised to read as follows:

* * * * *

(e) To qualify for a supplemental grant for a fourth and fifth year, a State must:

(1) Show that it has increased performance in its overall alcohol countermeasures program, and

(2) Implement the same number of requirements from paragraph (b) of this section as were in place the previous year, except that a State does not have to implement more than a total of fifteen criteria.

Issued on August 18, 1988.

**Diane K. Steed,**

*National Highway Traffic Safety Administrator.*

[FR Doc. 88-19305 Filed 8-22-88; 3:20 pm]

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

**[T.D. 8220]**

## Transition Rules for Certain Qualified Business Units Using a Profit and Loss Method of Accounting for Tax Years Beginning Before January 1, 1987

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Temporary regulations.

**SUMMARY:** This document contains temporary Income Tax Regulations setting forth transition rules for branches of United States persons, *i.e.* qualified business units (QBUs), which used a profit and loss method of accounting prior to the enactment of the Tax Reform Act of 1986 and do not elect (or are not required) to use the United States dollar approximate separate transactions method for taxable years beginning after December 31, 1986. This regulation is intended to provide immediate guidance for such taxpayers who must use the statutory profit and loss method of accounting for taxable years beginning after December 31, 1986. This action is necessary because of changes to the applicable tax law effected by the Tax Reform Act of 1986. In addition, the temporary regulations set forth in this document also serve as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the Federal Register.

**EFFECTIVE DATE:** These regulations are effective for taxable years beginning after December 31, 1986.

**FOR FURTHER INFORMATION CONTACT:** David Rosenberg of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, Attention: CC:LR:T (INTL-392-88) (202-634-5406, not a toll-free call).

**SUPPLEMENTARY INFORMATION:**

### Background

This document contains temporary regulations relating to procedures to be

followed by branches of United States persons, *i.e.* qualified business units (QBUs), using a profit and loss method of accounting prior to the enactment of Subpart J of the Internal Revenue Code of 1986.

**Need for Temporary Regulations**

New §§ 1.987–0T and 1.987–1T are added by this document to Part 1 of Title 26 of the Code of Federal Regulations in order to provide immediate guidance as to the transition rules for branches that used a profit and loss method of accounting under old law and do not elect (or are not required) to use the United States dollar approximate separate transactions method described in § 1.985–3T for taxable years beginning after December 31, 1986. These regulations will remain in effect until superseded by final regulations on this subject. Immediate guidance is needed by taxpayers who will report under the profit and loss method under section 987 for a taxable year beginning in 1987. For this reason it is found impracticable to issue this Treasury decision with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

**Explanation of Provisions**

Section 987 of the Internal Revenue Code of 1986 provides that (QBUs) that have a functional currency other than the U.S. dollar must account for their operations under the profit and loss method set forth in section 987 and regulations thereunder. In general, prior to the Tax Reform Act of 1986, foreign branches of U.S. persons accounted for their operations under a net worth method of accounting or a nonstatutory profit and loss method of accounting. Net worth to profit and loss transition rules are provided in § 1.989(c)–1T.

The profit and loss method in effect prior to the Tax Reform Act of 1986 is described in Rev. Rul. 75–107, 1975–1 C.B. 32. In general, under Rev. Rul. 75–107 a taxpayer computed the profit of a foreign branch by first calculating the branch's profit in its local currency and then transacting the net result into dollars.

One consequence of the profit and loss method under section 987 is that remittances from a branch result in the recognition of exchange gain or loss. Generally, a remittance is attributable first to earnings of taxable years beginning after Dcember 31, 1986, and second to unremitted earnings of taxable years beginning before January 1, 1987, and all capital contributions. The temporary regulations provide rules for determining the exchange gain or loss on a remittance in excess of post-86 earnings (*i.e.* on a remittance of pre-87 earnings or any capital contributions regardless of when made (the pool of EQ)), establishing a dollar basis for the EQ, and allocating the dollar basis to a remittance of EQ. Generally, exchange gain or loss equals the dollar amount of the remittance less its allocable dollar basis of EQ.

The dollar basis of the EQ generally equals the total dollar profit of the QBU for taxable years beginning before January 1, 1987, plus the dollar basis of capital contributions, less the dollar amount of remittances made during taxable years beginning before January 1, 1987. The pre-87 dollar profit of the QBU is that profit as properly adjusted for foreign taxes of the branch. That is, since foreign taxes diminish that amount of profits available for remittance, the dollar value of these taxes should not be included in the dollar basis of EQ. The Service is interested in receiving comments on any alternative methods for calculating the dollar basis of the EQ.

The temporary regulations also clarify how a profit and loss branch calculates the functional currency adjusted basis of its assets and the functional currency amount of its liabilities. Generally, these are historic functional currency calculations.

Section 1.987–0T sets forth a table of contents. Section 1.987–1T sets forth the transition rules. Paragraph (a) sets forth the applicability of § 1.987–1T. Paragraph (b) provides rules for (1) determining the functional currency pool of EQ; (2) determining the correct dollar basis of EQ; (3) determining the pool from which a remittance is drawn; (4) calculating the dollar basis of a remittance of EQ; and (5) calculating the exchange gain or loss on a remittance of EQ. Paragraph (c) provides rules for determining the functional currency adjusted basis of branch assets. Paragraph (d) provides rules for determining the functional currency amount of branch liabilities. Paragraph (e) provides an example of the foregoing rules.

**Non-Applicability of Executive Order 12291**

It has been determined that this temporary rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

**Regulatory Flexibility Act**

A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations. Accordingly, these temporary regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

**Drafting Information**

The principal author of these temporary regulations is David Rosenberg of the Office of Associate Chief Counsel (International) within the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in developing the regulations on matters of both substance and style.

**List of Subjects in 26 CFR 1.861–1—1.997–1**

Income taxes, Aliens, Exports, DISC, Foreign Investments in U.S., Foreign tax credit, FSC, Sources of Income, United States investments abroad.

**Adoption of Amendments to the Regulations**

Accordingly, 26 CFR Part 1 is amended as follows:

**Income Tax Regulations**

**PART 1—[AMENDED]**

**Paragraph 1.** The authority for Part 1 is amended by adding the following citation:

**Authority:** 26 U.S.C. 7805. * * * Sections 1.987–0T and 1.987–1T are also issued under 26 U.S.C. 987.

**Par. 2.** New §§ 1987–0T and 1.987–1T are added immediately after § 1.981–3 to read as follows:

**§ 1.987–0T Branch transactions (Temporary).**

This section lists the paragraphs contained in § 1.987–1T.

*§ 1.987–1T Transition rules for certain qualified business units using a profit and loss method of accounting for taxable years beginning before January 1, 1987 (Temporary).*

(a) Applicability.
(b) Transition rule.
(c) Functional currency adjusted basis of branch assets acquired in tax years beginning before January 1, 1987.
(d) Functional currency amount of branch liabilities acquired in taxable years beginning before January 1, 1987.
(e) Example.

**§ 1.987-1T Transition rules for certain qualified business units using a profit and loss method of accounting for taxable years beginning before January 1, 1987 (Temporary).**

(a) *Applicability*—(1) *In general.* This regulation provides transition rules for branches of United States persons, *i.e.* qualified business units (QBUs), whose functional currency (as defined in section 985 of the Code and the regulations thereunder) is other than the dollar and that used a profit and loss method of accounting (as described in paragraph (b) of this section) for their last taxable year beginning before January 1, 1987. A profit and loss method of accounting is any method of accounting under which the taxpayer calculates the profits of a QBU by computing the QBU's profits in its functional currency and translating the net result into dollars. For all taxable years beginning after December 31, 1986, such QBUs must account for use the profit and loss method of accounting as described in section 987, except to the extent otherwise provided in regulations under section 985 or any other provision of the Code. See § 1.989(c)–1T regarding transition rules for QBUs of United States persons whose functional currency is other than the dollar and that used a net worth method of accounting for their last taxable year beginning before January 1, 1987.

(2) *Insolvent QBUs.* This section shall not apply to a QBU that used a profit and loss method of accounting for its last taxable year beginning before January 1, 1987, whose beginning pool of $E (as defined in paragraph (b)(2)(1) of this section) is negative.

(b) *Transition rule.* This transition rule sets forth rules for calculating exchange gain or loss on a remittance (as defined in section 987) that occurs in a taxable year beginning after December 31, 1986, from a QBU that was on a profit and loss method of accounting for the taxpayer's last taxable year beginning before January 1, 1987. Under section 987, exchange gain or loss is determined on a remittance of post-86 QBU earnings (which are the previously unremitted earnings of the QBU, as adjusted according to United States generally accepted accounting and tax accounting principles, for taxable years beginning on or after January 1, 1987). Exchange gain or loss is also determined on a remittance in excess of post-86 QBU earnings. In order to calculate the exchange gain or loss occurring on such remittances, the taxpayer must assign its unremitted QBU earnings and capital (as measured in functional currency) to two pools, one pool consisting of post-86 QBU earnings and the other pool consisting of the sum of pre-87 equity (earnings and capital) and post-86 capital (hereinafter referred to as the EQ pool or EQ). A remittance first represents an amount of post–86 QBU earnings and secondly an amount out of EQ. This transition rule provides guidance for determining the extent to which a remittance is out of the EQ pool and provides a 5-step method for calculating exchange gain or loss upon a remittance from the EQ pool. The exchange gain or loss or a remittance from the EQ pool is determined by comparing the current dollar value of the remittance to the historical dollar basis of the remittance as determined under this transition rule and section 987. Such exchange gain or loss shall be considered realized in the taxable year of the remittance and shall be recognized except to the extent otherwise provided in regulations.

(1) *Step 1—Calculating the functional currency pool of EQ.*—(i) *Beginning pool.* The beginning pool of EQ is equal to the functional currency adjusted bases of a branch's assets less the functional currency amount of the branch's liabilities at the end of the taxpayer's last taxable year beginning before January 1, 1987, as these amounts are determined under the rules of paragraphs (c) and (d) of this section.

(ii) *Adjusting the EQ pool.* The EQ pool is increased by the functional currency amount of any capital contributions (as determined under section 987) made during the current taxable year or any prior taxable year beginning after December 31, 1986. If the capital contribution is made in a nonfunctional currency, this amount is translated into functional currency at the spot rate at the date of the contribution. The EQ pool is decreased by the functional currency amount of any remittance made during a prior taxable year beginning after December 31, 1986, that is considered remitted from the EQ pool under the ordering rules in paragraph (b)(3) of this section.

(2) *Step 2—Calculating the dollar pool of equity*—(i) *Beginning pool.* The beginning amount of a branch's dollar equity pool (hereinafter referred to as the $E pool) equals:

(A) The dollar amount of all the branch's profits reported on the taxpayer's income tax returns for taxable years beginning before January 1, 1987, plus the total dollar amount of all capital contributions to the branch during that period (properly reflected on the taxpayer's books), less—

(B) The dollar amount of all the branch's losses reported on the taxpayer's income tax returns for such years, and the total dollar basis of all remittances made by the branch during that period (properly reflected on the taxpayer's books).

A branch's profits and losses shall be properly adjusted for foreign taxes of the branch.

(ii) *Adjusting the $E pool.* The $E pool is increased by the dollar amount of any capital contributions (as determined under section 987) made during the current taxable year or any prior taxable year beginning after December 31, 1986. If the capital contribution is made in a currency other than the dollar, this amount is translated into dollars at the spot rate at the date of the contribution. The $E pool is decreased by the dollar basis of any remittance made during a prior taxable year beginning after December 31, 1986, that is considered remitted from the $E pool (as determined under paragraph (b)(4) of this section).

(3) *Step 3—Determination of the pools from which remittances are drawn.* The functional currency amount of any remittance is considered to come first out of unremitted post-86 functional currency earnings (including functional currency earnings for the current taxable year determined without regard to remittances made during the current year). To the extent the functional currency amount of the remittance (as determined under section 987) exceeds unremitted post-86 functional currency earnings, it is considered to come out of the EQ pool (as determined under paragraph (b)(1) of this section).

(4) *Step 4—Calculation of the dollar basis of a remittance of EQ.* The dollar basis of the amount of EQ remitted equals:

$$\frac{\text{functional currency amount remitted from EQ}}{\text{EQ}} \times \$E$$

Where:

EQ = the QBU's functional currency pool of branch equity determined under paragraph (b)(1)

$E = the QBU's dollar pool of branch equity determined under paragraph (b)(2)

(5) *Step 5—Calculation of the exchange gain or loss on the remittance of EQ.* The exchange gain or loss determined on a remittance out of EQ equals—

(i) The dollar value of the EQ remitted (as determined under section 987), less

(ii) The dollar basis of the EQ remitted as calculated under paragraph (b)(4) of this section.

(c) *Functional currency adjusted basis of branch assets acquired in taxable*

*years beginning before January 1, 1987.* (1) For taxable years beginning after December 31, 1986, the functional currency adjusted basis of a QBU asset acquired in a taxable year beginning before January 1, 1987, is the functional currency basis of the asset at the date of acquisition, as adjusted according to United States generally accepted accounting and tax accounting principles. The functional currency adjusted basis of an asset for which a functional currency basis was not determined at the date of acquisition is the nonfunctional currency basis of the asset at the date of acquisition multiplied by the spot exchange rate at the date of acquisition, as adjusted according to United States generally accepted accounting and tax accounting principles.

(2) Any future adjustments to the functional currency adjusted basis of such an asset are determined with respect to the appropriate functional currency adjusted basis of the asset as determined under this paragraph (c).

(d) *Functional currency amount of branch liabilities acquired in taxable years beginning before January 1, 1987.* For the first taxable year beginning after December 31, 1986, the amount of a QBU liability incurred in a taxable year beginning before January 1, 1987, is the functional currency amount of the liability at the date incurred, as adjusted according to United States generally accepted accounting and tax accounting principles. The functional currency amount of a liability for which a functional currency amount was not determined at the date incurred is the nonfunctional currency amount of the liability at the date incurred multiplied by the spot exchange rate at the date incurred, as adjusted according to United States generally accepted accounting and tax accounting principles.

(e) *Example.* The provisions of this section are illustrated by the following example.

*Example.* (i) *Facts.* U.S. is a domestic corporation. B, a branch of U.S., operates in country X and was established in 1985. B is a QBU and its functional currency is the FC. U.S. is on a calendar taxable year and, prior to January 1, 1987, accounted for the operations of B by the profit and loss method of accounting as set forth in Rev. Rul. 75–107, 1975–1 C.B. 32. B's books and records were kept according to United States tax accounting principles. B received a capital contribution of $2,000 in 1985, and had profits of $3,000 in 1985 and $5,000 in 1986. B made a remittance in 1986 the dollar basis of which was $1,000. As of December 31, 1986, the adjusted basis of B's functional currency assets exceeded the functional currency amount of its liabilities by 15,000 FC (the beginning pool of EQ). Under section 987, B has earnings of 8,000 FC in 1987, which are worth $1,000 when translated at the weighted average exchange rate for 1987 as required by sections 987(2) and 989(b)(4). B has no earnings and incurs no loss in 1988. There are no contributions to branch capital in 1987 and 1988. B remits 18,000 FC in 1988. Under section 987, the appropriate exchange rate for the 1988 remittance is 10 FC/$1.

(ii) *Calculation of exchange gain or loss on remittance.*

A. *Post-86 earnings.*

Under paragraph (b)(3) of this section, the 18,000 FC remittance comes first out of post-86 earnings (8,000 FC) and second out of EQ (10,000 FC). The loss on the 1988 remittance of post-86 earnings equals:

Dollar value of post-86 earnings remitted—Dollar basis of post-86 earnings remitted

= (8,000 FC × 10 FC/$1) − $1,000
= $800 − $1,000
= <$200> loss

B. *EQ.*

Under paragraph (b) of this section, U.S. will calculate exchange gain or loss on the 10,000 FC remittance of EQ from B as follows:

*Step 1.* The total EQ pool equals 15,000 FC (the functional currency adjusted bases of its assets less the functional currency amount of its liabilities as of December 31, 1986). There are no adjustments necessary under paragraph (b)(1)(ii) of this section.

*Step 2.* The $E pool is $9,000 (the $2,000 capital contribution in 1985 plus profits of $3,000 in 1985 and $5,000 in 1986 and less the $1,00 dollar basis of the 1986 remittance). There are no adjustments necessary under paragraph (b)(2)(ii) of this section.

*Step 3.* The entire 10,000 FC remittance is deemed to come out of EQ.

*Step 4.* The dollar basis of the EQ remitted equals:

$$N \times \$E \text{ determined under paragraph (b)(2)} = \frac{10{,}000\ FC}{15{,}000\ FC} \times \$9{,}000 = \$6{,}000$$

Where:

$$N = \frac{\text{Portion of remittance out of EQ}}{\text{Total EQ determined under paragraph (b)(1)}}$$

*Step 5.* Exchange loss of U.S. on remittance equals:

Dollar value of the EQ remitted—Dollar basis of the EQ remitted

= (10,000 FC × 10 FC/$1) − $6,000
= $1,000 − $6,000
= <$5,000> loss

C. *Total loss on remittance.* The total combined loss on the remittance is <$5,200>.

**Lawrence B. Gibbs,**

*Commissioner of Internal Revenue.*

Approved:

**O. Donaldson Chapoton,**

*Assistant Secretary of the Treasury.*

Signed: August 15, 1988.

[FR Doc. 88–19190 Filed 8–24–88; 8:45 am]

BILLING CODE 4830–01–M

## CENTRAL INTELLIGENCE AGENCY

### 32 CFR Part 1900

### Procedures for Disclosure of Records Under the Freedom of Information Act

**AGENCY:** Central Intelligence Agency.

**ACTION:** Interim rule.

**SUMMARY:** The Central Intelligence Agency is amending the Code of Federal Regulations by adding "Predisclosure Notification Procedures for Confidential Commercial Information" to comply with Executive Order 12600 of June 23, 1987. These regulations are intended to provide submitters of confidential commercial information with consultation prior to public release of the information pursuant to the FOIA.

**DATES:** Effective Date: August 25, 1988. Submit any comments by September 26, 1988.

**ADDRESS:** Address all comments to John H. Wright, Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505.

**FOR FURTHER INFORMATION CONTACT:** John H. Wright, Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505, Telephone: (703) 351-2083.

**SUPPLEMENTARY INFORMATION:** The policies and procedures of the Central Intelligence Agency (CIA or Agency) for handling requests for CIA records under the Freedom of Information Act (FOIA) or Executive Order 12356 are published in 32 CFR Part 1900. Part 1900 of Title 32 CFR was last published in full text in the **Federal Register** on 8 December 1987 (Vol. 52, No. 235, p. 46456). Section 1900.43(e) directs the records reviewer to § 1900.44 if records are determined to contain confidential commercial information. Section 1900.44 provides details of "Predisclosure Notification Procedures for Confidential Commercial Information" in compliance with Executive Order 12600 of June 23, 1987.

The Agency will issue a final rule as soon as possible after the expiration of the comment period. In the interim, the Agency will follow these regulations when processing records involving information potentially within the scope of exemption (b)(4).

This interim rule is not a major rule for the purposes of Executive Order 12291. This rule does not contain a collection of information for purposes of the Paperwork Reduction Act.

**List of Subjects in 32 CFR Part 1900**

Freedom of Information.

For reasons set forth in the preamble, 32 CFR Part 1900 is amended as follows:

## PART 1900—[AMENDED]

1. The authority citation for Part 1900 continues to read as follows:

**Authority:** National Security Act of 1947, as amended; the Central Intelligence Agency Act of 1949, as amended; the Freedom of Information Act, as amended; the CIA Information Act of 1984; and Executive Order 12356.

2. Sections 1900.43(e) and 1900.44 are added to read as follows:

**§ 1900.43 Reviewing records**

* * * * *

(e) In the event located records are determined to contain confidential commercial information, the Coordinator shall follow the predisclosure notification procedures set forth in § 1900.44.

**§ 1900.44 Predisclosure notification procedures for confidential commercial information.**

(a) *In general.* Confidential commercial information provided to the Central Intelligence Agency by a submitter shall not be disclosed pursuant to a Freedom of Information Act request except in accordance with this section. For purposes of this section, the following definitions apply:

(1) "Confidential commercial information" means records provided to the government by a submitter that arguably contain material exempt from release under Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4), because disclosure could reasonably be expected to cause substantial competitive harm.

(2) "Submitter" means any person or entity who provides confidential commercial information to the government. The term "submitter" includes, but is not limited to, corporations, state governments, and foreign governments.

(b) *Notice to business submitters.* The Coordinator shall provide a submitter with prompt notice of receipt of a Freedom of Information Act request encompassing its confidential commercial information whenever required in accordance with paragraph (c) of this section and except as provided in paragraph (g) of this section. The written notice shall either describe the exact nature of the confidential commercial information requested or provide copies of the records or portions of records containing the confidential commercial information.

(c) *When notice is required.* (1) For confidential commercial information submitted to the Agency prior to January 1, 1988, the Coordinator shall provide a submitter with notice of receipt of a FOIA request whenever:

(i) The records are less than 10 years old and the information has been designated by the submitter as confidential commercial information, or

(ii) The Coordinator has reason to believe that disclosure of the information could reasonably be expected to cause substantial competitive harm, or

(iii) The information is subject to prior express commitment of confidentiality given by the Coordinator to the submitter.

(2) For confidential commercial information submitted to the Agency on or after January 1, 1988, the Coordinator shall provide a submitter with notice of receipt of a FOIA request whenever:

(i) The submitter has in good faith designated the information as confidential commercial information, or

(ii) The Agency has reason to believe that disclosure of the information could reasonably be expected to cause substantial competitive harm.

(3) Notice of a request for confidential commercial information falling within paragraph (c)(2)(i) of this section shall be required for a period of not more than ten years after the date of submission unless the submitter requests, and provides acceptable justification for, a specific notice period of greater duration.

(4) The submitter's claim of confidentiality must be supported by a certification by an officer or authorized representative of the company that the information in question is in fact confidential commercial information and has not been disclosed to the public.

(d) *Opportunity to object to disclosure.* (1) Through the notice described in paragraph (b) of this section, the Coordinator shall afford a submitter seven working days within which to provide the Coordinator with a detailed statement of any objection to disclosure. Such statement shall specify why the information is contended to be a trade secret or commercial information that is considered confidential and capable of competitive damage if improperly disclosed. Information provided by a submitter pursuant to this paragraph may itself be subject to disclosure under the FOIA.

(e) *Notice of intent to disclose.* The Coordinator shall consider carefully a submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose confidential commercial information. Whenever the Coordinator decides to disclose confidential commercial information over the objection of a submitter, the Coordinator shall forward to the submitter a written notice which shall include:

(1) A statement of the reasons for which the submitter's disclosure objections were not sustained;

(2) A description of the confidential commercial information to be disclosed; and

(3) A specified disclosure date, which is seven working days after the notice of the final decision to release the requested information has been mailed to the submitter. When notice is given to a submitter under this subsection, the Coordinator shall notify the requester that such notice has been given to the submitter and the proposed date for disclosure.

(f) *Notice of FOIA lawsuit.* Whenever a requester brings suit seeking to compel disclosure of confidential commercial information covered by paragraph (c) of this section, the Coordinator shall promptly notify the submitter.

(g) *Exceptions to notice requirement.* The notice requirements of this section shall not apply if:

(1) The Coordinator determines that the information should not be disclosed;

(2) The information has been published or has been officially made available to the public;

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552).

Approved:

**R. M. Huffstutler,**

*Deputy Director for Administration.*

Date: July 28, 1988.

[FR Doc. 88-18393 Filed 8-24-88; 8:45 am]

BILLING CODE 6310-02-M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 117

[CGD7-88-02]

## Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, FL

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final Rule.

**SUMMARY:** At the request of the Port of Miami, the Coast Guard is changing the regulations governing the Dodge Island drawbridges at Miami, Florida, by extending the existing regulation and allowing the draw to remain closed during certain periods. This change is being made because of complaints about highway traffic delays. This action will accommodate the current needs of vehicular traffic and still provide for the reasonable needs of navigation.

**EFFECTIVE DATE:** These regulations become effective on September 26, 1988.

**FOR FURTHER INFORMATION CONTACT:** Mr. Brodie Rich, telephone (305) 536-4103.

**SUPPLEMENTARY INFORMATION:** On March 24, 1988, the Coast Guard published proposed rules (53 FR 9671) concerning this amendment. The Commander, Seventh Coast Guard District, also published the proposal as a Public Notice dated April 5, 1988. In each notice, interested persons were given until May 9, 1988, to submit comments.

### Drafting Information

The drafters of these regulations are Mr. Brodie Rich, project officer, and Lieutenant Commander S.T. Fuger, Jr., project attorney.

### Discussion of Comments

One hundred and twenty-eight comments were received. One hundred and twenty-two supported the proposal or expressed no objection. Five commentors opposed any change to existing regulations expressing that further restrictions on navigation imposed by a more restrictive regulation would necessitate vessel traffic divert around the bridge, and considered this regulation change unreasonable to meet the present needs of navigation. One of the objectors indicated that the proposed regulation change would cause adverse economic impacts on the marina located on the southwest corner of the Dodge Island bridge known as Miamarina. This regulation change would relieve present vehicular traffic conditions resulting from the steadily increasing volume of passengers destined to and from the passenger port facilities located on Dodge Island. The scheduled closure periods, will still afford opportunities for vessels to transit the bridge periodically through the day on Saturday including three midday openings between 11:15 a.m. and 12:15 p.m., and normally scheduled openings after 2:00 p.m. In addition, since there exists an alternate route around this drawbridge, the minimum disruption of waterway access resulting from this regulation is not considered to be an unreasonable burden to navigation. This regulation will only be in effect until the high-level fixed bridge presently under construction is completed, which will provide uninterrupted direct highway access from the mainland to Dodge Island (the Port of Miami). The final rule remains unchanged from the proposed rule published on March 24, 1988.

### Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the regulations exempt tugs with tows. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

### List of Subjects in 33 CFR Part 117

Bridges.

### Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46 and 33 CFR 1.05-1(g).

2. Section 117.261 is revised to read as follows:

**§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Key Largo.**

* * * * *

(pp) *Dodge Island bridges, mile 1089.4 at Miami.* The draws shall open on signal; except that from 7:15 a.m. to 5:45 p.m., Monday through Saturday except federal holidays and from 9:15 a.m. to 2:15 p.m. on Sundays, the draw need open only on the quarter-hour and three-quarter hour. From 9:20 a.m. to 11:10 a.m. and from 12:20 p.m. to 2:10 p.m. on Saturdays, the draws need not open.

* * * * *

Dated: August 16, 1988.

**Martin H. Daniell,**

*Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.*

[FR Doc. 88-19346 Filed 8-24-88; 8:45 am]

BILLING CODE 4910-14-M

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**33 CFR Part 165**

**[COTP Port Arthur, Texas Reg. 88-03]**

## Security Zone Regulations; Port of Beaumont, Texas and Sabine Neches Waterway

**AGENCY:** Coast Guard, DOT.

**ACTION:** Emergency rule.

**SUMMARY:** The Coast Guard is establishing a Security Zone within the Port of Beaumont and around the vessels USNS ALGOL, USNS ALTAIR, and M/V CYGNUS. The zone is needed to safeguard the port and the vessels from sabotage or other subversive acts, accidents, or other causes of a similar nature. Entry into this Security Zone is prohibited unless authorized by the Coast Guard Captain of the Port.

**EFFECTIVE DATE:** This regulation becomes effective on 9 August 1988. It terminates on 27 August 1988 or unless sooner terminated by the Coast Guard Captain of the Port.

**FOR FURTHER INFORMATION CONTACT:** Commander J.L. Robinson at (409) 724-4343.

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

### Drafting Information

The drafters of this regulation are LCDR B.J. Lambert, Project Officer for the Coast Guard Captain of the Port, and CDR J.A. Unzicker, Jr., Project Attorney, Eighth Coast Guard District Legal Office.

### Discussion of Regulation

The evolution requiring this regulation will begin on or about 9 August 1988. Establishing this Security Zone is essential to facilitating REFORGER 88, a joint service military operation which includes a military equipment load out through the Port of Beaumont, Texas. This regulation is issued pursuant to 50 U.S.C. 191 as set out in the authority citation for all of Part 165.

### List of Subjects in 33 CFR Part 165

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

### Regulation

In consideration of the foregoing, Subpart D of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

## PART 165—[AMENDED]

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

**Authority:** 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.0401, 6.04-6, and 160.5.

2. A new § 165.T835 is added to read as follows:

**§ 165.T835 Security Zone: Port of Beaumont, Texas and Sabine Neches Waterway in the vicinity of the USNS vessels ALGOL, ALTAIR and M/V CYGNUS.**

(a) *Location.* The following area is a Security Zone: Port of Beaumont within its fenced limited access perimeter, the Neches River immediately adjacent to this area and 2 miles ahead and 1 mile behind these vessels as they transit the Sabine Neches Waterway.

(b) *Effective Date.* This regulation becomes effective on 9 August 1988. It terminates on 27 August 1988 or unless sooner terminated by the Coast Guard Captain of the Port.

(c) *Regulations:* (1) In accordance with the general regulations in Part 165.23, entry into this Security Zone is prohibited unless authorized by the Coast Guard Captain of the Port.

Dated: July 5, 1988.

**A.A. Whiting III,**

*Captain, USCG, Captain of the Port, Port Arthur, Texas.*

[FR Doc. 88-19347 Filed 8-24-88; 8:45 am]

BILLING CODE 4910-14-M

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**VETERANS ADMINISTRATION**

**39 CFR Parts 17 and 21**

## Eligibility for Medical Benefits; Evidence of Inability To Defray Necessary Medical Expenses; Veterans Education; Clarification of Mitigating Circumstances; Correction

**AGENCY:** Veterans Administration.

**ACTION:** Final rules; corrections.

**SUMMARY:** On pages 25061-25068 of **Federal Register** of July 10, 1986 (51 FR 25061), the Veterans Administration (VA) published a final rule amending its medical series to conform with changes to several sections of Title 38, United States Code, enacted with passage of Title XIX of Pub. L. 99-272, "The Veterans' Health Care Amendments of 1986," significantly affecting veterans eligibility for health care benefits. In the process of making the amendments, gender specific language was inadvertently retained and some references were not updated.

On pages 28883-28884 of the **Federal Register** of August 1, 1988 (53 FR 28883) the VA published a final rule clarifying the Agency's policy on mitigating circumstances when a veteran withdraws from a course. In § 21.4136, subparagraph (4) on mitigating circumstances was inadvertently placed in the wrong paragraph.

This notice corrects previously published information.

**EFFECTIVE DATES:** July 1, 1986 for the Part 17 amendment; July 11, 1988 for the Part 21 amendment.

**FOR FURTHER INFORMATION CONTACT:**

*Part 17:* Paul Tryhus, Chief, Policies and Procedures Division (136F), Medical Administration Service, Department of Medicine and Surgery, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-2143.

*Part 21:* June C. Schaeffer, Assistant Director for Education Policy and Program Administration (225), Vocational Rehabilitation and Education Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-2092.

**SUPPLEMENTARY INFORMATION:**

**List of Subjects in 38 CFR Part 17 and 21**

Health care, Veterans.

Dated: August 19, 1988.

C.G. Verenes,

*Acting Chief, Directives Management Division.*

## PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: 72 Stat. 1114; 38 U.S.C. 210, unless otherwise noted.

*2. § 17.47 [Amended]*

In § 17.47(e)(1) (ii) and (iv), remove the word "himself" wherever it appears, and insert, in its place, the word "self".

In § 17.47(e)(2) in the last sentence, remove the words "(c)(3)", and insert, in their place, the words "(e)(1)".

*3. § 17.50b [Amended]*

In § 17.50b(a) in the second sentence, remove the words "§ 17.50 (c) through (f)", and insert, in their place, the words "§ 17.50 c through f".

*4. § 17.60 [Amended]*

In § 17.60(c) in the first sentence, remove the words "§ 17.48(g)", and insert, in their place, the words "§ 17.48(j)".

## PART 21—[AMENDED]

1. In § 21.4136, paragraph (l)(4) is correctly added as (k)(4) to read as follows:

**§ 21.4136 Rates; educational assistance allowance; 39 U.S.C. Chapter 34.**

* * * * *

(k) *Mitigating circumstances.* * * *

(4) If the student withdraws from a course during a drop-add period, the VA will consider the circumstances which caused the withdrawal to be mitigating. Veterans who withdraw from a course during a drop-add period are not subject to the reporting requirement found in paragraph (k)(1)(ii) of this section.

(Authority: 38 U.S.C. 1780(a)

* * * * *

[FR Doc. 88-19226 Filed 8-24-88; 8:45 am]

BILLING CODE 8320-01-M

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[FRL-3391-9]

### Approval and Promulgation of Air Quality Implementation Plans; Nashua, NH, Carbon Monoxide Attainment Plan

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving State Implementation Plan revisions submitted by the State of New Hampshire. The intended effect of these revisions is to control emissions of carbon monoxide in Nashua, New Hampshire, in order to attain the primary National Ambient Air Quality Standard by December 31, 1990 and to provide for reasonable further progress in the interim, as required under Part D of the Clean Air Act Amendments of 1977.

**EFFECTIVE DATE:** This action will be effective on September 26, 1988.

**ADDRESSES:** Copies of the documents relevant to this action are available for public inspection during normal business hours at the Environmental Protection Agency, Room 2312, JFK Federal Building, Boston, MA 02203; Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and the New Hampshire Department of Environmental Services, Air Resources Division, 64 N. Main St., Concord, NH 03302.

**FOR FURTHER INFORMATION CONTACT:** Thomas F. Wholley, (617) 565-3233; FTS 835-3233.

**SUPPLEMENTARY INFORMATION:**

#### Background

On February 26, 1985, September 12, 1985, December 3, 1985, July 25, 1986, October 7, 1986, May 12, 1987 and October 15, 1987, the Director of the New Hampshire Air Resources Division (ARD) submitted revisions to the New Hampshire State Implementation Plan (SIP). These revisions request an extension of the attainment date for carbon monoxide (CO) for the City of Nashua to 1990 and contain the necessary attainment plan. The plan includes local street improvements, a vehicle Anti-tampering/Anti-fuel Switching program and a vehicle Inspection/Maintenance (I/M) program.

On August 4, 1986 (51 FR 27878), EPA published a Notice of Proposed Rulemaking proposing approval of the overall plan. On June 12, 1987 (52 FR 22503), EPA published a Supplementary Notice of Proposed Rulemaking proposing approval of the rules for the I/M program in Nashua and eleven surrounding towns (Amherst, Derry, Hollis, Hudson, Litchfield, Londonderry, Merrimack, Pelham, Salem, and Windham).

Details of the plan, the history of its development, and EPA's rationale for proposing approval of the plan are provided in detail in EPA's August 4, 1986 **Federal Register** notice. Similarly, details of the I/M program and EPA's rationale for approving the I/M rules are provided in detail in EPA's June 12, 1987 notice. As no public comments were received on either notice, details provided in those notices will not be repeated here. The remainder of this notice discusses information received since the proposals were published.

#### I/M Program Requirements

The criteria EPA uses in evaluating the adequacy of I/M programs are discussed in detail in a policy document published in the **Federal Register** on January 22, 1981 (46 FR 7182). The Nashua area program was reviewed against these criteria and found to satisfy seven of the ten applicable requirements. EPA proposed approval of the I/M rules with the understanding that New Hampshire would submit the information on the following criteria before final rulemaking: (1) The recordkeeping and record submittal requirements; (2) the surveillance procedures; and (3) the public awareness plan.

On October 15, 1987, New Hampshire submitted information on the missing elements. The New Hampshire Department of Safety (DOS), the agency responsible for implementing the I/M program, has agreed with EPA on what will be included on emission inspection reports and quarterly reporting of data. We have also agreed that criteria for targeting of surveillance inspections will include low failure rates, abnormal frequencies of reported test results, and complaints. For public awareness, New Hampshire will conduct an extensive press and letter campaign, including distribution of EPA pamphlets on I/M and emission controls to all motorists in the program area.

EPA finds that this information satisfies the criteria set forth in the policy document referenced above. For more details on EPA's review, see the Technical Support Document available at locations listed in the **ADDRESSES** section of this notice.

#### Local Street Improvements

The attainment plan commits to four transportation control measures which reduce traffic congestion around intersections with high CO levels. These measures include rerouting of traffic, road construction, parking controls and optimization of signal timing. The December 3, 1985 submission contained details of these measures and a schedule showing full implementation by December, 1986. In the August 4, 1986 Notice of Proposed Rulemaking, EPA noted that final approval would not be published until these measures had been

implemented or until legal authority to implement them had been obtained.

Since that time, the City of Nashua, the ARD and EPA have worked together to modify the details of the December 3, 1985 submission. These modifications, submitted by New Hampshire on May 12, 1987, accommodate some of the city's other needs but still result in improvements in air quality of the same magnitude as the original plan.

EPA has reviewed the modified local street improvements and is satisfied that they provide the equivalent improvements in air quality as the measures we originally proposed for approval. EPA is also satisfied that all of these measures have been implemented. Further details on EPA's review are also found in the Technical Support Document referenced above.

### Final Action

EPA is approving the New Hampshire Carbon Monoxide State Implementation Plan for the City of Nashua and New Hampshire's request to extend the attainment date to December 31, 1990. EPA is also approving the Nashua area I/M program rules and the commitment from the Governor to convert the program to computer analyzers, if necessary.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291. Under 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 24, 1988. This action may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2)).

### List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide.

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

Date: May 27, 1988.

**Lee M. Thomas,**

*Administrator.*

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

## PART 52—[AMENDED]

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

**Authority:** 42 U.S.C. 7401–7642.

### Subpart EE—New Hampshire

2. Section 52.1520 is amended by adding paragraph (c)(39) as follows:

**§ 52.1520 Identification of plan.**

* * * * *

(c) * * *

(39) Attainment plans for carbon monoxide for the City of Nashua including an extension of the attainment date to December 31, 1990 as submitted on September 12, 1985, December 3, 1985, October 7, 1986, March 6, 1987, May 12, 1987 and October 15, 1987.

(i) *Incorporation by Reference.* (A) The New Hampshire Code of Administrative Rules, Department of Safety, Chapter 900, Emission Inspections, Part Saf–M, 901, Part Saf–M 902, Part Saf–M 903, Part Saf–M 904, Part Saf–M 905, Part Saf–M 906, Part Saf–M 907, Part Saf–M 908, Part Saf–M 909, and Part Saf–M 910, effective October 6, 1986.

(B) Section 715.02 Introductory Text and paragraph (1) of Part Saf-M-715, and § 716.01 Introductory Text and paragraph (g) of Part Saf-M-716, submitted to New Hampshire Department of Safety by the State of New Hampshire on August 14, 1985.

(ii) *Additional Material.* (A) A letter from Governor John H. Sununu to Michael R. Deland, dated March 6, 1987, committing to take legislative measures to convert the Inspection/Maintenance program in the Nashua area to the use of computerized emission analyzers in the event that the program is found to not be achieving the necessary emission reductions.

(B) Narrative submittals, including an attainment demonstration.

[FR Doc. 88–12631 Filed 8–24–88; 8:45 am]

BILLING CODE 6560–50–M

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### 40 CFR Part 52

**[FRL–3430–9]**

## Approval and Promulgation of Implementation Plans; Ohio

**AGENCY:** U.S. Environmental Protection Agency (USEPA).

**ACTION:** Final rule.

**SUMMARY:** USEPA is approving Ohio's Good Engineering Stack Height Regulations, Ohio Administrative Code Chapter 3745–16–01 and 02, as a revision to the Ohio State Implementation Plan (SIP). The rules USEPA is approving restrict the use of stack height and dispersion techniques in setting emission limits which are based on the impact of source emissions on ambient air quality. The rules are intended to satisfy the requirements of Section 123 of the Clean Air Act.

**EFFECTIVE DATE:** This rule will become effective on September 26, 1988.

**ADDRESSES:** Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Debra Marcantonio, at (312) 886–6088, before visiting the Region V office.)

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

Ohio Environmental Protection Agency, Office of Air Pollution Control, 1800 WaterMark Drive, Columbus, Ohio 42366–0149.

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

**FOR FURTHER INFORMATION CONTACT:** Debra Marcantonio, (312) 886–6088.

**SUPPLEMENTARY INFORMATION:** Section 123 of the Clean Air Act, as amended, requires USEPA to promulgate regulations to ensure that the degree of emission limitation required for the control of any air pollutant under an applicable State Implementation Plan (SIP) is not affected by that portion of any stack height which exceeds good engineering practice (GEP) or by any other dispersion technique. A regulation implementing section 123 was promulgated on February 8, 1982 (47 FR 5864). Revisions to the regulation were published on July 8, 1985 (50 FR 27892).

### State Implementation Plan Requirements

Pursuant to section 406(d)(2) of the Clean Air Act Amendments of 1977, USEPA is requiring that all States (1) review and revise, as necessary, their SIP to include provisions that limit stack height credits and dispersion techniques in accordance with USEPA's July 8, 1985, revised regulations and (2) review all existing emission limitations to determine whether any of these limitations have been affected by impermissible stack height credits above GEP or by any other dispersion techniques. For any limitations that have been so affected, States are required to prepare revised limitations consistent with their revised SIP. All SIP revisions and revised emission limitations were required to be submitted to USEPA within 9 months of promulgation of the July 8, 1985, revised stack height regulations.

Today's notice addresses the State's Stack Height Regulations developed to include provisions in the Ohio SIP that limit stack height credits and dispersion

techniques in accordance with USEPA's July 8, 1985, regulations. This action is potentially subject to review and modification after USEPA finalizes its response to the decision in *NRDC v. Thomas*, 838 F.2d 1224 (D.C. Cir. 1988). Any revised limitations for sources in Ohio will be addressed at a later time in a separate **Federal Register** notice.

On March 3, 1986, Ohio EPA submitted GEP Stack Height Regulations for inclusion in the State Implementation Plan. These regulations were adopted by the State on February 12, 1986, and became effective on March 5, 1986. On May 6, 1987 (52 FR 16877), USEPA proposed to approve Ohio's regulations. USEPA's proposed approval was based on the State regulations being the same or similar to the Federal regulations with a few exceptions. Only one exception (i.e., definition of emission limitation and emission standard) was considered significant enough to require further clarification from the State. This clarification was submitted to USEPA on September 2, 1987. No other public comments were submitted on USEPA's proposed action.

In the September 2, 1987 letter, the Ohio Environmental Protection Agency (OEPA) informed USEPA that it intended the State definition of "emission standard or emission limitation" to be consistent with the Federal definition.

The only difference between the State and Federal language is that the Federal definition states that the limits or standards apply on a continuous basis and will assure continuous emission reduction. In its comment letter, OEPA noted that emission limits developed by their Agency" * * * apply on a continuous basis * * *". As such, Ohio felt that the additional language in the Federal definition was unnecessary. USEPA accepts this clarification to the State's definition of emission limitation and emission standard and is incorporating this letter by reference into the SIP.

As discussed in the notice of proposed rulemaking, the State definitions are generally identical to the Federal requirements. In the tables below, the State definitions are compared to the Federal definitions. Based on this comparison, the State regulations are approvable.

*I. Definitions*

| Definition | Applicable Federal regulation | State regulation | Comments |
|---|---|---|---|
| (Not Applicable) | (Not Applicable) | 3745-16-01(A) | Includes those definitions in 3745-15-01. [On October 10, 1982 (47 FR 43375), USEPA approved 3745-15-01]. |
| Stack in Existence | § 51.1(gg) | 3745-16-01(B) | Identical to Federal. |
| Dispersion Technique | § 51.1(hh) | 3745-16-01(C) | Nearly identical (State uses the word "source" in place of "facility" except in (C)(2)(e).) |
| Emission Limitation and Emission Standard. | 40 CFR 51.1(Z) | 3745-16-01(D) | Both the State and the Federal limits are intended to apply on a continuous basis. Ohio submitted a clarification letter during the public comment period. |
| Excessive Concentration | § 51.1(kk) | 3745-16-01(E) | State regulation is identical, except that it defines a "nuisance" through reference to 3745-15-07 (approved by USEPA on August 13, 1984, 49 FR 32181). |
| Good Engineering | § 51.1(ii) | 3745-16-01(F) | State regulation is similar. The July 8, 1985 notice has a provision allowing the use of field study or fluid model demonstrations to verify the GEP stack height formula. The State has accepted this provision by allowing the Director to request such a demonstration. The State regulation references 3745-31 and 3745-35, instead of 40 CFR Parts 51 and 52. USEPA approved 3745-35 on June 10, 1982 (47 FR 25144), and July 8, 1983 (48 FR 31400). USEPA conditionally approved in final 3745-31 on October 31, 1980 (45 FR 72119), and proposed to remove the conditions on July 5, 1984 (49 FR 27584). |
| Nearby | § 51.1(jj) | 3745-16-01(G) | Identical to Federal. |
| Stack | § 51.1(ff) | 3745-16-01(H) | Concept identical to Federal. |
| Stack Height | | 3745-16-01(I) | State definition is acceptable. |

The State requirements as noted in the table are either the same or similar to the Federal requirements and, thus, are acceptable.

*II. Stack Height Requirements*

| Requirement | Federal regulation | State regulation | Comments |
|---|---|---|---|
| Applicability Exemptions | 40 CFR 51.12(k) | 3745-16-02(A) | Identical. |
| Stack Height Credit | § 51.12(j) | 3745-16-02(B) | Concept identical to Federal. |
| Public Hearing (on Greater than Formula Credit). | § 51.12(j) | 3745-16-02(C) | Concept identical to Federal. |
| Actual Stack Height | § 51.12(j) | 3745-16-02(D) | Concept identical to Federal. |

USEPA is taking final action to approve Ohio's Good Engineering Stack Height Regulations, Ohio Administrative Code Chapter 3745-16-01 and 02, as a revision to the Ohio SIP.

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 24, 1988. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

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

Air pollution control, Sulfur oxides, Intergovernment all pollutants, Incorporation by reference.

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

Dated: August 8, 1988.

**Lee M. Thomas,**

*Administrator.*

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

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

### Subpart KK—Ohio

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

Authority: 42 U.S.C. 7401–7462.

2. Section 52.1870 is amended by adding new paragraph (c)(81) to read as follows:

**§ 52.1870 Identification of plan.**

* * * * * * *

(c) * * *

(81) On March 3, 1986, the Ohio Environmental Protection Agency (OEPA) submitted Good Engineering Stack Height Regulations as a revision to the Ohio State Implementation Plan (SIP).

(i) Incorporation by reference.

(A) Ohio Administrative Code Chapter 3745–16–01 and 02, entitled "Definitions" and "Good Engineering Practice Stack Height Regulations". These rules were adopted by the State on February 12, 1986 and were effective on March 5, 1986.

(B) September 2, 1987 letter from Richard L. Shank, Ph.D., Director Ohio Environmental Protection Agency; to Valdas Adamkus, Regional Administrator, USEPA.

(ii) Additional material.

(A) March 3, 1986, letter from Warren W. Tyler, Director, Ohio Environmental Protection Agency; to Valdas Adamkus, Regional Administrator, U.S. EPA.

3. Section 52.1881 is amended by revising paragraph (a) introductory text, and adding paragraph (a)(11) to read as follows:

**§ 52.1881 Control strategy: Sulfur oxides (sulfur dioxide).**

(a) USEPA is approving, disapproving or taking no action on various portions of the Ohio sulfur dioxide control plan as noticed below. The disapproved portions of the Ohio plan do not meet the requirements of § 51.13 of this chapter in that they do not provide for attainment and maintenance of the national standards for sulfur oxides (sulfur dioxide). (Where USEPA has approved the State's sulfur dioxide plan, those regulations supersede the federal sulfur dioxide plan contained in paragraph (b) of this section and § 52.1882.)

* * * * * * *

(11) *Approval.* USEPA approves Ohio's Good Engineering Stack Height Regulations as contained in Ohio Administrative Code Chapter 3745–16–01 and 02. These rules were adopted by the State on February 12, 1986 and were effective on March 5, 1986.

* * * * * * *

[FR Doc. 88–18581 Filed 8–24–88; 8:45 am]

BILLING CODE 6560–50–M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 1

### Amendment of the Commission's Environmental Rules; Correction

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; correction.

**SUMMARY:** This action corrects the release date and title of action taken in the Final Rule document concerning the Commission's Environmental Rules.

**FOR FURTHER INFORMATION CONTACT:** Ronald Jackson (202) 632–4178.

**SUPPLEMENTARY INFORMATION:** On July 28, 1988, at 53 FR 28393, the Commission published a summary of a Final rule, FCC 88–191, in this proceeding concerning the Environmental rules. Inadvertently, the release date of the full text of this action, mentioned in the Supplementary Information section of the Preamble, was stated as being July 19, 1988. The correct release date is August 16, 1988. In addition, the type of document was misstated as a Summary of Memorandum Opinion and Order. The correct title should read: Summary of Order.

**H. Walker Feaster III,**

*Acting Secretary, Federal Communications Commission.*

[FR Doc. 88–19269 Filed 8–24–88; 8:45 am]

BILLING CODE 6712–01–M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Parts 611 and 662

[Docket No. 80737–8165]

### Northern Anchovy Fishery; Foreign Fishing

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

**ACTION:** Notice of final harvest quotas.

**SUMMARY:** NOAA issues this notice announcing the final determination of estimated spawning biomass and harvest quotas for the northern anchovy fishery in the exclusive economic zone (EEZ) for the 1988–89 fishing season. The harvest quotas have been determined by application of the formulas in the Northern Anchovy Fishery Management Plan (FMP) and its implementing regulations. This action is intended to notify fishermen and the public of the final harvest quotas and to promote orderly management of the fishery.

**EFFECTIVE DATE:** Effective August 22, 1988.

**FOR FURTHER INFORMATION CONTACT:** James J. Morgan, NMFS, Southwest Region, 213–514–6667.

**SUPPLEMENTARY INFORMATION:** In consultation with the California Department of Fish and Game and the NMFS Southwest Fisheries Center, the Director of the NMFS Southwest Region (Regional Director) made a preliminary determination that the spawning biomass of the central subpopulation of northern anchovy (*Engraulis mordax*) was 950,000 metric tons (mt). The biomass estimate is derived from, and is equivalent to, the Egg Production Method of measurement, but is based on the Stock Synthesis Model. Documentation of the spawning biomass estimate is contained in Administrative Report LJ–88–17 published by the Southwest Fisheries Center, NMFS. From this estimate, the Regional Director calculated preliminary determinations of harvest quotas and special allocations for the 1988–89 anchovy fishing season by applying formulas in the FMP. These preliminary determinations were announced in the **Federal Register** on July 14, 1988 (53 FR 26617). Regulations at 50 CFR 611.20(c) require that the estimated total allowable level of foreign fishing (TALFF) for this fishery also be published at the beginning of the fishing year.

The preliminary determinations were discussed, and agreed to, at a public meeting of the Pacific Fishery Management Council (Council) on July 14, 1988, in Portland, Oregon. Public comments were invited in the announcement and at the Council meeting; no public comments were received.

At the time of publication of the preliminary notice, age data were not available for 1987. Since the preliminary biomass estimate was announced, age data have been received, and the final spawning biomass has been calculated to be 1,008,000 mt. Even though the final estimate for spawning biomass is larger than the initial estimate, the harvest quotas previously announced cannot be increased because the U.S. harvest quota cannot exceed 144,900 mt. Regulations at 50 CFR 662.20(b) provide

that when the estimated spawning biomass is equal to or greater than 300,000 mt, the reduction harvest quota in the Pacific anchovy fishery area will be 70 percent of the estimated spawning biomass in excess of 300,000 mt, or 140,000 mt, whichever is less. Thus, the preliminary reduction harvest quota was the maximum allowable under the regulations and cannot be increased. The non-reduction harvest quota is 4,900 mt. The reduction harvest quota plus the non-reduction harvest quota equals the optimum yield (OY).

By applying the formulas in the FMP and in § 662.20, the Regional Director has made the following final determinations of harvest quotas, special allocations, and expected processing levels based on an estimated spawning biomass of 1,008,000 mt;

1. The total U.S. harvest quota or OY of northern anchovy is 144,900 mt plus an unspecified amount for use as live bait.

2. The total U.S. harvest quota for reduction purposes is 140,000 mt.

a. Of the total reduction harvest quota, 9,072 mt is reserved for the reduction fishery in subarea A (north of Pt. Buchon).

b. The reduction quota for subarea B (south of Pt. Buchon) is 130,928 mt.

3. The U.S. harvest allocation for non-reduction fishing (i.e., fishing for anchovy for use as dead bait and direct human consumption) is 4,900 mt. However, non-reduction fishing is not limited until the total catch in both the reduction and non-reduction fisheries reaches the total harvest quota of 144,900 mt.

4. There is no U.S. harvest limit for the live bait fishery.

5. The domestic annual processing (DAP) capacity for the reduction and non-reduction industry is 1,621 mt.

6. The amount allocated to joint venture processing (JVP) is zero because there is no history of, nor are there applications for, joint ventures.

7. The domestic annual harvest (DAH) capacity, the sum of DAP and JVP, is 1,621 mt.

8. The TALFF is 80,903 mt. The FMP states that the TALFF in the EEZ will be based on the U.S. portion of the OY minus the DAH and minus that amount of expected harvest in the Mexican fishery zone which is in excess of that allocated by the FMP. The excess Mexican harvest in 1988–1989 is expected to be 62,376 mt. Applying the formula in the FMP results in the following for TALFF: [TALFF = (144,900 mt−1,621 mt)−(62,376 mt) = 80,903 mt].

### Other Matters

This action is taken under the authority of 50 CFR Part 662 and § 611.20 and complies with Executive Order 12291.

### List of Subjects in 50 CFR Parts 611 and 662

Fisheries.

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

Dated: August 22, 1988.

**James W. Brennan,**

*Assistant Administrator for Fisheries, National Marine Fisheries Service.*

[FR Doc. 88–19318 Filed 8–22–88; 2:50 pm]

BILLING CODE 3510-22-M

# Proposed Rules

Federal Register
Vol. 53, No. 165
Thursday, August 25, 1988

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.

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 40

### Custody and Long-Term Care of Uranium Mill Tailings Sites

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is considering general licenses that would permit NRC to license the custody and long-term care of decommissioned uranium or thorium mill tailings sites after remedial actions under the Uranium Mill Tailings Radiation Control Act have been completed. Commission action is needed to provide a procedure that ensures the maintenance of closed sites in a manner sufficient to protect the public health and safety and the environment. This action is necessary to meet the requirements of Titles I and II of the Uranium Mill Tailings Radiation Control Act. Although this notice is being published as an advance notice of proposed rulemaking (ANPRM), the full text of a proposed rule is included and a proposed rule may not be necessary.

**DATE:** Comment period expires October 24, 1988. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

**ADDRESSES:** Send comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555 Attention: Docketing and Service Branch. Deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m.

Comments received, the environmental assessment and finding of no significant impact, and the regulatory analysis can be examined at: The NRC Public Document Room, 1717 H Street NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mark Haisfield, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Mail Stop NL/S–260. Telephone (301) 492–3877.

**SUPPLEMENTARY INFORMATION:**



## I. Background

In the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA) the Congress recognized that uranium mill tailings may pose a potentially significant radiation health hazard to the public. One of the measures enacted by Congress to control this hazard is to place the long-term custodial care of the uranium or thorium mill tailings disposal site, after completion of all remedial actions, in the hands of government.

Title I of UMTRCA defines the statutory authority and roles of the Department of Energy (DOE) and the NRC with regard to the remedial action program for inactive uranium mill tailings sites. Title I requires that, upon completion of the remedial action program by DOE, these sites be maintained by the DOE, or other Federal agency designated by the President, under a license issued by the Commission. Title II of UMTRCA contains similar requirements for NRC licensing of presently active uranium or thorium mill tailings sites following their closure and operating license termination. These sites would be licensed by the Commission upon their transfer to the Federal Government or the State in which they are located, at the option of the State. These proposed regulations will complement other UMTRCA required regulations which have been completed and cover activities through closure.

## II. Proposed Action

The regulatory additions being considered to Part 40 would provide for two new general licenses. The general licenses in § 40.27 and § 40.28 would correspond to Title I and Title II of UMTRCA, respectively. The provisions in § 40.27 would apply to inactive sites and the provisions in § 40.28 would apply to active sites. Although the requirements in § 40.27 and § 40.28 would differ somewhat due to the differences in Title I and Title II of the Act, the criteria for determining what constitutes adequate monitoring, maintenance, and emergency measures for long-term custodial care are the same.

The regulations being considered deal only with uranium or thorium mill tailings sites after remedial actions have been completed. Upon satisfactory reclamation (by DOE for Title I, or an NRC or Agreement State licensee for Title II) to applicable closure standards, the NRC would receive a detailed surveillance and maintenance plan (SMP) from DOE or an appropriate State. The SMP will discuss ownership (whether Federal or State) and custody (agency responsible) of the site, site conditions, the surveillance program, required follow-up inspections, and how and when custodial maintenance and emergency repairs will be accomplished. (See the section entitled "The Surveillance and Maintenance Plan".) The general license would become effective for each individual Title I or Title II site upon NRC receipt of an SMP that meets the requirements of the general license.

For sites governed by the provisions of § 40.27 (Title I sites), the general license would apply only to the DOE or another Federal agency designated by the President. For sites governed under the provisions of § 40.28 (Title II sites), DOE, or another Federal agency, would submit the SMP, unless the State, at its option, decides to take custody of the site and be included in the general license. The authority to grant a long-term care license is reserved to the NRC. States may be the custodial agency, but are not authorized to grant this type of license. See section 83 b(1)(A) of the Atomic Energy Act of 1954 as amended and 10 CFR 150.15a.

There are some differences in requirements for sites located on Indian

lands. For title I sites, the Indian site will remain in the ownership of that tribe. The NRC and DOE have generally agreed that sites on Indian lands should be handled in the same manner as other Title I sites, including conduct of surveillance and maintenance under proposed § 40.27. We also understand that DOE and the appropriate Indian tribes have agreed that DOE would provide for long-term care. Four of the 24 Title I sites are on Indian lands. (Additional discussion of this issue is provided in VII, Issues for Comment.)

For Title II sites on Indian lands it is not clear who will be responsible for monitoring, maintenance, and emergency measures at the site. Currently, only one site falls into this category. UMTRCA provides that long-term monitoring and maintenance will be done by the United States and that the licensee will be required to enter into arrangements with the Commission to ensure this monitoring and maintenance. However, UMTRCA was not explicit as to which Federal agency is responsible for the site, and should these sites ever require emergency measures, additional authorizations may be required. The basic obligations for these sites have already been codified in Part 40, Appendix A, Criterion 11F, and are not part of this rulemaking.

Both § 40.27 and § 40.28 would allow for potential future uses of the sites. As provided in UMTRCA, any future use would require a separate Commission license to assure that the site remains or is restored to a safe and environmentally sound condition. See the, "Future Uses of the Disposal Site" section.

The rulemaking being considered would issue a general license to governmental bodies for possession and maintenance of uranium or thorium mill tailings sites after closure, pursuant to statute. Therefore, this rulemaking has no impact upon the private sector. NRC could choose to license these sites with a general license or by issuing separate specific licenses for each site. The licensing basis would be the same. The use of general licenses (one for Title I and one for Title II) is the most efficient use of resources and administratively more convenient. Each site to which the general license would eventually apply, will have undergone full environmental and technical review in conjunction with remedial action for Title I or license termination for Title II. The general license being considered by the Commission can accommodate site-specific matters through the site-specific surveillance and maintenance plans and future orders. It is also equally as enforceable as a specific license.

### III. The Stabilization and Long-Term Care Program (Title I and Title II)

Although the end result for custodial care licensing for Title I or Title II sites would be similar, the processes leading up to closure of Title I or Title II sites are different. The following provides background on these processes, as well as some of the differences between Title I and Title II licensing.

*Title I (24 sites)*

UMTRCA charged the EPA with the responsibility for promulgating remedial action standards for inactive uranium mill sites. The purpose of these standards is to protect the public health and safety and the environment from radiological and non-radiological hazards associated with radioactive materials at the sites. The final standards were promulgated with an effective date of March 7, 1983 (48 FR 602; January 5, 1983). See 40 CFR Part 192-Health and Environmental Protection for Uranium Mill Tailings, Subparts A, B, and C.

The Department of Energy (DOE) will select and execute a plan of remedial action that will satisfy the EPA standards and other applicable laws and regulations. All remedial actions must be selected and performed with the concurrence of the NRC. The required NRC concurrence with the selection and performance of proposed remedial actions and the licensing of long-term surveillance and maintenance of disposal sites would be for the purpose of ensuring compliance with UMTRCA.

The stabilization and long-term care program for each site has four distinct phases. In the first phase DOE selects a disposal site and design. This phase includes preparation of an Environmental Assessment or an Environmental Impact Statement, and a Remedial Action Plan. The Remedial Action Plan is structured to provide a comprehensive understanding of the remedial actions proposed at that site and contains specific design and construction requirements. NRC and State/Indian tribe concur in the Remedial Action Plan to complete the first phase.

The second phase is the performance phase. In this phase the actual decontamination, decommissioning, and reclamation at the site is done in accordance with the Remedial Action Plan. The NRC and the State/Indian tribe, as applicable, must occur in any changes to this plan. At the completion of reclamation activities at the site, NRC concurs in DOE's determination that the activities at the site have been completed in accordance with the approved plan. Prior to licensing, the next phase, title to the disposed tailings and contaminated materials and the land upon which they are disposed must be in Federal custody (except for sites on Indian lands) to provide for long-term Federal control, at Federal expense.

NRC concurrence in the DOE determination that reclamation of the site has been accomplished in accordance with the approval plan may have a conditional clause regarding ground water. For example, ground water restoration, through either active techniques or passive restoration through natural flushing, may take many years. If a conditional clause is required, the post-licensing phase may require monitoring the site to ensure that restoration is proceeding as planned or require other actions as necessary. Because EPA ground water standards are currently being revised, this practice of conditional concurrence and planned activities during post-licensing may have to be re-examined.

The third phase is the licensing phase. The general license would not apply until (1) NRC concurrence in the DOE determination that the site has been properly reclaimed and (2) the surveillance and maintenance plan (SMP) has been received by NRC. The SMP should be submitted within 4 months of the NRC concurrence in completion. Certification indicates that the site has been stabilized in accordance with EPA standards. Current plans also include a Federal Register notice of NRC's receipt of the SMP and public meetings to inform the local public of the future plans for the site and to provide an opportunity for public comments. There is no termination date for the general license being considered.

The final phase of the program is surveillance, monitoring, and maintenance and begins after NRC receives the SMP. In this phase DOE and NRC periodically inspect the site to ensure its integrity. The surveillance and maintenance plan would require the DOE to make repairs, if needed.

One of the requirements in the EPA standards is that control of the tailings should be effective for up to 1,000 years without active maintenance. Thus, although the NRC license will require repairs as necessary, the design of the stabilized pile is such that this should be minimized. In the event that significant repairs are ever necessary, a determination will be made as to the need for additional National

Environmental Policy Act (NEPA) actions.

According to recent schedules presented to the Commission, Title I sites should be eligible for NRC licensing this calendar year. DOE has already submitted certification reports for NRC review and concurrence for two sites. Once NRC concurs in DOE's certification that remedial actions are completed, the sites are ready for site transfer and licensing. Four additional sites are scheduled for completion by the end of fiscal year (FY) 1989, two in FY 1990, four in FY 1991, seven in FY 1992, and the remaining five in early FY 1993. NRC cannot license these sites under 10 CFR Part 40 as now written since 10 CFR 40.1(a) states that "The regulations in this part do not establish procedures and criteria for the issuance of licenses for materials covered under Title I * * *." Consequently, prompt action by the Commission is needed for orderly licensing.

*Title II*

UMTRCA also charged EPA with the responsibility for promulgating standards for active uranium or thorium sites. EPA completed this in Subpart D and E of 40 CFR Part 192 issued October 7, 1983 (48 FR 45946).

Title II sites have active NRC or Agreement State licenses. Each licensee is responsible for having a remedial action plan that is approved by the NRC or an Agreement State. This plan describes how the licensee will close the site to meet all applicable standards after completion of operations.

Before the NRC, or an Agreement State, terminates a license the site must be closed in a manner sufficient to meet applicable standards. These include the requirements contained within 10 CFR Part 40—Domestic Licensing of Source Material, or similar Agreement State requirements, and the EPA standards in 40 CFR Part 192. In addition, 10 CFR 150.15a requires that prior to the termination of any Agreement State license for byproduct material, the Commission shall have made a determination that all applicable standards and requirements have been met.

Following the operating license termination, invoking the general license for Title II sites would be similar to the process used for Title I sites. The most significant differences are:

1. A State, at its option, my take over custodial care of a Title II site instead of the DOE.

2. In some rare cases, such as may occur with deep burial where no ongoing site surveillance will be required, surface land ownership transfer requirements may be waived for a Title II site.

3. Potential future uses of a Title I site are limited to subsurface rights, whereas, a Title II site could also potentially allow the usage of surface rights. (See the section entitled "Future Uses of the Disposal Site".)

4. All surface and subsurface rights for a Title I site must be in Federal custody (except when on Indian land). For a Title II site the Commission may take into account the status of ownership and right to the land, and the ability of a licensee to transfer title and custody to the United States or a State.

5. There is an additional Title II requirement when an operating license in an Agreement State is terminated and the site transferred to the United States for long-term custodial care. All funds collected by the State for long-term monitoring and maintenance will be transferred to the United States. This requirement has already been codified in Part 150 and is not part of this rulemaking.

6. Title I covers designated inactive uranium mill tailings sites. Title II covers sites licensed as of January 1, 1978 and new uranium and thorium mill tailings sites.

Licensees at the Title II sites also need the framework in place for the long-term care of sites. The long-term care programs to be conducted by the DOE or States need to be factored into remedial action plans and decommissioning plans so that engineering, monitoring, data, and financial considerations can be included. As a measure of the urgency, 10 of the 20 conventional mills licensed by NRC have made corporate decisions to no longer use the sites or keep them in standby condition. They plan to decommission them and are seeking license termination. Activities at these 10 sites are in various stages of design, planning and decommissioning.

## IV. The Surveillance and Maintenance Plan

DOE, or the appropriate State, would submit a site-specific surveillance and maintenance plan to the NRC after site closure has been satisfactorily completed. The NRC would review the SMP and supporting documentation to ensure that the ownership of land and materials is adequately documented, and that the proposed surveillance and maintenance provides the necessary conditions for that site.

The DOE has developed a "Guidance for UMTRA Project Surveillance and Maintenance" document issued in January 1986. Copies of this document are available from the U.S. Department of Energy, UMTRA Project Office, Albuquerque Operations Office, P.O. Box 5400, Albuquerque, New Mexico, 87115. This document, which was developed with NRC staff coordination, provides detailed generic guidance for what information should be considered in designing a site-specific SMP for Title I sites. (This guidance has not been evaluated by NRC for application to Title II sites. While many provisions may be appropriate, site closure and remediation by actively regulated licensees may result in somewhat different procedures. NRC is considering what additional guidance and what modifications to existing guidance may be appropriate for Title II sites.) The document addresses five primary activities. These activities, which are discussed in the following paragraphs, are:

1. Definition and characterization of final site conditions.
2. Site inspections.
3. Ground-water monitoring.
4. Aerial photography.
5. Custodial maintenance and contingency (or emergency) repair.

DOE indicated that final site conditions should be defined and characterized prior to the completion of remedial actions at a site. As-built drawings should be compiled, a final topographic survey should be performed, a vicinity map should be prepared, and ground and aerial photographs should be taken. Survey monuments, site markers, and signs should be established. If the site-specific SMP specifies that ground-water monitoring is required, then a network of monitoring wells should be identified and new wells established if needed.

DOE describes three types of inspections: Phase I, Phase II, and contingency inspections. Scheduled phase I inspections would be conducted by a small team to identify conditions that may affect design integrity. Phase II inspections would be unscheduled and dependent upon potential problems identified during a Phase I inspection. Team members of a Phase II inspection should be specialists in the potential problem areas (e.g., geotechnical engineer for settlement). Contingency inspections would also be unscheduled and occur when information has been received that indicates that site integrity has been, or may be, threatened by natural events (e.g., severe earthquake) or other means.

The need to monitor ground-water conditions should be determined on a site-specific basis. If it is determined that ground-water monitoring is required, then it should be conducted in

two phases, screening monitoring and evaluative monitoring. Screening monitoring would be designed to detect changes in ground-water quality attributable to the tailings. If a significant change is apparent, evaluative monitoring should be initiated. Evaluative monitoring would be more extensive and would quantify the rate and magnitude of the change of conditions.

Initial surveillances should include the acquisition and interpretation of aerial photography. The principal purposes of aerial photography are to aid inspectors in the field and to provide a permanent, visual record of site conditions. Color infrared stereo photos, high oblique prints, and low oblique, natural color photographs should be taken at the completion of remedial action. Follow-up aerial photography would only be done if the Phase I or Phase II inspections identified a need for this.

Custodial maintenance such as grass mowing or fence repair may be required at some sites. Extreme natural events or purposeful intrusion may occur at a site which would require immediate emergency measures. When compared with contingency (or emergency) repair, custodial maintenance will be less costly, smaller in scale, and more frequent in occurrence. In contrast, contingency (or emergency) repairs are very unlikely to be needed; however, repair costs may be substantial.

### V. Future Uses of the Disposal Site

UMTRCA provides for potential future uses of the disposal site. For a Title I site, it provides that the Secretary of the Interior, with the concurrence of both the Secretary of Energy and the NRC, may dispose of any subsurface mineral rights. If this occurs, the NRC will issue a specific license to the Secretary of the Interior to assure that the tailings are not disturbed, or if disturbed are restored to a safe and environmentally sound condition.

For a Title II site the same provisions as above apply with the following additions. First, surface as well as subsurface estates may be available for use. Second, although the request to use these rights may be received from any person, if permission is granted, the person who transferred the land shall receive the right of first refusal with respect to this use of the land.

Environmental impacts would be evaluated prior to any action granting the use of surface or subsurface estates.

### VI. Petition for Rulemaking

On December 5, 1980, the NRC received a petition for rulemaking submitted by the Sierra Club (PRM–40–23). An amendment to this petition was received by the NRC on March 21, 1983. The original petition requested that the NRC amend its regulations to license the possession of uranium mill tailings at inactive storage sites. The petitioner proposed that the NRC take the following regulatory action to ensure that public health and safety and the environment is adequately protected from the hazards associated with uranium mill tailings.

1. Repeal the licensing exemption for inactive mill tailings sites subject to the Department of Energy's remedial program.

2. Require a license for the possession of byproduct material on any other property in the vicinity of an inactive mill tailings site if the byproduct materials are derived from the inactive mill tailings site.

3. Or alternatively, conduct a rulemaking to determine whether a licensing exemption of these sites or the byproduct material derived from the sites constitutes an unreasonable risk to public health and safety.

In the 1983 amendment, the petitioner requests that, in the event that NRC denies the petitioner's earlier request that NRC repeal the licensing exemption for inactive sites or conduct the requested rulemaking, the NRC take further action. Specifically, the petitioner requests that the NRC ensure that the management of byproduct material located on or derived from inactive uranium processing sites is conducted in a manner that protects the public health and safety and the environment from the radiological and nonradiological hazards associated with uranium mill tailings.

Whether the original petition is granted or not, the petitioner also requests that the NRC establish requirements to govern the management of byproduct material, not subject to licensing under section 81 of the Atomic Energy Act (42 U.S.C. 2111), comparable to the requirements applicable to similar materials under the Solid Waste Disposal Act, as amended (42 U.S.C. 6901 et seq.). In the alternative, the petitioner suggests that NRC extend the coverage of the requirements in 10 CFR Part 40, Appendix A, which are now applicable only to licensed byproduct material, to byproduct material not subject to licensing. In addition, the petitioner requests that NRC issue regulations that would require a person exempt from licensing to conduct monitoring activities, perform remedial work, or take any other action necessary to protect health and safety and the environment.

One of the purposes of the rulemaking being considered is to provide a licensing procedure for custodial care of inactive sites. Although this is not what the petitioner requested, the end result would directly address their concerns. Inactive sites would be licensed and would be managed to ensure their long-term integrity.

Another concern of the petitioner is that until DOE completes remedial actions, the tailings will be unregulated. While it is true that the sites are unregulated in a legal sense, they have not been ignored by DOE. DOE has proceeded with its remedial action program. DOE's program is oriented toward completing high priority sites first. High priority sites are those generally closest to population centers. There are eight high priority sites. Reclamation activities at four are completed or underway and activities for the other four are in active planning or design phases. The activities for medium and low priority sites are in various phases—initial planning has been completed for all, and activities for several have progressed into the construction phase. In addition, DOE monitors the sites before and during remedial actions.

After the completion of this rulemaking, NRC will make a final determination on the issues raised by the petitioner and publish its findings in the Federal Register.

### VII. Issues for Comment

There are several areas where the statutes, EPA's regulations, and DOE's programs introduce some uncertainties, particularly for the aspects of this rulemaking related to Title I for UMTRCA. Pending bills, the implications of the proposed EPA Title I ground-water protection standards, and institutional issues concerning Tribal lands are specific areas of current concern.

Two recent bills (S. 1991 and H.R. 4591) address extending DOE's authority to perform remedial actions for Title I sites. Action on these bills could impact when and how remedial actions are completed. A two-step process may result at sites where long-term ground-water restoration is needed. Under the bills, DOE would be required to complete final surface restoration by 1994, but could continue activities associated with ground-water restoration indefinitely. The language in the two bills is not identical, particularly regarding extending DOE's authority to address ground-water matters, and will have to be reconciled.

The potential statutory implications of EPA's proposed amendments to 40 CFR Part 192 (52 FR 36000; September 24, 1987) were addressed in staff comments on the rule. The letter transmitting the comments dated January 29, 1988 stated.

> Under present law, NRC concurrence that DOE has performed the remedial actions in accordance with EPA standards is necessary, before NRC can issue the license called for in UMTRCA. Under the proposed Title I standards, completion of the remedial actions may be delayed by groundwater restoration activities for periods of up to 100 years to achieve the established concentration limits. In addition, the provision for post-disposal monitoring, to confirm performance of disposal designs and corrective actions, also extends the time before remedial action is completed. EPA indicated that periods of at least 30 years may be involved in this post-disposal period. Such prolonged time periods will require Congressional action to extend DOE's authority and funding to conduct such activities. Accordingly, EPA should take into account that legislative changes may be needed to implement the long-term aspects of the proposed standards.

There is an uncertainty in the licensing of the Department of Energy as custodian of a reclaimed tailings millsite on Indian land (that is, reservation land where the title is held in trust by the United States for the benefit of the Indian tribe). Under Section 104(f) of UMTRCA, the NRC will license DOE as to any processing site or disposal site used for the disposal of Title I tailings. These sites are to be acquired by the State and transferred to the United States for permanent custody. On Indian lands the situation is somewhat different. Under Section 105(b) the NRC will license DOE if the disposal site is a site to which the tailings have been removed from the processing site. If the tailings are stabilized in place, the statute is silent on the licensing of DOE, if DOE is the long-term custodian.

The Cooperative Agreement between the Navaho Nation and the DOE recognizes this quirk in the law. It distinguishes between two types of disposal sites, a depository site and a millsite. A depository site is a site to which material is removed for disposal, and the Tribe agrees to assist DOE in securing all property interests. Such a site is recognized as subject to licensing. A millsite equates to stabilization in place. The tribe agrees to assist DOE, to the extent necessary, to acquire or extinguish individual Indian interests. Issues of long-term custody are deferred to resolution on a site specific basis for millsites.

Only if DOE becomes the long-term custodian of a millsite on Indian land is licensing an issue. If any other Government agency, such as the Department of the Interior, or the Tribe, becomes the custodian it may be subject to licensing under the Atomic Energy Act as in possession of byproduct material. Even if DOE becomes the custodian, but not a licensee, it is still subject to NRC oversite under Section 84b of the Atomic Energy Act, as amended, and Section 105(a)(3) of UMTRCA. Thus, NRC may impose the requirements of the general license on DOE, by order, if necessary to assure long-term monitoring and maintenance of tailings on an Indian land millsite.

The Commission concludes that its statutory responsibility to license long-term care of sites where remedial action is complete and all applicable standards have been met dictates that it proceed in spite of these uncertainties. The Commission would appreciate public comments on these uncertainties. In particular, comments on the following points would be appreciated:

1. The Commission's understanding of DOE's current schedules and resources indicates that DOE cannot complete the program by the current 1990 limit. Thus, the Commission considers it unlikely that DOE's authority to continue remedial actions will not be extended in some fashion. However, extension is not assured and the exact terms of any extension are unknown.

2. EPA's proposed amendments of 40 CFR Part 192 concerning ground-water protection for Title I sites also include provisions that may lead to long-term ground-water restoration programs at some sites. The exact timing and content of EPA's final regulations are unknown. Further, based on the proposed regulations, additional legislation may be needed to implement the final standards.

3. The statutes are not completely clear with respect to institutional matters associated with reclaimed sites on Indian land. However, the matter is being addressed through agreements, and there are other options for NRC oversight of the sites. The Commission would particularly welcome comments from DOE and affected Indian Tribes on this matter.

## VIII. ANPRM/Proposed Rule

Although this notice is being published at this time as an Advance Notice of Proposed Rulemaking because of the remaining uncertainties in the Department of Energy Title I program, the full text of a proposed rule is being made available for comment. If the noted uncertainties and other aspects of the proposal are commented upon fully by interested persons in response to the advanced notice in a manner that allows the Commission to reach a final decision on the licensing issues, the Commission may exercise its option to proceed directly to a final rule. The Administrative Procedures Act, in 5 U.S.C. 553(b)(3)(B), permits an agency to omit general notice of proposed rulemaking when for good cause it can find that such notice and public procedure are impracticable, unnecessary, or contrary to public interest. Full public comment by interested persons on the general licenses published in this advance notice may make a second round of comment unnecessary, unless the public comment leads to substantial revision of the proposal.

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

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The rulemaking being considered would establish general licenses for custodial care of uranium or thorium mill tailings sites by another Federal agency or State. The licensing action would be done after remedial actions are completed, and would ensure that sites remain in good condition. If unexpected repairs are ever required, the licensee would be responsible to make the necessary repairs. Therefore, the actions required under these regulations being considered would be preventative of adverse environmental impacts.

The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 1717 H Street, NW, Washington, DC. Single copies of the environmental assessment and finding of no significant impact are available from Mark Haisfield, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Mail Stop NL/S-260. Telephone (301) 492-3877.

## X. Paperwork Reduction Act Statement

This rule being considered does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget approval number 3150-0020.

### XI. Regulatory Analysis

The Commission has prepared a draft regulatory analysis on the regulation being considered. The analysis examines the costs and benefits of the alternatives considered by the Commission. The draft analysis is available for inspection in the NRC Public Document Room, 1717 H Street NW., Washington, DC. Single copies of the draft analysis may be obtained from Mark Haisfield, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Mail Stop ML/S–260.

The Commission requests public comment on the draft regulatory analysis. Comments on the draft analysis may be submitted to the NRC as indicated under the **ADDRESSES** heading.

### XII. Regulatory Flexibility Certification Statement

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule, if adopted, will not have a significant economic impact upon a substantial number of small entities. This rule will apply only to a Federal agency or an appropriate State. Therefore, a Regulatory Flexibility Analysis is not required and has not been prepared.

### List of Subjects in 10 CFR Part 40

Government contracts, Hazardous materials-transportation, Nuclear materials, Penalty, Reporting and recordkeeping requirements, Source material, and Uranium.

Under the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, 5 U.S.C. 553, and the Uranium Mill Tailings Radiation Control Act of 1978, as amended, the NRC is proposing the following amendments to 10 CFR Part 40.

## PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

1. The table of contents for Part 40 is amended by adding entries for §§ 40.27 and 40.28 to read as follows:

General Licenses

* * * * *

40.27 General license for long-term care of DOE remedial action sites.

40.28 General license for long-term care of uranium or thorium byproduct tailings sites.

2. The authority citation for Part 40 continues to read as follows:

Authority: Secs. 62, 63, 64, 65, 81, 161, 182, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 94, Pub. L. 95–604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); secs. 274, Pub. L. 86–373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846). Sec. 275, 92 Stat. 3021, as amended by Pub. L. 97–415, 96 Stat. 2067 (42 U.S.C. 2022).

Section 40.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 40.3, 40.25(d)(1)–(3), 40.35(a)–(d), 40.41 (b) and (c), 40.46, 40.51 (a) and (c), and 40.63 are issued under sec. 161b, 68 Stat. 948, as amended, (42 U.S.C. 2201(b)); and §§ 40.5, 40.25 (c) and (d) (3) and (4), 40.26(c)(2), 40.35(e), 40.42, 40.61, 40.62, 40.64, and 40.65 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

3. Section 40.1 is revised to read as follows:

#### § 40.1 Purpose.

(a) The regulations in this part establish procedures and criteria for the issuance of licenses to receive title to, receive, possess, use, transfer, provide for long-term custodial care, or deliver source, by-product materials, and residual radioactive material, as defined in this part, and establish and provide for the terms and conditions upon which the Commission will issue these licenses. The regulations in this part also establish certain requirements for the physical protection of import, export, and transient shipments of natural uranium. [Additional requirements applicable to the import and export of natural uranium are set forth in Part 110 of this chapter.]

(b) The regulations contained in this part are issued under the Atomic Energy Act of 1954, as amended (68 Stat. 919), Title II of the Energy Reorganization Act of 1974, as amended (88 Stat. 1242), and Titles I and II of the Uranium Mill Tailings Radiation Control Act of 1978, as amended (42 U.S.C. 7901).

4. In § 40.2a, paragraph (a) is revised to read as follows:

#### § 40.2a Coverage of inactive tailings sites.

(a) Prior to the completion of the remedial action, the Commission will not require a license pursuant to 10 CFR Chapter I for possession of residual radioactive materials as defined in this Part that are located at a site where milling operations are no longer active, if the site is designated a processing site covered by the remedial action program of Title I of the Uranium Mill Tailings Radiation Control Act of 1978. The Commission will exert its regulatory role in remedial actions primarily through concurrence and consultation in the execution of the remedial action pursuant to Title I of the Uranium Mill Tailings Radiation Control Act of 1978. After remedial actions are completed, the Commission will license the long-term custodial care under the requirements set out in § 40.27.

* * * * *

5. Section 40.3 is revised to read as follows:

#### § 40.3 License requirements.

A person subject to the regulations in this part may not receive title to, own, receive, possess, use, transfer, provide for long-term custodial care, deliver byproduct material or residual radioactive material as defined in this part or any source material after removal from its place of deposit in nature, unless authorized in a specific or general license issued by the Commission under the regulations in this part.

6. In § 40.4, paragraph (t) is added to read as follows:

#### § 40.4 Definitions.

* * * * *

(t) "Residual radioactive material" means: (1) Waste (which the Secretary of Energy determines to be radioactive) in the form of tailings resulting from the processing of ores for the extraction of uranium and other valuable constituents of the ores; and (2) other waste (which the Secretary of Energy determines to be radioactive) at a processing site which relates to such processing, including any residual stock of unprocessed ores or low-grade materials. This term is used only with respect to materials at sites subject to remediation under Title I of the Uranium Mill Tailings Radiation Control Act of 1978.

7. In § 40.7, paragraph (f) is revised to read as follows:

#### § 40.7 Employee protection.

* * * * *

(f) The general licenses provided in §§ 40.21. 40.22, 40.25, 40.27, and 40.28 are exempt from paragraph (e) of this section.

8. Section 40.20 is revised to read as follows:

#### § 40.20 Types of licenses.

(a) Licenses for source material are of two types: general and specific. The general licenses provided in this part are effective without the filing of applications with the Commission or the issuance of licensing documents to particular persons. Specific licenses are issued to named persons upon

applications filed pursuant to the regulations in this part.

(b) Section 40.27 contains a general license applicable for custody and long-term care of residual radioactive material at uranium mill tailings disposal sites remediated under Title I of the Uranium Mill Tailings Radiation Control Act of 1978.

(c) Section 40.28 contains a general license applicable for custody and long-term care of byproduct material at uranium or thorium mill tailings disposal sites remediated under Title II of the Uranium Mill Tailings Radiation Control Act of 1978.

9. New §§ 40.27 and 40.28 are added to read as follows:

**§ 40.27 General license for long-term care of DOE remedial action sites.**

(a) A general license is issued for the custodial care, to include monitoring, maintenance, and emergency measures necessary to protect public health and safety and other actions necessary to comply with the standards of section 275(a) of the Atomic Energy Act of 1954, for remediated uranium mill tailings sites under Title I of the Uranium Mill Tailings Radiation Control Act of 1978, as amended. The license is available only to the Department of Energy, or another Federal agency designated by the President to provide custodial care. The purpose of this general license is to ensure that uranium mill tailings sites will be maintained in such a manner as to protect the public health, safety, and the environment after closure.

(b) The general license in paragraph (a) of this section becomes effective when the Commission receives a site-specific long-term surveillance and maintenance plan (SMP) that meets the requirements of this section. The Department of Energy, or other Federal agency designated by the President, shall submit the SMP within 120 days following Commission concurrence in the Secretary of Energy's determination of completion of remedial action at each site. The plan may incorporate by reference information contained in documents previously submitted to the Commission if the references to the individual incorporated documents are clear and specific. Each SMP must include—

(1) A legal description of the site to be licensed, including documentation on whether land and interests are owned by the United States or an Indian tribe. If the site is on Indian land, then, as specified in the Uranium Mill Tailings Radiation Control Act of 1978, the Indian tribe and any person holding any interest in the land shall execute a waiver releasing the United States of any liability or claim by the Tribe or person concerning or arising from the remedial action and holding the United States harmless against any claim arising out of the performance of the remedial action;

(2) A detailed description of the final site conditions, including existing ground-water characterization. This description must be detailed enough so that future inspectors will have a baseline to determine changes to the site and when these changes are serious enough to require maintenance or repairs. If the site will have continuing aquifer restoration requirements, then the SMP must provide details on how restoration is to be completed and how contingencies will be resolved;

(3) A description of the long-term surveillance program, including proposed inspection frequency and reporting to the Commission, frequency and extent of ground-water monitoring if required, inspection personnel qualifications, inspection procedures, recordkeeping and quality assurance procedures;

(4) A description of the criteria for follow-up inspections based on routine inspections or extreme natural events; and

(5) A description of the criteria for performing custodial maintenance and emergency measures. This description must specify what constitutes custodial maintenance and what requires emergency measures.

(c) The custodial agency under the general license established by paragraph (a) of this section shall—

(1) Maintain the site in accordance with the provisions of the approved SMP;

(2) Obtain concurrence from the Commission for all changes to the SMP;

(3) Guarantee permanent right-of-entry to Commission representatives for the purpose of periodic site inspections; and

(4) Notify the Commission prior to undertaking any major construction related to the site.

(d) As specified in the Uranium Mill Tailings Radiation Control Act of 1978, the Secretary of the Interior, with the concurrence of the Secretary of Energy and the Commission, may sell or lease any subsurface mineral rights associated with land on which residual radioactive materials are disposed. In such cases, the person acquiring the rights and the Secretary of Interior shall comply with section 104(h) of the Uranium Mill Tailings Radiation Control Act of 1978. This section requires, among other things, that the Commission issue a license to the Secretary of the Interior to assure that the site remains in a safe and environmentally sound condition.The Commission shall respond to each licensing request on a site-by-site basis.

**§ 40.28 General license for long-term care of uranium or thorium byproduct tailings sites.**

(a) A general license is issued for the custodial care, to include monitoring, maintenance, and emergency measures necessary to protect the public health and safety and other actions necessary to comply with the standards promulgated pursuant to section 84 of the Atomic Energy Act of 1954, for remediated uranium or thorium mill tailings sites under Title II of the Uranium Mill Tailings Radiation Control Act of 1978, as amended. The license is available to the Department of Energy, to another Federal agency designated by the President, or to the State where the remediated site is located if the State exercises its option to acquire the site. The purpose of this general license is to ensure that uranium or thorium mill tailings sites will be maintained in such a manner as to protect the public health, safety, and the environment after closure.

(b) The general license in paragraph (a) of this section becomes effective when the Commission receives a site-specific long-term surveillance and maintenance plan (SMP) that meets the requirements of this section. The intended general licensee shall submit the SMP after the operating licensee has completed remedial action meeting the requirements of Appendix A of this Part of applicable Agreement State requirements. The plan may incorporate by reference information contained in documents previously submitted to the Commission if the reference to the individual incorporated documents are clear and specific. Each SMP must include—

(1) A legal description of the site to be licensed. The description must show that the operating licensee has made all reasonable efforts to transfer title and any other interests in the land to the United States or a State. See Appendix A, Criterion 11 of this Part for more detailed criteria regarding land transfer;

(2) A detailed description of the final site conditions, including existing ground-water characterization. This description must be detailed enough so that future inspectors will have a baseline to determine changes to the site and when these changes are serious enough to require maintenance or repairs;

(3) A description of the long-term surveillance program, including

proposed inspection frequency and reporting to the Commission (see Appendix A, Criterion 12 of this part for more details on inspections and reporting), frequency and extent of ground-water monitoring if required, inspection personnel qualifications, inspection procedures, recordkeeping and quality assurance procedures;

(4) A description of the criteria for follow-up inspections based on routine inspections or extreme natural events; and

(5) A description of the criteria for performing custodial maintenance and emergency measures. This description must specify what constitutes custodial maintenance and what requires emergency measures.

(c) The custodial agency who has a general license established by paragraph (a) of this section shall—

(1) Maintain the site in accordance with the provisions of the approved SMP;

(2) Obtain concurrence from the Commission for all changes to the SMP;

(3) Guarantee permanent right-of-entry to Commission representatives for the purpose of periodic site inspections; and

(4) Notify the Commission prior to undertaking any major construction related to the site.

(d)(1) Upon application, the Commission may issue a specific license, as specified in the Uranium Mill Tailings Radiation Control Act of 1978, permitting the use of surface and/or subsurface estates transferred to the United States or a State. Although an application may be received from any person, if permission is granted, the person who transferred the land to DOE or the State shall receive the right of first refusal with respect to this use of the land. The application must demonstrate that—

(i) The proposed action does not endanger the public health, safety, welfare, or the environment;

(ii) Whether the proposed action is of a temporary or permanent nature, the site would be maintained and/or restored to meet requirements in Appendix A of this Part for reclaimed sites.

(2) A person receiving a specific license to use the surface or subsurface area of a site shall ensure that the site will be maintained or restored to conditions complying with Appendix A of this Part. On a case-by-case determination, the Commission may require financial arrangements to ensure that the licensed person is able to maintain the site undisturbed, or if disturbed is able to restore the site to a safe and environmentally sound condition.

Dated at Rockville, Maryland, this 19th day of August, 1988

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

*Secretary of the Commission.*

[FR Doc. 88-19322 Filed 8-24-88; 8:45 am]

BILLING CODE 7590-01-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 87-NM-129-AD]**

### Airworthiness Directives; Fokker Model F-28 Series Airplanes

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

**ACTION:** Supplemental Notice of Proposed Rulemaking (NPRM); reopening of comment period.

**SUMMARY:** This notice proposes to amend an earlier proposed airworthiness directive (AD), applicable to Fokker Model F-28 series airplanes, which would have required a modification of the emergency lighting system. This proposal would amend the proposed AD by clarifying the accomplishment procedures to ensure proper modification of the emergency lighting system on these airplanes.

**DATES:** Comments must be received no later than September 27, 1988.

**ADDRESSES:** Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-129-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Fokker Aircraft, USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Transport Airplane Office, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Ms. Armella Donnelly, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

**Availability of NPRM**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-129-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

**Discussion**

A proposal to amend Part 39 of the Federal Aviation Regulations which would have required modification of the emergency lighting system on Fokker Model F-28 series airplanes, was published as a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on February 3, 1988 (53 FR 3047).

That NPRM was prompted by reports that the emergency lighting system on these airplanes may not come on automatically upon impact when both engines stop and the normal aircraft power is lost, if the battery remains attached to the power bus. This condition, if not corrected, could result in failure of the emergency lighting system to operate when required in an emergency situation.

Significant comments were received from one commenter. The commenter stated its understanding of the proposal to be a requirement to modify all Fokker F-28 airplanes to comply with Fokker Service Bulletin F28/33-26, and that the rationale for the proposal was to remove the control of the "emergency exit lights" (commenter's terminology) from the battery power bus, and put the

control on a bus powered solely by a generator system to allow the "exit lights" (commenter's terminology) to come on if generator power is lost. The commenter further stated that Service Bulletin F28/33–26 does not appear to provide for this requirement. The commenter recommended that the proposal be withdrawn, pending clarification of the intent of the service bulletin. The commenter further stated that the modification provided for by Service Bulletin F28/33–26 would not change the mode of operation for the "affected lighting (exit signs)" except by adding an "ARMED" position to the emergency lights switch. The commenter also stated its belief that with the emergency lights illuminated during flight (or during normal aircraft power availability) and the emergency switch in the ARMED position, the airplane would comply with Federal Aviation Regulations (FAR) 25.812. The rationale for this belief is that it would allow the emergency "exit lights" to operate (1) off the AC generator, if available; (2) if generator power is not available, off the ship battery power; and (3) if ship battery power is below minimum voltage or the battery switch is off, off the emergency battery packs. The commenter concluded that if its rationale was correct, there would be no need for the proposed AD action.

The FAA has carefully considered these comments and, while there does appear to be some confusion over terminology and operation of the Model F–28 emergency lighting system, and confusion as to the requirements of the proposal, the need for the proposed action continues to exist.

To clarify the terminology used in this proposal, the FAA notes that the Model F–28 emergency lighting system consists of two elements: The *emergency lights* and the *evacuation lights*. Throughout this document, reference to the "emergency lighting system" is intended to include both elements. Each element consists of numerous individual lights located throughout the airplane; the emergency lights are primarily located in the passenger compartment, and externally to the fuselage. In addition, each emergency exit sign houses light bulbs that are divided between the system's two elements.

FAR 25.812 requires that the emergency lighting system cockpit switch have an ON, OFF, and ARMED position, so that when armed in the cockpit the emergency lighting system will illuminate or remain illuminated upon interruption of the airplane's normal electric power (i.e., AC power). It is known that early configurations of the Model F–28 may not have a cockpit switch of the type required. Also, some configurations may not automatically illuminate. One purpose of Service Bulletin F28/33–26 is to provide instructions for installation of the required three position switch, and modification of the circuitry so that, upon the loss of normal power and when armed, the emergency lighting system (i.e., emergency and evacuation lights) automatically illuminate or remain illuminated.

Subsequent to the closing of the comment period, the FAA also received information from the manufacturer that it was preparing a new service bulletin that would provide additional instructions for modifying the emergency lighting system so that the system would illuminate if normal airplane power (i.e., AC power) were lost. This new service bulletin, however, has not yet been issued.

When normal airplane power is lost (i.e., AC generator power), the emergency lighting system will operate off of the airplane batteries until the emergency lighting control circuit (a voltage dropout relay) senses the airplane battery voltage drop below 10 volts. Below 10 volts, the control circuit switches the power source to the emergency lighting system's dedicated batteries. However, between a voltage greater than 10 volts but less than full charge, there will not be enough battery power available to provide the required illumination levels. In the absence of a determination of the minimum battery voltage necessary to provide the required illumination, the emergency lighting system must, upon loss of normal aircraft power (i.e., AC generator power), be solely powered by the emergency lighting system battery packs. The intent of this proposal, then, is to also assure that the required emergency lighting illumination levels are provided.

In consideration of the comments received and the above discussion, and since the unsafe condition which prompted this rulemaking action is likely to exist or develop on airplanes of this model registered in the United States, the FAA is revising the proposal that would require modification of the emergency lighting system in a manner approved by the FAA, to clarify the requirements as follows:

a. Installation of a three position emergency lighting switch (i.e., OFF, ON, and ARMED) in the cockpit; and

b. Modification of the electrical system so that the emergency lighting system illuminates upon loss of normal electrical power (i.e., AC generator power); and either

c. Modification of the electrical system so that upon loss of normal electrical power, the emergency lighting system is powered by its own dedicated battery packs; or

d. Determination, by illumination measurement, of the minimum airplane battery voltage necessary to provide the required emergency lighting illumination levels and modification of the emergency lighting control circuit to switch from the airplane batteries to the emergency lighting systems dedicated battery packs prior to dropping below this minimum airplane battery voltage.

In addition, the economic impact analysis, below, has been revised to account for additional manhours which may be necessary for some operators to accomplish the required actions.

To provide interested persons an opportunity to comment on the changes to this proposal, the FAA is reopening the comment period for an additional thirty (30) days.

It is estimated that 51 airplanes of U.S. registry would be affected by this AD. It would take approximately 90 manhours per airplane to accomplish the required actions, although not all airplanes would need to be modified to the same extent; e.g., some may already have the three position switch installed in the cockpit. The average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $183,600.

The regulations set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane ($2,400). A copy of a draft regulatory evaluation

prepared for this action is contained in the regulatory docket.

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

Aviation safety, Aircraft.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

**PART 39—[AMENDED]**

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

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

**§ 39.13 [Amended]**

2. By revising the Notice of Proposed Rulemaking, Docket 87–NM–129–AD, published in the **Federal Register** on February 3, 1988 (53 FR 3047), FR Doc. 2191, as follows:

Fokker B.V.: Applies to Model F–28 series airplanes, certificated in any category. Compliance is required within the next 12 months after the effective date of this AD, unless previously accomplished:

To ensure the proper operation of the emergency lighting system when required during an emergency situation, accomplish the following:

A. Verify that a three position emergency lighting switch (i.e., OFF, ON, and ARMED) is installed in the cockpit. If such a switch is not installed in the cockpit, install one in a manner approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

Note: Operators may wish to refer to Fokker Service Bulletin F28/33–26, dated October 12, 1983, in determining the means to be used to install a three position switch.

B. Verify that the emergency lighting system illuminates upon loss of normal electrical power when the three position cockpit mounted switch is placed in the armed position.

Note: (1) Normal electrical power is considered to be the F–28 AC generator power.

(2) For the purpose of this requirement, the emergency lighting system is considered to consist of both the emergency lights and the evacuation lights; however, all affected operators should be aware that for operations under FAR Part 121, an airplane's emergency lighting system also includes the floor proximity lighting. Any modification to the F–28 emergency lighting system should ensure the proper operation of the floor proximity lighting.

C. Accomplish either of the following:

1. Modify the electrical system, in a manner approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region, so that upon loss of normal electrical power, the emergency lighting system is powered by its own dedicated battery packs; or

2. Determine, by illumination measurement, the minimum airplane battery voltage necessary to provide the required emergency lighting illumination levels. Modify the emergency lighting control circuit, in a manner approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region, to switch from the airplane batteries to the emergency lighting system battery packs prior to dropping below the above determined minimum airplane battery voltage.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Standardization Branch, ANM–113.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modification required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Fokker Aircraft, USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Transport Airplane Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Washington, DC, on August 17, 1988./

**Thomas E. McSweeny,**

*Acting Director, Office of Airworthiness.*

[FR Doc. 88–19284 Filed 8–24–88; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

**[INTL–393–88]**

## Transition Rules for Certain Qualified Business Units Using a Profit and Loss Method of Accounting for Tax Years Beginning Before January 1, 1987

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of proposed rulemaking by cross-reference to temporary regulations.

**SUMMARY:** This document provides proposed Income Tax Regulations setting forth transition rules for branches of United States persons, *i.e.* qualified business units (QBUs), who used a profit and loss method of accounting prior to the enactment of the Tax Reform Act of 1986 and do not elect (or are not required) to use the United States dollar approximate separate transactions method for taxable years beginning after December 31, 1986. In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary Income Tax Regulations relating to these transition rules. The text of the temporary regulations serves as the comment document for this notice of proposed rulemaking.

**DATES:** The regulations are proposed to be effective for taxable years beginning after [Date which is 30 days after final regulations are published in the **Federal Register**]. Written comments and requests for a public hearing must be delivered or mailed by October 24, 1988.

**ADDRESS:** Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (INTL–393–88), Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** David Rosenberg of the Office of the Associate Chief Counsel (International) within the Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224. Attention: CC:LR:T (INTL–393–88) (202–634–5406, not a toll-free call).

**SUPPLEMENTARY INFORMATION:**

**Background**

The temporary regulations published in the Rules and Regulations portion of this issue of the **Federal Register** add new §§ 1.987–0T and 1.987–1T to Part 1 of Title 26 of the Code of Federal Regulations. Final regulations are by this document proposed on the basis of the temporary regulations. Section 987 was added to the Internal Revenue Code of 1986 by section 1261 of the Tax Reform Act of 1986 (P.L. 99–514, 100 Stat. 2090). For the text of the temporary regulations, see FR Doc. 88–19190 [T.D. 822)]. The preamble to the temporary regulations explains this addition to the Income Tax Regulations.

**Non-Applicability of Executive Order 12291**

It has been determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

### Regulatory Flexibility Act

Although this document is a notice of proposed rulemaking that solicts public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

### Comments and Requests for a Public Hearing

Before the adoption of these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the Federal Register.

### Drafting Information

The principal author of these proposed regulations is David Rosenberg of the Office of Associate Chief Counsel (International) within the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in developing the regulations on matters of both substance and style.

### List of Subjects in 26 CFR 1.861–1—1.997–1

Income taxes, Aliens, Exports, DISC, Foreign investments in U.S., Foreign tax credit, FSC, Sources of income, United States investments abroad.

### Proposal of Regulations

The temporary regulations, FR Doc. 88–19190 [T.D. 8220] published in the Rules and Regulations portion of this issue of the Federal Register are hereby also proposed as final regulations under section 987 of the Internal Revenue Code of 1986.

**Lawrence B. Gibbs,**

*Commissioner of Internal Revenue.*

[FR Doc. 88–19191 Filed 8–24–88; 8:45 am]

BILLING CODE 4830–01–M

## POSTAL SERVICE

### 39 CFR Part 111

### Exclusion of "Plus" Issues From Second-Class Mail; Extension of Time for Comment

**AGENCY:** Postal Service.

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** In anticipation of the possible adoption of a temporary mail classification change concerning the eligibility of "Plus" issues for second-class mail privileges, the Postal Service published in the Federal Register (53 FR 29483) on August 5, 1988 a proposed implementing regulation, which, if adopted, would exclude from second-class mail those "Plus" issues distributed on a different day from any other issue of the parent publication. The Postal Service requested comments by September 6, 1988. In response to requests for additional time, the Postal Service is extending the comment period to September 8, 1988.

**DATE:** Comments on the proposed rule change must be received on or before September 8, 1988.

**ADDRESS:** Written comments should be mailed or delivered to the Director, Office of Classification and Rates Administration, Room 8430, 475 L'Enfant Plaza West, SW., Washington, DC 20260–5360. Copies of all written comments will be available for inspection and photocopying between 9:00 a.m. and 4:00 p.m., Monday through Friday, in Room 8430, at the above address.

**FOR FURTHER INFORMATION CONTACT:** Leo Raymond, (202) 268–5199.

**Fred Eggleston,**

*Assistant General Counsel Legislative Division.*

[FR Doc. 88–19273 Filed 8–24–88; 8:45 am]

BILLING CODE 7710–12–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

### 42 CFR Part 434

**[BERC–417–P]**

### Medicaid Program; Modification of Certain Requirements for Health Insuring Organizations

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Proposed rule.

**SUMMARY:** This proposal describes the conditions under which a Health Insuring Organization (HIO) is subject to Medicaid Health Maintenance Organization (HMO) regulations. It would require that an HIO which becomes operational on or after January 1, 1986 and arranges for the delivery of services to Medicaid recipients be subject to HMO requirements. The regulations would specify that exemptions from certain HMO rules are permitted for HIOs which began operation on or after January 1, 1986 if the HIOs obtained a section 1915(b) waiver prior to that date, or if an HIO is otherwise identified in the law. The exemptions continue as long as the waiver under section 1915(b) of the Act remains in effect.

These regulations would implement section 9517(c) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99–272), as amended by section 9435(e) of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509), and section 1895 (c)(4) of the Tax Reform Act of 1986 (Pub. L. 99–514).

**DATE:** Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on October 24, 1988.

**ADDRESS:** Address comments in writing to: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC–417–P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to Room 309–G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC or to Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

If comments concern information collection or recordkeeping requirements, please address a copy of comments to: Office of Management and Budget, Office of Information and Regulatory Affairs, Room 3208, New Executive Office Building, Washington, DC 20503, Attention: Allison Herron.

In commenting, please refer to file code BERC–417–P. Comments will be available for public inspection as they are received, beginning approximately three weeks after publication, in Room 309–G of the Department's office at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone 202–245–7890).

**FOR FURTHER INFORMATION CONTACT:** Thomas Saltz, (301) 966–4641.

**SUPPLEMENTARY INFORMATION:**

## I. Background

### *A. Health Insuring Organizations—General*

For a number of years prior to 1981, the Medicaid regulations permitted States to contract with health insuring organizations (HIOs). An HIO is an entity which assumes an underwriting risk to pay for medical services provided to Medicaid recipients in exchange for a premium paid by the State agency. HIOs are paid a negotiated, fixed amount per beneficiary per month and, in return, underwrite the cost of providing Medicaid services. Health insuring organizations are provided for under the broad authority of section 1902(a)(4)(A) of the Social Security Act (the Act), which provides for "such methods of administration * * * as are found by the Secretary to be necessary for the proper and efficient operation of the plan," and under section 1903(a)(1)(C) of the Act (dealing with Federal sharing of Medicaid costs) that makes available funds for sharing the costs of "insurance premiums for medical or any other type of remedial care or the cost thereof".

An HIO differs from a health maintenance organization (HMO) in that an HIO pays for services whereas an HMO provides services. In recent years some HIOs have made arrangements through contracts with community providers, including HMOs, doctors, hospitals, and others, for the provision of Medicaid services in a given area for groups of recipients.

Regulations containing the Medicaid requirements for HIOs are presently in 42 CFR Part 434, Subpart B.

### *B. Relationship of HIOs to Other Program Activities*

Under section 1915(b) of the Act, the Secretary has the authority to waive provisions of section 1902 of the Act, to the extent such waivers are determined to be cost effective, do not substantially impair recipient access to services and quality of care, do not restrict a recipient's access to emergency services, and are consistent with the purposes of title XIX. Waivers requested by States under section 1915(b) of the Act may involve the use of primary care case management systems, specialty physicians' services arrangements, localities as central brokers of health services, a sharing of cost savings with recipients, or a restriction on the providers from whom recipients can obtain covered services. Any section 1902 provisions may be waived. The requirements for statewideness in section 1902(a)(1), comparability of services in section 1902(a)(10), and freedom of choice in section 1902(a)(23) of the Act are the most frequently waived provisions under these proposals.

Several States have requested waivers under section 1915(b)(1) in order to implement primary care case management systems in which HIOs arrange for recipients' health care services through contracts with providers, and assume an underwriting risk for these services. As of January 1, 1986, all new HIOs which operate under the authority of a section 1915(b) waiver must meet all applicable statutory and regulatory requirements of 42 CFR Part 434 and section 1903(m) of the Act. These provisions may not be waived under the authority of section 1915(b).

### *C. Current Regulations*

The basic existing regulations governing HIOs at 42 CFR 434.14 require an HIO to meet certain requirements if it wishes to contract with a State agency to serve as a payer for medical services provided to Medicaid recipients. These include requirements that capitation fees paid by the State cannot exceed the cost of the same services for a group of recipients receiving those services on a fee-for-service basis; that capitation fees paid in HIO can only be renegotiated annually (in most cases), and place the HIO at risk; that capitation fees will not include amounts to enable the HIO to recover specific losses for risks it assumes during a contract period; that the underwriting risks assumed by the HIO must be specified in the contract between the State and the HIO; that the contract must state how any savings which remain after allowable costs are deducted from capitation fees are to be handled; that the contract must specify the extent to which an HIO may obtain reinsurance of its underwriting risk; and that the actuarial basis for computation of capitation fees must be specified.

In addition, HIOs must meet requirements in regulations at 42 CFR 434.6 that all HMOs and PHPs must meet when contracting with a State agency. These regulations specify contract requirements relating to recipients served; enrollment rules; covered services; inspections and evaluation of services provided; contract termination procedures; record systems; confidentiality; third party liability; and subcontracting. Subcontractors, though not directly contracting with the State, must meet all Medicaid requirements appropriate to their delegated service activity.

## II. New Legislation

### *A. Consolidated Omnibus Budget Reconciliation Act of 1985*

Section 9517(c) of Pub. L. 99–272, the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), amended section 1903(m)(2)(A) of the Act by identifying HIOs as organizations subject to HMO requirements under section 1903(m) of the Act, if they are involved in the delivery of services through arrangements with providers of services. This amendment is effective for HIOs which became operational on or after January 1, 1986, with one exception. HIOs that operate under the authority of a section 1915(b) waiver granted a State prior to that date, but which did not become operational until after it, are subject to the new statutory requirements if they provide services through arrangements with providers of service. However, they are exempt from the HMO requirements at section 1903(m)(2)(A) (ii) and (vi) of the Act, which pertain to composition of enrollment and the right to terminate enrollment freely at any time.

(Note: Section 9517(c)(2)(B) of COBRA erroneously identified the exception clauses as (ii) and (iv). These should have been (ii) and (vi). Section 1895(c)(4)(B) of Pub. L. 99–514, the Tax Reform Act of 1986 (TRA) corrected this error.)

The conference report accompanying section 9517(c) of COBRA specifically noted the absence in our regulations of: minimum qualifications for an HIO that arranges for the provisions of services; quality assurance methods that HIOs must employ; standards to assure access to services; amounts of savings that may be retained; and frequency or content of utilization or financial reports (H. Conf. Rep. No. 453, 99th Cong., 1st Sess. (1985), pp. 550–551). The report also noted that these HIOs are not subject to specific regulatory requirements regarding financial reporting or ownership information.

The effect of the revision made by COBRA is to subject HIOs that do more than merely act as a payer of services to regulatory requirements virtually identical to HMOs. The conference report accompanying COBRA clarified that:

where an HIO does more than simply act as a fiscal agent to review and process claims for payment, but actually arranges with other providers (through subcontract or otherwise) for the delivery of services to Medicaid eligible (even though the HIO does not itself deliver services), it is subject to all of the regulatory requirements to which any health maintenance organization or similar prepaid

entity is subject under current law. (H. Conf. Rep. No. 453, 99th Cong., 1st Sess. (1985), pp. 550–551.)

The COBRA amendment permits HIOs which operate under the authority of a section 1915(b) waiver granted a State prior to January 1, 1986 to be exempt during the period of the waiver from the HMO provisions that membership be less than 75 percent Medicare/Medicaid and that enrollees may terminate enrollment without cause at any time.

*B. Omnibus Budget Reconciliation Act of 1986*

Section 9435(e) of Pub. L. 99–509, the Omnibus Budget Reconciliation Act of 1986 (OBRA 86) amended section 9517(c) of COBRA, by adding a new subparagraph (D). This change stated that "nothing in section 1903(m)(1)(A) of the Social Security Act shall be construed as requiring an HIO to be organized under the HMO laws of a State". The conference report pertaining to section 9435(e) of OBRA 86 stated that in order to meet the requirement in section 1903(m)(2)(A)(1) of the Act, the HIO is only required to be organized under the laws of the State in which it does business, including the State's corporation law. The report states that an HIO organized under the corporation law in the State in which it operates, which makes services accessible as required by section 1903(m)(1)(A)(i) of the Act, and which has made adequate provision against the risk of insolvency as required by section 1903(m)(1)(A)(ii) of the Act, has met the requirement of section 1903(m)(2)(A)(i) of the Act (H. Rep. No. 1012, 99th Cong. 2d Sess. (1986) pp. 411–412.

*C. Tax Reform Act of 1986*

Section 1895(c)(4)(A) of Pub. L. 99–514, the Tax Reform Act of 1986 (TRA), amended section 9517(c)(2) of COBRA by adding that a health insuring organization is not considered operational until the date on which it first enrolls patients. Under an earlier HCFA interpretation (given to the State agency), operational meant the date an HIO began administrative processes to carry out the provision of Medicaid services. In addition, section 1895(c)(4)(C) of TRA provided that the Hartford Health Network, Inc., is exempt from clauses (ii) and (vi) of section 1903(m)(2)(A) of the Act (concerning composition of enrollment and disenrollment without cause) during the period it has a section 1915(b) waiver in effect (if the request for a waiver under section 1915(b) of the Act submitted before January 1, 1986 is subsequently approved by the Secretary).

## III. Provisions of the Proposed Regulations

We propose to revise 42 CFR Part 434 by redesignating Subparts D and E as Subparts E and F respectively, and adding a new Subpart D. The proposed new Subpart D would incorporate changes made by legislation and follow the direction of Congress in the conference reports by establishing the scope of responsibilities for an HIO under Medicaid. The regulations under Subpart D would provide that an HIO that does more than simply act as a payer of services, is subject generally to the regulatory requirements to which any HMO or similar prepaid entity is subject under current law.

Current regulations at § 434.14 describe the requirements for contracts with HIOs. We would remove and reserve § 434.14 and move the requirements in this section to new §§ 434.40 and 434.42 in the new Subpart D of Part 434.

In addition, we would add a new § 434.44 that would specify special rules for certain HIOs. These special rules at § 434.44(a) would require that an HIO which becomes operational on or after January 1, 1986, and which arranges with other providers (through subcontract or through other arrangements) for the delivery of services to Medicaid enrollees on a prepaid capitation risk basis be subject to requirements for HMOs and PHPs set forth in § 434.20 (d) and (e), and §§ 434.21 through 434.38 and §§ 434.50 through 434.65. The rules would also require that an HIO be organized under the appropriate laws, including corporation laws, of the State in which it operates. However, the HIO need not be organized under the State HMO laws, but must meet requirements under § 434.20(c) (1), (2) and (3) of this chapter.

We also would provide in § 434.44(b) that any HIO subject to the special rules in § 434.44(a) that obtained a section 1915(b) waiver of certain requirements under section 1902 of the Act prior to January 1, 1986 is exempt from the requirements at §§ 434.26 and 434.27(b) (composition of enrollment and disenrollment without cause) during the effective period of the waiver. The effective period includes extensions and renewals to the original waiver period.

In § 434.20(e)(2), the cross reference to Subpart D would be revised to Subpart E of the part.

## IV. Regulatory Impact Statement

*A. Executive Order 12291*

Executive Order 12291 requires us to prepare and publish an initial regulatory impact analysis on any proposed major rule. A major rule is defined as any regulation that is likely to result in: an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In addition, we generally prepare an initial regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a proposed regulation would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we treat all providers and fiscal intermediaries as small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if the proposed rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis also must conform to the provisions of section 603 of the RFA.

This proposed rule reflects current implementation of previous statutory changes and would serve only to codify in regulations those practices that already have been implemented. This rule, in itself, would have no effect on Medicaid program expenditures.

For these reasons, we have determined that a regulatory impact analysis is not required. Further, we have determined, and the Secretary certifies, that this proposed rule would not have a significant economic impact on a substantial number of small entities, and would not have a significant impact on the operations of substantial number of rural hospitals. Therefore, we have not prepared a regulatory flexibility analysis.

*B. Paperwork Reduction Act*

Section 434.44 of this proposed rule contains information collection requirements that are subject to the Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1980 as amended, 44 U.S.C. 3507–3511. Organizations and individuals desiring to submit comments

on the information collection requirements should direct them to the agency official whose name appears in the "ADDRESS" section of the preamble.

### IV. Response to Comments

Because of the large number of pieces of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments contained in correspondence that we receive by the date specified in the "DATE" section of this preamble, and will respond to the comments in the preamble to that rule.

### List of Subjects in 42 CFR Part 434

Health maintenance organizations (HMO), Medicaid, Reporting and recordkeeping requirements, Grant programs—health, health insuring organizations (HIOs).

42 CFR Part 434 would be amended as set forth below:

## PART 434—CONTRACTS

1. The authority citation for Part 434 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. The heading for Subpart B is revised to read as follows:

### Subpart B—Contracts With Fiscal Agents and Private Nonmedical Institutions

### § 434.14 [Removed and Reserved]

3. Section 434.14 would be removed and reserved.

### § 434.20 [Amended]

4. In § 434.20, paragraph (e)(2), the cross-reference "Subpart D" is changed to "Subpart E".

5. Subparts D and E are redesignated as Subparts E and F, and a new Subpart D is added to read as follows:

### Subpart D—Contracts With Health Insuring Organizations



### Subpart D—Contracts With Health Insuring Organizations

### § 434.40 Contract requirements.

(a) Contracts with health insuring organizations must—

(1) Meet the general requirements for all contracts and subcontracts specified in § 434.6;

(2) Specify that the contractor assumes at least part of the underwriting risk and;

(i) If the contractor assumes the full underwriting risk, specify that payment of the capitation fees to the contractor during the contract period will constitute full payment by the agency for the cost of medical services provided under the contract;

(ii) If the contractor assumes less than the full underwriting risk, specify how the risk is apportioned between the agency and the contractor;

(3) Specify whether the contractor returns to the agency part of any savings remaining after the allowable costs are deducted from the capitation fees, and if savings are returned, the apportionment between agency and the contractor; and

(4) Specify the extent, if any, to which the contractor may obtain reinsurance of a portion of the underwriting risk.

### § 434.42 Capitation fees.

(a) The contract must—

(1) Specify that the capitation fee will not exceed the limits set forth under part 447 of this chapter;

(2) Specify that, except as permitted under paragraph (b) of this section, the capitation fee paid on behalf of each recipient may not be renegotiated—

(i) During the contract period if the contract period is 1 year or less; or

(ii) More often than annually if the contract period is for more than 1 year.

(3) Specify that the capitation fee will not include any amount for recoupment of any specific losses suffered by the contractor for risks assumed under the same contract or a prior contract with the agency; and

(4) Specify the actuarial basis for computation of the capitation fee.

(b) The capitation fee may be renegotiated more frequently than annually for recipients who are not enrolled at the time of renegotiation or if the renegotiation is required by changes in Federal or State law.

### § 434.44 Special rules for certain health insuring organizations.

(a) A health insuring organization that first enrolls patients on or after January 1, 1986, and arranges with other providers (through subcontract, or through other arrangements) for the delivery of services (as described in § 434.21(b)) to Medicaid enrollees on a prepaid capitation risk basis is—

(1) Subject to the general requirements set forth in §434.20(d) concerning services that may be covered and § 434.20(e) which set forth the requirements for all contracts, the additional requirements set forth in §§ 434.21 through 434.38 and the Medicaid agency responsibilities specified in §§ 434.50 through 434.65; and

(2) To be organized under the appropriate laws, including corporation laws, of the State in which it operates. There is no Federal requirement that an HIO be organized under a State's HMO law, if it has one. However, the health insuring organization must meet the State plan definition requirements in § 434.20(c) (1), (2) and (3) of this chapter.

(b) *Special exemption.* Any health insuring organization subject to the requirements in paragraph (a) of this section, that is operating under the authority of a waiver under section 1915(b) of the Act granted prior to January 1, 1986, is exempt from those requirements relating to composition of enrollment and disenrollment without cause in §§ 434.26 and 434.27(b), during the effective period of the waiver, including extensions and renewals.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance)

Dated: March 17, 1988.

**William L. Roper,**

*Administrator, Health Care Financing Administration.*

Approved: April 28, 1988.

**Otis R. Bowen,**

*Secretary.*

[FR Doc. 88-19155 Filed 8-24-88; 8:45 am]
BILLING CODE 4120-01-M

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### 49 CFR Part 571

[Docket No. 88-16; Notice 1]
RIN: 2127-AB-75

### Federal Motor Vehicle Safety Standards; Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** Standard No. 102 requires "identification of shift lever positions of automatic transmissions" to be "permanently displayed in view of the driver." This notice proposes to replace the requirement for "permanent display" with a requirement that identification of automatic transmission shift lever positions be displayed whenever the ignition is in a position where the

transmission can be shifted, and whenever the transmission is not in park. NHTSA believes that the proposed requirements would facilitate the use of electronic displays, while ensuring that the information in question is displayed at all times when it may be needed for safety. This action results from petitions for rulemaking submitted by Chrysler and General Motors, which requested that the existing requirement be amended to "permit" or "more clearly allow" the use of electronic displays for this purpose. NHTSA previously granted the two petitions by letter.

**DATES:** Comments must be received on or before October 24, 1988. The amendments in this notice would become effective 30 days after the publication of a final rule.

**ADDRESSES:** Comments should refer to the docket and notice numbers and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street SW., Washington, DC 20590. Docket hours are 8 a.m. to 4 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Mr. Kenneth Rutland, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC (202–366–5267).

**SUPPLEMENTARY INFORMATION:** NHTSA has received petitions for rulemaking from Chrysler and General Motors (GM) to amend Standard No. 102, *Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect.* That standard specifies requirements for the purposes of reducing the likelihood of shifting errors, preventing starter engagement with the vehicle in drive position, and providing supplemental braking at speeds below 25 miles per hour.

Chrysler and GM requested that section S3.2 of the standard be amended to "permit" or "more clearly allow" the use of electronic displays of automatic transmission shift level positions. (These displays are often called PRNDL displays, the acronym PRNDL referring to the following gear positions: *p*ark, *r*everse, *n*eutral, *d*rive, and *l*ow.) That section currently requires "identification of shift lever positions of automatic transmissions" to be "permanently displayed in view of the driver." NHTSA has interpreted the term "positions" to include both the position of the gears in relation to each other and the gear position actually selected. NHTSA has interpreted the requirement that identification be "permanently displayed in view of the driver" to require a display whenever there is a driver in the driver's seating position, even if the ignition is not turned on.

Chrysler argued that the requirement for permanent display of the PRNDL is design restrictive and prevents the use of electronics. That company stated that since an electronic display requires electrical current for activation, a permanent and constantly activated display would drain the vehicle's battery in a short period of time. Chrysler stated that fifteen minutes is the maximum amount of time that it can allow an electronic display to draw energy from the battery of a parked vehicle.

Both Chrysler and GM argued that the use of electronic PRNDL displays can offer several benefits, as compared to conventional mechanical displays. These include more precise indication of the selected gear, visibility which does not depend on ambient light and/or headlamp activation, designs with improved human factors characteristics, and improved customer satisfaction through product distinction and innovation.

While both petitioners argued that permanent display of PRNDL information is unnecessary for safety and that the safety related aspects of section S3.2 can be maintained by a less stringent requirement, they recommended different approaches for facilitating the use of electronic displays.

Chrysler stated that the driver needs to know the gear position of the automatic transmission before starting the vehicle. That company stated that the principal steps in the driver's normal approach to operating the vehicle are: (1) Opening the door, (2) inserting the ignition key into the ignition lock, and (3) turning the ignition key to start the engine. Chrysler recommended the addition of PRNDL viewing requirements for each of these steps to ensure that the driver would have opportunity to know the gear position at each step before operating the vehicle. More specifically, that company recommended a requirement that the PRNDL be displayed in view of the driver for at least three minutes whenever the driver's door is opened, for at least 15 minutes whenever the ignition key is inserted in the ignition lock, and whenever the ignition key is turned to the "on" position.

GM, on the other hand, recommended a requirement that the PRNDL be displayed in view of the driver whenever the vehicle is capable of mobility and the potential for shifting the transmission exists. That company cited a design in which an electronic PRNDL display is coupled with a transmission shift interlock system. Under this design, the PRNDL display is illuminated whenever the ignition switch is in the "on" or "off" position, but not when the ignition is in the "lock," "accessory," or "start" position. The interlock feature of the design precludes shifting the transmission whenever the ignition switch is in the "lock" or "accessory" position. Moreover, the feature precludes placing the ignition in the "lock" or "accessory" position unless the transmission is in park. Therefore, it is not possible to shift the transmission out of park (or drive the vehicle) without first moving the ignition switch out of the "lock" and "accessory" positions, thereby causing the electronic PRNDL to be activated. GM argued that this design ensures a PRNDL display whenever the vehicle is capable of mobility and the opportunity exists for shifting the transmission, and should be sufficient to satisfy section S3.2.

NHTSA notes that Standard No. 102's requirements for PRNDL displays have not been changed since 1967, when the standard was established as one of the agency's initial Federal motor vehicle safety standards. See 32 FR 2410, February 3, 1967. Electronic technology was largely undeveloped at that time. As a result, the requirement for permanent display of PRNDL information in part reflected the mechanical displays then being used.

In light of Chrysler's and GM's petitions for rulemaking and changed technology, NHTSA has reconsidered whether permanent display of PRNDL information is necessary for safety. As discussed below, the agency has tentatively determined that a less stringent requirement can maintain the safety aspects of section S3.2 while facilitating the use of electronic technology.

As indicated above, the stated purpose of the requirement for permanent display of PRNDL information is to reduce the likelihood of shifting errors. With respect to a driver making a mistake in shifting gears, NHTSA believes that this purpose can be accomplished by requiring PRNDL information to be displayed whenever the ignition is in a position where it is possible for the driver to shift transmission. Another safety concern about shifting errors is the possibility that a driver will leave a vehicle believing that it is in park when it is not. With respect to the contribution that a PRNDL display can make to reducing the likelihood of such an occurrence, NHTSA believes that purpose can be accomplished by requiring PRNDL

information to be displayed whenever the transmission is not in park.

NHTSA is therefore proposing to require that identification of shift lever positions of automatic transmissions, including both the position of the gears in relation to each other and the position selected, be displayed in view of the driver when either of the following conditions exists: (A) the ignition is in a position where the transmission can be shifted, or (B) the transmission is not in park. However, such display would not be required when the ignition is in a position that is used only to start the vehicle. The agency notes that the only time the ignition is in that position is momentarily during the starting of the vehicle, and full battery power may be needed at that time to start the vehicle.

The proposed requirements focus on the vehicle conditions where NHTSA believes there is a safety need for PRNDL information to be displayed to the driver. The agency notes that the proposal is very similar to that suggested by GM.

NHTSA believes that, as a practical matter, manufacturers choosing to avail themselves of the increased flexibility offered by the proposed requirements would likely use an electronic PRNDL display coupled with a transmission shift interlock system. The interlock system could be designed to prevent the transmission from being shifted under the vehicle conditions where the vehicle is parked, i.e., the transmission in park and the ignition in the lock position. The PRNDL information would not be required to be displayed in this situation, since the transmission would be in park and the ignition would be in a position where the transmission could not be shifted. There would thus not be a problem of the vehicle's battery being drained as a result of a driver leaving the vehicle with the PRNDL display illuminated.

NHTSA notes that the use of transmission shift interlock systems can result in safety benefits unrelated to the display of PRNDL information. In a separate rulemaking, the agency has proposed requirements that would have the effect of requiring transmission shift interlock systems for vehicles equipped with automatic transmissions. See 53 FR 11105, April 5, 1988. That proposal was issued in light of a safety concern about the rolling away of automatic transmission vehicles whose shift lever is inadvertently moved while the vehicles are parked on slanted surfaces with the engine off.

NHTSA also considered the regulatory approach suggested by Chrysler concerning when PRNDL information must be displayed. However, the agency believes that an approach which focuses on the times when drivers are *likely* to take certain actions, instead of on the times when drivers *actually* take those actions, could result in a lack of PRNDL information when it may be needed. Assume, for example, that a driver stops a vehicle and turns off the engine without placing the transmission in park, and then waits a few minutes before deciding to leave it. At that time, the driver may have forgotten that the transmission is not in park, but might be reminded if the PRNDL information were displayed. Under Chrysler's recommended approach, however, the PRNDL display could have been turned off. As indicated above, the requirements proposed by this notice focus on the vehicle conditions where the agency believes there is a safety need for PRNDL information to be displayed to the driver. NHTSA believes that the proposed requirements would ensure that PRNDL information is displayed at all times when it is needed.

The agency wishes to reiterate that its primary safety concern in this rulemaking is to provide the driver with transmission position information for the vehicle conditions where such information can reduce the likelihood of shifting errors. However, the agency recognizes that, for example, in the situation described above (i.e., where they key remains in the ignition and the vehicle is not in park), after a certain length of time, the vehicle's battery will be drained sufficiently so that it will not start the car. While Chrysler's solution would have precluded this situation from occurring, the proposed rule, because of the agency's safety concerns mentioned previously, would not allow the display to be terminated. The agency seeks public comments on this issue (providing gear selector information versus allowing the battery to be drained) and whether the agency needs to take other action in this regard. The agency notes that this situation is not unlike others, such as leaving headlamps or a radio on for extended periods, which could also drain the battery. The agency also wishes to point out that manufacturers would be free to provide warnings to the driver before the battery is drained to the point that it could no longer start the vehicle.

While the above discussion has been limited to vehicles equipped with automatic transmissions, section S3.2 also covers manual transmission vehicles. The section requires that identification of the shift lever pattern of manual transmissions, except three foward speed manual transmissions having the standard "H" pattern, shall be permanently displayed in view of the driver. While the language of this requirement may appear similar to that for automatic transmissions, the substance is quite different. While it is necessary to use a position indicator to show the shift lever *positions* of an automatic transmission, a simple label may be used to show the shift lever *pattern* of a manual transmission. Also, while the requirements for automatic transmissions apply to all vehicles equipped with such transmissions, the requirements for manual transmission vehicles exclude three forward speed transmission having the standard "H" pattern.

Chrysler stated in its petition that the manual transmission requirements do not need to be changed. The discussion in GM's petition did not specifically address the manual transmission requirements. However, its recommended amendment specified the same requirements for displays of the shift lever pattern of a manual transmission as for display of the shift lever positions of an automatic transmission, i.e., whenever the vehicle is capable of mobility and the potential for shifting the transmission exists.

NHTSA is not aware at this time of any reason to propose a change in section S3.2's requirements for display of the shift lever pattern of a manual transmission. The use of electronic technology does not appear to be relevant to these provisions, since they require a simple label rather than a position indicator. Manufacturers desiring to supplement the required label with an electronic display, that may include manual transmisssion positions, are free to do so.

Since the proposed amendment for automatic transmissions would impose no new requirements but would instead increase manufacturer flexibility by relieving a restriction, the agency is proposing that the amendment become effective 30 days after publication of a final rule.

NHTSA previously granted the Chrysler and GM petitions by letter. As indicated above, the requirements proposed by this notice are very similar to those suggested by GM. For the reasons discussed above, NHTSA decided not to propose requirements along the lines requested by Chrysler. However, the requirements proposed by this notice do address the problem cited by Chrysler's petition.

The agency has considered the costs and other impact of this proposal and determined that the proposal is neither major within the meaning of Executive Order 12291 nor significant within the

meaning of the Department of Transportation's regulatory policies and procedures. The proposed requirements would impose no new requirements but instead increase manufacturer flexibility by relieving a restriction. Any cost impacts would be in the nature of slight, nonquantifiable cost savings. Since the effects of the proposal, if adopted as a final rule, would be minimal, a full regulatory evaluation has not been prepared.

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the proposed amendments would not have a significant economic impact on a substantial number of small entities. Small businesses, small organizations, and small governmental units would be affected by the proposed amendments only to the extent that they purchase motor vehicles. As noted above, the proposed amendments would not significantly affect vehicle price. Accordingly, no regulatory flexibility analysis has been prepared.

The agency has also analyzed this proposed rule for the purpose of the National Environmental Policy Act, and determined that the proposed rule would not have any significant impact on the quality of the human environment.

Finally, this proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. It has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federal Assessment.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purported confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

**List of Subjects in 49 CFR Part 571**

Imports, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, 49 CFR Part 571 would be amended as follows:

## PART 571—[AMENDED]

1. The authority citation for Part 571 would continue to read as follows:

**Authority:** 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

**§ 571.102 [Amended]**

2. S3.1.4 would be added to § 571.102 to read as follows: S3.1.4 *Identification of shift lever positions.*

S3.1.4.1 Except as provided in S3.1.4.2, identification of shift lever positions, including the position of the gears in relation to each other and the gear position selected, shall be displayed in view of the driver whenever any of the following conditions exist:

(a) The ignition is in a position where the transmission can be shifted.

(b) The transmission is not in park.

S3.1.4.2 Such display need not be provided when the ignition is in a position that is used only to start the vehicle.

3. S3.2 would be revised to read as follows:

S3.2 *Manual transmissions.* Identification of the shift lever pattern of manual transmissions, except three forward speed manual transmissions having the standard "H" pattern, shall be permanently displayed in view of the driver.

Issued on August 18, 1988.

**Barry Felrice,**

*Associate Administrator for Rulemaking.*

[FR Doc. 88-19345 Filed 8-22-88; 4:04 pm]

BILLING CODE 4910-59-M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 646

**[Docket No. 80624-8124]**

### Snapper-Grouper Fishery of the South Atlantic

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

**ACTION:** Proposed rule.

**SUMMARY:** NOAA proposes to designate two artificial reefs (ARs) off Ft. Pierce, Florida, as special management zones (SMZs) in which specific fishing gear and harvest limitations would apply. The intended effect is to promote orderly use of the fishery resources on the ARs, to reduce potential user-group conflicts, and to maintain the intended socioeconomic benefits of the ARs to the maximum extent practicable.

**DATE:** Comments on the proposed rule must be received on or before September 26, 1988.

**ADDRESS:** Comments on the proposed rule and requests for copies of the draft regulatory impact review should be sent to Rodney C. Dalton, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702.

**FOR FURTHER INFORMATION CONTACT:** Rodney C. Dalton, 813-893-3722.

**SUPPLEMENTARY INFORMATION:** Snapper-grouper species are managed under the Fishery Management for the Snapper-Grouper Fishery of the South Atlantic Region (FMP), prepared by the South Atlantic Fishery Management Council (Council), and its implementing regulations at 50 CFR Part 646, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The FMP provides for designation of ARs and fish attraction devices (FADs) as SMZs, in which specific gear and harvest limitations would apply.

An AR or FAD creates fishing opportunities that would not otherwise exist and an AR may increase biological production. The cost of their construction and maintenance can be substantial and their intended socioeconomic benefits (e.g., recreational fishing or tournaments) can be reduced or eliminated if highly efficient fishing gear and fishing practices are not restrained. Therefore, designation of an AR as an SMZ acts as an incentive for the construction of an AR or FAD.

The Ft. Pierce Sportfishing Club (Club) holder of a permit from the Corps of Engineers to construct the ARs, requested the Council to establish SMZs around two ARs located in the exclusive economic zone off the southeast coast of Florida. FADs are utilized with each AR. The Club requested that the following limitations be applied in these SMZs: (1) Prohibit use of fish traps, (2) prohibit use of bottom longlines, (3) prohibit use of hydraulic and electric reels to fish for snapper-grouper species unless the reels are mounted on hand-held (including rod holder) fishing rod, (4) prohibit spearfishing on the inshore reef, and (5) prohibit harvest or possession of jewfish. The Club expressed concern about the fish traps and bottom longlines that are in the immediate area of the ARs.

In accordance with the FMP, the Council evaluated the Club's request, considering the FMP's criteria of (1) fairness and equity, (2) promotion of conservation, and (3) prevention of excessive shares. The Council also considered possible conflicts among fishermen and impacts on historical uses.

One commercial fish trapper has been identified who fishes between 80 and 120 traps off St. Lucie, Martin, and Indian River Counties. This individual also fishes bottom longline gear. There have been unverifiable reports of an additional one or two individuals who fish with traps, and reports that some commercial divers may use bottom longlines on a part-time basis, though probably not in the specific areas of the ARs. Although fishing occurs off Martin, St. Lucie, and Indian River Counties, the amount that occurs in the immediate vicinity of the ARs is unknown.

Recreational catch information is available only for the east coast of Florida as a whole and is not particularly helpful in ascertaining catches in the Ft. Pierce area. Commercial data (Source: Florida Trip Ticket Program) for all Florida east coast counties north of Palm Beach indicate 892,345 pounds of snappers and groupers were caught in 1985 and 1,072,884 pounds were caught in 1986. Given these catch figures, the total commercial catch from the specific areas that would be regulated through the establishment of SMZs would appear to be relatively small.

The Ft. Pierce sites are located on a relatively wide continental shelf with large sandy areas. Although the site surveys indicate that there are no hard bottom areas within the ARs, the Recreational Use Reefs document (FL Sea Grant MAP–9, 1979; Monitoring Team Report) reports hard bottom in this general area. Most of the information presented at the public hearing supports the position that both of these areas are located in a relatively barren habitat. A commercial diver stated that there is some hard bottom scattered within these sites. Although there is no empirical data on historical use, it is reasonable to assume that there was no significant fishing by the prohibited gear types prior to placement of the ARs and FADs, since the bottom is mostly barren sand.

SMZ designation is consistent with the FMP objective to "promote orderly use of the resource." Although there is limited information that indicates any of the gear types that are proposed to be prohibited has created a problem in the areas under consideration, these efficient gear types have the potential to overfish small, localized areas such as the ARs.

Given the paucity of information available, it is difficult to address conservation in the biological sense. The national standard guidelines indicate that these criteria can also be met by "encouraging a rational, more easily managed use of the resource" or by "optimizing the yield in terms of * * * economics or social benefits of the product." The proposal could be viewed as satisfying these conditions and thus promoting conservation.

The excessive share standard does not appear to be violated because it seems likely that no significant reef fisheries existed near the site prior to the AR and the cumulative impact of SMZs in this area would not appear to be significant at this time.

The natural bottom in and surrounding this area consists of a relatively wide continental shelf with relatively barren sandy habitat. There do not appear to be large areas of natural hard bottom present within the requested areas. There are, however, areas of natural hard bottom outside the SMZs. The distribution of natural bottom serves to minimize the impacts on the historical uses of this area.

An additional problem addressed by this proposed rule is the removal of jewfish from the ARs. Jewfish are exceptionally large members of the grouper family capable of exceeding a length of 7 feet and a weight of 700 pounds. Although jewfish are not common on these ARs, they represent a unique aesthetic experience for the diving community. The inquisitive nature of jewfish makes them easy prey for spearfishermen, and occasionally a jewfish is taken by hook and line. Once a jewfish is removed from a reef, replacement may not occur for several years. The Club and the Council have concluded that the only equitable way to preserve jewfish for the continuing aesthetic enjoyment of many users is to prohibit any take or possession of jewfish in the SMZ.

After due consideration of the evaluation criteria, supporting data, comments during public hearings, and other relevant information, the Council recommended and the Director, Southeast Region, NMFS, concurs with proposing the establishment of the requested SMZs. Restrictions on fishing gear and fishing practices in these SMZs are intended to (1) promote orderly use of the resource, (2) reduce potential user group conflicts, (3) maintain the intended socioeconomic benefits of the ARs and thereby maintain incentives for the creation of ARs and FADs, (4) optimize use of biological production, and (5) create fishing opportunities that would not otherwise exist.

### Requests for Comments

Because establishment of these SMZs would prohibit certain gear and activities within the proposed boundaries, thus altering usage of approximately 5.8 square miles of ocean bottom, the public is asked to pay particular attention to possible impacts of the action on historical users of the area and to the potential changes in fishing opportunities for recreational and commercial fishermen and divers within these SMZs.

### Classification

The Assistant Administrator for Fisheries, NOAA, determined that this proposed rule is necessary for the conservation and management of the snapper-grouper fishery and that it is consistent with the Magnuson Act and other applicable law.

These measures are part of the Federal action for which an environmental impact statement (EIS) was prepared. The final EIS for the FMP was filed with the Environmental Protection Agency and the notice of availability was published on August 19, 1983 (48 FR 37702).

The Assistant Administrator initially determined that this proposed rule is not a major rule requiring a regulatory impact analysis under Executive Order 12291. This proposed rule, if adopted, is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The Council prepared a draft regulatory impact review (RIR) which concludes that this rule will have the following economic effects.

Specific estimates of benefits of the AR program off Ft. Pierce are not available; however, several factors indicate that positive benefits have occurred in this area. Significant increases in the number of offshore-oriented vessels and expansion of the charterboat industry and local diving community are, in part, a response to the enhanced fishing opportunities created by construction of ARs. Continuing increases in participation in offshore fishing tournaments, many of which center around ARs, is another example of the benefits of reefs.

The actual benefit of restricting use of gear that is incompatible with the intended use of these ARs is to ensure that the benefits associated with ARs will continue to be realized. Establishment of these SMZs is intended to provide AR permittees the necessary incentive to properly maintain existing reefs and construct additional ARs to enhance fishing opportunities where necessary.

Costs in terms of the burden on excluded user groups are minimal. Only one commercial fish trapper fishes this general area (he also fishes bottom longline gear) and his catch from these specific SMZs is unknown but is expected to be small, given that the entire reported commercial snapper-grouper catch off the east coast of Florida was less than 1.1 million pounds in 1986. In considering the impacts on the affected fishermen, it should be noted that these ARs were constructed on a relatively wide continental shelf that provides a large fishing area for the various gear types. Therefore, users of the prohibited gear types do have alternative areas in which to fish. Prohibiting the take, possession, or retention of jewfish within these SMZs does not impose a significant burden. It is expected that additonal Federal enforcement costs resulting from this proposed action will be minimal. Copies fo the draft RIR are available (see **ADDRESS**).

The General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities because its impacts would be limited currently to a very few individuals who may have used gear proposed to be prohibited in the new SMZs. The best available information indicates that fewer than five individuals fish with traps in the general area and there are unverifiable reports of a few individuals using bottom longlines on a part-time basis. These individuals comprise an insignificant percentage of the small business entities involved in the snapper-grouper fishery. Further, the SMZs constitute an extremely small portion of the available fishing grounds and do not appear to have been historical fishing areas prior to construction of the ARs. Prohibiting the harvest of jewfish will have a minimal impact on small entities because jewfish are sporadic inhabitants of ARs and are not sufficiently abundant to support sustained fishing activity. As a result, a regulatory flexibility analysis was not prepared.

This rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

The Council determined that this rule does not directly affect the coastal zone of any State with an approved coastal zone management program. A letter was sent to Florida, the only State involved, advising of this determination.

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

**List of Subjects in 50 CFR Part 646**

Fisheries, Fishing.

Dated: August 22, 1988.

**James W. Brennan,**

*Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For reasons set forth in the preamble, 50 CFR Part 646 is proposed to be amended as follows:

## PART 646—SNAPPER-GROUPER FISHERY OF THE SOUTH ATLANTIC

1. The authority citation for Part 646 continues to read as follows:

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

2. In § 646.6, paragraphs (l) and (m) are revised and paragraph (n) is removed, to read as follows:

**§ 646.6 Prohibitions.**

* * * * *

(l) Use prohibited or unauthorized fishing gear in a special management zone, as specified in § 646.24(b)(2) and (c);

(m) Harvest or fail to release a jewfish within a special management zone, or possess a jewfish taken from a special management zone, as specified in § 646.24(b)(1).

3. In § 646.24, new paragraphs (a)(20) and (21) are added, paragraph (b) is revised, and a new paragraph (c) is added, to read as follows:

**§ 646.24 Area limitations.**

(a) * * *

(20) *Ft. Pierce Inshore Reef:* The area is bounded on the north by 27°26.8′ N. latitude; on the south by 27°25.8′ N. latitude; on the east by 80°09.24′ W. longitude; and on the west by 80°10.36′ W. longitude.

(21) *Ft. Pierce Offshore Reef:* The area is bounded by straight lines connecting the following points in the order listed:

| Point | Latitude | Longitude |
|---|---|---|
| A | 27°23.68′ N. | 80°03.95′ W. |
| B | 27°22.08′ N. | 80°03.06′ W. |
| C | 27°23.94′ N. | 80°00.02′ W. |
| D | 27°24.85′ N. | 80°00.33′ W. |
| A | 27°23.68′ N. | 80°03.95′ W. |

(b) The following restrictions apply within all of the SMZs specified in paragraph (a) of this section.

(1) Jewfish may not be harvested by any type of gear. Jewfish taken incidentally by hook-and-line gear must be released immediately by cutting the line without removing the fish from the water.

(2) The use of fish traps and bottom longlines is prohibited.

(c) The following additional restrictions apply in the indicated SMZs.

(1) In SMZs specified in paragraphs (a)(1) through (19) of this section,

(i) The use of gill nets and trawls is prohibited; and

(ii) Fishing may be conducted only with hand-held hook-and-line gear (including manual, electric, or hydraulic rod and reel) and spearfishing gear (including powerheads).

(2) In SMZs specified in paragraphs (a)(20) and (21) of this section, hydraulic and electric reels that are permanently affixed to the vessel are prohibited when fishing for fish in the snapper-grouper species.

(3) In the SMZ specified in paragraph (a)(20) of this section, the use of spearfishing gear is prohibited.

[FR Doc. 88-19304 Filed 8-22-88; 2:13pm]
BILLING CODE 3510-22-M

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**50 CFR Part 675**

**[Docket No. 80859-8159]**

## Groundfish of the Bering Sea and Aleutian Islands Area

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

**ACTION:** Proposed closure modification; request for comments.

**SUMMARY:** NOAA proposes modification of a closure notice that will allow U.S. vessels processing their catch on board or delivering it to U.S. processors (DAP) to conduct a directed fishery for yellowfin sole and "other flatfish" in the Bering Sea subarea south of 58°00' N. latitude and east of 165°00' W. longitude (Zone 1) under specified conditions intended to limit the incidental or bycatch of Pacific halibut, Tanner crabs (*Chionoecetes bairdi*), and red king crabs. Directed fishing for yellowfin sole and "other flatfish" by DAP fishing vessels and U.S. fishing vessels working in joint ventures with foreign processing vessels (JVP) previously was prohibited on March 8, 1988, due to attainment of the prohibited species catch (PSC) limit for *C. bairdi* Tanner crabs. Subsequent reassessment of data on bycatches of crabs in the directed fisheries for yellowfin sole and "other flatfishes" indicates that the risk of biological harm to Tanner crabs and other prohibited species from reopening Zone 1 to only DAP fishing is not significant. Therefore, the previous closure notice would be modified to allow DAP directed fishing for yellowfish sole and "other flatfishes" in Zone 1 under specified conditions. This action is necessary to increase the flexibility of the developing DAP fishery for yellowfin sole in the Bering Sea. The intended effect is to relax a restriction on certain domestic fishermen while maintaining protective measures for prohibited species.

**DATE:** Comments on this proposed action and especially on the determinations of the Regional Director are invited until September 21, 1988.

**ADDRESS:** Send comments to James W. Brooks, Acting Director, Alaska Region, National Marine Fisheries Service, 709 West 9th Street, P.O. Box 21668, Juneau, AK 99802-1668. Copies of the Regional Director's determinations may be obtained on request from the same address or by calling 907-586-7221.

**FOR FURTHER INFORMATION CONTACT:** Jay J. C. Ginter, Fishery Management Biologist, NMFS, 907-586-7229.

**SUPPLEMENTARY INFORMATION:** The domestic and foreign groundfish fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands (BSAI) area are managed under the Fishery Management Plan for the Groundfish Fishery in the Bering Sea and Aleutian Islands Area (FMP). The FMP was developed by the North Pacific Fishery Management Council (Council) and approved by the Secretary of Commerce (Secretary) in 1981. Federal regulations implementing the FMP and governing domestic fisheries in the BSAI area appear under 50 CFR Part 675.

A principal purpose of these regulations is to prevent overfishing of the target groundfish species. In addition, the regulations provide for control of incidental catches of nongroundfish prohibited species. Controls on foreign fishing bycatches of prohibited species have been effective since the early 1980s. In recent years, domestic (JVP and DAP) groundfish fisheries have replaced foreign fishing effort and similar controls on domestic fisheries have become necessary. In 1986, the Council recommended and the Secretary implemented PSC limits on the bycatches of crabs (red king and *C. bairdi* Tanner) and Pacific halibut by the JVP and DAP fisheries for yellowfin sole and "other flatfish." Other flatfish as defined in the FMP include rock sole, flathead sole, arrowtooth flounder, rex sole, butter sole, longhead dab, Dover sole, starry flounder, Alaska plaice, and longnose plaice.

The Council's purpose in recommending PSC limits for domestic fisheries was to limit the fishing mortality of crabs and halibut while not overly restricting access to Bering Sea flatfish resources by the domestic groundfish fisheries. Of concern was the biological impact of such fishing, especially on crabs which were at historically low levels of abundance, and the economic impact on the directed fisheries for crabs and halibut.

The crab and halibut bycatch controls on domestic fisheries were first implemented by emergency rule in 1986 (June 6, 1986, 51 FR 20652) and subsequently by FMP amendment (March 19, 1987, 52 FR 8592) effective only for the 1987 and 1988 fishing years. These controls (1) established two bycatch limitation zones, (2) specified PSC limits for red king crab, *C. bairdi* Tanner crab, and Pacific halibut applicable to the JVP and DAP fisheries for yellowfin sole and "other flatfish" which trigger the closure of one or both zones if reached, and (3) closed an area within Zone 1 to all domestic commercial fishing with trawl gear. Any of the following specified PSC limits trigger a closure of Zone 1 to a directed fishery for yellowfin sole and "other flatfish":

—80,000 *C. bairdi* Tanner crabs caught by DAP and JVP vessels in Zone 1 while directed fishing for yellowfin sole and "other flatfish,"

—135,000 red king crabs caught by DAP and JVP vessels in Zone 1 while directed fishing for yellowfin sole and "other flatfish," and

—828,000 Pacific halibut caught by JVP vessels only while directed fishing for yellowfin sole and "other flatfish" anywhere in the BSAI management area.

The PSC limit which triggers the closure of Zone 2 is:

—326,000 *C. bairdi* Tanner crabs caught by DAP and JVP vessels in Zone 2 while directed fishing for yellowfin sole and "other flatfish."

Zone 1 was closed to JVP and DAP directed fishing for yellowfin sole and "other flatfish" on March 8, 1988, after the Regional Director determined that the PSC limit for Tanner crabs in Zone 1 had been taken (March 11, 1988, 53 FR 7941). This determination was based on bycatch data collected from onboard observers in the JVP fishery. Additional bycatches of prohibited species by the DAP fishery for "other flatfish" in Zone 1 up to that time are unknown due to the absence of onboard observers. Estimates of DAP bycatches of Tanner crabs range from 19,000 to 37,000 animals depending on the assumed rate of bycatch per mt of groundfish.

Closure of either zone due to the achievement of any PSC limit is ordinarily effective for the remainder of the fishing year (§ 675.21 (a), (b), and (c)). However, § 675.21(d) provides for the Secretary to "* * * allow some or all vessels to continue or resume directed fishing for yellowfin sole and 'other flatfish' under conditions which will limit fishing by permissible gear, areas, times, and other appropriate factors." In authorizing and conditioning such fishing in an otherwise closed zone, the Secretary is required to take into account five determinations by the Regional Director regarding the probable effects of allowing continued or resumed fishing.

Representatives of DAP fishing interests requested the Regional Director to reopen Zone 1 to DAP fishing only to allow a harvest of up to 25,000 mt of yellowfin sole. The Council

reviewed this issue on request of the Regional Director at its April 13–15, 1988 meeting and supported, in principle, the reopening of Zone 1 to directed fishing for yellowfin sole by DAP vessels only.

The Secretary has considered the five determinations of the Regional Director and hereby proposes to modify the closure of Zone 1 to allow directed fishing for yellowfin sole and "other flatfish" within Zone 1 by only those DAP fishing vessels that subscribe to the following conditions and until otherwise notified.

**Conditions**

1. Any DAP fishing vessel on which trawl-caught groundfish are brought onboard must carry an observer approved by the Regional Director.

2. Directed fishing for yellowfin sole and "other flatfish" will cease by notice in the **Federal Register** when any of the following occurs:

(a) the total number of red king crabs taken by JVP and DAP vessels while directed fishing for yellowfin sole and "other flatfish" in Zone 1 since the beginning of the 1988 fishing year equals the PSC limit of 135,000 animals.

(b) the total number of *C. bairdi* Tanner crabs taken by DAP vessels while directed fishing for yellowfin sole and "other flatfish" in Zone 1 after reopening equals a supplemental PSC limit of 50,000 animals.

(c) the total number of Pacific halibut taken by DAP vessels while directed fishing for yellowfin sole and "other flatfish" in Zone 1 after reopening equals a supplemental PSC limit of 60,200 animals.

The five determinations of the Regional Director and the information on which they are based are contained in a separate document which may be requested from the above address. In summary, the Regional Director determined that the expected additional fishing mortality resulting from reopening Zone 1 would be no more than 60,200 halibut, 50,000 *C. bairdi* Tanner crabs, and 21,500 red king crabs. The Regional Director determined further that these additional amounts of fishing mortality are not likely to have a measurable effect on the respective populations of these species and that the added risk of overfishing these species due to reopening Zone 1 according to the above conditions is insignificant.

**Classification**

This action is proposed under authority of § 675.21(d). For the reasons stated above, the Under Secretary for Oceans and Atmosphere (Under Secretary) has initially determined that this proposed action is necessary and consistent with the Magnuson Fishery Conservation and Management Act. In addition, based on the above discussion and the Regional Director's determinations, the Assistant Administrator for Fisheries, NOAA has determined that this proposed action (1) qualifies for a categorical exclusion from the requirement to prepare an environmental assessment under the National Environmental Policy Act, (2) is not a major rule requiring regulatory impact analysis under Executive Order 12291, and (3) contains no collection of information requirement subject to the Paperwork Reduction Act. A determination as to whether or not the rule has a significant economic impact on a substantial number of small entities will be made in conjunction with the publication of the final rule. However, the Under Secretary finds that the Regional Director's determinations substantially satisfy the environmental and economic documentation requirements of these laws.

**List of Subjects in 50 CFR Part 675**

Fish, Fisheries, Reporting and recordkeeping requirements.

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

Dated: August 22, 1988.

**William Matuszeski,**

*Executive Director, National Marine Fisheries Service.*

[FR Doc. 88–19342 Filed 8–22–88; 4:03 pm]

BILLING CODE 3510–22–M

# Notices

Federal Register
Vol. 53, No. 165
Thursday, August 25, 1988

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

### Forest Service

### Control of Unwanted Vegetation, Diseases, Insects, and Animals in the Pacific Southwest Region Nurseries and Tree Improvement Center

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** The Forest Service will prepare an environmental impact statement (EIS) for the Pest Management Activities at the Humboldt Nursery, McKinleyville, California; Placerville Nursery, Camino, California; and Chico Tree Improvement Center, Chico, California. The agency invites written comments and suggestions on the scope of the analysis. The agency also gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

**DATE:** Comments concerning the scope of the analysis must be received by October 1, 1988.

**ADDRESS:** Submit written comments and suggestions concerning the scope of the analysis to Patricia Malone, Assistant Nursery Manager, Placerville Nursery, 2375 Fruitridge Road, Camino, California 95709.

**FOR FURTHER INFORMATION CONTACT:** Questions about the proposed action and EIS should be directed to Patricia Malone, Assistant Nursery Manager, Placerville Nursery, 2375 Fruitridge Road, Camino, California 95709, phone 916–622–9600.

**SUPPLEMENTARY INFORMATION:** In preparing the EIS, the Forest Service will identify and consider a range of alternatives for this project. One of those is no action. Other alternatives will consider a range of methods for the prevention and control of unwanted vegetation, diseases, insects, and animals in the Region's nurseries and tree improvement center. The methods under consideration includes biological, chemical, manual, and mechanical techniques. The activities that require prevention and controls include cover cropping, seed pre-treatment, nursery seedbed and greenhouse preparation, sowing, seedling growth from germination to lifting, seedling storage, and seed orchard management.

Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from federal, state, and local agencies and other individuals or organizations who may be interested in or affected by the proposed project. This input will be used in preparation of the draft EIS. The scoping process includes:

1. Defining the scope of the analysis and nature of the decision to be made.
2. Identifying the issues and determining the significant issues for consideration and analysis within the EIS.
3. Defining the proper interdisciplinary team make-up.
4. Determining the effective use of time and money in conducting the analysis.
5. Identifying potential environmental, technical, and social impacts of the EIS and alternatives.
6. Determining potential cooperating agencies.
7. Identifying groups or individuals interested or affected by the decision.

Paul F. Barker, Regional Forester, Pacific Southwest Region, is the responsible official.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by February, 1989. At that time, EPA will publish a notice of availability of the draft EIS in the **Federal Register.**

The comment period on the draft EIS will be 45 days from the date the EPA's notice of availability appears in the **Federal Register.** It is very important that those interested in the pest management project participate at that time. To be the most helpful, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merit of the alternatives discussed (see the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alert an agency to the reviewers' position and contentions, *Vermont Yankee Nuclear Power Corp. v. NRDC,* 435 U.S. 519, 553 (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final EIS, *Wisconsin Heritages, Inc. v. Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

After the comment period ends on the draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the final EIS. The final EIS is scheduled to be completed by June, 1989. In the final EIS the Forest Service is required to respond to the comments and responses received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the draft EIS, and applicable laws, regulations and policies in making a decision regarding this project. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal under 36 CFR 211.18.

Date: August 17, 1988.

**J. Thomas Whear,**

*Acting Forest Supervisor, Eldorado National Forest.*

[FR Doc. 88–19293 Filed 8–24–88; 8:45 am]

BILLING CODE 3410–11–M

### Soil Conservation Service

### Pickens-Anderson Watershed, South Carolina; Finding of No Significant Impact

**AGENCY:** Soil Conservation, USDA.

**ACTION:** Notice of a finding of no significant impact.

**SUMMARY:** Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council of Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 65), the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Pickens-Anderson Watershed, Pickens and Anderson Counties, South Carolina.

**FOR FURTHER INFORMATION CONTACT:** Billy Abercrombie, State Conservationist, Soil Conservation Service, 1835 Assembly Street, Room 950, Columbia, South Carolina 29201, Telephone (803) 765–5681.

**SUPPLEMENTARY INFORMATION:** The environmental assessment of this federally assisted action indicated that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Billy Abercrombie, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for watershed protection. The planned works of improvement include accelerated technical and financial assistance to apply land treatment measures on 3,233 acres of cropland.

A copy of the Finding of No significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment is on file and may be reviewed by contacting Billy Abercrombie.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protrection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials)

Dated: June 7, 1988.

**Billy Abercrombie,**

*State Conservationist.*

[FR Doc. 88–19236 Filed 8–24–88; 8:45 am]

BILLING CODE 3410–16–M

## COMMISSION ON CIVIL RIGHTS

### Arizona Advisory Committee; Agenda and Notice of Public Forum

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the Arizona Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 3:00 p.m. on September 3, 1988, at the Howard Johnson Plaza Hotel, 1500 North 51st Avenue, Phoenix, Arizona 85043. The Advisory Committee will conduct a forum to obtain information on the Immigration Reform and Control Act of 1986 in Arizona.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, John White, or Philip Montez, Director of the Regional Division, (213) 894–3437, (TDD 213/894–0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 16, 1988.

**Susan J. Prado,**

*Acting Staff Director.*

[FR Doc. 88–19237 Filed 8–24–88; 8:45 am]

BILLING CODE 6335–01–M

### Louisiana Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Louisiana Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 11:00 a.m., on September 22, 1988, at the Holiday Inn Crowne Plaza, 333 Poydras Street, New Orleans, Louisiana. The purpose of the meeting is to review current committee projects and discuss civil rights issues of current concern in the State.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Michael R. Fontham, or Melvin Jenkins, Director of the Central Regional Division (816) 426–5253, (TDD 816/426–5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 17, 1988.

**Susan J. Prado,**

*Acting Staff Director.*

[FR Doc. 88–19238 Filed 8–24–88; 8:45 am]

BILLING CODE 6335–01–M

### Maine Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Maine Advisory Committee to the Commission will convene at 4:00 p.m. and adjourn at 7:00 p.m. on September 22, 1988, at the Best Western Senator Inn, State Room, 284 Western Ave., Augusta, ME 04330. The purpose of the meeting is (1) provide orientation for new members and update the Committee on Commission and regional program activities, and (2) plan future SAC activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Grayce E. Studley, 207–874–8100, X–3135 or John I. Binkley, Director of the Eastern Regional Division at (202) 523–5264, (TTD 202/376–8117). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 18, 1988.

**Susan J. Prado,**

*Acting Staff Director.*

[FR Doc. 88–19239 Filed 8–24–88; 8:45 am]

BILLING CODE 6335–01–M

## DEPARTMENT OF COMMERCE

### Bureau of Export Administration

### Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee will be held Sept. 13, 1988 at 9:30 a.m., Herbert C. Hoover Building, Room 4830, 14th Street and Constitution

Avenue NW., Washington, DC. The Committee advises the offices of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to computer peripherals adn realted test equipment or technology.

Agenda

*General Session*

1. Introduction of Members and Visitors.
2. Introduction of Invited Guests.
3. Presentation of Papers of Comments by the Public.
4. Discussion of OEM Sales of Peripherals to Bloc Countries.
5. Discussion of Reclassification of Laser Optical Disk Drives from 1522A to 1565A.
6. Discussion of Protocol Converters—TTG1.
7. Discussion of G–COM/GFW Treatement of Disk Packs.
8. Discussion of Public Rule Making Progress.
9. Discussion of Regulatorion Flow Charting Progress.
10. Status on Release of "Production Systems".

*Executive Session*

11. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be sumitted at any time before or after the meeting and can be directed to: Ruth D. Fitts, Technical Support Staff, Office of Technology & Policy Analysis, Room 4086, 14th & Constitution Avenue NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meeting found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes call Ruth D. Fitts, 202–377–4959.

Date: August 18, 1988.

**Betty A. Ferrel,**

*Acting Director, Technical Support Staff, Office of Techology and Policy Analysis.*

[FR Doc. 88–19272 Filed 8–24–88; 8:45 am]

BILLING CODE 3510-DT-M

## International Trade Administration

### Management-Labor Textile Advisory Committee; Partially Closed Meeting

A meeting of the Management-Labor Textile Advisory Committee will be held on Wednesday, September 14, 1988, Herbert C. Hoover Building, room H3407, 14th Street and Constitution Avenue NW., Washington, DC 20230. (The Committee was established by the Secretary of Commerce on October 18, 1961 to advise officials of problems and conditions in the textile and apparel industry.)

General Session: 1:30 p.m. Review of import trends, report on conditions in the domestic market, and other business.

Executive Session: 2:00 p.m. Discussion of matters properly classified under Executive Order 12356 (3 CFR, 1982 Comp. p. 166) and listed in 5 U.S.C. 552b(c)(1).

The general session will be open to the public with a limited number of seats available. A Notice of Determination to close meetings or portions of meetings to the public on the basis of 5 U.S.C. 552b(c)(1) has been approved in accordance with the Federal Advisory Committee Act. A copy of the notice is available for public inspection and copying in the Central Facility, room H6628, U.S. Department of Commerce, (202) 377–3031.

For further information or copies of the minutes, contact Alfreda Burton, (202) 377–3737.

**James H. Babb,**

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 88–19271 Filed 8–24–88; 8:45 am]

BILLING CODE 3510-DR-M

### Applications for Duty-Free Entry of Scientific Instruments; National Institute of Environmental Health Sciences et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–561; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purpose for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

*Docket Number:* 88–238. *Applicant:* National Institute of Environmental Health Sciences, NIH, PHS, DHHS, P.O. Box 12233, Research Triangle Park, NC 27709. *Instrument:* Mass Spectrometer, Model CONCEPT I S. *Manufacturer:* Kratos Analytical, United Kingdom. *Intended Use:* The instrument will be used for the analysis of substances relevant to problems in environmental health sciences and to development of new analytical techniques which can be applied to environmental health science problems. Typical compounds of interest include polycyclic aromatic hydrocarbons, tetrachlorodienzodioxin, tetrachlorodibenzofurans, prostaglandins, leukotrienes, arachidonic acid metabolites, pesticide and herbicide metabolites, modified bases from the interaction of DNA and carcinogens, carbohydrate analysis and members of the xenobiotic glutathione conjugate family. *Applications Received by Commissioner of Customs:* July 27, 1988.

*Docket Number:* 88–239. *Applicant:* Occidental College, Department of Biology, 1600 Campus Road, Los Angeles, CA 90041. *Instrument:* Electron Microscope, Model EM 109. *Manufacturer:* Carl Zeiss, West Germany. *Intended Use:* Studies to expand hemocyte classification scheme and further explore crustacean immunological processes. Experiments will be conducted to provide a sound understanding of the structure of the circulating hemocytes and the hemocytes developing in the hematopoietic tissue throughout the molt cycle in a representative shrimp, crab and lobster. This information will be used to establish a unified classifiation scheme for crustacean hemocytes that will allow results on the physiological function of hemocytes in one crustacean to be properly interpreted with regard to other species. In addition, the instrument will be used to introduce

introductory biology students, both major and non-majors, to electron microscopy as part of their introduction to cells and tissues and how they are studied. *Application Received by Commissioner of Customs:* Juy 27, 1988.

*Docket Number:* 88–241. *Applicant:* University of Rochester Department of Pharmacology, 601 Elmwood Ave., Rochester, NY 14642. *Instrument:* Magnetic Sector Mass Spectrometer, Model VG TS–250. *Manufacturer:* VG Tritech, United Kingdom. *Intended Use:* The instrument will be used in experiments for the characterization and quantification of large, polar molecules which are of biological and biomedical significance. Experiments will deal with the enzymatic synthesis of peptides and peptide *S*-conjugates and oligosaccharides, structure-function relationships of glucosyltransferases, organic synthesis of cyclophosphamide analouges and highly oxygenated natural products, and characterization of glycoproteins in respiratory secretions. *Application Received by Commissioner of Customs:* July 28, 1988.

*Docket Number:* 88–242. *Applicant:* New York University, Department of Psychology, 6 Washington Place, 8th Floor, New York, NY 10003. *Instrument:* Display Oscilloscopes (2), Model DM2. *Manufacturer:* Joyce Electronics, United Kingdom. *Intended Use:* The instrument will be used to generate visual patterns for perceptual and physiological experiments on the organization of the visual system. *Application Received by Commissioner of Customs:* July 28, 1988.

*Docket Number:* 88–243. *Applicant:* Walter Reed Army Institute of Research, Division of Pathology, Washington, DC 20307–5100. *Instrument:* Electron Microscope, Model CM–12. *Manufacturer:* N.V. Philips, The Netherlands. *Intended Use:* The instrument will be used to study the interaction of body cells and tissues with a variety of harmful agents. Much of the work is involved with virus, bacterial or parasitic interactions with the cells or tissues they infect. *Application Received by Commissioner of Customs:* August 1, 1988.

*Docket Number:* 88–244. *Applicant:* Vanderbilt University, Mechanical Engineering Department, Box 1592, Station B, Nashville, TN 37235. *Instrument:* Excimer Laser, Model EMG 160T MSC. *Manufacturer:* Lambda Physik, West Germany. *Intended Use:* Studies of combustion properties in hypersonic propulsion flows using vibrational Raman scattering and fluorescence induced by the narrowband excimer laser. Experiments will be conducted to:

a. Investigate the optimal wavelengths for narrowband excimer-induced Raman scattering and fluorescence,

b. Calibrate the excimer-induced Raman/fluorescence system for measurement of gas properties in hydrogen-air flames, and

c. Apply excimer-induced Raman/fluorescence system to hypersonic propulsion flows to measure the flow properties.

Application Received by Commissioner of Customs: August 1, 1988.

**Leonard E. Mallas,**

*Acting Director, Statutory Import Programs Staff.*

[FR Doc. 88–19343 Filed 8–24–88; 8:45 am]

BILLING CODE 3510–DS–M

## Applications for Duty-Free Entry of Scientific Instruments; University of California, Berkeley et al.

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), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

*Docket Number:* 88–246. *Applicant:* University of California, Berkely, Department of Geology and Geophysics, 2405 Bowditch Street, c/o Purchasing Department, Berkeley, CA 94720. *Instrument:* Mass Spectrometer, Model 3545. *Manufacturer:* VG Isotopes, United Kingdom. *Intended Use:* Studies of geological materials; rocks, minerals, fluids and gases. Experiments will involve chemical separation of trace element concentrations and isotopic compositions of mineral and the measurements of their isotopic compositions for the purpose of determining the age and origin of geological and geochemical phenomena and structures. The instrument will also be used in some instances for the purpose of determining the compositions of materials produced under laboratory conditions that are chosen to reproduce natural conditions in the earth. *Application Received by Commissioner of Customs:* August 4, 1988.

*Docket Number:* 88–247. *Applicant:* University of Pittsburgh, Department of Chemical and Petroleum Engineering, 1249 Benedum Hall, Pittsburgh, PA 15261. *Instrument:* Constant Temperature Air Bath and Rocking Mechanism for PVT Cell, Model JEFRI. *Manufacturer:* D.B. Robinson and Associates, Canada. *Intended Use:* The instrument will be used for the study of $CO_2$/oil/brine and $CO_2$/particulate suspensions in a PVT cell. *Application Received by Commissioner of Customs:* August 4, 1988.

*Docket Number:* 88–248. *Applicant:* Rutgers University, Procurement and Contracting, P.O. Box 1089, Piscataway, NJ 08854. *Instrument:* Strut Buckling Apparatus, Model HST 15. *Manufacturer:* Hi-Tech Scientific, Ltd., United Kingdom. *Intended Use:* The instrument will be used in the course 180:345—Properties of Materials Laboratory to give students an understanding of the mechanical properties of materials and structural elements and techniques for testing them. *Application Received by Commissioner of Customs:* August 4, 1988.

*Docket Number:* 88–249. *Applicant:* Rutgers University, Procurement and Contracting, P.O. Box 1089, Piscatway, NJ 08854. *Instrument:* Torsion Tester. *Manufacturer:* Hi-Tech Scientific, Ltd., United Kingdom. *Intended Use:* The instrument will be used in the course 180:345—Properties of Materials Laboratory to give students an understanding of the mechanical properties of materials and structural elements and techniques for testing them. *Application Received by Commissioner of Customs:* August 4, 1988.

*Docket Number:* 88–250. *Applicant:* University of Massachusetts, Amherst, MA 01003. *Instrument:* Electron Microscope, Model CM10/PC. *Manufacturer:* N.V. Philips, The Netherlands. *Intended Use:* The instrument will be used for basic research of nuclei from vertebrate animals, plant chromosomes, bacterial cells, viruses. Examples of the experiments to be conducted are:

(1) Tomographic reconstructions from micrographs taken at various tilt angles of the specimens.

(2) Examination of frozen specimens for the determination of the ultrastructure.

(3) General biomedical problems requiring high resolution election microscopy.

The instrument will also be used in the course Zoology 708 Electron Microscopy to train graduate students to be proficient in the theory and practice of electron microscopy as applied to biology. *Application Received by Commissioner of Customs:* August 5, 1988.

Leonard E. Mallas,

*Acting Director, Statutory Import Programs Staff.*

[FR Doc. 88-19344 Filed 8-24-88; 8:45 am]

BILLING CODE 3510-DS-M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Establishment of Export Visa and Certification Requirements for Certain Textiles and Textile Articles Produced or Assembled in the United Mexican States

August 22, 1988.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Amending a notice setting forth requirements for participation in the Special Regime and issuing a directive to the Commissioner of Customs establishing visa and certification requirements.

**EFFECTIVE DATES:** September 1, 1988 and January 1, 1989.

**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).

**FOR FURTHER INFORMATION CONTACT:** Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

**SUPPLEMENTARY INFORMATION:** The Governments of the United States and the United Mexican States established, effective on September 1, 1988, new visa and certification requirements for certain cotton, wool and man-made fiber textile products, produced or manufactured in Mexico and exported from Mexico on or after September 1, 1988.

On May 3, 1988, a notice was published in the **Federal Register** (53 FR 15724) announcing the requirements for participation in the Special Regime. Several requirements stated in this **Federal Register** notice have been clarified further or changed.

The requirement that limited the U.S. Customs ports which could be used by shipments under the Special Regime has been revised to include all U.S. Customs ports. However, because the four districts of San Diego, Nogales, El Paso and Laredo will be using district headquarters for administrating the Shippers Export Declaration (Form ITA-370P or successor document) for shipments under the Special Regime for their districts, such shipments must be exported and imported at ports within the same district. Outside these four districts, shipments under the Special Regime may be exported and imported at any port, for which headquarters in Washington, DC, will be used for administering the Shippers Export Declaration under this program.

The description on the Shippers Export Declaration of the cut parts to be exported to Mexico for assembly must state the correct category or part category. A merged category description is unacceptable. The quantity must be stated in correct category units and in whole numbers. Decimals or fractions will not be accepted. All U.S. components to be used in the assembly of the product must be described on the Shippers Export Declaration and exported in the same shipment.

At the time the cut parts are exported from the United States, U.S. Customs will assign a unique 10 digit certification number to the Shippers Export Declaration. The first four digits will identify the district and port of export. The top copy of the form will be sent to the appropriate administration headquarters, the second copy will accompany the shipment and the third copy will remain on file at the port of export.

On September 1, 1988, U.S. Customs will start signing the first section of the form ITA-370P for shipments destined for Mexico which the Government of the United Mexican States intends to export to the United States under the provisions of the Special Regime and TSUSA 807.0010 (or USTS item number 9800.00.0020 under the Harmonized Commodity Code) on or after January 1, 1989. Categories subject to the Special Regime are listed below:

335
338/339/638/639
340/640
342/642
347/348
349/649
351/651
352/652
359-C (coveralls and overalls)
369-B (handbags and luggage)
369-U (shoe uppers)
633
634
647/648
659-C (coveralls and overalls)
659-S (swimwear)
666

These products, which are assembled in Mexico from parts cut in the United States from fabric formed in the United States, are for export from Mexico during the period January 1, 1989 through December 31, 1989.

A copy of the current bilateral textile agreement is available from the Textiles Division, Economic Bureau, U.S. Department of State, (202) 647-1998.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987). Also see 46 FR 27516, published on May 20, 1981; 53 FR 7961, published on March 11, 1988 and 53 FR 15724, published on May 3, 1988.

Interested persons are advised to take all necessary steps to ensure that textiles and textile articles, produced in Mexico and exported on or after September 1, 1988 or assembled in Mexico and exported on or after January 1, 1989, which are to be entered or withdrawn from warehouse for consumption into the United States will meet the requirements set forth in the letter published below to the Commissioner of Customs.

James H. Babb,

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

August 22, 1988.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Mr. Commissioner: This directive cancels and supersedes the directive issued to you on May 15, 1981, as amended, by the Chairman, Committee for the Implementation of Textile Agreements, which directed you to prohibit entry for consumption or withdrawal from warehouse for consumption of certain cotton, wool and man-made fiber textile and apparel products, produced or manufactured in Mexico for which the Government of the United Mexcan States had not issued an appropriate export visa or exempt certification.

Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of February 13, 1988 between the Governments of the United States and the United Mexican States; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended,

you are directed to prohibit, effective on September 1, 1988, entry into the Customs territory of the United States (i.e., the 50 States, the District of Columbia and the Commonwealth of Puerto Rico), for consumption, and withdrawal from warehouse for consumption of textiles and textile articles of cotton, wool and man-made fiber textile products in Categories 200–222, 223 (excluding cotton webs, wadding and batting in TSUSA number 355.0200), 224–239, 300–369, 400–464, 465 (excluding floor covering in TSUSA items 361.42 and 361.45), 469, 600–620, 621 (excluding inked ribbon film strips in TSUSA numbers 389.6260 and 389.6265) and 622–670, including any part or merged categories as established in the bilateral agreement, produced or manufactured in Mexico and exported on or after September 1, 1988, or on or after January 1, 1989 under the Special Regime and TSUSA 807.0010 (or USTS item number 9800.00.0020 under the Harmonized Commodity Code), from Mexico for which the Government of the United Mexican States has not issued an appropriate visa or exempt certification in accordance with the procedures outlined below. You are directed to prohibit entry of shipments under the Special Regime which are exported from Mexico prior to January 1, 1989.

A valid export visa or exempt certification must accompany each commercial shipment of the aforementioned textiles and textile articles. However, should additional categories, merged categories or part categories be added to the bilateral agreement or become subject to import quotas, the entire category or categories shall be automatically included in coverage of the visa arrangement.

Effective on January 1, 1989, commercial shipments of apparel and made-up products in the aforementioned categories which have been assembled in the United Mexican States from components cut in the United States from U.S.-formed fabric in which findings and trimmings of non-U.S. manufacture represent no more than 25 percent of the value of the component parts, and are subject to the categories, part categories and merged categories within the Special Regime, as designated in the Agreement, and qualify for entry under TSUSA 807.0010 (or USTS 9800.00.0020), also shall be visaed by the Government of the United Mexican States.

Textiles and textile articles of cotton, wool and man-made fibers exported from Mexico on or after September 1, 1988 shall be visaed by the stamping of the original circular visa in blue ink on the front of the original commercial invoice. The original visa shall not be stamped on duplicate copies of the invoice. The original of the invoice with the original visa stamp will be required to enter the shipment into the United States. Duplicaties of the invoice and/or visa may not be used for this purpose.

Each visa stamp shall include the following information:

1. The visa number. For shipments subject to the Special Regime, the visa number shall be in the standard nine digit/letter format beginning with one numeric digit for the last digit of the year of export, following by the two character alpha country code specified by the International Organization for Standardization (ISO) (the code for Mexico is "MX"), followed by the digit 2, 4, 6 or 8 (to designate the shipment as subject to the Special Regime), and a five digit numerical serial number identifying the shipment; e.g., 9MX465432.

For all other shipments, the visa number shall be in the standard nine digit/letter format beginning with one numeric digit for the last digit of the year of export, followed by the two character alpha country code, MX, followed by the digit 1, 3, 5, 7, or 9, and a five digit numeric serial number identifying the shipment; e.g., 9MX198765.

2. The date of issuance. The date of issuance shall be the day, month and year on which the visa was issued.

3. The signature of the issuing official. The signature shall be that of the issuing official of the Government of the United Mexican States.

4. The correct category(s), merged category(s), part category(s), quantity(s), and unit(s) of quantity in the shipment in the unit(s) of quantity provided for in the U.S. Department of Commerce Correlation and in the U.S. Tariff Schedules of the United States Annotated (TSUSA) or successor document shall be reported in the spaces provided within the visa stamp, e.g., "Cat. 340–510dz." Quantities must be stated in whole numbers. Decimals or fractions will not be accepted. Merged category quota merchandise may be accompanied by either the appropriate merged category visa or the correct category visa corresponding to the actual shipment (e.g., quota Category 347/348 may be visaed as "Cat. 347/348" or, if the shipment consists solely of Category 347 merchandise, the shipment may be visaed as "Cat. 347," but not as "Cat. 348").

A visa with the nine-digit visa number reserved for the Special Regime will not be issued unless it is accompanied by a Shippers Export Declaration (Form ITA–370P or successor document), being evidence of the required origin and will not be issued for shipments exported from Mexico prior to January 1, 1989. Invoices for Special Regime shipments shall include only those apparel or made-up textile products subject to the Special Regime. Shipments exported from the United States at ports within U.S. Customs districts in San Diego, Nogales, El Paso and Laredo must be subsequently imported within the same district as the port of export. Shipments may be exported and imported at any port outside these four districts.

U.S. Customs shall not accept a visa and entry will not be permitted if the shipment does not have a visa, or if the visa number, date of issuance, signature, category, quantity or units of quantity are missing, incorrect or illegible, or have been crossed out or altered in any way. If the shipment is subject to the Special Regime for entry under TSUSA 807.0010 (or USTS 9800.00.0020), U.S. Customs shall not accept a visa and entry will not be permitted if the shipment is not accompanied by a properly completed Shippers Export Declaration (Form ITA–370P or successor document). The correct category or part-category and quantity in category units must be stated in the Shippers Export Declaration. Quantities must be stated in whole numbers. Decimals or fractions will not be accepted. Invoices visaed for Special Regime shall include only products that are subject to the Special Regime. If the quantity indicated on the visa is less than that of the shipment, entry shall not be permitted. If the quantity indicated on the visa is more than that of the shipment, entry shall be permitted and only the amount entered shall be charged.

If the visa is not acceptable to the U.S. Customs, or if there is a minor error on the accompanying ITA–370P form, then a new visa must be obtained from the Government of the United Mexican States, or a visa waiver issued by the U.S. Department of Commerce at the request of the Government of the United Mexican States and presented to the U.S. Customs Service before any portion of the shipment will be released. The waiver, if used, only waives the requirement to present a visa with the shipment. If does not waive the quota requirement.

If the visaed invoice is deficient, the U.S. Customs Service will not return the original document after entry, but will provide a certified copy of that visaed invoice for use in obtaining a new correct original visaed invoice, or a visa waiver, as appropriate.

U.S. Customs may permanently deny entry of any shipment claimed to be qualified for the Special Regime but found not to be qualified according to the provisions of the Special Regime relating to trade in cotton, wool and man-made fiber apparel and made-up textile products assembled of U.S.-formed and cut fabrics. In appropriate cases, the U.S. Customs Service may determine that entry is permitted provided a new visa issued by the Government of the United Mexican States is obtained and presented to the U.S. Customs Service.

If the quotas are in force, U.S. Customs shall charge only the actual quantity in the shipment and the correct category will be charged to the restraint level. If the shipment from Mexico has been allowed entry into the commerce of the United States with either an incorrect visa or no visa, and redelivery is requested but cannot be made, U.S. Customs shall charge the shipment to the correct category limit whether or not a replacement visa or visa waiver is provided.

Certain textiles and textile articles of cotton, wool and man-made fibers will be exempt from levels of restraint and visa requirements if they are certified, prior to the shipment leaving Mexico, by the placing of the original rectangular-shaped stamped marking in blue ink on the front of the original commercial invoice. The original invoice with the original exempt certification shall not be stamped on duplicate copies of the invoice. The original of the invoice with the original certification stamp will be required to enter that shipment into the United States. Duplicates of the invoice and/or certificate may not be used for this purpose.

In order to qualify as exempt, products must be handloomed fabric, handmade cottage industry products made from handloomed fabric, or a particular folklore handicraft textile product as agreed upon by the Governments of the United States and the United Mexican States or subsequently

added by mutual agreement. Each exempt certification stamp will include the following information: (1) Date of issuance, (2) signature of issuing official, and (3) description of basis for exemption.

Invoices for certified exempt items shall include only textile or apparel products that are agreed to be exempt (list enclosed). An export visa shall not be issued to shipments of certified exempt items. If a shipment is claimed as qualifying for exemption but found not to qualify, then a visa must be obtained from the Government of the United Mexican States and presented to the U.S. Customs Service before any portion of the shipment will be released. Merchandise imported for the personal use of the importer and not for resale, regardless of value; properly marked commercial sample shipments valued at US $250 or less; and floor coverings classified in TSUSA items 361.42 and 361.45, regardless of value; do not require a visa or exempt certification for entry and shall not be charged to the agreement levels.

The visa and exempt certification stamps remain unchanged.

The actions taken with respect to the Government of the United Mexican States concerning imports of textiles and textile articles of cotton, wool and man-made fibers from Mexico have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1). This letter will be published in the **Federal Register.**

Sincerely,

James H. Babb,

*Chairman, Committee for the Implementation of Textile Agreements.*

**Annex**

*Mexican Traditional Folklore Handicraft Textile Products*

"Mexican Items" are traditional Mexican products, cut, sewn, or otherwise fabricated by hand in cottage units of the cottage industry.

| Name | Description |
|---|---|
| Abrigo Ramo | A lightweight, long sleeve coat made of crude looking natural cloth. It has buttons in front along the entire length of the coat. The sleeves and front of the coat are heavily embroidered with flowers. |
| Regional | handloomed costume dresses made from rough "cambaya" cloth, hand dyed and richly decorated with hand embroidered designs representing traditional regional motifs such as stars, key designs, pyramids, poppies, sunflowers and marigolds. All of the designs are richly and brilliantly colored. |
| Blusa Huaxtla Puebla. | An ample blouse worn extensively in the northern hills of the State of Puebla which is made of hand woven, crude greige cloth. It is pleated in the upper front and back and is heavily decorated around the collar, sleeves and bust with hand-embroidered, multi-colored crosses. |
| Blusa Huamantla Tlaxcala. | A blousa made of natural, plain, hand woven white cloth, traditionally worn in Tlaxcalteca and North Puebla regions of the country. It is heavily pleated around the bust, shoulders and cuffs and hand-embroidered in geometric motifs representing various farm animals and flowers. |
| Blusa Manta de Bolilio. | A hand made blouse, worn by peasant women in the Mexican highlands, which comes with a very wide round or square neckline. The neckline is overlapped by a hand made piece of lace. The front and back of the blouse are heavily pleated. |
| Blusa Oaxaca. | An amply cut, loose fitting blouse of hand woven fabric. Worn extensively in the Mixterzapotec region of the State of Oaxaca, it is heavily pleated in the front and upper back and is completely edged in multi-colored lace with strips of lace along the sleeves. |
| Blusa Punto de Cruz. | A blouse hand made from crude fabric and adorned with traditional "cross stitch" embroidery commonly used by peasants in the central states of Mexico. The neck of the blouse is cut in a square or rectangular shape and is embroidered in a geometric pattern with flowers and leaves. The fabric itself is uniquely woven to form an overall pattern of small squares. |
| Calzon Blanco. | The most common peasant costume worn in Mexico. The two-piece outfit, consisting of pants and shirt, is made completely by hand in the cottage industry from unbleached griege cloth. The pants are baggy with two slits in the leg at the ankle. Narrow strips of cloth, attached at either end of the slits along the pants leg and at the waist, are used to hold the trousers in place. The shirt is decorated with long vertical pleats in front. A red, hand woven cotton band is worn loosely around the waist as an accessory. |
| Capa | A cape richly and extensively hand embroidered with vivid colors. When used by bull fighters, it is intricately hand embroidered with silver and gold thread. |
| Capote | A red cape lined in yellow worn by the "matador" in the bull ring. |
| Charro | A male costume consisting of a broad-brimmed hat made in cotton velvet, banded and decorated with silver or contrasting cotton ribbons. A shirt in white cotton percale embroidered with an eagle in the back and birds in the front. It is worn with a large multi-colored bow tie called a "corbaton" made of a strip of cotton material more than a yard long and six inches wide. The jacket is fastened beneath the lapels with double frog linked silver buttons. The jacket is worn with close-fitting tapered trousers which have an inch wide flap along the outer sides that sometimes is studded with silver buttons, metal studs or sequins. |
| Chiapaneca | (From Chiapas). A richly embroidered handmade dress consisting of a "huipil", a very wide skirt and a petticoat. The skirt is made of a very wide strip of cotton lace embroidered with large, brightly colored flowers, which are sewn together with the blouse or "huipil". The petticoat is heavily edged with a hand drawn lace band. |
| Chinanteca | A female costume from Oaxaca completely handloomed by highland Indians. It consists of a "huipil" made of three long strips of cotton heavily decorated with ruffles and a wrap-around skirt hand embroidered in ancient geometric designs. An embroidered strip of ribbons in alternated colors is sewn or "appliqued" to the huipil. |
| China Poblana. | A wide skirt called a "castor", made of red cotton flannel printed with black geometrical designs and profusely embroidered with sequins. The top and lower edges of the skirt are made of green cotton satin. The blouse is trimmed at the neckline and shoulders with a wide strip of embroidery in a traditional flower design made with thread or with beads and spangles. A traditional multi-colored hand made "rebozo" and a headdress made of two strands of hand braided red, white and green ribbons complete the costume. |
| Deshildo | A heavy tablecloth or doilie containing intricate designs exclusively hand drawn from the fabric itself. |
| Fustan | A type of long skirt, sometimes used as a petticoat. Always has a decorative band called a "xmanikte" encircling the lower edge. The "fustan" is generally heavily hand embroidered in a cross stitch with colorful geometric designs or flowers. |
| Hamacas | A handmade hammock from the Mexican Tropics uniquely constructed by a system of knots permitting simultaneous utilization by several people. |
| Huautleca | A "huipil" composed of three rectangular pieces of hand made cloth, heavily hand embroidered with geometric designs representing flowers and birds. From the region of Huautla, Oaxaca. |

| Name | Description |
|---|---|
| Huichol | A man's costume from Jalisco which is completely handwoven and embroidered in cross-stitch. It consists of a straw hat decorated with a "borlas" around the top of a flat crown, a long shirt with slit sleeves and wide-legged trousers also heavily hand embroidered. The trousers are held in place by a waist-band called a "cosihuire" or "queitzaruame", which is decorated with a number of sashes. The entire costume is covered with a cape called a "tuhuarra", which is richly hand embroidered and decorated with ribbon applique. It is completed with an embroidered hand made carrybag or knapsack called a "morral". |
| Huipil | A very traditional, unshaped and sleeveless woman's dress heavily embroidered and formed by a rectangular piece of fabric with a hole or slot in the center for the head. In many cases the embroidered decoration is hand drawn from the fabric itself. The designs appearing in the huipil depict birds, flowers and geometric patterns of pre-Colombian Mexico. |
| Jorongo | A cloak made of a rectangular piece of cotton fabric with a hole in the center for the head to pass through. Heavily embroidered by hand with designs which appear mainly on that part of the fabric which covers the shoulders. |
| Jubon | An amply cut blouse from Campeche and Yucatan made of unbleached gray cloth richly embroidered around the neckline and lower edge with colored flowers and trailing vine designs. The decoration can also be made of lace or ribbons. A special festive type of Jubon is also used as part of the "Mestiza" costume. |
| Malacatera | A cotton dress consisting of two pieces. The skirt is hand made out of a large rectangular piece of cloth, pleated at the waist and horizontally stripped in a bold pattern. The "huipil" is hand made of shear transparent cotton richly hand embroidered in the front and at the bottom. |
| Mestiza | A female costume from Yucatan consisting of a traditional hand made multi-colored "huipil", a "jubon" and a "fustan". The jubon is richly hand embroidered around the neckline and lower edge with colored flowers and trailing vines designs. A decorative band of drawn work which is called "xmanikte" encircles the lower edge of the "fustan". The costume is topped off by an elaborate hand woven cotton headdress called a "tuch". |
| Mixteca | A handloomed huipil, from the Mixteca region of Oaxaca consisting of three rectangular pieces of cotton cloth brightly embroidered with birds and sewn together by embroidered narrow bands one or two inches in width. The three pieces of cloth are held together by plain, hand made cotton bands. |
| Nahuatl | (from Puebla) It consists of a handwoven quetchquemetl decorated and embroidered with animals and/or flowers. The dress also includes a wide skirt named the "enredo" which wraps around the waist and is held in place with "faja" which is a narrow piece of fabric, hand-woven, with geometric motifs or greek keys. The entire dress also includes a light short sleeved blouse of cotton fabric embroidered at the neckline and shoulders. |
| Padas Amano. | A rather primitive hand printed or hand painted fabric depicting rural or religious scenes. Often used as wall tapestry. Generally comes in two sizes 20" x 20" or 79" x 138". |
| Quetchquemetl. | A type of closed cape made from two rectangular pieces of cloth formed into a square with a hole in the middle for the head. It covers the bust, the back and the shoulders and is handwoven in decorative designs. |
| Ranchera Jalisco. | A very wide full dress, the bottom portion of which is made out of large pleated horizontal bands of brightly colored fabric. The bands of fabric are decorated with lace at the point they are sewn together. Handmade lace is also used extensively to decorate the top portion of the dress. |
| Rebozo | A long, narrow shawl, woven by hand in single- or multi-colored designs with fringe edges or ends of edges hand-knotted. |
| Resplandor | The Tehuana headdress is of Zoque origin folded specially to allow the edge, made of beautiful, intricately designed lace, to remain rigid on top of the head in the shape of a halo. It is made of stiff cotton lace and ribbon, well starched, with pleats at the edges. It is also called "bida-moro". |
| Rodete de Tlacoyal. | A very heavily knotted rope-like piece of material worn in a twisted configuration on the head. |
| Sarape | A type of blanket made of rough, hand woven fabric in bright, multi-colored stripes. |
| Tehuana | A female costume from Oaxaca consisting of an ample white petticoat bound with hand made lace, a bright skirt with a wide starched and pleated lower edge made of wide cotton lace, embroidered all over with geometric or flower design, a short "huipil" which falls slightly below the waist, and a headdress hand made of cotton lace, heavily starched which is called a "resplandor". |
| Terno | A male costume consisting of pants and jacket, used by a bull fighter at the start of his career. It is hand embroidered on the sides of the pants and jacket with fancy, hand woven ribbon in contrasting colors. It is often heavily decorated in silver and gold. |
| Traje Regional Tarasco. | A Micuoacan peasant dress hand made from "cambaya" cloth. It has a unique yoke around the collar which is elaborately hand embroidered with flowers and animals utilizing a stitch pattern that gives the motif a very primitive appearance. |
| Vestido de la Costa del Golfo. | A dress made entirely by hand of delicate cotton lace, either white or in colors. Worn extensively in the State of Veracruz, Tabasco and Campeche at festivals and weddings. |
| Vestido Encaze. | A very lightweight, transparent, heavily embroidered, hand made dress, made out of strips of lace which is often used for holidays and weddings. |
| Vestido Miraflores. | An ankle length, long-sleeved woman's dress made from "cambaya" hand loomed and hand dyed fabric. The sleeves and bottom portion of the dress are delicately hand embroidered in brilliantly colored floral or bird motifs. Frequently the dress is also decorated with various colored ribbons sewn along the edges of the entire dress. |
| Yalalteca | A female costume from Oaxaca consisting of a very large "huipil" which falls almost to the knee, richly decorated with geometric designs and a loosely fitting skirt or wrap-around of stripped red and white cotton. |

[FR Doc. 88–19321 Filed 8–24–88; 8:45 am]
BILLING CODE 3510-OR-M

## COMMODITY FUTURES TRADING COMMISSION

### Advisory Committee on CFTC-State Corporation; Meeting

This is to give notice, pursuant to section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. I, section 10(a), that the Commodity Futures Trading Commission's Advisory Committee on CFTC-State Cooperation will conduct a public meeting in the Fifth Floor Hearing Room at the Commission's Washington, DC, headquarters located at Room 532, 2033 K Street, NW., Washington, DC 20581, September 14, 1988, beginning at 10:00 a.m. and lasting until 4:00 p.m. The agenda will consist of:

### Agenda

1. Opening Remarks—Wendy L. Gramm, Chairman, CFTC; Fowler C. West, Commissioner, CFTC and Chairman, Advisory Committee on CFTC-State Cooperation;

2. Report by representatives of the Commission's Off-Exchange Task Force on recommendations concerning bank-financed precious metals programs;

3. Report by the Division of Enforcement and representatives of the U.S. Department of Justice on the activities of the Securities and Commodities Fraud Working Group;

4. Educational Efforts—a. Report by the Commission's Division of Enforcement and by representatives of the North American Securities Administrators Association on the Commission's educational enforcement seminars for state officials;

b. Discussion about the feasibility of promoting consumer education programs concerning investment fraud in the public school system;

5. Status report by representatives of the American Newspaper Publishers Association Credit Bureau, Inc. on its advertising fraud forum;

6. Status report and discussion regarding the adoption of the NASAA Model State Commodity Code by the states, and discussion regarding problems posed by potential offshore boiler rooms; and

7. Discussion of other questions of concern to Advisory Committee members.

The Advisory Committee was created by the Commodity Futures Trading Commission for the purpose of receiving advice and recommendations on matters of joint concern to the States and the Commission arising under the Commodity Exchange Act, as amended. The purposes and objectives of the Advisory Committee on CFTC-State Cooperation are more fully set forth in the March 31, 1988 Sixth Renewal Charter of the Advisory Committee.

The meeting is open to the public. The Chairman of the Advisory Committee, Commissioner Fowler C. West, is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee should mail a copy of the statement to the attention of: The Advisory Committee on CFTC-State Cooperation c/o Commissioner Fowler C. West, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, before the meeting. Members of the public who wish to make oral statements should also inform Commissioner West in writing at the foregoing address at least three business days before the meeting. Reasonable provisions will be made, if time permits, for an oral presentation of no more than five minutes each in duration.

Issued by the Commission in Washington, DC on August 22, 1988.

Jean A. Webb,

*Secretary of the Commission.*

[FR Doc. 88-19331 Filed 8-24-88; 8:45 am]

BILLING CODE 6351-01-M

## CONSUMER PRODUCT SAFETY COMMISSION

### Notification of Request for Approval of Survey of Consumers to Determine Exposure to Hazards Associated With Riding Mowers and Lawn and Garden Tractors

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520), the Consumer Product Safety Commission has submitted to the Office of Management and Budget a request for approval of a survey of 800 randomly-chosen consumers who use riding mowers or lawn and garden tractors, hereinafter referred to generically as riding mowers.

The purpose of the survey for which the Commission seeks approval is to collect data from the general population of riding mower users concerning the users, the designs of riding mowers in use, the amount of time the riding mowers are in use, and the types of terrain mowed.

The initial information will be collected by telephone by a contractor; there is also a follow-up questionnaire, and consumers will be asked to measure the slope of the terrain mowed with a simple device that will be supplied with the questionnaire. This information will enable the Commission to assess the importance of various factors on consumer safety and identify strategies for dealing with risks. Using these data, the Commission hopes to reduce the estimated 50,000 medically-attended injuries that occur each year associated with the use of riding mowers, including a number of serious injuries and deaths caused by tipping or slipping of the mowers on slopes.

**Additional Details About the Request for Extension of Approval of Information Collection Requirements**

*Agency address:* Consumer Product Safety Commission, Washington, DC 20207.

*Title of information collection:* Survey to Determine Consumer Exposure to Hazards Associated with the Use of Riding Mowers and Lawn and Garden Tractors.

*Type of request:* New collection.

*Frequency of collection:* One-time.

*General description of respondents:* Owners/operators of riding mowers and lawn and garden tractors.

*Estimated number of respondents:* 800.

*Estimated average number of hours per respondent:* 0.28

*Estimated number of hours for all respondents:* 223.

*Comments:* Comments on this request for approval for collection of information should be addressed to Pamela Barr, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; telephone (202) 395-7340. A copy of any comments should be sent to Francine Shacter, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492-6416. Copies of the request for approval may be obtained from Ms. Shacter.

This is not a proposal to which 44 U.S.C. 3504(h) applies.

Dated: August 17, 1988.

**Sadye E. Dunn,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc. 88-19320 Filed 8-24-88; 8:45 am]

BILLING CODE 6355-01-M

## DEPARTMENT OF DEFENSE

### Department of the Air Force

### Determination of Active Military Service: Civilian U.S. Navy IFF Technicians Who Served in the Combat Areas of the Pacific During World War II

On August 2, 1988, the Secretary of the Air Force determined that the World War II service of a group known as "Civilian U.S. Navy IFF Technicians Who Served in the Combat Areas of the Pacific during World War II (December 7, 1941 to August 15, 1945)" would be considered "active duty" under the provisions of Pub. L. 95-202 and be eligible for benefits according to all laws administered by the Veterans Administrator.

To receive recognition, each applicant must meet the following eligibility criteria:

1. Was employed by the Hazeltine Electronics Corporation under a valid contract with the U.S. Navy.

2. Served satisfactorily aboard a U.S. Navy vessel deployed at sea in the Pacific Ocean beyond the continental limits of the United States.

3. Served during the period December 7, 1941 to August 15, 1945.

Before an individual can receive any Veterans Administration benefits, the person must first apply for an Armed Forces Discharge Certificate by filling out a DD Form 2168 and sending it to:

Navy Military Personnel Command (NMPC-3), Navy Department, Washington, DC 20370-5300.

Note: Individuals should include as much supporting documentation as possible when making application.

Forms are available from any Veterans Administration Office, Veterans Organization, or the office listed above.

Patsy J. Conner,

*Air Force Federal Register Liaison Officer.*

[FR Doc. 88-19353 Filed 8-24-88; 8:45 am]

BILLING CODE 3910-01-M

## USAF Scientific Advisory Board; Meeting

August 19, 1988

The USAF Scientific Advisory Board Ad Hoc Committee on Science and Technology (S&T) Roadmaps Review will meet on September 13, 1988 from 1:00 p.m. to 5:00 p.m. and on September 14, 1988 from 8:00 a.m. to 5:00 p.m. at the Pentagon, Washington, DC 20330-5430.

The purpose of this meeting is to review the roadmaps for the programs in the Air Force S&T base. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

Patsy J. Conner,

*Air Force Federal Register Liaison Officer.*

[FR Doc. 88-19313 Filed 8-24-88; 8:45 am]

BILLING CODE 3910-01-M

## Department of the Navy

## Government-owned Inventions; Availability for Licensing

**AGENCY:** Department of the Navy, DoD.

**ACTION:** Notice of Availability of Inventions for Licensing.

**SUMMARY:** The inventions listed below are assigned to the United States Government as represented by the Secretary of Navy and are made available for licensing by the Department of the Navy.

Copies of patents cited are available from the Commissioner of Patents and Trademarks, Washington, DC 20231, for $1.50 each. Requests for copies of patents must include the patent number.

Copies of patent applications cited are available from the National Technical Information Service (NTIS), Springfield, Virginia 22161. Copies also may be ordered by telephone request to (730) 487-4650. Requests for copies of patent applications must include the patent application serial number. Claims are deleted from the patent application copies sold to avoid premature disclosure.

**DATE:** August 25, 1988.

**FOR FURTHER INFORMATION CONTACT:** Mr. R.J. Erickson, Staff Patent Attorney, Office of the Chief of Naval Research (Code OOCCIP), Arlington, Virginia 22217-5000, telephone (202) 696-4001.

Patent 4,197,787: Pump piston with flexible member; filed 29 August 1977; patented 15 April 1980.

Patent 4,201,605: Gas Generator Propellant for Airbreathing Missiles; filed 31 July 1978; patented 6 May 1980.

Patent 4,201,853: Polymeric Binders of Nitrated Phenols and Polyisocyanates Which Reversibly Dissociate at Elevated Temperatures; filed 18 May 1978; patented 6 May 1980.

Patent 4,203,667: Covert recovery or signalling system; filed 4 December 1978; patented 20 May 1980.

Patent 4,204,143: Pulse width modulated power amplifier for direct current motor control; filed 26 September 1978; patented 20 May 1980.

Patent 4,207,688: Pilot training simulator; filed 11 October 1977; patented 17 June 1980.

Patent 4,211,999: Coverter for converting a high frequency video signal to a digital signal; filed 23 November 1977; patented 8 July 1980.

Patent 4,215,534: Cooling system for an expander engine; filed 3 September 1976; patented 5 August 1980.

Patent 4,215,633: Acoustic emission contact fuze with signal processing capability; filed 5 June 1978; patented 5 August 1980.

Patent 4,217,910: Internal jugular and left ventricular thermodilution catheter; filed 10 October 1978; patented 19 August 1980.

Patent 4,387,974: Circuit for Calculating the Position of the Eye; filed 11 May 1981; patented 14 June 1983.

Patent 4,394,556: Cam Operated Switch Assembly; filed 26 February 1982; patented 19 July 1983.

Patent 4,414,181: Gas generator outlet having controlled temperature transition; filed 2 November 1981; patented 8 November 1983.

Patent 4,414,413: 1,2-DI(N,N-BIS) (2-Fluoro-2,2-Dinitroethyl) Carbanyl Hydrozine; filed 21 December 1981; patented 8 November 1983.

Patent 4,453,754: Electronic plug-in module extractor; filed 25 March 1982; patented 12 June 1984.

Patent 4,468,639: Monolithic combined charge transfer and surface acoustic wave device; filed 29 September 1982; patented 28 August 1984.

Patent 4,472,786: Analog gaussian convolver; filed 23 April 1982; patented 18 September 1984.

Patent 4,480,324: Constant beamwidth frequency independent acoustic antenna; filed 11 April 1983; patented 30 October 1984.

Patent 4,480,916: Phase-modulated polarizing interferometer; filed 6 July 1984; patented 30 October 1984.

Patent 4,487,584: Raster shifting delay compensation system; filed 17 November 1982; patented 11 December 1984.

Patent 4,488,876: Aimpoint Processor for Quantizing Target Data; filed 26 March 1982; patented 18 December 1984.

Patent 4,491,842: Frozen Wave Generator Jammer; filed 9 April 1981; patented 1 January 1985.

Patent 4,493,136: Pivotal mono wing cruise missile with wing deployment and fastener mechanism; filed 29 April 1982; patented 15 January 1985.

Patent 4,494,084: Pin diode linear attenuator controlled by a companding DAC; filed 1 March 1982; patented 15 January 1985.

Patent 4,494,625: Axial acoustic wave attenuator for Ramjets; filed 29 July 1983; patented 22 January 1985.

Patent 4,500,885: Data link data and address recognition; filed 11 May 1965; patented 19 February 1985.

Patent 4,500,886: Data link shift register operation; filed 11 May 1965; patented 19 February 1985.

Patent 4,503,406: Inside collet for coaxial placement of diode; filed 30 June 1983; patented 5 March 1985.

Patent 4,506,368: Dye lasters using 2-(4-pyridyl)-5-aryloxazoles and quaternary salts of these compounds; filed 2 June 1980; patented 19 March 1985.

Patent 4,507,661: Interfering noise pulse eliminator and its use in a dicke type radiometer circuit; filed 26 April 1982; patented 28 March 1985.

Patent 4,509,014: Nuclear Magnetic Resonance Gyroscope; filed 23 November 1982; patented 2 April 1985.

Patent 4,509,325: Turbine Engine Cold Temperature Starting System; filed 28 December 1978; patented 9 April 1985.

Patent 4,509,808: High Voltage, Gas Tight Connector; filed 18 March 1983; patented 9 April 1985.

Patent 4,512,197: Apparatus for Generating a Focusable and Scannable Ultrasonic Beam for Non-Destructive Examination; filed 1 September 1983; patented 23 April 1985.

Patent 4,517,593: Video Multiplexer; filed 29 April 1983; patented 14 May 1985.

Patent 4,520,428: Dense Packaging System for Printer Wiring Boards; filed 2 February 1983; patented 28 May 1985.

Patent 4,521,260: Detonation-Transfer Energetic Composition; filed 26 October 1984; patented 4 June 1985.

Patent 4,522,882: Method and Apparatus for Coating Submerged Portions of Floating Structures; filed 19 September 1983; patented 11 June 1985.

Patent 4,524,090: Deposition of Compounds From Multi-Component Organo-Metals; filed 30 April 1984; patented 18 June 1985.

Patent 4,526,980: Method for the Preparation of Tetranitrodibenzotetrazapentalene; filed 6 July 1983; patented 2 July 1985.

Patent 4,534,436: Bridge Crane; filed 5 July 1983; patented 13 August 1985.

Patent 4,538,149: Frequency Agile Magnetron Imaging Radar; filed 18 January 1982; patented 27 August 1985.

Patent 4,539,300: Method for the Fabrication of Hexagonal BN Toughened Matrix Composites; filed 21 September 1983; patented 3 September 1985.

Patent 4,539,405: Synthesis of 1,4-Dinitrofurazano (3,4-B) Piperzane; filed 16 April 1984; patented 3 September 1985.

Patent 4,539,986: Simulated Oxygen Breathing Apparatus; filed 13 September 1982; patented 10 September 1985.

Patent 4,540,315: Method for Exploratory Trench Wall Stabilization; filed 28 February 1982; patented 10 September 1985.

Patent 4,540,988: Broadband Multi-Element Antenna; filed 13 June 1983; patented 10 September 1985.

Patent 4,541,341: Self-Checking Arming and Firing Controller; filed 28 October 1983; patented 17 September 1985.

Patent 4,541,778: Pin Rooted Blade Biaxial Air Seal; filed 18 May 1984; patented 17 September 1985.

Patent 4,546,249: High Speed Optically Controlled Sampling System; filed 1 July 1983; patented 8 October 1985.

Patent 4,547,775: Frequency Agile Imaging Radar With Error Frequency Correction; filed 18 January 1982; patented 15 October 1985.

Patent 4,547,845: Split-Bus Multiprocessor System; filed 21 April 1982; patented 15 October 1985.

Patent 4,555,455: Ambient Temperature Thermal Battery; filed 14 February 1985; patented 26 November 1985.

Patent 4,600,536: Explosive Compound; filed 19 October 1984; patented 15 July 1984.

Patent 4,634,458: Double-Stage Air Filter; filed 10 February 1986; patented 6 January 1987.

Patent 4,635,246L: Frequency Multiplex System Using Injection Locking of Multiple Laser Diodes; filed 20 October 1983; patented 6 January 1987.

Patent 4,637,570: Drag Stabilizer; filed 9 January 1980; patented 20 January 1987.

Patent 4,639,902: Near Ultrasonic Pattern Comparison Intrusion Detector; filed 24 June 1985; patented 27 January 1987.

Patent 4,640,180: Gun-Firing System; filed 20 June 1985; patented 3 February 1987.

Patent 4,644,505: Broadband Matching Network; filed 11 June 1984; patented 17 February 1987.

Patent 4,644,548: Free Electron Laser With Tapered Axial Magnetic Field; filed 25 January 1984; patented 17 February 1987.

Patent 4,644,843: Gas Actuated Gun System for Launching a Projectile; filed 10 September 1985; patented 24 February 1987.

Patent 4,648,057: Robust Interactive Technique for High-Resolution Spatial Processing and Spectral Estimation; filed 18 May 1984; patented 3 March 1987.

Patent 4,648,461: Fluid Pressure Discharge Safety System; filed 1 July 1985; patented 10 March 1987.

Patent 4,649,281: Oil Content Monitor/Control System; filed 2 July 1985; patented 10 March 1987.

Patent 4,649,824: Apparatus for Aerospace Vehicle Separation Events Using a Linear Shaped Charge; filed 27 June 1985; patented 17 March 1987.

Patent 4,656,918: Electromagnetic Induction Method and Apparatus Therefor for Collapsing and Propelling a Deformable Workpiece; filed 20 February 1985; patented 14 April 1987.

Patent 4,657,822: Fabrication of Hollow, Cored, and Composite Shaped Parts from Selected Alloy Powders; filed 2 July 1986; patented 14 April 1987.

Patent 4,659,035: Rate Estimation By Mixing Independent Rate Signals; filed 25 January 1985; patented 21 April.

Patent 4,661,160: Alkaline Earth Metaborates as Property Enhancing Agents for Refractory Concrete; filed 11 April 1986; patented 28 April 1987.

Patent 4,661,783: Free Electron and Cyclotron Resonance Distributed Feedback Lasers and Masers; filed 18 March 1981; patented 28 April 1987.

Patent 4,662,580: Simple Diver Reentry Method; filed 20 June 1985; patented 5 May 1987.

Patent 4,662,581: Modified Null Flow Modulator; filed 15 July 1985; patented 5 May 1987.

Patent 4,665,526: Minimum Inductance Laser Head for Pulsed Transverse Discharges Without Wall Tracking; filed 15 May 1986; patented 12 May 1987.

Patent 4,675,091: Co-Sputtered Thermionic Cathodes and Fabrication Thereof; filed 16 April 1986; patented 23 June 1987.

Patent 4,689,628: Adaptive Sidelobe Canceller System; filed 16 August 1974; patented 25 August 1987.

Patent Application 058,415: Incoherent Laser System for Producing Smooth and Controllable Spatial Illumination Profiles; filed 5 June 1987.

Patent Application 079,962: Method for Fabricating Thin Film Metallic Meshes for use as Fabry-Perot Interferometer Elements, Filters, and Other Devices; filed 31 July 1987.

Patent Application 091,133: Atomic Layer Etching; filed 31 August 1987.

Patent Application 102,937: Method and Apparatus for Producing Substoichiometric Silicon Nitride of Preselected Proportions; filed 30 September 1987.

Patent Application 106,998: Reflectometers; filed 9 October 1987.

Patent Application 112,579: A Serial Data Word Processing Arrangement; filed 26 October 1987.

Patent Application 123,629: Method for Growing Patterned Thin Films of Superconductors; filed 23 November 1987.

Patent Application 131,684: Pneumatic Induction Fiber Spreader with Lateral Venturi Restrictors; filed 11 December 1987.

Patent Application 154,565: Optical Paramagnetic/Dia-Magnetic Gas Sensor; filed 10 February 1988.

Patent Application 848,880: Doppler-Improved Polyphase Pulse Expander Compressor; filed 7 April 1986.

Patent Application 878,150: 2,2,2-Trifluoroethoxy Bis(2-Fluoro-2,2-Dinitroethoxy) Methane and a Method of Preparation; filed 23 June 1986.

Patent Application 925,039: Optical Position Gauge; filed 30 October 1986.

Date: August 22, 1988.

Jane M. Virga,

*Lieutenant, JAGC, U.S. Naval Reserve Alternate Federal Register Liaison Officer.*

[FR Doc. 88-19335 Filed 8-24-88; 8:45 am]

BILLING CODE 3810-AE-M

## DEPARTMENT OF ENERGY

### Meeting on the International Marketplace—Niches for U.S. Coal Technology

**AGENCY:** Department of Energy.

**ACTION:** Notice of meeting.

**SUMMARY:** The Department of Energy's Office of Fossil Energy (DOE/FE) is announcing a public meeting to present preliminary findings of ongoing programs in (1) characterization of small combustors in international industrial, commercial, and residential market applications, (2) Pacific rim coal trade and coal logistics, and (3) markets for and competitiveness of selected U.S. clean coal technologies.

DOE/FE has initiated these three programs to explore, evaluate and analyze potential market opportunities to improve the U.S. balance of trade and world energy security through increased exports of U.S. coal combustion equipment, technology, and coal. International markets for and competitiveness of selected U.S. Clean Coal Technologies will be discussed. The program on small combustors has concentrated on potential markets in Organization for Economic Cooperation and Development (OECD) member countries. Information systems on international coal trade logistics and the U.S. coal resources available to international markets will also be demonstrated.

The objective of this meeting is to provide interested parties with a report on the current state of findings developed to date.

The meeting is planned to consist of (1) a morning plenary session at which DOE will provide industry with a background of the initiative and present its preliminary findings, (2) an afternoon breakdown into small working groups for interactive discussion regarding opportunities for expanding coal utilization, followed by (3) a closing summary session at which working group leaders will summarize the results of their individual sessions.

A no-host luncheon including a speaker will be offered to participants at a cost of $30.00 per person. An expression of interest in attending this luncheon would be appreciated by September 23, 1988, at the address below, however, walk-in registrants will be welcome. Make checks payable to Sheladia Associates, Inc.

Addressee: Sheladia Associates, Inc., 15825 Shady Grove Road, Suite 100, Rockville, MD 20850, ATTN: Judith Kimel, TELEFAX: (301) 948-7174.

In addition, any questions or comments may be submitted to the above address.

The public meeting will be held October 3, 1988, at: Sir Francis Drake Hotel, 450 Powell Street (Union Square), San Francisco, CA 94102, (415) 392-7755.

Registration will begin at 7:30 a.m. and the opening session will begin at 9:00 a.m.

**J. Allen Wampler,**

*Assistant Secretary, Fossil Energy.*

[FR Doc. 88-19355 Filed 8-24-88; 8:45 am]

BILLING CODE 6450-01-M

## Economic Regulatory Administration

**[ERA Docket No. 88-32-NG]**

### Tarpon Gas Marketing Ltd.; Order Granting Blanket Authorization To Import Natural Gas

**AGENCY:** Economic Regulatory Administration, Department of Energy.

**ACTION:** Order Granting Blanket Authorization to Import Natural Gas.

**SUMMARY:** The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting Tarpon Gas Marketing Ltd. (TGM) blanket authorization to import Canadian natural gas. The order issued in ERA Docket No. 88-32-NG authorizes TGM to import up to 500 Bcf per day of natural gas over a two-year period beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 12, 1988.

**Constance L. Buckley,**

*Acting Director, Office of Fuels Programs.*

[FR Doc. 88-19356 Filed 8-24-88; 8:45 am]

BILLING CODE 6450-01-M

## Federal Energy Regulatory Commission

**[Docket Nos. ER88-539-000 et al.]**

### Public Service Company of Colorado et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

August 18, 1988.

Take notice that the following filings have been made with the Commission:

**1. Public Service Company of Colorado**

[Docket No. ER88-539-000]

Take notice that on July 29, 1988, a Consent Settlement Agreement executed by the Commission Trial Staff (Staff) and Public Service Company of Colorado (PSCC) was filed with the Commission. The Consent Settlement Agreement would lower the wholesale requirements rates to the City of Burlington, Colorado (FERC Rate Schedule No. 15), Towns of Julesburg and Center, Colorado (FERC Rate Schedules No. 20 and No. 17, respectively) and the transmission rate to Colorado-Ute Electric Association (FERC Rate Schedule No. 37). The lowered rates are the result of an informal investigation pursuant to Order No. 475.

The signatories request an effective date of August 1, 1988. Copies of this filing were served upon PSCC, the Town of Julesburg, Colorado-Ute Electric Association, Centel, the City of Burlington and the Town of Center, and the Colorado Public Utilities Commission.

*Comment date:* September 6, 1988, In accordance with Standard Paragraph E at the end of this notice.

**2. Union Electric Company**

[Docket No. ER88-562-000]

Take notice that on August 15, 1988, Union Electric Company (UE) tendered for filing an Interchange Agreement dated July 15, 1988, between UE and Kansas City Power & Light Company.

The Interchange Agreement, supersedes in its entirety an existing agreement and among other things, establishes the rights and obligations of the parties, the points of interconnections, the types of power and energy to be exchanged and the rates therefore.

UE requests that the filing be permitted to become effective July 15, 1988.

*Comment date:* September 6, 1988, in accordance with Standard Paragraph E at the end of this notice.

**3. Niagara Mohawk Power Corporation**

[Docket No. ER88-561-000]

Take notice that on August 15, 1988, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing an agreement between Niagara Mohawk and Vermont Public Power Supply Authority dated May 1, 1988.

The May 1, 1988 agreement is to provide for the sale by Niagara Mohawk of peaking capacity and related energy to Vermont Public Power Supply Authority. The terms of this agreement and the period during which the purchase of Peaking Capacity can occur shall commence on May 1, 1988 and shall continue until October 31, 1988.

Copies of this filing were served upon Vermont Public Power Supply Authority

and the New York State Public Service Commission.

*Comment date:* September 6, 1988, in accordance with Standard Paragraph E at the end of this notice.

**4. Oklahoma and Electric Company**

[Docket No. ER87-627-000]

Take notice that on February 2, 1988, Oklahoma Gas and Electric Company (OG&E) tendered for filing revised rates which are applicable to the towns of Mannford and Perry, Oklahoma.

The decreased rates that have been proposed by the Company are being made to reflect the decrease in the corporate income tax rate pursuant to the Tax Reform Act of 1986 and are proposed to be effective with usage on and after July 1, 1987.

OG&E states that copies of the tariff, rate schedules and the entire filing have been sent to Mannford and Perry, Oklahoma. A complete set of the filing has also been sent to the Corporation Commission of the State of Oklahoma and the Arkansas Public Service Commission.

*Comment date:* September 6, 1988, in accordance with Standard Paragraph E at the end of this document.

**5. Colockum Transmission Company, Inc.**

[Docket No. ER88-563-000]

Take notice that on August 15, 1988, Colockum Transmission Company, Inc. tendered for filing as a change of rate a contract between Colockum and Pacific Power & Light Company.

This contract contemplates the exchange of capacity for energy, and involves no form of income for either party. Pursuant to the contract, Pacific agrees to delivery firm energy to Colockum at a rate of exchange of 1947 kilowatthours of energy per kilowatt of capacity.

*Comment date:* September 6, 1988, 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, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88-19274 Filed 8-24-88; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket Nos. CP88-665-000 et al.]**

## Midwestern Gas Transmission Company et al.; Natural Gas Certificate Filings

August 18, 1988.

Take notice that the following filings have been made with the Commission:

**1. Midwestern Gas Transmission Company**

[Docket No. CP88-665-000]

Take notice that on August 8, 1988, Midwestern Gas Transmission Company (Midwestern), 1010 Milam, Houston, Texas 77002, filed in Docket No. CP88-665-000 an application pursuant to section 7(c) of the Natural Gas Act for authorization to transport natural gas for six shippers, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Midwestern proposes to transport, on an interruptible basis, up to 747,450 Dth per day for the account of six shippers as follows:

| Shipper | Volume (Dth/day) |
|---|---|
| Poco Petroleum Ltd. | 207,450 |
| Natural Gas Clearinghouse | 100,000 |
| Koch Hydrocarbon Company | 100,000 |
| Victoria Gas Corporation | 110,000 |
| Renaissance Energy Ltd. | 80,000 |
| Tarpon Gas Marketing Ltd. | 150,000 |

It is stated that the proposed service involves Midwestern's northern system. Midwestern states that the gas would be received and delivered at various points as set forth in the Precedent Agreements with each shipper contained in Exhibit I of the application.

Midwestern proposes to charge each shipper the rate set forth in Midwestern's Rate Schedule IT-2. Midwestern states the term of the transportation agreement is for a period of five years.

Midwestern states that the proposed transportation services are necessary to meet the shipper's existing as well as future requirements and that the services would also provide access to alternate sources of supply and markets.

*Comment date:* September 8, 1988, in accordance with Standard Paragraph F at the end of this notice.

**2. American Distribution Company, Alabama Division**

[Docket Nos. CP84-474-011; and Docket No. CP86-263-003]

Take notice that on August 5, 1988, American Distribution Company (Alabama Division), (Applicant), 333 Clay Street, Suite 2000, Houston, Texas 77002, filed in docket Nos. CP84-474-011 and CP86-263-003 an application pursuant to section 7(c) of the Natural Gas Act for amendments to its certificates to extend the authorized terms to be coterminous with the life of production from the Copeland plant, Washington County, Alabama, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant notes that the term of the authorizations issued in Docket Nos. CP84-474-001 and CP86-263-001 expire on December 23, 1988. Applicant now proposes to extend the aurhorizations to be coterminous with the life of the Copeland plant, a term which Applicant indicates would coincide with the term related to the authorization issued to Applicant in Docket No. CP84-474-000. No other changes are proposed.

*Comment date:* September 8, 1988, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

**3. Great Lakes Gas Transmission Company**

[Docket No. CP87-467-003]

Take notice that on August 8, 1988, Great Lakes Gas Transmission Company (Great Lakes), 2100 Buhl Building, Detroit, Michigan 48226, filed in Docket No. CP87-467-003, a petition to amend the orders issued in Docket Nos. CP87-467-000, *et al.*, CP79-462, *et al.* and CP66-110, *et al.*, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Great Lakes states that it requests authorization to continue to provide firm transportation service to both Texas Eastern Transmission Corporation (Texas Eastern) and Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), of volumes of natural gas to be purchased by Texas Eastern and Tennessee from ProGas Limited, in the quantity of 75,000 Mcf of natural gas per day (Mcfd), through the contract year ending November 1, 2000.

Great Lakes states that pursuant to an order dated June 10, 1981 (15 FERC ¶ 61,254), which granted it a certificate of public convenience and necessity, in Docket No. CP79–462, *et al.*, as amended by orders dated July 18, 1985, (32 FERC ¶ 62,191), February 10, 1986, (34 FERC ¶ 61,185), November 28, 1986, (37 FERC ¶ 61,195) and October 29, 1987, (41 FERC ¶ 61,094, reh'g granted, 41 FERC ¶ 61,302), Great Lakes is currently authorized to transport up to 75,000 Mcfd for each of Texas Eastern and Tennessee. It is further stated that in the order issued October 29, 1987, the Commission stated that the subject transportation service would terminate on the earlier of one year from the date of the October 29, 1987 order, or the date that Great Lakes accepts a blanket certificate issued by the Commission pursuant to Part 284 of the Regulations.

It is stated that both Texas Eastern and Tennessee have received authorization from the Economic Regulatory Administration (ERA), in Docket No. 86–06–NG and Docket No. 87–37–NG, respectively, for the import of the subject volumes, for terms ending October 31, 2000. It is further stated that Texas Eastern and Tennessee have executed amendatory agreements, each dated July 27, 1988, with Great Lakes, which embody the parties' agreement to seek regulatory authority for transportation arrangements to November 1, 2000.

Great Lakes states that no additional facilities would be required to provide the subject service, since this service would continue to be provided as a result of agreement with TransCanada Pipe Lines Limited (TransCanada) to back-off equivalent volumes from Great Lakes's system under a gas transportation contract dated September 12, 1967, as amended (T–4 Transportation Contract). Great Lakes indicates that this is reflected in a letter agreement between Great Lakes and TransCanada, dated July 27, 1988. It is further indicated that such letter agreement provides for a continuation of the current back-off arrangements, subject to receipt of regulatory approvals satisfactory to the parties, to November 1, 2000. Great Lakes states that the transportation by Great Lakes for Texas Eastern and Tennessee has, since its inception, occurred in conjunction with the back-off under the T–4 Transportation Contract, and would be required to enable Great Lakes to continue the subject transportation service. Great Lakes further states that pursuant to the back-off arrangements, the firm contract quantity under the T–4 Transportation Contract would be reduced by the sum of the firm contract quantities in effect between Great Lakes and Texas Eastern and Tennessee.

Great Lakes indicates that since this is a back-off arrangement, and to make Great Lakes whole as a result of reduction in charges payable by TransCanada, the Commission has authorized rates for Texas Eastern and Tennessee on the Great Lakes' system equivalent to the rates applicable for service under the T–4 Transportation Contract.

*Comment date:* September 8, 1988, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

**4. Northwest Pipeline Corporation**

[Docket No. CP88–651–000]

Take notice that on August 1, 1988, Northwest Pipeline Corporation (Applicant), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP88–651–000, an application pursuant to section 7(c) of the Natural Gas Act for a blanket certificate of public convenience and necessity, with pre-granted abandonment, authorizing implementation of services at the Jackson Prairie Storage Field under the terms and conditions of a proposed new Rate Schedule SGS–2; all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it is a one-third owner of the Jackson Prairie Storage Field in Washington. It is stated that the Commission's Order on Rehearing, dated May 31, 1988, (43 FERC ¶ 61342) in Docket No. CP86–578–000, required that Northwest's storage facilities be subject to open access requirements to the extent that they function as system supply storage. Specifically, with respect to the Jackson Prairie storage facility, it is stated that the order required the Applicant to make its one-third of the facility available to the extent that it is used for system supply storage. It is asserted that currently at Jackson Prairie, Applicant is utilizing 25,000 Mcf of daily storage demand and 2,000,000 Mcf of storage capacity for system supply protection and load balancing. It is further asserted that upon approval of the pending pleadings in Docket Nos. CP87–516–000 and CP88–200–000, the subject 25,000 Mcf/d of storage demand will be wholly owned by Applicant, while the 2,000,000 Mcf of storage capacity will continue to be owned one-third each by Applicant, Washington Natural Gas Company (Washington Natural) and the Washington Water Power Company (WWP). Therefore, Applicant, in compliance with the May 31, 1988 Commission order, proposes to make available for open access storage services the 25,000 Mcf/d of storage demand, which is anticipated to soon be wholly owned by Applicant, and Applicant's ownership share, 666,666 Mcf of the 2,000,000 Mcf storage capacity which is being utilized by Applicant for system supply storage.

Applicant requests the Commission to issue a blanket certificate authorizing it to implement new contract storage services in accordance with a proposed new Rate Schedule SGS–2 and any future executed service agreements thereunder. Applicant also requests pre-granted abandonment approval to terminate service under SGS–2 service agreements upon expiration of such service agreements. Rate Schedule SGS–2 is proposed to be applicable to Applicant's ownership share of the Jackson Prairie storage field which is not presently committed to services under Rate Schedule SGS–1.

It is said that upon issuance and acceptance of the requested certificate authorizations, service under Rate Schedule SGS–2 would be available to any party which executed a service agreement under the SGS–2 Rate Schedule and which has transportation agreements in place under Rate Schedules TI–1 or TF–1 covering the delivery of the customer's gas to and from the Jackson Prairie storae field.

Further, Applicant avers that the proposed terms and conditions of service under Rate Schedule SGS–2 will parallel the terms and conditions of service under Applicant's existing Rate Schedule SCS–1, including the modifications thereto which are pending Commission approval in Docket No. CP88–200–000.

The proposed initial rates for service under Rate Schedule SGS–2 are as follows:

| | |
|---|---|
| Demand charge | 102.80 cents per MMBtu of daily storage demand per month. |
| Capacity demand charge | 2.66 cents per MMBtu of storage capcity per month. |
| Withdrawal charge | 3.08 cents per MMBtu of gas withdrawn. |

Applicant further requests that the Commission approve specific procedures it should follow in offering the new SGS–2 service on a non-discriminatory, first-come first-served basis. Applicant proposes to establish a queue for SGS–2 service requests commencing the date this certificate is filed with the Commission. All requests

received within 10 days of the Commission order date approving this application would be treated as if received on the application filing date. Since available capacity likely will be inadequate to satisfy all requests having the same request date, an allocation procedure will be needed. It is stated that section 5.2(b) of the Storage Agreement (See Sheet No. 1232 of Applicant's Tariff Volume No. 2) obligates Applicant to make the subject capacity available only to its existing distribution customers, while the Commission's May 31, 1988 order in Docket No. CP86–578–000 requires that the subject capacity be made available on an open-access basis. When multiple requests have the same date, Applicant asks the Commission to clarify whether it should allocate available capacity among its requesting distribution customers prior to considering other requests or whether it should allocate the available capacity amongst all requesters without distinction. It is explained that in either case, allocations of available capacity would be *pro rata*, based upon the requested storage demands of the appropriate group of requesters and storage capacity would be allocated proportionate to storage demand. Any subsequent relinquishment of capcity by the SGS–2 customers would be offered similarly to those requesters in the queue with remaining unsatisfied requests, it is stated.

*Comment date:* September 8, 1988, in accordance with Standard Paragraph F at the end of this notice.

**Standard Paragraph**

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88–19275 Filed 8–24–88; 8:45 am]

BILLING CODE 6717–01–M

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**[Project No. 10255–001]**

## Alternative Energy Management, Inc., Surrender of Preliminary Permit

August 22, 1988.

Take notice that Alternative Energy Management, Inc., Permittee for the proposed Perry Hydro Project No. 10255, has requested that its preliminary permit be terminated. The permit was issued on June 5, 1987, and would have expired May 31, 1990. The project would have been located on the Delaware River near Topeka, Jefferson County, Kansas. The Permittee cites that the proposed project is not economically feasible as the basis for the surrender request.

The Permittee filed the request on August 2, 1988, and the preliminary permit for Project No. 10255 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88–19276 Filed 8–24–88; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. RP88–201–001]**

## East Tennessee Natural Gas Company; Tariff Filing

August 19, 1988.

Take notice that on August 12, 1988, East Tennessee Natural Gas Company (East Tennessee) hereby files ten copies of the following revised tariff sheets to Original Volume No. 1 of its FERC Gas Tariff to be effective July 1, 1988.

Twelfth Revised Sheet No. 5
First Revised Sheet No. 143
First Revised Sheet No. 144

East Tennessee states that the purpose of these revisions is to comply with the July 28, 1988, Commission Order in this docket. East Tennessee is filing Revised Sheet No. 143 to include language allowing Buyer to elect payment of the flow-through surcharge of a single payment or a six-month or thirty-six month amortization period. Revised Sheet No. 144 provides for direct billing of former customers only if they were receiving, or had certificate authorization to receive, service on July 1, 1988.

East Tennessee states these tariff sheets have been revised to establish Surcharge Subaccounts for the purpose of computing carrying charges and accommodating separate amortization schedules for each Tennessee surcharge. Also, the collection of accrued interest has been changed to the January and July invoices of each calendar year rather than transferring the accrued interest to a subsequent surcharge.

East Tennessee states that in response to the Commission's inquiry in the July 28 Order regarding the sales to Orange & Rockland, East Tennessee notes that the Commission Order in Docket No. CP81–219 authorizing these sales expressly conditioned (in ordering paragraph (B)(1)) East Tennessee's certificate to "fully interruptible" sales that were "subordinate to the requirements of East Tennessee's existing customers" 16 FERC ¶ 61,127, at 61,307 (1981).

East Tennessee states that copies of the filing have been mailed to all of its customers and affected state regulatory commissions. Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such

motions or protests should be filed on or before August 29, 1988. 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; provided, however, that any person who previously filed a motion to intervene in this proceeding is not required to file a further motion. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88-19277 Filed 8-24-88; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. RP87-22-008 et al.]**

## High Island Offshore System et al.; Filing of Pipeline Refund Reports and Refund Plans

August 22, 1988.

Take notice that the pipelines listed in the Appendix hereto have submitted to the Commission for filing proposed refund reports. The date of filing and docket number are also shown on the Appendix.

Any person wishing to do so may submit comments in writing concerning the subject refund reports. All such comments should be filed with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, on or before September 6, 1988. Copies of the respective filings are on file with the Commission and available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

APPENDIX

| Filing date | Company | Docket No. |
|---|---|---|
| 7/5/88 | Highland Island Offshore System. | RP87-22-008 |
| 7/22/88 | Northwest Pipeline Corporation. | RP79-57-009 |
| 7/29/88 | El Paso Natural Gas Company. | RP85-58-020 |
| 7/29/88 | Trunkline Gas Company. | RP85-77-009 |
| 8/1/88 | Great Lakes Gas Transmission Co. | RP86-35-012 |
| 8/15/88 | Columbia Gas Transmission Corp. | TA81-1-21-030 |

[FR Doc. 88-19278 Filed 8-24-88; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket Nos. CP86-578-017, RP85-13-022, 023, RP8-47-011, 012, and TQ88-2-37-002]**

## Northwest Pipeline Corp.; Change in FERC Gas Tariff

August 19, 1988.

Take notice that on August 12, 1988, Northwest Pipeline Corporation ("Northwest"), in compliance with the orders issued by the Federal Energy Regulatory Commission ("Commission") on July 28, 1988 in the above docket numbers, submitted the following tariff sheets to be a part of its FERC Gas Tariff. On August 16, 1988, Northwest filed Corrected Substitute Forty-First Revised Sheet No. 10 to its FERC Gas Tariff, First Revised Volume No. 1, which has a mathematical error contained in its August 12, 1988 filing.

*First Revised Volume No. 1*

Substitute Sixth Amended Thirty-ninth Revised Sheet No. 10
Substitute Forty-First Revised Sheet No. 10
Third Revised Sheet No. 16
Substitute Second Revised Sheet No. 16-A
Third Revised Sheet No. 21
First Revised Sheeet No. 21-A
Fourth Revised Sheet No. 27
Substitute Third Revised Sheet No. 28
Third Revised Sheet No. 33
Second Revised Sheet No. 36
Second Revised Sheet No. 38
Second Revised Sheet No. 39
Third Revised Sheet No. 40
Substitute Third Revised Sheet No. 301

*Original Volume No. 1-A*

Second Amended Thirteenth Revised Sheet No. 201
First Amended Substitute Fourteenth Revised Sheet No. 201
First Amended Substitute Fourth Revised Sheet No. 202
Second Revised Sheet No. 303
Second Revised Sheet No. 311
Second Revised Sheet No. 414-A
Second Revised Sheet No. 502
Second Revised Sheet No. 511
Second Revised Sheet No. 515
Substitute First Revised Sheet No. 601

*Original Volume No. 2*

Fourteenth Revised Sheet No. 2
Sixth Revised Sheet No. 2.1

(For convenience, Northwest is resubmitting tariff sheets with this filing which have not changed since being previously submitted in its July 18, 1988 compliance filing in Docket No. RP88-47-000.)

Northwest states the purpose of this filing is to comply with the Commission's orders of July 28, 1988 in Dockets Nos. CP86-578-015 and RP85-13-020, and in Docket Nos. RP88-47-003 and 005. Northwest has also consolidated issues addressed in various inter-realted pending proceedings and has provided the Commission and other parties an opportunity to deal with any inter-related issues at the same time in response to a single pleading.

A copy of this filing is being served on all parties of record, Northwest's jurisdictional customers and affected state commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washigton, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 29, 1988. 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,**

*Acting Secretary.*

[FR Doc. 88-19279 Filed 8-24-88; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket Nos. TA89-1-40-000 and RP88-168-003]**

## Raton Gas Transmission Co.; Filing of Annual Purchased Gas Adjustment

August 19, 1988.

Take notice that Raton Gas Transmission Company (Raton) on August 12, 1988, tendered for filing proposed changes to its FERC Gas Tariff, Original Volume No. 1, to implement its first annual purchased gas adjustment under the provisions of Order Nos. 483 and 483-A. The proposed tariff sheets are to be effective October 1, 1988.

Raton states that the revised tariff sheets reflect a demand rate decrease of $1.48, and a commodity rate decrease of 0.27¢ for the P-1 Rate Schedules. The commodity rate change reflects a decrease of 2.07¢ in Raton's projected cost of gas and an increase of 1.79¢ in Raton's surcharge rate effective October 1, 1988. These decreases are based upon a comparison with the rates filed by Raton on February 5, 1988 in Docket No. RP88-55, which rates were accepted by Commission Order of March 24, 1988.

Copies of the filing have been served upon Raton's jurisdictional customers and other interested persons, including public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with section 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214). All such motions or protests in Docket No. TA89-1-40-000 should be filed on or before September 12, 1988, and all such motions or protests in Docket No. RP88-168-003 should be filed on or before August 29, 1988. 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,**

*Acting Secretary.*

[FR Doc. 88-19280 Filed 8-24-88; 8:45 am]

BILLING CODE 6717-01-M

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## Sea Robin Pipeline Co.; Tariff Filing of Revised Tariff Sheets

**[Docket Nos. TQ88-1-6-001, 002 and RP88-138-001, 002]**

August 19, 1988.

Take notice that on August 8, 1988, Sea Robin Pipeline Company (Sea Robin) tendered for filing certain tariff sheets and on August 15, 1988, tendered for filing an amendment to its August 8, 1988 filing to include additional tariff sheets inadvertently not included in the August 8, 1988 filing. The tariff sheets thus filed on August 15, 1988 are as follows:

*Original Volume No. 1*

Substitute Fiftieth Revised Sheet No. 4
Substitute Fifth Revised Sheet No. 6
Substitute Sixth Revised Sheet No. 7
Substitute Third Revised Sheet No. 7-A
Substitute Fourth Revised Sheet No. 7-C
Substitute Original Sheet No. 7-C1
Substitute Second Revised Sheet No. 15
Substitute Second Revised Sheet No. 16
Substitute Third Revised Sheet No. 17
Substitute Fourth Revised Sheet No. 19
Substitute Original Sheet No. 19-A

*Original Volume No. 2*

Substitute Thirty-third Revised Sheet No. 127-D
Substitute Thirty-third Revised Sheet No. 135-C

Sea Robin states the proposed effective date for the preceding tariff sheets is June 1, 1988. These tariff sheets are being filed to incorporate the appropriate language in section 1 of Rate Schedules X-1 and X-2 and section 4 of Rate Schedules X-7 and X-8 to satisfy the requirements specified in the Commission's Letter Order of July 8, 1988. These revisions bring Sea Robin's PGA clause into compliance with the Commission's regulations as promulgated under Order Nos. 483 and 483-A. Sea Robin proposes no changes to its Current Effective Rates at this time.

Sea Robin also tendered for filing to be effective July 1, 1988 the following tariff sheets:

*Original Volume No. 1*

Substitute Fifty-first Revised Sheet No. 4

*Original Volume No. 2*

Substitute Thirty-fourth Revised Sheet No. 127-D
Substitute Thirty-fourth Revised Sheet No. 135-C

Sea Robin states that these revised tariff sheets will be mailed to its jurisdictional customers and to interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in such accordance with §§ 385.214 and 385.211 of the Commission's regulations. All such motions of protest should be filed on or before Aug. 29, 1988. 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,**

*Acting Secretary.*

[FR Doc. 88-19281 Filed 8-24-88; 8:45 am]

BILLING CODE 6717-01-M

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**[Project No. 459-022]**

## Union Electric Co.; Public Meetings

August 22, 1988.

On December 18, 1986, Union Electric Company, licensee of the Osage Project No. 459, located on the Osage River in Benton, Camden, Miller and Morgan Counties, Missouri, filed an application to amend its license to revise the prescribed flood control regulation of the project reservoir, Lake of the Ozarks, to reflect changes in the hydrological conditions in the Osage Basin due to the construction and operation of the U.S. Army Corps of Engineers' Harry S. Truman Project, located upstream of the Osage Project.

The Commission staff has determined that it should meet with interested federal, state, and local agencies and the general public so that the staff may receive and evaluate their veiws, technical and otherwise, regarding the proposed amendment.

Accordingly, a meeting will be held with interested agencies to consider their opinions concerning technical issues related to the proposed amendment on Wednesday, September 14, 1988, at 2:00 p.m. at the Howard Johnson Motel, 1200 South Kirkwood Road, Kirkwood, Missouri 63122.

Futhermore, a public meeting will be held on Thursday, September 15, 1988, from 8:00 p.m. to 10:30 p.m., at Conference Room No. 492, Truman State Office Building, 301 West High Street, Jefferson City, Missouri 65101, at which interested agencies, officials, and the general public may express their views regarding the proposed amendment.

At each of these meetings statements may be given orally or in writing. The meetings will be recorded by a stenographer, and all statements (oral and written) will become part of the public record in this proceeding. In addition, written comments may be submitted until October 15, 1988. Any such comments should be addressed to Lois D. Cashell, Acting Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, and should clearly show the project name and number (*i.e.*, Osage Project No. 459-022) on the first page.

Inquiries with regard to these meetings should be addressed to Ronald Kowalewski, Office of Hydropower Licensing, at (202) 376-1942.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88-19282 Filed 8-24-88; 8:45 am]

BILLING CODE 6717-01-M

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## Office of Hearings and Appeals

## Issuance of Decisions and Orders; Week of July 4 Through July 8, 1988

During the week of July 4 through July 8, 1988 the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

### Appeal

*American Air Filter, 7/5/88, KFA-0192*

American Air Filter filed an Appeal from a Freedom of Information Act (FOIA) determination issued to it by the

Albuquerque Operations Office (Authorizing Official) of the DOE. The Authorizing Official withheld certain bidding price information of unsuccessful bidders for DOE contracts based upon his finding that the release of the information could cause competitive injury to the firms. American Air Filter contended that the information was not proprietary or confidential and that its release would not place anyone at a competitive disadvantage. In considering the Appeal, the DOE found that the information was properly withheld pursuant to Exemption 4 since release of the data could give American information which would allow the firm to consistently undercut the future bids of its competitors. Therefore, the Appeal was denied.

**Motion for Discovery**

*Texas American Oil Corp., 7/7/88, KRD-0360, KRH-0360*

Texas American Oil Corporation (Texas American) filed a Motion for Discovery and a Motion for Evidentiary Hearing in connection with its Statement of Objections to a Proposed Remedial Order (PRO) that was issued to the firm by the Economic Regulatory Administration (ERA) on September 30, 1986. In the PRO, the ERA alleges that in its Refiners' Monthly Reports during the period October 1976 through February 1977, Texas American's wholly-owned subsidiary, Texas American Petrochemicals, Inc. (TAPI), misreported certain crude oil subject to "processing agreements" and thereby received excessive small refiner bias (SRB) benefits under DOE's Entitlements Program, in violation of 10 CFR 211.67(e)(2). In the alternative, the ERA alleges that TAPI's transactions involving that crude oil resulted in the circumvention or contravention of the Entitlements Program, in violation of 10 CFR 205.202. In its Motions, Texas American requested responses to 92 interrogatories and production of documents and also that an evidentiary hearing be convened, principally with respect to its contention that the ERA misapplied the standards of § 211.67(e)(2) since TAPI did not directly purchase the crude oil concerned from the processing refiner and did not directly or indirectly sell the refined products to the processing refiner. In considering the Motion for Discovery, the DOE determined that much of the discovery was unnecessary since the PRO and the ERA's pleadings contained the information requested, and that the discovery was otherwise irrelevant or involved matters of legal interpretation. In considering the Motion for Evidentiary Hearing, the DOE determined that Texas American had failed to specify a disputed factual issue material to the violation alleged in the PRO. Accordingly, Texas American's Motion for Discovery and Motion for Evidentiary Hearing were denied.

**Implementation of Special Refund Procedures**

*Evett Oil Co., 7/6/88, KEF-0020*

The DOE issued a Decision and Order implementing a plan for the distribution of $60,000 (plus accrued interest) received pursuant to a consent order entered into by Evett Oil Company and the DOE on July 1, 1985. The DOE determined that the consent order funds should be distributed to customers that purchased covered products from Evett during the period March 1, 1979 through March 31, 1980. The specific information to be included in Applications for Refund is set forth in the Decision.

*World Oil Company, 7/7/88, KEF-0005*

The DOE issued a Decision and Order implementing a plan for the distribution of $1,057,703 (plus accrued interest) received pursuant to a consent order entered into by World Oil Company and the DOE on January 19, 1984. The DOE determined that the consent order funds would be divided into two pools, one relating to World's crude oil sales and the other relating to the sales of refined products. Purchasers of World refined products during the period August 20, 1973 through January 27, 1981 may file claims for refunds from the refined products pool. Under the procedures adopted, the crude oil pool will be made available for distribution pursuant to the DOE's Statement of Restitutionary Policy for crude oil claims. The specific information to be included in Applications for Refund is set forth in the Decision.

**Refund Applications**

*Bak Ltd/Portland Heating Oil Co., Inc., 7/8/88, RF303-4*

The DOE issued a Decision and Order concerning an Application for Refund filed by Portland Heating Oil Company, Inc., a No. 2 heating oil retailer. Portland sought a portion of the settlement fund obtained by the DOE through a consent order entered into with BAK LTD. The DOE determined that Portland met the criteria for a refund of $1,377. Since this amount is below the $5,000 small claims threshold, Portland was not required to support its refund claim with injury documentation. Portland was awarded a refund of $1,377 plus $1,365 in accrued interest.

*Beacon Oil Company/Golden State Oil Co., 7/7/88, RF238-29*

The DOE issued a Decision and Order concerning an Application for Refund filed on behalf of Golden State Oil Company (Golden State) in the Beacon Oil Company (Beacon) special refund proceeding. During 1980, Golden State received $44,722 of the $59,810 in motor gasoline credit refunds that it was scheduled to receive from Beacon. Although Golden State was eligible to apply for the $15,088 that remained unpaid when motor gasoline was deregulated on January 28, 1981, the firm did not attempt to demonstrate that it was injured by Beacon's alleged overcharges. Instead, Golden State attempted to receive a refund under the small claims presumption of injury. Because DOE determined that Golden State did not pass through to its customers the $44,722 of previously received credit, the firm was not eligible for a small claims refund. Accordingly, its Application for Refund was denied.

*Dallas County Board of Education Amherst School District, 7/8/88, RF272-3479, RF272-3555.*

The DOE issued a Decision and Order granting two Applications for Refund from crude oil overcharge funds based on the Applicants' purchases of refined petroleum products from August 19, 1973, through January 27, 1981. Dallas County Board of Education estimated its 1973-1974 purchases from its actual 1974-1975 volume. Amherst School District estimated its claim based on its recent fuel consumption levels. The DOE determined that each applicant should be presumed injured because it was an end-user of the gallons claimed. The sum of the refunds granted in this Decision is $528.

*Getty Oil Co./Farmers and Merchants, Cooperative Oil Co., 7/8/88, RF265-2650, RF265-2651, RF265-2652, RF265-2653*

Farmers and Merchants Cooperative Oil Co. (Farmers) filed an Application for Refund in which the firm sought a portion of the fund obtained by the DOE through a consent order entered into with Getty Oil Company. The DOE found that Farmers purchased Getty motor gasoline, middle distillate, propane and other petroleum products during the consent order period, and that the applicant, an agricultural cooperative, was injured. Under the procedure outlined in *Getty Oil Corp.*, 15 DOE ¶ 85,064 (1986) Farmers was found entitled to receive a refund of $42,346.

*Good Hope Refineries/Chevron U.S. A. Inc., Gulf Oil Corp., 7/6/88, RF189–18, RF189–23*

The DOE issued a Decision and Order concerning two Applications for Refund filed by Chevron U.S.A. Inc. and Gulf Oil Corporation in the Good Hope Refineries refund proceeding. Both applicants were spot purchasers of Good Hope petroleum products. After examining the evidence and supporting documentation, the DOE concluded that the applicants had failed to rebut the presumption that spot purchasers were not injured by Good Hope's alleged violations. Accordingly, both applications were denied.

*King & King Enterprises, Inc./Petroleum Trading & Transport Co., 7/7/88, RF256–4*

The DOE issued a Decision and Order concerning an Application for Refund filed by Petroleum Trading & Transport Co. (PT&T) in the King & King Enterprises, Inc. (K&K) special refund proceeding. Purchase records submitted by PT&T indicated that the firm was a spot purchaser of K&K motor gasoline, and hence, PT&T was presumed not to have been injured. PT&T, however, attempted to rebut the spot purchaser presumption of non-injury. For the two months in which it purchased from KK, PT&T demonstrated that its base period supply obligations had limited its discretion, but the firm demonstrated that it had suffered a loss on its K&K purchases in only one of the months. Consequently, the DOE limited PT&T's refund to the K&K products that it resold at a loss. The total refund granted to PT&T was $7,804, representing $4,664 in principal and $3,140 in accured interest.

*Mat Dur Inc., 7/6/88, RF272–12651*

The DOE issued a Decision and Order denying an application for crude oil overcharge refunds filed by Mat Dur Inc., a retailer of refined petroleum products during the period August 19, 1973 through January 27, 1981. Because Mat Dur did not demonstrate that it was injured due to the crude oil overcharges, it was ineligible for a crude oil refund.

*Milton Jackson, Et Al., 7/7/88, RF 272–1513, Et Al.*

The DOE issued a Decision and Order granting 17 Applications for Refund from crude oil overcharge funds based on the Appliants' purchases of refined petroleum products from August 19, 1973, through January 27, 1981. Those applicants that estimated their annual petroleum purchases multiplied the number of acres they farmed by 23.8, the average annual petroleum product consumption rate among the nation's farmers, as estimated by the U.S. Department of Agriculture. In two cases, the DOE used a factor of 0.13996 gal./lb. to convert pounds of grease to gallons. The DOE determined that all of the Appliants should be presumed injured because each was an end-user of the gallons it claimed. The refunds granted in this Decision total $820.

*Mobil Oil Corporation/Benson's Mobil Svc., Holland Fuel Inc., Hollis Bros. Mobil Service, Lou and Ben's Mobil Service, 7/7/88, RF 225–6589, RF225–6590, RF225–6594, RF 225–6606*

Benson's Mobil Service, Holland Fuel Inc., Hollis Brothers Mobil Service and Lou and Ben's Mobil Service, all retailers of Mobil refined petroleum products, filed Applications for Refund from the Mobil Oil Corporation escrow account. Each applicant elected to apply for a refund based upon the presumptions set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totalling $493 ($395 principal plus $98 in interest).

*Mobil Oil Corp./Dee Lester's Mobil Svc., Palatine Auto Clinic, Lester's Mobil Service, Bill's Mobil Service, 7/6/88, RF225–6591, RF225–6595, RF225–6596, RF225–6600*

Dee Lester's Mobile Service, Palatine Auto Clinic, Lester's Mobil Service, and Bill's Mobil Service filed applications for refund for the Mobil Oil Corporation escrow account. OHA wrote each of the firms requesting confirmation that Mr. Nic Schnettler was its authorized representative in this proceeding. Palatine Auto Clinic informed OHA that Mr. Schnettler was not authorized to submit a claim on behalf of the firm. The letters to the other three firms were returned as undeliverable and Mr. Schnettler was unable to prove that he was authorized to represent them in the Mobil refund proceeding. Therefore, the four Applications for Refund were dismissed.

*Mobil Oil Corp./Nicot Oil Co., Inc., 7/8/88, RF225–6577*

Nicot Oil Co., Inc., a reseller of Mobil refined petroleum products, filed an Application for Refund from the Mobil Oil Corporation escrow account. The applicant elected to apply for a refund based upon the presumptions set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted a refund of $4,214 (representing $3,375 in principal plus $839 in interest).

*Mohenis Services, Inc., 7/8/88, RF272–3538*

The DOE issued a Decision and Order granting an Application for Refund from crude oil overcharge funds based on the Applicant's purchases of refined petroleum products from August 19, 1973, through January 27, 1981. To calculate its gasoline purchase volume, the Applicant divided its estimated vehicle mileage figures by appropriate miles per gallon figures. The DOE determined that the Applicant should be presumed injured because it was an end-user of the gallons claimed. The refund granted in this Decision is $879.

*National Helium Corp., Belridge Oil Co., Palo Pinto Oil Co./Massachusetts, 7/8/88, RQ2–444, RQ8–445, RQ5–446*

The DOE issued a Decision and Order approving the consolidated second-state refund application submitted by the Commonwealth of Massachusetts in the National Helium Corp., Belridge Oil Co., and Palo Pinto Oil Co. refund proceedings. Massachusetts will use a total of $254,865 ($121,638 in principal plus $133,227 in interest) to develop a computerized traffic flow project that would incorporate highway mapping, an incident data base, and incident response plans. In evaluating the proposed project, the DOE determined that it would reduce motorists' fuel use and would improve the quality of transportation in the Commonwealth.

*Pyrofax Gas Corp./Wilson A. Rice & Son, Wise Oil & Fuel, 7/8/77 RR277–1, RR277–2*

The DOE issued a Decision and Order concerning Motions for Reconsideration filed by Wilson A. Rice & Son and Wise Oil & Fuel in the Pyrofax Gas Corporation special refund proceeding. In reviewing the motions, the DOE found that the firms' initial Applications for Refund merit reconsideration. Based on the information provided in the motions, the DOE determined that Rice should receive a refund of $4,578 in principal under the small claims presumption of injury and that Wise should receive a refund of $46,543, its full volumetric share of the Pyrofax consent order fund. Therefore, the DOE granted the firms refunds totalling $87,487 in principal and interest.

*Sandoz Pharmaceutical Corp., 7/8/88, RF272–3439*

The DOE issued a Decision and Order granting an Application for Refund from crude oil overcharge funds based on the Applicant's purchases of refined petroleum products from August 19, 1973, through January 27, 1981. The Applicant used actual contemporaneous records to calculate its claim volume. The DOE determined that the Applicant should be presumed injured because it was an end-user of the gallons claimed.

The refund granted in this Decision is $1,193.

*Sauvage Gas Company/Flame Gas Company, 7/6/88, RF308–1*

The DOE issued a Decision and Order concerning an Application for Refund fled by Flame Gas Company in the Sauvage Gas Company special refund proceeding. The DOE determined that Flame Gas did not purchase any covered petroleum products from Sauvage during the consent order period. Accordingly, its refund applications was denied.

**Crude Oil End-Users**

The Office of Hearings and Appeals granted crude oil overcharge refunds to end-user applicants in the following Decisions and Orders:

| Name | Case No. | Date | No. of applicants | Total refund |
|---|---|---|---|---|
| Bill Hanser Ranch, et al. | RF272–19400 | 7/8/88 | 112 | $3,861 |
| Clement Sipiorski et al. | RF272–19801 | 7/8/88 | 130 | 3,205 |
| Gerald F. Hochstein et al. | RF272–18600 | 7/7/88 | 144 | 3,402 |
| Gilbert Blankenship et al. | RF272–19600 | 7/8/88 | 164 | 3,552 |
| Kurt Huelskamp et al. | RF272–20400 | 7/6/88 | 159 | 3,786 |
| Milton, McLaen, et al. | RF272–19200 | 7/7/88 | 163 | 3,715 |
| Parks Farms, Inc. et al. | RF272–20800 | 7/8/88 | 142 | 3,859 |
| Ralph Bohrtz et al. | RF272–7611 | 7/7/88 | 142 | 7,502 |

**Dismissals**

The following submissions were dismissed:

| Name | Case No. |
|---|---|
| A. Duda and Sons, Inc. | RF272–41555 |
| Admiral Cruises Inc. | RF272–23225 |
| Alvin Kieffer | RF272–55535 |
| Anchor Glass Container Corp. | RF277–91 |
| Beaver Creek Board of Education | RF272–22944 |
| Bernard M. Strope | RF272–39437 |
| Biloxi Public Schools | RF272–48398 |
| Blanche W. Pallister | RF272–41890 |
| Borough of Emerson | RF272–37381 |
| Bronson Methodist Hospital | RF272–43775 |
| Brown Stove Works, Inc. | RF272–11278 |
| C&B Equipment | RF272–37560 |
| Carolina Stalite Co. | RF272–41581 |
| City of Emporia | RF272–49900 |
| City of Herington | RF272–42142 |
| City of Pratt | RF272–42151 |
| City of Quincy | RF272–48002 |
| City of Severy | RF272–42117 |
| City of Wyoming | RF272–49159 |
| Comanche County | RF272–42134 |
| Coulouthros Ltd. | RF272–23223 |
| Country Club Inn Motel | RF272–23531 |
| Crumly Farms | RF272–43684 |
| Dennis J. McConville | RF272–42040 |
| Dewitt Public Schools | RF272–43953 |
| Dole Packaged Foods Company | RF272–37066 |
| Donald Reinesch | RF272–41815 |
| Dunn County | RF272–17962 |
| Edwin F. Welch | RF272–49897 |
| Eureka Equity Exchange | RF272–45558 |
| | RF272–47865 |
| F.I.T. Aviation, Inc. | RF272–48394 |
| Florida Airmotive Inc. | RF272–48396 |
| Griffin Wood Co., Inc. | RF272–45556 |
| Harry Kimura | RF272–43717 |
| Herbert's Exxon | RF272–52547 |
| Holly Ridge Planting Co. | RF272–14845 |
| J&C Drilling Co. | RF272–43172 |
| Johnson Concrete Co., Inc. | RF272–41582 |
| Kadoka School District 35–1 | RF272–47885 |
| Lawton Transit Mix Inc. | RF272–49402 |
| Linn County | RF272–42129 |
| Logan County Highway Dept. | RF272–16457 |
| Long Island College Hsptl | RF272–41903 |
| Maple View Farms | RF272–44763 |
| Masonite Corporation | RF272–25593 |
| Michael Kenner | RF272–44708 |
| Neels Farms Inc. | RF272–36259 |
| Perry Public School | RF272–43635 |
| Piedmont Block Company | RF272–41583 |
| Pratt County Road Dept. | RF272–42146 |
| Randolph N. Rhodes | RF272–44623 |
| Riley County Public Works | RF272–42108 |
| Robert J. Pierson | RF272–40654 |
| Roger Thompson | RF272–52202 |
| Rudolph Feldkamp | RF272–54143 |
| Shanahan Farms | RF272–43707 |
| Simon Brothers Inc. | RF272–42981 |
| South Dakota Concrete Products | RF272–43626 |
| Squirt Pak | RF272–41552 |
| Town of Tarboro | RF272–42972 |
| U.S.D. 341 | RF272–16434 |
| United Veterans Mutual Housing | RF272–5000788 |
| University Veterans Mutual Housing | RF272–50788 |
| University of Hawaii Auxiliary Services | RF272–56216 |
| Varsity Service | RF272–48397 |
| Vintage Enterprises, Inc. | RF272–41037 |
| Wells Community Hospital | RF272–24834 |
| 230 Owners Corporation | RF272–55653 |

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: August 19, 1988.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

[FR Doc. 88–19357 Filed 8–24–88; 8:45 am]

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## Issuance of Decisions and Orders; Week of July 11 Through July 15, 1988

During the week of July 11 through July 15, 1988 the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

**Appeal**

*William R. Bowling II, 7/15/88, KFA–0191*

William R. Bowling II (Appellant) filed an Appeal from a denial by the Director of the DOE's Office of Executive Secretariat of a request for information which the Appellant has submitted under the Freedom of Information Act. The Appellant sought access to, *inter alia*, the minutes of a meeting of the Atomic Energy Commission purportedly held on October 26, 1953. In considering the Appeal, the OHA found that an adequate search had been conducted in response to the Appellant's request, and that no documents responsive to the Appellant's request exist. Accordingly, the Appeal was denied.

**Request for Exception**

*Petroleum Traders Corp., 7/15/88, KEE–0163*

Petroleum Traders Corporation (PTC) filed an Application for Exception from the requirement to complete and file Form EIA–782B, entitled "Resellers/ Retailers' Monthly Petroleum Product Sales Report." In considering the request, the DOE found that PTC's reporting burden was not significantly different from that of the other firms participating in the EIA–782B survey. Accordingly, exception relief was denied.

**Request For Modification and/or Rescission**

*States, 7/12/88, KER–0015, KER–0016, KER–0017*

The DOE considered a Motion for Reconsideration filed by 33 States and territories (States). The States objected to several aspects of three Decisions and Orders Implementing refund procedures for disbursing alleged crude oil overcharges to injured persons. The DOE pointed out that all of the States' arguments had been fully considered in a prior Decision and Order and that there was no basis for adopting any of their suggestions. Accordingly, the Motion was denied.

**Implementation of Special Refund Procedures**

*Exxon Corp., 7/14/88, KEF-0087*

The DOE issued a Decision and Order implementing procedures for the distribution of $28,348,738.50 (plus accrued interest) obtained as a result of a DOE consent order with Exxon Corporation on October 8, 1986. The DOE determined that the consent order funds should be distributed to customers that purchased refined petroleum products from Exxon during the period March 6, 1973 through January 27, 1981. The specific information required in an Application for Refund is set forth in the Decision and Order.

**Refund Applications**

*Alpine Butane Co., Inc., 7/13/88, RF272-7643*

The DOE issued a Decision and Order denying an application for a crude oil refund filed by Alpine Butane Company, Inc., a reseller of propane and butane. Alpine was ineligible to receive a refund because it failed to demonstrate that it was injured by the crude oil overcharges.

*Aminoil U.S.A., Inc., Knudsen Oil & Feed Et Al., 7/11/88, RF139-60 Et Al.*

The DOE issued a Decision and Order concerning Applications for Refund filed by five reseller/retailers in the Aminoil U.S.A., Inc. special refund proceeding. The firms submitted cost banks in excess of their refund claims and market price comparisons in support of their claims for refunds exceeding $5,000. After examining the firm's applications and supporting documentation, the DOE concluded that they should receive refunds totaling $220,623, representing $142,830 in principal and $77,793 in interest.

*City of Glendale, Public Service Department, Gainesville Regional Utilities, 7/13/86, RF272-5188, RF272-6306*

The DOE issued a Decision granting refunds from crude oil overcharge funds to the Public Service Department of the City of Glendale, California, and Gainesville Regional Utilities of Gainesville, Florida. Both applicants operated municipal utilities during the crude oil settlement period, August 19, 1973 through January 27, 1981. The DOE determined that, as regulated public utilities, both Glendale and Gainesville were eligible to receive refunds provided that they passed them through to their customers. The DOE rejected objections raised in the proceeding that: (i) As governmental authorities, Glendale and Gainesville were ineligible for a refund, and (ii) the end-user presumption did not apply since Glendale and Gainesville passed through all overcharges to their customers. Accordingly, DOE approved refunds of $39,230 to Glendale and $42,696 to Gainesville, based upon the amount of their respective purchases and the volumetric refund amount currently available, $0.0002 per gallon.

*Getty Oil Co. M&W Propane Co., Inc. Et Al., 7/11/88, RF265-2639, Et Al.*

The DOE issued a Decision and Order concerning six Applications for Refund filed by resellers or retailers of products covered by a Consent Order that the DOE entered into with Getty Oil Company. Each applicant submitted information indicating the volume of Getty propane purchased from Getty during the consent order period. In three claims of this proceeding, the applicants were eligible for a refund below the small claims threshold of $5,000. In the other three claims, the applicants elected to limit their claims to $5,000. The total amount of the refunds approved in the Decision and Order is $49,842, representing $24,418 in principal and $25,424 in accrued interest.

*Gulf Oil Co./H&M Gulf Et Al., 7/14/88, RF300-5803 Et Al.*

The DOE issued a Decision and Order concerning 15 Applications for Refund filed in the Gulf Oil Company special refund proceeding. Each of the Applicants demonstrated that it purchased less than 7,812,500 gallons of Gulf product during the consent order period. Therefore, under the small claims presumption, each applicant is eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision, which includes both principal and interest, is $26,174.

*Gulf Oil Corp./J.L. Sowell, Dist. Wilkerson Fuel Co., Inc., 7/14/88, RF40-3647, RF40-3702*

The DOE issued a Decision and Order concerning two Applications for Refund from the Gulf Oil Corporation consent order fund for which refund procedures were set forth in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984). The Decision resolved a disputed refund claim between the former and current owners of J.L. Sowell, Dist. (Sowell), a sole proprietorship which purchased Gulf product and received Gulf product on consignment during the Gulf consent order period. The DOE determined that it was impossible to conclude that the contract of sale transferred Gulf refund rights from the former owner to the current owner. Therefore, the DOE rescinded the refund previously granted to the current owner and approved a partial refund for the former owner. The DOE denied the portion of the former owner's claim based on consigned gallons because the applicant unreasonably manipulated a previously approved methodology in its attempt to show a sales decline. The refund rescinded in this Decision totals $2,812, and the refund granted totals $1,439.

*Holiday of Park Falls, Inc., 7/13/88, RF272-7927*

The DOE issued a Decision and Order denying an application for a crude oil fund filed by Holiday of Park Falls, Inc., a retail service station which sold motor gasoline. Holiday was ineligible to receive a refund because it failed to demonstrate that it was injured by the crude oil overcharges.

*Hugo Oil Et Al., 7/15/88, RF272-6117 Et Al.*

The DOE issued a Decision and Order concerning the Applications for Refund filed by six claimants in the Subpart V crude oil refund proceeding. The DOE determined that the applicants all purchased refined petroleum products for resale and thus passed on the costs of any crude oil overcharges to their customers. Therefore, the DOE concluded that these claimants were not injured by any of the overcharges associated with the gallons that they each purchased. Accordingly, these Applications for Refund were denied.

*Kuhlman Corp., 7/14/88, RF272-1039*

The DOE issued a Decision and Order concerning an Application for Refund from crude oil overcharge funds based on the Applicant's purchases of transformer oil during the period August 19, 1973 through January 27, 1981 (the Settlement Period). The DOE determined that transformer oil is an eligible product for the purposes of the crude oil refund proceedings. The total refund granted in this Decision is $2,793.

*Mobil Oil Corp./Auto Ade, Inc., Et Al., 7/13/88, RF225-6597, Et Al.*

The DOE issued a Decision granting 11 Applications for Refund from the Mobil Oil Corporation escrow account filed by retailers and resellers of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totalling $4,818 (representing $3,858 in principal and $960 in interest).

*Mobil Oil Corp. Featherstone Service Station, Inc. Mack Oil Company. Mack Oil Co. Knight Oil Co., 7/12/88, RR225-19 RF225-10037, RF225-*

*10038, RF225–10048, RF225–10049, RF225–11030*

The DOE issued a Decision and Order denying a Motion for Modification submitted by Featherstone Service Station, Inc. (FSS) and granting in part two Applications for Refund submitted by Mack Oil Co. (Mack) and Knight Oil Co. (Knight) in the Mobil special refund proceeding. In its initial refund application, FSS submitted approximated all-product banks of unrecouped increased product cost in an attempt to rebut the level-of distribution presumption and receive 100% of the Mobil volumetric refund amount. The DOE determined that these banks were inadequate for a showing of injury *Mobil Oil Corp./Featherstone Service Station, Inc.*, 17 DOE ¶ 85,171 1988). In the present determination, the DOE again found that FSS's all-product banks do not satisfy the requirements for an injury demonstration because they do not provide accurate measures of specific product cost passthrough and because after July 1, 1976, such banks reflect sales of products that were no longer covered by the Mandatory Petroleum Price Regulations. Similarly, the DOE was unable to accept the all-product banks submitted as a basis for an injury demonstration by Mack and Knight. In *Mobil*, however, applicants who are unable to rebut the *Mobil* presumptions are nontheless eligible for a refund under these presumptions. The DOE reviewed the applications made by Mack and Knight to insure that all necessary information had been provided and, accordingly, the two refunds were granted in part. The total amount approved in this Decision and Order was $8,677, representing $6,949 in principal and $1,728 in interest.

*Mobil Oil Corp./Harrell Petroleum Co., 7/15/88, RR225–32*

The DOE issued a Decision and Order approving a Motion for Reconsideration in the Mobil Oil Corp. special refund proceeding filed by Harrell Petroleum Company. OHA determined that Harrell should receive an additional refund of $3,500 in principal because Harrell elected to limit its claim to the $5,000 presumption of injury level and due to an inadvertent error, was originally granted only $1,500 in principal. In accordance with the procedures outlined in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985), Harrell was granted a refund totalling $4,744 ($3,500 in principal plus $1,244 in accrued interest).

*Palo Pinto/Louisiana Standard Oil Co. (Indiana)/Louisiana Perry Gas Processors, Inc./Louisiana Belridge Oil Co./Louisiana Pennzoil Co./ Louisiana Coline Gas Corp./ Louisiana Standard Oil Co. (Indiana)/Louisiana, 7/15/88, RQ5–435, RQ21–436, RQ183–437, RQ8–438, RQ10–439, RQ2–441, RQ251–442*

The DOE issued a Decision and Order denying the second-stage refund application filed by the State of Louisiana in the Palo Pinto, Standard Oil Co. (Indiana), Perry Gas Processors, Inc., Belridge Oil Co., Pennzoil Co., Coline Gas Corp. and Standard Oil Co. (Indiana) second stage refund proceedings. The state requested $2,705,000 for funding the Center for Advanced Microstructures and Devices (CAMD) and the study of "combustion kinetics" at Louisiana State University. The DOE found that the programs were not likely to provide any tangible benefits to injured consumers in the near term. Therefore, the program did not provide restitution to injured consumers of petroleum products. Accordingly, Louisiana's submission was denied.

*S.M. Flickinger Co., Inc., Et Al., 7/13/88, RF272–1695, Et Al.*

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to six claimants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant used the petroleum products for various commercial activities and each determined its claim by consulting actual purchase records. As an end-user, each applicant was entitled to receive a refund of its full volumetric share. The total refund granted in this Decision is $4,814.

*The New York Hospital RF272–7567, Blue Circle West FR272–12525, Samaritan Hospital, 7/13/88, RF272–12654*

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to The New York Hospital, Blue Circle West, and Samaritan Hospital. Each applicant presented evidence that it purchased petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant determined its claim either by consulting actual records or by using a reasonable estimate of its purchases. Additionally, each applicant demonstrated that it was an end-user of the petroleum products it claimed and was therefore presumed injured. The sum of the refunds granted in this Decision is $10,973. Each of the three claimants will be eligible for additional refunds as additional crude oil overcharge funds become available.

*Wisconsin Electric Power Co., RF272–207, San Diego Gas & Electric Co., 7/11/88, RF272–285*

Wisconsin Electric Power Company and San Diego Gas & Electric Company filed applications for refund in the Subpart V crude oil refund proceedings. A group of states filed objections to the applications, claiming that the applicants should not be eligible to receive refunds because they were not injured end-users. The states also claimed that the applicants should not be permitted to act as conduits for the distribution of refund benefits to their injured customers. The DOE rejected both of the states' arguments, finding that the applicants were not claiming a refund for themselves, but rather agreed to pass through to their customers the benefits of any refunds which they would receive. The DOE also found that the Settlement Agreement permitted utilities to receive refunds in Subpart V crude oil proceedings in order to distribute direct restitution to their injured customers. In addition, the DOE stated that strong considerations of restitutionary policy favored approval of the applicant's claims. Accordingly, the applications were approved and the applicants were granted refunds totalling $717,625.

*Wolf Creek School District, Et. Al., 7/13/88, RF272–5184, Et. Al.*

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to five applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant used the products for heating its buildings and operating its vehicles, and each determined its claim either by consulting actual purchase records or by reasonably estimating its consumption. Each applicant was an end-user of the products it claimed and was therefore presumed by the DOE to have been injured. The sum of the refunds granted in this Decision is $2,936. All of the claimants will be eligible for additional refunds as additional crude oil overcharge funds become available.

**Crude Oil End-Users**

The Office of Hearings and Appeals granted crude oil overcharge refunds to end-user applicants in the following Decisions and Orders:

| Name | Case No. | Date | Number of applicants | Total refund |
|---|---|---|---|---|
| Alfred G. Starz *et al* | RF272-21000 | 7/12/88 | 113 | $2,981 |
| Alfred Riebe, Jr. *et al* | RF272-14800 | 7/11/88 | 149 | 3,439 |
| Allan Ramsey *et al* | RF272-25200 | 7/15/88 | 106 | 3,379 |
| Arthur R. Miller *et al* | RF272-7945 | 7/11/88 | 46 | 1,788 |
| Charles M. Golden *et al* | RF272-20601 | 7/12/88 | 176 | 3,530 |
| City of Crofton *et al* | RF272-08801 | 7/12/88 | 131 | 17,361 |
| City of Lamar *et al* | RF272-17800 | 7/12/88 | 112 | 4,324 |
| Clarence E. Zwahr *et al* | RF272-23401 | 7/15/88 | 115 | 3,310 |
| Dale Merryman *et al* | RF272-20000 | 7/12/88 | 145 | 3,666 |
| Donald R. Epperly *et al* | RF272-15002 | 7/11/88 | 149 | 3,535 |
| Duane E. Bonnenberger *et al* | RF272-16800 | 7/11/88 | 165 | 2,972 |
| Ed Stewart *et al* | RF272-21800 | 7/11/88 | 158 | 3,970 |
| Elmer Cohrs & Sons *et al* | RF272-18005 | 7/11/88 | 123 | 2,945 |
| Elvin L. Pospisil *et al* | RF272-15801 | 7/12/88 | 133 | 3,558 |
| Emery F. Tuttle *et al* | RF272-7773 | 7/15/88 | 150 | 5,117 |
| Freed Agricultural Service *et al* | RF272-5200 | 7/15/88 | 50 | 1,335 |
| Garrett Farms *et al* | RF272-15200 | 7/11/88 | 147 | 3,358 |
| Gene Marsh *et al* | RF272-12000 | 7/12/88 | 144 | 5,728 |
| H.W. McKee *et al* | RF272-14410 | 7/12/88 | 152 | 3,754 |
| Irvin Boerthein *et al* | RF272-23200 | 7/15/88 | 109 | 3,164 |
| James Dentlinger *et al* | RF272-17000 | 7/15/88 | 173 | 3,900 |
| James S. Tedder *et al* | RF272-18801 | 7/11/88 | 107 | 3,250 |
| John Merrill Transport *et al* | RF272-16600 | 7/12/88 | 144 | 3,832 |
| Kermit Skadberg *et al* | RF272-08400 | 7/11/88 | 150 | 4,052 |
| Kickert Bus Lines *et al* | RF272-24204 | 7/15/88 | 169 | 3,740 |
| Kohler Dist. *et al* | RF272-25001 | 7/12/88 | 143 | 3,828 |
| Leo Bulfer *et al* | RF272-17400 | 7/12/88 | 139 | 3,084 |
| Lerda Farms *et al* | RF272-15600 | 7/11/88 | 159 | 4,069 |
| Lester A. Johnson *et al* | RF272-16001 | 7/15/88 | 142 | 3,625 |
| Marvin Siebert *et al* | RF272-19000 | 7/11/88 | 126 | 3,674 |
| R. Allen Battin *et al* | RF272-14602 | 7/11/88 | 166 | 3,515 |
| Rodney Koyen *et al* | RF272-17200 | 7/12/88 | 164 | 3,853 |
| Runyan Family Farm *et al* | RF272-22000 | 7/11/88 | 168 | 3,972 |
| Sierra Express *et al* | RF272-21601 | 7/11/88 | 169 | 3,979 |
| Skic's, Inc. *et al* | RF272-16201 | 7/15/88 | 111 | 3,073 |
| Stanford E. Kline *et al* | RF272-17601 | 7/11/88 | 136 | 3,854 |
| Vantage Vocational School *et al* | RF272-21200 | 7/12/88 | 167 | 3,988 |
| Vern C. Jacobson *et al* | RF272-21400 | 7/12/88 | 164 | 4,433 |

Dismissals

The following submissions were dismissed:

| Name | Case No. |
|---|---|
| Government Accountability Project | KFA-0199 |
| Southern Oil Service, Inc. | RF225-9075 |

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

August 19, 1988.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

[FR Doc. 88-19358 Filed 8-24-88; 8:45 am]

BILLING CODE 6450-01-M

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL-3434-5]**

### Region VI; Approvals of PSD Permits

Notice is hereby given that the Environmental Protection Agency (EPA), Region VI, has issued Prevention of Significant Deterioration (PSD) permits to the following:

1. PSD-TX-712—Houston Pipe Line Company: This permit, issued on February 26, 1988, authorizes the construction of a natural gas pipeline compressor station to be located off Highway 281, approximately 2.5 miles northwest of George West, Live Oak County, Texas.

2. PSD-TX-718—Marathon Oil Company: This permit, issued on March 7, 1988, authorizes the installation of two 6,000 horsepower natural gas-fired turbines at the existing gas processing plant located east of Farm Road 1257, approximately 2 miles southwest of Iraan, Pecos County, Texas.

3. PSD-TX-731—Exxon Chemical Company: This permit issued on March 25, 1988, authorizes the construction of three natural gas and off-gas fired turbine cogeneration trains at the existing olefins plant located at 3525 Decker Drive, Baytown, Harris County, Texas.

4. PSD-TX-705—EP Operating Company: This permit, issued on April 12, 1988, authorizes the installation of four compressor engines at the Opelika compressor station located off Highway 31, approximately 4 miles northeast of Murchison, Henderson County, Texas.

5. PSD-TX-741—Sun Exploration and Production Company: This permit, issued on May 11, 1988, authorizes the modification of the existing natural gasoline plant located off FM Road 2294, approximately 4.5 miles southwest of San Isidro, Starr County, Texas.

6. PSD-TX-328M-2—Amerada Hess Corporation: PSD-TX-328M-2 modifies PSD-TX-328M-1 to authorize and increase of 90 tons per year of nitrogen oxides and 1,053 tons per year of carbon monoxide at the injection gas processing plant located on State Highway 214, approximately 4 miles northwest of Seminole, Gaines County, Texas. The modified permit was issued on May 19, 1988.

7. PSD-TX-739—Tenaska, Incorporated: This permit, issued on

June 1, 1988, authorizes the construction of a gas turbine cogeneration facility to be located adjacent to the Campbell Soup plant at 500 Loop 286 N.W., Paris, Lamar County, Texas.

8. PSD–TX–733—Phillips 66 Company: This permit, issued on June 1, 1988, authorizes the construction of a sulfur recovery unit at the existing natural gas processing plant located on FM Road 722, approximately 3 miles southwest of Dumas, Moore Country, Texas.

9. PSD–TX–725—Celanese Engineering Resins, Inc.: This permit, issued on June 3, 1988, authorizes the construction of a cogeneration facility at the existing Celanese Plant located on State Highway 77, approximately 1.5 miles southwest of Bishop, Nueces County, Texas.

10. PSD–TX–684—Inland-Orange, Inc.: This permit, issued on June 3, 1988, authorizes the modification of a boiler at the existing paper mill located on Highway 87, approximately 7 miles north of Orange, Orange County, Texas.

11. PSD–TX–719—Gulf States Utilities: This permit issued on June 22, 1988, authorizes the modification of Utility Boiler No. 5 at the existing Sabine Power Station located on FM Road 1442, approximately 1 mile east of Bridge City, Orange County, Texas.

These permits have been issued under EPA's Prevention of Significant Deterioration of Air Quality Regulations at 40 CFR 52.21, as amended August 7, 1980. The time period established by the Consolidated Permit Regulations at 40 CFR 124.19 for petitioning the Administrator to review any condition of the permit decisions has expired. Such a petition to the Administrator is, under 5 U.S.C. 704, a prerequisite to the seeking of judicial review of the final agency action.

Notice is hereby given that the Environmental Protection Agency (EPA), Region VI, has extended the expiration date of the following Prevention of Significant Deterioration (PSD) permits:

1. PSD–TX–662—Texas Utilities: This permit, issued on February 26, 1986, authorized the construction of four natural gas and oil fired turbine units at the existing De Cordova Stream Electric Station located on Walters Bend, approximately 4 miles southeast of Granbury, Hood County, Texas. The company has postponed the start of construction after a reevaluation of its resources planning. The permit was extended on March 2, 1988, to a new expiration date of February 26, 1989.

2. PSD–TX–664—Union Texas Petroleum Corporation: This permit, issued on December 11, 1985, authorized the construction of a cryogenic unit and the installation of two 2,000 horsepower engines at the existing Bendum Gas Processing Plant located on Ranch Road 1555, approximately 12 miles northeast of Rankin, Upton County, Texas. The company has postponed its program of modification due to continued unfavorable economic conditions. The permit was extended on May 19, 1988, to a new expiration date of November 26, 1988.

3. PSD–TX–686—Liquid Energy Corporation: This permit, issued on June 4, 1986, authorized the modification of the existing gas processing plant located on State Highway 114, approximately four miles west of Bridgeport, Wise County, Texas. The company has postponed its program of modification due to current economic conditions. The permit was extended on June 23, 1988, to a new expiration date of November 21, 1989.

The PSD regulation at 40 CFR 52.21(r)(2) states that the Administrator may extend the 18-month period in which construction must commence if the company shows that an extention is justified.

A notice of EPA's proposed action to extend these PSD permits was published in a newspaper in the affected area of each facility.

Documents relevant to the above actions are available for public inspection during normal business hours at the Air, Pesticides and Toxics Division, U.S. Environmental Protection Agency, Region VI, 1445 Ross Avenue Dallas, Texas 75202.

Under section 307(b)(1) of the Clean Air Act, judicial review of the approval of of these actions is available, if at all, only by the filing of a petition for review in the United States Fifth Circuit Court of Appeals, within 60 days of (date of publication of notice). Under section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

This notice will have no effect on the National Ambient Air Quality Standards.

The office of Management and Budget has exempted this information notice from the requirements of section 3 of Executive Order 12291.

Date: August 8, 1988.

**Robert E. Layton, Jr.,**

*Regional Administrator, Region VI.*

[FR Doc. 88–19303 Filed 8–24–88; 8:45 am]

BILLING CODE 6560–50–M

[OPP–50675A; FRL–3434–7]

## Issuance of an Experimental Use Permit; Genetically Engineered Microbial Pesticide

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

**ACTION:** Notice.

**SUMMARY:** EPA has granted an experimental use Permit to Crop Genetics International (CGI) for the testing of a genetically engineered microbial pesticide. This permit is in accordance with, and subject to, the provisions of 40 CFR Part 172, which define EPA procedures for the use of pesticides for experimental purposes.

**FOR FURTHER INFORMATION CONTACT:** By mail: Phillip Hutton, Product Manager (PM) 17, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, Dc 20460. Office location and telephone number: Rm. 207, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–2690).

Requests regarding information contained in the public docket should be referenced with docket control number OPP–50675 and sumbitted by mail to: Information Services Section, Program Management and Support Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person: Rm. 246 CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

**SUPPLEMENTARY INFORMATION:** EPA has issued the following experimental use permit (EUP):

58788–EUP–1. Issuance. Crop Genetics International, 7170 Standard Drive, Hanover, MD 21076. This EUP allows the inoculation of a *Clavibacter xyli* subspecies *cynodontis* bacterium that has been genetically engineered to contain a *Bacillus thuringiensis* delta endotoxin gene (Cxc/Bt) into corn seedlings to evaluate the efficacy of this organism as a plant associated insecticidal agent against the European corn borer, and to obtain further knowledge on the behavior of this organism in the environment. The total acreage authorized in this EUP is 4 acres with approximately 2 acres in Ingleside, Maryland and approximately 2 acres in Beltsville, Maryland. $5 \times 1016$ organisms have been authorized for shipment to each site. The EUP is effective from May 24, 1988 to May 24, 1989. This EUP was issued subject to several limitations, among which is the requirement that the crop be destroyed or used for research purposes only.

CGI tested at the two Maryland locations in the spring of 1988. Cxc/Bt was injected into corn plants which will be studied through the summer and fall. The parental strain of *Clavibacter xyli* subspecies cynodontis (Cxc) was isolated from Bermuda grass in Westover, Maryland (CGI isolate number MD69a).

The Agency evaluated potential adverse effects on nontarget species that conceivably might occur as a result of this small-scale test. This evaluation also included an assessment of the potential exposure this microorganism might exhibit to the nontarget species.

The Agency has concluded that the potential to affect nontarget organisms is not of concern for this small-scale field test. The reasons follow.

The inherent properties of Cxc and the results of the infectivity and pathogenicity tests in mice submitted by CG indicate that there are not likely to be human health risks. Cxc grows slowly at 34°C and does not grow at 36°C; normal human body temperature is 37°C. The delta endotoxin from *B. thuringiensis* var. *kurstaki* has been extensively studied and there has been no indication of any health problems. In addition, all crops will be used for research purposes or destroyed so there will be no dietary exposure to humans.

The genetic alterations are not likely to enhance any potential plant pathogenic properties of the *C. xyli cynodontis* parental strain which occurs naturally in Maryland. This experiment will not appreciably increase the quantity of the parental strain or the quantity of the delta endotoxin already occurring naturally in the environment, nor will it appreciably alter the distribution of the delta endotoxin as produced by *Bacillus thuringiensis*. In addition, CGI has shown that Cxc/Bt has a relatively low order of toxicity to susceptible insects.

CGI has demonstrated that the toxin gene will eventually be irreversibly lost from the parental Cxc strain, and that the revertant and/or parental Cxc strains that have lost the toxin gene will outgrow the engineered strain so that, for the limited quantity used in this small-scale field test, the Cxc/Bt will not persist in the environment.

The Agency has assessed the probability that the *B. thuringiensis* toxin gene could be transferred to other microorganisms. CGI submitted tests which indicated that Cxc had no mechanism for naturally-occurring genetic transfer. Accordingly, the Agency has concluded that the probability of transfer of this gene is extremely remote.

Furthermore, the Agency has concluded that the exposure of Cxc/Bt to nontarget species will be minimal since stringent containment, monitoring, and contingency procedures will be followed. Thus the environmental spread of Cxc/Bt will be limited from this small-scale field test.

CGI submitted data indicating that, although Cxc can infect many plants after direct inoculation (an infective dose for corn was demonstrated at 100 CFU/plant), it does not appear to persist naturally in certain susceptible plants surveyed by CGI in the field. It has been shown to occur naturally in Bermuda grass. In addition, the incidence of transmission of Cxc from artificially colonized corn plants seems to be very low. CGI has shown that there is no gross colonization of sugarcane from infected Bermuda grass and no gross colonization of Bermuda grass or bindweeds in fields of Cxc-colonized corn. It is not likely to persist at levels that could infect plants in water or soil. This conclusion is supported by studies showing that corn was not infected by high levels of Cxc in soil, both in the laboratory and in the field. Overall, the data indicate that there may be an avenue for limited movement of the Cxc to other plants, particularly by mechanical transfer, i.e. by cutting tools, or by transmission through seed, but the rate of movement is of a low order and the containment, monitoring, and contingency plans will be adequate to control potential movement from the test site.

The Agency has specified procedures to minimize spread of Cxc/Bt beyond the test site. The field test design includes buffer zones, barriers to contain runoff, and fencing. The protocols include tool disinfection, destruction of all seed, monitoring, and contingency plans to minimize any transfer to other plants, and prevent the transfer to subsequent crops.

The Agency issued an announcement of receipt of EUP application in the Federal Register of January 26, 1988 (53 FR 2641). The nonconfidential business information portions of the application were made available for public comment at that time. In addition, the Agency's March 25, 1988, Preliminary Scientific Position was made available for public comment at the time it was sent to an *ad hoc* subcommittee of the EPA Biotechnology Science Advisory Committee (BSAC) for their review and comment.

All commenters, except for one, agreed with the Agency's conclusion that no significant risk to humans or to nontarget organisms could be foreseen from this small-scale field test.

Several commenters, while not objecting to permit issuance, expressed reservations about the adequacy of the existing data base to support future testing conducted on a large-scale. The BSAC also expressed some concern regarding this issue. The Agency shared some of these concerns and informed the applicant of this situation. The Agency focused on assessment of risk for this well-contained small-scale field test.

Several substantive comments were directly related to the proposed small-scale test. One commenter stated that CGI did not follow Good Laboratory Practice (GLP) regulations when they tested the identity, purity, strength, and composition of the test substance. In fact, CGI stated in the submission that it did not possess a formal independent Quality Assurance Unit as provided in the GLP regulations. For this reason, the Agency conducted an audit of these studies on May 17, 1988. The purpose of the audit was to determine the validity of the subject studies, and establish a chain of custody concerning the product tested between CGI and Microbiological Associates, which had performed the toxicology studies. This audit confirmed that while CGI did not possess a formal quality assurance unit, the studies were conducted under more than adequate control and are considered valid.

One commenter questioned the validity of the data waivers requested by the applicant. The regulations concerning the data requirements (40 CFR Part 158) allow for such waivers if the applicant can demonstrate that the requirements are not applicable. The waivers requested by CGI were reviewed by the Agency and found to be reasonable. Prior to submitting the application, CGI met with the Agency on several occasions to discuss specific studies which would be required to support the experimental program. As a part of this process, several studies not listed in Part 158 were requested by OPP and supplied by CGI.

One concern expressed at the BSAC subcommittee meeting was the ability to protect plants in surrounding areas from the runoff of water after rainfall. Specifically, the subcommittee recommended that EPA set a standard for the construction of a dike around the plot area, and gave us an example, one which would be effective to withstand a severe rain event with an occurrence frequency of 1 in 10 years. The Agency has considered the BSAC suggestion and has made the construction of a dike (berm) a requirement associated with permit issuance.

It is the Agency's view that the data requirements needed to support an EUP have been adequately satisfied and that a point has been reached in the research and development of this product where small-scale field studies are warranted. Remaining questions on efficacy and questions regarding possible environmental effects of Cxc/Bt products can best be answered by conducting a carefully controlled and monitored small-scale study. The Agency believes that, although issues of potential hazards from the release of genetically engineered microbial pesticides have been raised, those issues have been satisfactorily addressed by information provided by CGI and other relevant sources. This conclusion is based on reviews from the Agency scientific staff and recommendations from the *ad hoc* subcommittee of the BSAC. It is the Agency's considered option that approval and issuance of this EUP under the conditions imposed will not result in adverse effects on humans or the environment. There, the Agency has issued this EUP.

Dated: August 11, 1988.

**Edwin F. Tinsworth,**

*Director, Registration Division.*

[FR Doc. 88-19301 Filed 8-24-88; 8:45 am]

BILLING CODE 6560-50-M

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**[OPTS-140099; FRL-34348]**

## Access to Confidential Business Information by Miller Reporting Co.

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

**ACTION:** Notice.

**SUMMARY:** EPA has authorized Miller Reporting Company (MRC), Washington, DC, access to information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

**FOR FURTHER INFORMATION CONTACT:** Michael M. Stahl, Acting Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0551.

**SUPPLEMENTARY INFORMATION:** Under TSCA, EPA must determine whether the manufacture, processing, distribution in commerce, use, or disposal of certain chemical substances or mixtures may present an unreasonable risk of injury to human health or the environment. New chemical substances, i.e., those not listed on the TSCA Chemical Substances Inventory, are evaluated by EPA under section 5 of TSCA. Existing chemical substances, i.e., those listed on the TSCA Inventory, are evaluated by the Agency under sections 4, 6, 7, and 8 of TSCA. Certain existing chemical substances intended to be exported to foreign countries are required to be reported to EPA under section 12 of TSCA. New and existing chemical substances intended to be imported into the United States are evaluated by EPA under section 13 of TSCA. Petitions received by EPA to initiate a proceeding for the issuance, amendment, or repeal of a rule under sections 4, 6, or 8 or an order under section 5(e) or 6(b)(2) are evaluated by EPA under section 21 of TSCA.

Under a procurement, MRC, 507 C St., NE., Washington, DC will assist the Office of Toxic Substances by attending meetings where information that may be claimed or determined to be CBI may be discussed. MRC will be responsible for transcribing information from these meetings into official transcripts for the review of the Biotechnology Science Advisory Committee.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide MRC access to these CBI materials on a need-to-know basis. All access to TSCA CBI under this procurement will take place at EPA Headquarters facilities.

Clearance for access to TSCA CBI under this procurement is scheduled to expire on July 14, 1990.

MRC personnel will be required to sign non-disclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: August 18, 1988.

**Charles L. Elkins,**

*Director, Office of Toxic Substances*

[FR Doc. 88-19300 Filed 8-24-88; 8:45 am]

BILLING CODE 6560-50-M

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**[FRL-3434-3]**

## Issuance of National Pollutant Discharge Elimination System Permit to the State of Florida

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

**ACTION:** Notice of Proposed Issuance of a National Pollutant Discharge Elimination System Permit to the State of Florida.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA) intends to issue a National Pollutant Discharge Elimination System (NPDES) General Permit No. FLG040001 to facilities within the political boundary of the State of Florida. This NPDES general permit proposes effluent limitations, prohibitions, reporting requirements and other conditions on facilities which discharge treated groundwater and/or stormwater which have been contaminated by automotive gasoline, aviation and/or diesel fuels. This proposed permit authorizes discharges from facilities currently located in and discharging to surface waters within the political boundary of the State of Florida, and any new treatment facilities placed in operation during the term of the permit. Written notice of intent (NOI) to be covered by the NPDES general permit shall be provided to the Permit Issuing Authority prior to initiation of any discharge. Coverage by this general permit shall commence upon receipt of written notification from the Permit Issuance Authority.

The proposed NPDES permit contains limitations on the amounts of pollutants allowed to be discharged and was drafted in accordance with the provisions of the Clean Water Act (33 U.S.C. 1251 *et seq.*) and other lawful standards and regulations. The pollutant limitations and other permit conditions are tentative and open to comment from the public.

**ADDRESSES:** Persons wishing to comment upon or object to any aspects of a specific permit issuance or wishing to request a public hearing, are invited to submit same in writing within thirty (30) days of this notice to the Office of Congressional and External Affairs, Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365, ATTENTION: Ms. Suzanne D. Potter.

The public notice number and NPDES number should be included in the first page of comments. All comments received within the 30-day period will be considered in the formulation of a final determination regarding the permit. Any interested person may within the 30-day period request a public hearing. Where there is a significant degree of public interest in a proposed permit issuance, the EPA Regional Administrator will hold a public hearing.

After consideration of all written comments and the requirements and policies in the Act and appropriate regulations, the EPA Regional Administrator will make a determination regarding the permit issuance. If the determination is substantially unchanged from those announced by this notice, the EPA Regional Administrator will so notify all persons submitting written comments. If

the determination is substantially changed, the EPA Regional Administrator will issue a public notice indicating the revised determination. Requests for evidentiary hearing may be filed after the Regional Administrator makes the above-described determinations. Additional information regarding an evidentiary hearing is available in 40 CFR Subpart E, 48, FR 14278 (April 1, 1983), or by contacting the Office of Regional Counsel at the address aforementioned or by calling (404) 347–2335.

**SUPPLEMENTARY INFORMATION:** The administrative record for each, including application, fact sheet or statement of basis, draft permit, a sketch showing the exact location of the discharge(s), comments received, and additional information on hearing procedures is available at cost by writing the EPA address aforementioned, or for review and copying at 345 Courtland Street, NE., 3rd floor, Atlanta, Georgia, between the hours of 8:15 a.m. and 4:30 p.m., Monday through Friday. Copies will be provided at a minimal cost per page.

**Greer C. Tidwell,**

*Regional Administrator.*

[Permit No. FLG040001]

**General Permit To Discharge Under the National Pollutant Discharge Elimination System**

In compliance with the provisions of the Clean Water Act, as amended (33 U.S.C. 1251 *et seq*; the "Act").

Discharges of treated groundwater and stormwater incidental to groundwater cleanup operations which are contaminated with gasoline or aviation fuel are authorized to discharge to waters of the United States within the State of Florida.

In accordance with effluent limitations, monitoring requirements and other conditions set forth herein. The permit consists of this cover sheet, Part I *6* pages, Part II *24* pages, Part III *1* page, Part IV *1* page, Part V *2* pages.

This permit shall become effective upon notification of coverage. (See Part II, F for application and coverage requirements.)

This permit and the authorization to discharge shall expire at midnight,

**Bruce R. Barrett,**

*Director, Water Management Division.*

**Part I**

*A. Effluent Limitations/and Monitoring Requirements: Existing Sources and New Dischargers*

1. During the period beginning on the effective date of the permit and lasting through the term of this permit, the permittee is authorized to discharge treated groundwater and stormwater that has been contaminated by *Automotive Gasoline*. It is anticipated that these contaminated waters will be treated by air stripping, followed by activated carbon adsorption if necessary, or equivalent treatment to meet the following effluent limitations.

Such discharges shall be limited and monitored by the permittee as specified below:

| Effluent characteristic | Discharge limitations | | Monitoring requirements | |
|---|---|---|---|---|
| | Daily avg | Daily max | Measurement frequency | Sample type |
| Flow, MGD | Report | Report | Continuous | Flowmeter. |
| Benzene, µg/l | | 1.0 | 1/month | Grab. |
| Total lead, µg/l | | 30.0 | 1/month | Grab. |

[1] Monitoring for this parameter is required only when contamination results from leaded fuel.

The effluent (100%) shall not be lethal to more than 50% of appropriate fish and invertebrate test organisms in 48 hour static toxicity tests (48-hr. $LC_{50}$). Failure to demonstrate compliance with the acute toxicity requirement will constitute a violation of this permit, (see Part V–2.).

The pH shall not be less than 6.0 standard units nor greater than 8.5 standard units and shall be monitored once every month by grab sample, or continuously with a recorder, at the discretion of the permittee (See item I.B.4).

There shall be no discharge of floating solids or visible foam in other than trace amounts.

Samples taken in compliance with the monitoring requirements specified above shall be taken at the following location(s): Nearest accessible point after final treatment but prior to actual discharge or mixing with the receiving waters.

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS: Existing Sources and New Dischargers

2. During the period beginning on the effective date of the permit and lasting through the term of this permit, the permittee is authorized to discharge treated groundwater and stormwater that has been contaminated by *Aviation Gasoline, Jet Fuel* or *Diesel*. It is anticipated that these contaminated waters will be treated by air stripping, followed by activated carbon adsorption if necessary or equivalent treatment to meet the foregoing effluent limitations.

Such discharges shall be limited and monitored by the permittee as specified below:

| Effluent characteristic | Discharge limitations | | Monitoring requirements | |
|---|---|---|---|---|
| | Daily avg | Daily max | Measurement frequency | Sample type |
| Flow, MGD | Report | Report | Continuous | Flowmeter. |
| Benzene, µg/l | | 1.0 | 1/month | Grab. |
| Naphthalene, µg/l | | 100.0 | 1/month | Grab. |
| Total lead, µg/l | | 30.0 | 1/month | Grab. |

[1] Monitoring for this parameter is required only when contamination results from leaded fuel.

The effluent (100%) shall not be lethal to more than 50% of appropriate fish and invertebrate test organisms in 48 hour static toxicity tests (48-hr. $C_{50}$). Failure to demonstrate compliance with the acute toxicity requirement will constitute a violation of this permit, (see Part V–2.).

The pH shall not be less than 6.0 standard units nor greater than 8.5 standard units and shall be monitored once every month by grab sample, or continuously with a recorder, at the discretion of the permittee (See item I.B.4).

There shall be no discharge of floating solids or visible foam in other than trace amounts.

Samples taken in compliance with the monitoring requirements specified above shall be taken at the following location(s): Nearest accessible point after final treatment but prior to actual discharge or mixing with the receiving waters.

*B. Other Requirements*

1. Any more frequent effluent discharge monitoring required by the Florida Department of Environmental Regulation (FDER) for the parameters limited in this permit, or different parameters, shall be reported to the Permit Issuing Authority in accordance with the requirements of Part III–A of this permit.

2. Effluent limitations for combining Contaminated Groundwater pumped to *above-ground storage tanks*, with Contaminated Groundwater from the sites *recovery wells*.

a. If the permittee desires coverage where waste streams from a facility covered by this General Permit are combined for treatment of contaminated groundwater and performance data indicate the discharge is capable of meeting the applicable limits as described in Part I A.1 or A.2, then approval to combine these discharges may be requested.

3. Within 60 days of the effective date of this permit or startup of discharge the permittee shall also submit the results of the following analyses. These analyses shall be performed on a representative sample of the groundwater effluent discharge, taken after final treatment. Required analyses (one time only):

a. EPA Method 625—Acid and base/neutral extractable organics

b. EPA Method 624—Purgeable Organics

If the analyses required in the above Par' B–3 reveal other toxic pollutants or subsequent biomonitoring test shows lethality, (less than 50% survival of test organisms in 100% effluent) this General Permit may be terminated and an individual permit issued.

4. If the pH is monitored continuously, the pH values shall not deviate outside the required range more than 7 hours and 26 minutes in any calendar month and no individual excursion shall exceed 60 minutes. An "excursion" is an unintentional and temporary incident in which the pH value of discharge wastewater exceeds the range set forth in the permit.

*C. Test Procedures*

In performing the analysis for the dissolved constituents in the surface water and groundwater the permittee shall use the guidelines recommended and described in sections 17–70.008(9)[a-e] of the petroleum contamination site cleanup criteria rule for the State of Florida.

a. If the petroleum contamination is from a petroleum fuel in which the source of contamination has not been identified, the *groundwater* shall be analyzed (using the recommended methods) for the following parameters as described in Section 17.70.008(9)[d] of the State Underground Petroleum Environmental Response Program:

| | |
|---|---|
| (1) Lead | (EPA Method 239.2 or Standard Method 304) |
| (2) Priority Pollutant Volatile Organics. | (EPA Method 624) |
| (3) Priority Pollutant Extractable Organics. | (EPA Method 625) |
| (4) Non-priority Pollutant Organics (with GC/MS Peaks greater than 10 ppb). | (EPA Methods 624 & 625) |

*D. Schedule of Compliance*

1. The permittee shall achieve compliance with the effluent limitations specified for discharges in accordance with the following schedule: Operational level attained * * * Upon Notification of Coverage.

2. No later than 14 calendar days after any date identified in the above schedule of compliance the permittee shall submit either a report of progress or, in any case of specific actions being required by identified dates, a written notice of compliance or noncompliance. In the latter case, the notice shall include the cause of noncompliance, any remedial actions taken, and the probability of meeting the next scheduled requirement.

**Part II**

**Standard Conditions for NPDES Permits**

*Section A. General Conditions*

1. Duty to Comply

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

2. Penalties for Violations of Permit Conditions

Any person who violates a permit condition is subject to a civil penalty not to exceed $25,000 per day of such violation. Any person who willfully or negligently violates permit conditions is subject to a fine of up to $50,000 per day of violation, or by imprisonment for not more than 1 year, or both.

3. Duty to Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

4. Permit Modification

After notice and opportunity for a hearing, this permit may be modified, terminated or revoked for cause (as described in 40 CFR 122.62 et seq.) including, but not limited to, the following:

a. Violation of any terms or conditions of this permit;

b. Obtaining this permit by misrepresentation or failure to disclose fully all relevant facts;

c. A change in any conditions that requires either temporary interruption or elimination of the permitted discharge; or

d. Information newly acquired by the Agency indicating the discharge poses a threat to human health or welfare.

If the permittee believes that any past or planned activity would be cause for modification or revocation and reissuance under 40 CFR 122.62, the permittee must report such information to the Permit Issuing Authority. The submittal of a new application may be required of the permittee. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

5. Toxic Pollutants

Notwithstanding Paragraph A–4, above, if a toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is established under section 307(a) of the Act for a toxic pollutant which is present in the discharge and such standard or prohibition is more stringent than any limitation for such pollutant in this permit, this permit shall be modified or revoked and reissued to conform to the toxic effluent standard or prohibition and the permittee so notified.

The permittee shall comply with effluent standards or prohibitions established under section 307(a) of the Clean Water Act for toxic pollutants within the time provided in the regulations that establish those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

6. Civil and Criminal Liability

Except as provided in permit conditions on "Bypassing" Section B, Paragraph B–3, nothing in this permit shall be construed to relieve the permittee from civil or criminal penalties for noncompliance.

7. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the Act.

8. State Laws

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State law or regulation under authority preserved by section 510 of the Act.

9. Property Rights

The issuance of this permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations.

10. Severability

The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

11. Duty To Provide Information

The permittee shall furnish to the Permit Issuing Authority, within a reasonable time, any information which the Permit Issuing Authority may request to detemine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The permittee shall also furnish to the Permit Issuing Authority upon request, copies of records required to be kept by this permit.

*Section B. Operation and Maintenance of Pollution Controls*

1. Proper Operation and Maintenance

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

2. Need To Halt or Reduce Not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the condition of this permit.

3. Bypass of Treatment Facilities

a. Definitions

(1) "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility, which is not a designed or established operating mode for the facility.

(2) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

b. Bypass not exceeding limitations.

The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Paragraphs c. and d. of this section.

c. Notice

(1) Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass; including an evaluation of the anticipated quality and effect of the bypass.

(2) Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in Section D, Paragraph D–4 (24-hour notice).

d. Prohibition of bypass.

(1) Bypass is prohibited and the Permit Issuing Authority may take enforcement action against a permittee for bypass, unless:

(a) Bypass was unavoidable to prevent loss of life; personal injury, or severe and extensive property damage;

(b) There were no feasible alternatives to the bypass, such as maintenance of sufficient reserve holding capacity, the use of auxiliary treatment facilities, retention of untreated waste, waste hauling, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(c) The permittee submitted notices as required under Paragraph b. of this section.

(2) The Permit Issuing Authority may, within its authority, approve an anticipated bypass, after considering its adverse effects, if the Permit Issuing Authority determines that it will meet the three conditions listed above in Paragraph d.(1) of this section.

**4. Upsets**

"Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation. An upset constitutes an affirmative defense to an action brought for non-compliance with such technology based permit limitation

if the requirements of 40 CFR 122.41(n)(3) are met. (Note that this provision does not apply to water quality requirements.)

5. Removed Substances

This permit does not authorize discharge of solids, sludge, filter backwash, or other pollutants removed in the course of treatment or control of wastewaters to waters of the United States unless specifically limited in Part 1.

*Section C. Monitoring and Records*

1. Representative Sampling

Samples and measurements taken as required herein shall be representative of the volume and nature of the monitored discharge. All samples shall be taken at the monitoring points specified in this permit and, unless otherwise specified, before the effluent joins or is diluted by any other wastestream, body of water, or substance. Monitoring points shall not be changed without notification to and the approval of the Permit Issuing Authority.

2. Flow Measurements

Appropriate flow measurement devices and methods consistent with accepted scientific practices shall be selected and used to insure the accuracy and reliability of measurements of the volume of monitored discharges. The devices shall be installed, calibrated and maintained to insure that the accuracy of the measurements are consistent with the accepted capability of that type of device. Devices selected shall be capable of measuring flows with a maximum deviation of less than +10% from the true discharge rates throughout the range of expected discharge volumes. Guidance in selection, installation, calibration and operation of acceptable flow measurement devices can be obtained from the following references.

a. "A Guide of Methods and Standards for the Measurement of Waterflow", U.S. Department of Commerce, National Bureau of Standards, NBS Special Publication 421, May 1975, 97 pp. (Available from the U.S. Government Printing Office, Washington, DC 20402. Order by SD catalog No. C13.10:421)

b. "Water Measurement Manual", U.S. Department of the Interior, Bureau of Reclamation, Second Edition, Revised Reprint, 1974, 327 pp. (Available from the U.S. Government Printing Office, Washington, DC 20402. Order by catalog No. 127.19/2:W29/2, Stock No. S/N 24003–0027.)

c. "Flow Measurement in Open Channels and Closed Conduits", U.S. Department of Commerce, National Bureau of Standards, NBS Special Publication 484, October 1977, 982 pp. (Available in paper copy or microfiche from National Technical Information Service (NTIS), Springfield, VA 22151. Order by NTIS No. PB–273 535/5ST.)

d. "NPDES Compliance Flow Measurement Manual", U.S. Environmental Protection Agency, Office of Water Enforcement, Publication MCD–77, September 1981, 135 pp. (Available from the General Services Administration (8BRC), Centralized Mailing Lists Services, Building 41, Denver Federal Center, Denver, CO 80225.)

3. Monitoring Procedures

Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in this permit.

4. Penalties for Tampering

The Clean Water Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate, any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than 2 years per violation, or by both.

5. Retention of Records

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report or application. This period may be extended by the Permit Issuing Authority at any time.

6. Record Contents

Records of monitoring information shall include:

a. The date, exact place, and time of sampling or measurements;

b. The individual(s) who performed the sampling of measurements;

c. The date(s) analyses were performed;

d. The individual(s) who performed the analyses;

e. The analytical techniques or methods used; and

f. The results of such analyses.

7. Inspection and Entry

The permittee shall allow the Permit Issuing Authority, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

a. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

c. Inspect at reasonable time any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

d. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location.

*Section D. Reporting Requirements*

1. Change in Discharge

The permittee shall give notice to the Permit Issuing Authority as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

a. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source; or

b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under Section D, Paragraph D–10(a).

2. Anticipated Noncompliance

The permittee shall give advance notice to the Permit Issuing Authority of any planned change in the permitted facility or activity which may result in noncompliance with permit requirements. Any maintenance of facilities, which might necessitate unavoidable interruption of operation and degradation of effluent quality, shall be scheduled during noncritical water quality periods and carried out in a manner approved by the Permit Issuing Authority.

3. Transfer of Ownership or Control

A permit may be automatically transferred to another party if:

a. The permittee notifies the Permit Issuing Authority of the proposed

transfer at least 30 days in advance of the proposed transfer date;

b. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and

c. The Permit Issuing Authority does not notify the existing permittee of his or her intent to modify or revoke and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in paragraph b.

4. Monitoring Reports

See Part III of this permit.

5. Additional Monitoring by the Permittee

If the permittee monitors any pollutant more frequently than required by this permit, using test procedures approved under 40 CFR 136 or as specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the Discharge Monitoring Report (DMR). Such increased frequency shall also be indicated.

6. Averaging of Measurements

Calculations for limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Permit Issuing Authority in the permit.

7. Compliance Schedules

Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date. Any reports of noncompliance shall include the cause of noncompliance, any remedial actions taken, and the probability of meeting the next scheduled requirement.

8. Twenty-Four Hour Reporting

The permittee shall orally report any noncompliance which may endanger health or the environment, within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause, the period of noncompliance, including exact dates and times; and if the noncompliance has not been corrected, the anticipated time it is expected to continue, and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. The Permit Issuing Authority may verbally waive the written report, on a case-by-case basis, when the oral report is made.

The following violations shall be included in the 24 hour report when they might endanger health or the environment:

a. An unanticipated bypass which exceeds any effluent limitation in the permit.

b. Any upset which exceeds any effluent limitation in the permit.

9. Other Noncompliance

The permittee shall report in narrative form, all instances of noncompliance not previously reported under Section D, Paragraphs D–2, D–4, D–7, and D–8 at the time monitoring reports are submitted. The reports shall contain the information listed in Paragraph D–8.

10. Changes in Discharges of Toxic Substances

The permittee shall notify the Permit Issuing Authority as soon as it knows or has reason to believe:

a. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic substance(s) (listed at 40 CFR 122, Appendix D, Table II and III) which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

(1) One hundred micrograms per liter (100 ug/l); or

(2) Two hundred micrograms per liter (200 ug/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 ug/l) for 2, 4-dinitrophenol and for 2-methyl-4, 6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony.

b. That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant (listed at 40 CFR 122, Appendix D, Table II and III) which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

(1) Five hundred micrograms per liter (500 ug/l); or

(2) One milligram per liter (1 mg/l) for antimony.

11. Signatory Requirements

All applications, reports, or information submitted to the Permit Issuing Authority shall be signed and certified.

a. All permit applications shall be signed as follows:

(1) For a corporation: By a responsible corporate officer. For the purpose of this Section, a responsible corporate officer means:

(1) A president, secretary, treasurer or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy—or decision-making functions for the corporation, or (2) the manager of one or more manufacturing production or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(2) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

(3) For a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official.

b. All reports required by the permit and other information requested by the Permit Issuing Authority shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(1) The authorization is made in writing by a person described above;

(2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity; such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.); and

(3) The written authorization is submitted to the Permit Issuing Authority.

c. Certification. Any person signing a document under paragraphs (a) or (b) of this section shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under the direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

12. Availability of Reports

Except for data determined to be confidential under 40 CFR Part 2, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the Permit Issuing Authority. As required by the Act, permit applications, permits and effluent data shall not be considered confidential.

13. Penalties for Falsification of Reports

The Clean Water Act provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance shall, upon conviction, be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than 2 years per violation, or by both.

*Section E. Definitions*

1. Permit Issuing Authority

The Regional Administrator of EPA Region IV or his designee, unless at some time in the future the State receives the authority to administer the NPDES program and assumes jurisdiction over the permit; at which time, the Director of the State program receiving authorization becomes the issuing authority.

2. Act

"Act" means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act) Pub. L. 92–500, as amended by Pub. L. 95–217, Pub. L. 95–576 and Pub. L. 100–4, 33 U.S.C. 1251 *et seq.*

3. Concentration Measurements

a. The "average monthly concentration", is the sum of the concentrations of all daily discharges sampled and/or measured during a calendar month on which daily discharges are sampled and measured, divided by the number of daily discharges sampled and/or measured during such month (arithmetic mean of the daily concentration values). The daily concentration value is equal to the concentration of a composite sample or in the case of grab samples is the arithmetic mean (weighted by flow value) of all the samples collected during the calendar day.

b. The "maximum daily concentration" is the concentration of a pollutant discharge during a calendar day. It is identified as "Daily Maximum" under "Other Limits" in Part I of the permit and the highest such value recorded during the reporting period is reported under the "Maximum" column under "Quality" on the DMR.

4. Other Measurements

a. The effluent flow expressed as MGD is the 24 hour average flow averaged monthly. It is the arithmetic mean of the total daily flows recorded during the calendar month. Where monitoring requirements for flow are specified in Part I of the permit the flow rate values are reported in the "Average" column under "Quantity" on the DMR.

b. An "instantaneous flow measurement" is a measure of flow taken at the time of sampling, when both the sample and flow will be representative of the total discharge.

c. Where monitoring requirements for pH or dissolved oxygen are specified in Part I of the permit, the values are generally reported in the "Quality or Concentration" column on the DMR.

5. Types of Samples

a. Grab Sample: A "grab sample" is a single influent or effluent portion which is not a composite sample. The sample(s) shall be collected at the period(s) most representative of the total discharge.

6. Calendar Day

A calendar day is defined as the period from midnight of one day until midnight of the next day. However, for purposes of this permit, any consecutive 24-hour period that reasonably represents the calendar day may be used for sampling.

7. Hazardous Substance

A hazardous substance means any substance designated under 40 CFR Part 116 pursuant to section 311 of the Clean Water Act.

8. Toxic Pollutant

A toxic pollutant is any pollutant listed as toxic under section 307(a)(1) of the Clean Water Act.

*Section F. Application Requirements*

a. For expired individual NPDES permits, dischargers desiring coverage under NPDES General Permit Number FLG040001 are required to submit a notice of intent (NOI) to be covered by the general permit to the Permit Issuing Authority. The NOI shall include: (1) The name and address of the operation, (2) the applicable individual NPDES number(s), (3) thc identification of any new discharge location not contained in the expired permit, (4) evidence that the operation has obtained a Site Rehabilitation Initiation Order from the State of Florida, (5) a map showing the facility and discharge location (in latitude and longitude), and (6) the name of the receiving water. Operators having several individual permits are encouraged to consolidate requests for coverage into one NOI for all individual permits. The previous submission of the proper forms in the renewal application does not relieve the permittee desiring coverage under the general permit of the requirement to file a NOI.

b. Dischargers having valid individual NPDES permits that desire coverage under the general permit are required to file a NOI to the Permit Issuing Authority within at least 30 days prior to expiration of their current permit(s). The notice shall contain the same information specified in paragraph (a) above. Permittees desiring to retain their individual permit are required to submit the appropriate application forms at least 180 days before expiration of their individual permit.

c. Dischargers who have not previously obtained a valid individual NPDES permit will be required to submit a Site Remedial Action Plan as required by Florida Department of Environmental Regulation to EPA. Such submittals shall be accompanied by a NOI to be covered by the general permit and shall contain the same information specified in paragraph (a) above. The application for coverage under the general permit must be made at least forty-five (45) days before the discharge is to commence.

d. Notification of coverage will be given by the Permit Issuing Authority by letter to the permittee. Upon receipt of coverage the permittee shall achieve the effluent limitations required by this permit, once the facility becomes operational.

*Section G. Additional General Permit Conditions*

1. The Permit Issuing Authority may require any person authorized by this permit to apply for and obtain an individual NPDES permit when:

a. The discharge(s) is a significant contributor of pollution;

b. The discharger is not in compliance with the conditions of this permit;

c. A change has occurred in the availability of the demonstrated technology of practices for the control of abatement of pollutants applicable to the point sources;

d. Effluent limitation guidelines are promulgated for point sources covered by this permit;

e. A Water Quality Management Plan containing requirements applicable to such point source is approved; or

f. The point source(s) covered by this permit no longer:

(1) Involve the same or substantially similar types of operations;

(2) Discharge the same types of wastes;

(3) Require the same effluent limitations or operating conditions;

(4) Require the same or similar monitoring; and

(5) In the opinion of the Regional Administrator, are more appropriately controlled under an individual permit than under a general permit.

The Regional Administrator may require any operator authorized by this permit to apply for an individual NPDES permit only if the operator has been notified in writing that a pemit application is required.

2. Any operator authorized by this permit may request to be excluded from the coverage of this general permit by applying for an individual permit. The operator shall submit an application together with the reasons supporting the request to the Regional Administrator.

3. When an individual NPDES permit is issued to an operator otherwise subject to this general permit, the applicability of this permit to the owner or operator is automatically terminated on the effective date of the individual permit.

4. A source excluded from coverage under this general permit solely because it already has an individual permit may request that its individual permit be revoked, and that it be covered by this general permit. Upon revocation of the individual permit, this general permit shall apply to the source.

5. A petroleum contamination recovery operation may be excluded from this general permit if it proposes discharges to receiving waters that are classified as "Special Protection, Outstanding Florida Waters" as set forth by FAC 17–3.043.

6. The permittee shall notify the Permit Issuing Authority within 30 days after the permanent termination of discharge from their facility. This letter shall include the necessary *Site Rehabilitation Completion Order* (SRCO) from Florida Bureau of Waste Cleanup which constitutes final action on the State level for completion of cleanup activities at the affected site. After review of the SRCO, permission will be given by EPA to deactivate coverage by the general NPDES permit for the facility.

**Part III**

*Other Requirements*

*A. Reporting of Monitoring Results*

Monitoring results obtained during the previous calendar quarter shall be summarized for each month (each quarter if monitoring frequency is quarterly) and must be reported on a Discharge Monitoring Report Form (EPA No. 3320-1), postmarked no later than the 28th day of the month following the completed calendar quarter. (For example data for January-March shall be submitted by April 28.) Duplicate signed copies of these, and all other reports required by Section D of Part II, Reporting Requirements, shall be submitted to the Permit Issuing Authority and the State at the following addresses:

Environmental Protection Agency,

Florida Dept. of Environmental Regulation Region IV, Local District Office Address. Facilities Performance Branch, Water Management Division, 345 Courtland Street, NE., Atlanta, GA 30365.

*B. Reopener Clause*

This permit shall be modified, or alternatively revoked and reissued, to comply with any applicable effluent standard or limitation issued or approved under sections 301(b)(2) (C), and (D), 304(b)(2) and 307(a)(2) of the Clean Water Act, if the effluent standard or limitation so issued or approved:

1. Contains different conditions or is otherwise more stringent than any condition in the permit; or

2. Controls any pollutant not limited in the permit.

The permit as modified or reissued under this paragraph shall also contain any other requirements of the Act then applicable.

**Part IV**

**Best Management Practices and Conditions**

*Section A. General Conditions*

*1. BMP Plan*

Preparation of a Best Management Practices (BMP) Plan shall be done in conjunction with development of the Remedial Action Plan required by Florida Department of Environmental Regulation (See Part II.F.c.). The "NPDES guidance Document" can be used as a reference which contains technical information on BMPs and the elements of the BMP program. The permittee shall develop and implement a BMP plan which prevents, or minimizes the potential for. the release of pollutants from ancillary activities, including material storage areas; plant site runoff; in-plant transfer, process and material handling areas; loading and unloading operations, and sludge and waste disposal areas, to the waters of the United States through plant site runoff; spillage or leaks; sludge or waste disposal; or drainage from raw material storage. The term pollutants refers to any substance listed as toxic under section 307(a)(1) of the Clean Water Act, oil, as defined in section 311(a)(1) of the Act, and substance listed as hazardous under section 311 of the Act. Copies of the "NPDES Guidance Document" may be obtained by submitting written requests to: Director, Permits Division (EN–336), Office of Water Enforcement and Permits, 401 M St. SW., Environmental Protection Agency, Washington, DC 20460.

**Part V**

**Biomonitoring Program**

In accordance with Part 1 of this permit, the permittee shall initiate the series of tests described below within 30 days of commencement of discharge from outfall(s) 001.

1. The permittee shall conduct 48-hour static toxicity tests on three appropriate test species (EPA/600/4–85/013, Table 1). The test organisms used shall include at least one fish and one invertebrate test species (Recommend: A Daphnidae species, the fathead minnow (*Pimephales promelas*), and one species selected from EPA/600/4–85/013, Table 1). Tests shall be conducted once every month for a period of three months following the initiation of the tests and once every year thereafter for the duration of the permit using samples of 100% final effluent. Such tests will be conducted on a grab sample of 100% final effluent. Results of all tests conducted with any species shall be reported according to EPA/600/4–85/013, Section 13, Report Preparation and Data Utilization, and shall be submitted to EPA with the quarterly discharge monitoring report.

2. If lethality (less than 50% survival of test organisms in 100% effluent) is found in any of the above samples of effluent, this will constitute a violation of this permit. The permittee will then be subject to the enforcement provisions of the Clean Water Act. In the event a violation of toxicity limits results in an enforcement action, any different or more stringent monitoring requirements imposed in that enforcement action shall apply in lieu of the requirements of this permit condition for whatever period of

time is specified by EPA in the enforcement action.

3. All test organisms, procedures and quality assurance criteria used shall be in accordance with *Methods for Measuring the Acute Toxicity of Effluent to Freshwater and Marine Organisms*, EPA–600/4–85–013. A standard reference toxicant quality assurance test shall be conducted concurrently with each set of toxicity tests and its results submitted with the quarterly discharge monitoring report.

**Fact Sheet For National Pollutant Discharge Elimination System General Permit To Discharge Treated Wastewater To U. S. Waters**

[NPDES Permit No. FLG040001]

*1. Synopsis of Application*

a. Name and Address of Applicant
Applicants within the political boundary of the State of Florida

b. Type of Facility
System for treatment of petroleum fuel contaminated ground water and stormwater

c. Design Capacity of Facility
To be based on a case by case analyses of the contaminated site

d. Applicant's Receiving Waters.
Waters of the U.S. in the State of Florida

e. Description of Wastewater Treatment Facilities
Air stripping, aeration, carbon adsorption when necessary, or other water treatment technologies which can effectively treat contaminated waters to the levels required by the general permit.

f. Description of discharges (as reported by applicant)
Reviewing the effluent data submitted by eight (8) individual applicants, the following information was obtained:

| Effluent characteristic | No. of facilities reporting | Reported concentration highest |
|---|---|---|
| Benzene | 8 | < 1.0 µg/1. |
| Naphthalene | 2 | < 10.0 µg/1. |
| Do | 1 | < 20.0 µg/1. |
| Do | 1 | < 1.0 µg1/ |
| Do | 4 | No data reported. |
| Lead | 1 | 20 µg/1. |
| Do | 1 | 7 µg/1. |
| Do | 1 | < 100 µg/1. |
| Do | 5 | No data reported. |

*2. Proposed Effluent Limits for This General Permit*

Discharges contaminated with *automotive gasoline:*

| Effluent characteristic | Daily maximum |
|---|---|
| Benzene | 1.0 µg/1. |
| Total Lead [1] | 30.0 µg/1. |
| pH | 6.0–8.5 std. units. |

Discharges contaminated with *aviation fuels and diesel:*

| Effluent characteristic | Daily maximum |
|---|---|
| Benzene | 1.0 µg/1. |
| Naphthalene | 100 µg/1. |
| Total Lead [1] | 30 µg/1. |
| pH | 6.0–8.5 std. units. |

[1] Required only when contamination results from leaded fuel.

*3. Background*

The State of Florida's Department of Environmental Regulation (FDER) Bureau of Waste Cleanup has initiated a remedial action process at sites where petroleum contamination of groundwater has occurred through the adoption of the State Underground Petroleum Environmental Response (SUPER) Act of 1986. This act gives the FDER authority over cleanup operations for areas which have been contaminated by fuels from petroleum storage systems. As of December of 1987, FDER estimates that there are over 2000 facilities that have reported suspected petroleum leaks. This potential underground leak and cleanup activity is expected to increase in the near future. The SUPER Act programs are authorized through the year 1997. Currently, EPA is issuing indivdiual permits on a case by case basis. In order to expedite this permitting process, and treat possible contamination to drinking water aquifers, like the Biscayne aquifer which is an important source of drinking water in southern Florida, a National Pollutant Discharge Elimination System (NPDES) general permit is being proposed for the State of Florida.

*4. General Information for This Florida General Permit*

This general permit covers a variety of contaminants found in petroleum fuels. This will allow the operator, once a leak has been detected and groundwater supply contaminated, to immediately initiate a hydrocarbon recovery system.

This recovery system for the treatment of contaminated groundwater in most cases consists of monitoring wells, and recovery wells. Placement of the wells is generally determined after geologic consideration and groundwater movement in the area affected. The rate or movement by the contaminants is affected by the varying permeability and adsorptive characteristics of the water filled pore spaces and depth to the water table. Vapor recovery systems are often used to remove volatiles from the soil. After reaching the water table, the free-floating contaminant is usually pumped from the recovery wells to an above ground storage tank. The dissolved organics in the contaminated water are pumped to an air stripper and treated using packed-tower aeration and when necessary, carbon adsorption. Both of these treatment processes have been proven effective in removing 94–99% of the volatile compounds by applying good engineering practices, before discharging into surface waters or nearby tributaries and canals.

The State of Florida is expecting 100 permits a year which could occur from petroleum contamination and proposed discharges. Therefore, in order to allow hydrocarbon recovery operations to be permited without delays in permit issuance, this general permit is being proposed for sources identified within the political boundaries of the state of Florida.

This general permit may be used to authorize discharges of treated ground water and any stormwater incidental to the groundwater cleanup operation. All such operations in Florida must obtain a Site Rehabilitation Initiation Order (SRIO) prior to the cleanup. This SRIO becomes a part of the applicant's notice of intent (NOI). This permit is not limited to cleanup operations funded by the State of Florida, but may cover *all* such cleanup operations.

*5. Basis For This General Permit Final Effluent Limits And Permit Conditions*

The effluent limits for the general permit are based on treatment technology data obtained from previous individual permits. The general permit has been written to require an effluent limit on three (3) chemicals, i.e., benzene, naphthalene and lead. Based on the fact that benzene is a potential carcinogen; (EPA 440/5–80–0180) the effluent limit was written to meet the FDER community drinking water standard of 1.0 ug/1 (FAC 17–22.104(1)(g)) and water quality criteria for a pH range of 6.0–8.5 standard units. Based on the "Ambient Water Qaulity Document for Benzene" this maximum contaminant level for benzene is well below the $10^{-6}$ risk factor of 40 ug/1 for consumption of contaminated aquatic organisms.

This limit of 1.0 ug/1 is also between the $10^{-5}$ risk factor of 6.6 ug/1 and $10^{-6}$ risk factor of .66 ug/1 for consumption of contaminated water and aquatic organisms. The effluent limit for lead, which his added to gasoline in the form of tetraethyllead, was written to meet the FDER water quality standard of 30

ug/1 (FAC 17-3.121(16)(g)) for Class III Waters. Based on the "Ambient Water Quality Document for Lead" this limit is well below the current human health standard of 50 ug/1 which is protective of human health against the ingestion of contaminated water and contaminated aquatic organisms (EPA 440/5-80-057).

The naphthalene limit of 100 ug/1 was written according to FEDER petroleum contamination site cleanup criteria (17-70.011(5)A 2E). Based on the "Ambient Water Quality Document for Naphthalene" acute and chronic toxicity to freshwater aquatic life occur at concentrations as low as 2300 ug/1 for the Rainbow Trout and 620 ug/1 for the Fathead Minnow, respectively, and would occur at lower concentrations among species that are more sensitive than those tested. Since toxicity screening will use acute tests only, a water quality based limit of .3(2300 ug/1) or 690 ug/1 could be derived. Also, according to the "Handbook of Environmental Data and Organic Chemicals" tainting of fish flesh occurs for naphthalene near 1000 ug/1. The petroleum site criteria limit of 100 ug/1 is more stringent than EPA's water quality document for naphthalene and should provide adequate protection for more sensitive aquatic organisms.

The permittee may request an individual permit to contain less stringent end-of-pipe effluent limits for benzene, total lead and naphthalene dependent upon resulting instream concentrations durign critical low flows of the receiving stream.

As with any petroleum fuel, other aromatic compounds will be present once testing has occurred. Since other volatiles will be present in untreated groundwater in greater concentrations than benzene, past experience in treatment design has shown that these organics can be effectively treated before discharging to surface waters.

According to the "Toxicant Profile for the ALKYL BENZENES", (Ethylbenzene, Isopropylbenzene, Toluene, Xylene) prepared for Florida's DER by the Center of Biomedical and Toxicological Research at Florida State University, levels of 100-200 ug/1 were recommended for the protection of aquatic organisms and human health. These recommendations are below EPA's "Ambient Water Quality Critera" documents recommendations for human health which suggest levels of 1400 ug/1-14300 ug/1 for Ethylbenzene and Toluene. The recommended treatment technology of air stripping and when necessary, carbon adsorption, will reduce the benzene concentration to below 1.0 ug/1. Therefore, EPA will not impose specific limits on the other pollutants which may occur since meeting the limits set in this permit should reduce the other pollutants well below those levels allowable based on Florida's water quality standards. Also, the effluent shall not be lethal to more than 50% of appropriate fish and invertebrate test organisms in a 48 hour static renewal toxicity test. Because the effluent from Outfall 001 may be toxic, toxicity testing requirements as contained on Pages I-1, I-2 and in Part V have been included to ensure that the effluent from Outfall conforms with FAC Section 17-4.244(4) and Regional policy as contained in the document, "Whole Effluent Toxicity Testing Policy for Florida", dated May 5, 1986.

Since the recovery wells in most instances are placed in areas of highest contamination, it is reasonable to conclude that the greatest potential for toxicity should occur during the initial stages of facility operation. Therefore, an initial frequency of once-a-month for three (3) months is included in these requirements to indicate instances of toxicity and reveal the facilities treatment performance immediately after commencement of discharge. If no toxicity is confirmed, the frequency is then reduced to yearly since the permittee will be required to meet effluent limitations and the potential for toxicity is at a minimum. Failure to demonstrate compliance with the acute toxicity requirement will constitute a violation of the terms of the permit. The sample type for all monitoring is "Grab" since the untreated groundwater quality is expected to be consistent in level of contamination.

The permittee is required to develop and implement a plan for Best Management Practices (BMPs) in conjunction with development of the Remedial Action Plan required by FDER. BMPs are actions or procedures to prevent or minimize the potential for the release of toxic pollutants or hazardous substances in significant amounts to surface waters.

*6. Treatment Technology*

According to EPA's publication entitled "Treatment of Volatile Organic Compounds in Drinking Water", a drinking water research experiment was conducted on spiked water using one organic volatile and then by combining two volatiles with aeration as the treatment process. It was discovered that no difference was observed in treatment efficiency when applying aeration to one organic chemical or a combination of volatiles. In this particular experiment an overall efficiency of 92% was obtained. Most petroleum fuels consist of a combination of volatiles and aromatics, each different based on additives included during refining of the fuel. In case studies revealed in Environmental's Science and Engineering document ESE No. 84-912-0300, packed tower aeration utilizing different packing materials, varying flow paths and air-to-water ratios have been proven effective in removing 94-99% of the volatiles. Some particular compounds are not as easily air-stripped as others which would necessitate the need for a combination treatment design used in conjunction with aeration.

Carbon adsorption has been proven effective in removing organics from water until the influent concentration is in equilibrium with the effluent and the organics no longer adhere to the carbon surface. Adsorption has been used successfully in removing less volatile compounds of higher molecular weight.

According to (EPA 570/9-84-005) entitled "Adsorption Techniques in Drinking Water Treatment" the efficiency of carbon adsorption was proven effective during a case study in Hialeah, Florida at the Preston water treatment plant. In this study, groundwater from a drinking water aquifer was spiked with higher molecular weight extractables before treating the water with granular activated carbon. It was found that more than 90% removal of the spiked compounds was obtained. The combination of air-stripping with adsorption usually extends the adsorptive life of the activated carbon and leads to more efficient treatment, but is not always required in every situation.

*7. Other Legal Requirements*

*A. Executive Order 12291*

The Office of Management and Budget has exempted this action from the review requirements of Executive Order 12291 pursuant to section 8[b] of that order.

*B. Regulatory Flexibility Act*

After review of the facts presented in this document, I hereby certify, pursuant to the provisions of 5 U.S.C. 605(b), that this general NPDES permit will not have a significant impact on a substantial number of small entities. Moreover, the permit reduces a significant administrative burden on regulated sources.

*C. Paperwork Reduction Act*

EPA has reviewed the requirements imposed on regulated facilities in this draft general permit under the Paperwork Reduction Act of 1980, 44

U.S.C. 3501 *et seq.* The information collection requirements of this permit have already been approved by the Office of Management and Budget in submissions made for the NPDES permit program under the provisions of the Clean Water Act.

*8. Requested Variances or Alternatives To Required Standards*

None.

*9. Effective Date Of Proposed Effluent Limits*

The proposed effluent limits will be effective immediately upon receipt of written notification of coverage from the Permit Issuing Authority.

*10. State Certification Requirements*

Section 301(b)(1)(c) of the Act requires that NPDES permits contain conditions which ensure compliance with applicable State water quality standards or limitations. Section 401 requires that States certify that Federally issued permits are in compliance with State law. This permit is for operations within waters within the State of Florida. EPA is requesting State officials to review and provide appropriate certification of this draft general permit pursuant to 40 CFR 124.53.

*11. EPA Contact*

Additional information concerning the permit may be obtained at the address and during the hours noted in Item 12 from: Ms. Suzanne D. Potter, Public Notice Coordinator, 404/347-3004.

12. *The Administrative Record,* including application, draft permit, fact sheet, public notice (after release), State Certification (after receipt), comments received, and additional information is available by writing the EPA, Region IV, or for review and copying at 345 Courtland Street, NE., 3rd Floor, Atlanta, Georgia 30365, between the hours of 8:15 a.m. and 4:30 p.m., Monday through Friday. Copies will be provided at a minimal charge per page.

*13. Proposed Schedule for Permit Issuance*

Draft Permit FDER Bureau of Waste Cleanup—March 29, 1988
Draft Permit to EPA Headquarters—June 8, 1988
Draft to State for Certification—August 11, 1988
Draft Permit to Public Notice—August 25, 1988
Proposed Issuance Date—October 12, 1988

[FR Doc. 88-19302 Filed 8-24-88; 8:45 am]
BILLING CODE 6560-50-M

## FEDERAL COMMUNICATIONS COMMISSION

### Technical and Allocations Subgroups of Radio Advisory Committee; Joint Meeting

The Technical and Allocations Subgroup of the Advisory Committee on Radio Broadcasting will hold a joint meeting at 1:30 p.m. on Thursday, September 8, 1988 in the McCollough Room at the Headquarters of the National Association of Broadcasters, 1771 N Street W., Washington, DC.

The agenda will be:

—Use of the expanded AM band (1605-1705 kHz) in the United States;
—Methods for improving the AM radio broadcast service;
—FM allocations, with reference to the use of FM directional antennas, Class A upgrades, creation of FM Class C3 stations, and FM translators;
—Other business.

Consideration will be given to the question of whether the subgroups will wish to make written submissions to the FCC, particularly with reference to improvement of the AM technical standards.

The Subgroups' meetings are continuing ones, and may be resumed after each session at times and places decided by the participants. Meetings of the Radio Advisory Committee and its Subgroups are open to the public. All interested persons are invited to participate.

For further information, please call Wallace Johnson, Chairman of the Technical Subgroup, at (703) 824-5660, or Louis Stephens, Chairman of the Allocations Subgroup, at (202) 254-3394.

**H. Walker Feaster III,**

*Acting Secretary.*

[FR Doc. 88-19270 Filed 8-24-88; 8:45 am]
BILLING CODE 6712-01-M

## FEDERAL RESERVE SYSTEM

### Adrian Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 12, 1988.

**A. Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Adrian Bancshares, Inc.,* Adrian, Missouri; to become a bank holding company by acquiring 80 percent of the voting shares of Adrian Bank, Adrian, Missouri.

2. *Bancorp II, Inc.,* Kansas City, Kansas; to become a bank holding company by acquiring 80 percent of the voting shares of Citizens Bank of Pilot Grove, Pilot Grove, Missouri.

3. *First National of Nebraska, Inc.,* Omaha, Nebraska; to acquire 80 percent of the voting shares of First National Columbus Bancorp, Columbis, Nebraska, parent of First National Bank and Trust Company of Columbus, Columbus, Nebraska.

**B. Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *First Interstate Bancorp,* Los Angeles, California; to acquire 100 percent of the voting shares of Jefferson State Bank, Medford, Oregon. Applicant proposes to engage in State authorized general insurance activities through the bank as a primary activity.

2. *Philippine National Bank,* Manila, Philippines; to become a bank holding company by acquiring 100 percent of the voting shares of Century Holding Corporation, San Francisco, California, and thereby indirectly acquire Century Bank, San Francisco, California.

Board of Governors of the Federal Reserve System, August 19, 1988.

**James McAfee,**

*Associate Secretary of the Board.*

[FRDoc. 88-19233 Filed 8-24-88; 8:45 am]
BILLING CODE 6210-01-M

### Comerica Inc.; Application to Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 19, 1988.

**A. Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Comerica Incorporated*, Detroit, Michigan; to engage *de novo* through its subsidiary Comerica Investment Advisers, Inc., Detroit, Michigan, in acting as an investment adviser in providing to persons other than registered investment companies portfolio investment advice, pursuant to § 225.25(b)(4)(iii) of the Board's Regulation Y

Board of Governors of the Federal Reserve System, August 19, 1988.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 88-19234 Filed 8-24-88; 8:45 am]

BILLING CODE 6210-01-M

### John Elson Kirkpatrick; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has 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 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. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 16, 1988.

**A. Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *John Elson Kirkpatrick*, Oklahoma City, Oklahoma; to acquire an additional 14.8–19.0 percent of the voting shares of Banks of Mid-America, Inc., Oklahoma City, Oklahoma, parent of Liberty National Bank and Trust Company, Oklahoma City, Oklahoma, and First National Bank and Trust Company of Tulsa, Tulsa, Oklahoma.

Board of Governors of the Federal Reserve System, August 19, 1988.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 88-19235 Filed 8-24-88; 8:45 am]

BILLING CODE 6210-01-M

## GENERAL SERVICES ADMINISTRATION

### Eligibility To Use GSA Sources of Supply And Services

**AGENCY:** Federal Supply Service, GSA.

**ACTION:** Notice.

**SUMMARY:** This notice provides information on the eligibility to use GSA sources of supply and services. This action is necessary to provide guidance concerning eligibility requirements to eligible Government activities and cost-reimbursement contractors working for the Government.

**FOR FURTHER INFORMATION CONTACT:** Robert A. Renner, Regulations Management Branch (703-557-5480).

**SUPPLEMENTARY INFORMATION:** This notice contains text that was extracted from GSA Order ADM 4800.2B, dated May 13, 1988, Subject: Eligibility to use GSA sources of supply and services. The text reads as follows:

**Subject:** Eligibility to use GSA sources of supply and services

1. *Purpose.* This order provides definitions and listings of those agencies and other activities authorized to use GSA sources of supply and services.

2. *Background.* The Federal Property and Administrative Services Act of 1949, as amended, authorize the Administrator to procure and supply personal property and nonpersonal services for the use of executive agencies, mixed-ownership Government corporations, as identified in the Government Corporation Control Act, and the District of Columbia. Other organizations may be eligible by reason of enabling statutory authority.

3. *Definition.* GSA sources of supply and services are defined as those support programs administered by GSA and prescribed in the Federal Property Management Regulations (FPMR) Parts 101-26—Procurement Sources and Programs, 101-39—Interagency Fleet Management Systems, 101-40—Transportation and Traffic Management, 101-42—Property Rehabilitation Services and Facilities, 101-43 thru 101-46, 101-48 and 101-49, Utilization and Disposal Programs, and in the Federal Information Resources Management Regulations (FIRMR), 41 CFR ch. 201-32 for ADP and 41 CFR ch. 201-40 for Telecommunications.

4. *Authority to use GSA sources of supply and services.* The authority to use GSA sources of supply and services is established by statute (see par. 5).

5. *Eligible activities.* Organizations eligible to use GSA sources of supply and services are covered by the provisions of the Federal Property and Administrative Services Act of 1949, as amended, hereafter referred to as the Property Act. Definitions of the organizations follow. It is noted, however, that although an organization may be eligible to use these sources, it does not necessarily mean that it would always be practical for GSA to make such sources available.

a. *Executive agencies.* Sections 201(a) and 211(b) of the Property Act provide

for executive agencies' use of GSA sources of supply and services. Executive agencies, as defined in section 3(a) of the Property Act, include:

(1) *Executive departments.* These are the cabinet departments defined in 5 U.S.C. 101 and are listed in app. A.

(2) *Wholly owned Government corporations.* These are defined in 31 U.S.C. 9101 and are listed in App. A.

(3) *Independent establishments in the executive branch of the Government.* These are generally defined by 5 U.S.C. 104. However, it is often necessary to consult specific statutes, legislative histories, and other references to determine whether a particular establishment is within the executive branch. To the extent that GSA has made such determinations, the organizations qualifying under this authority are listed in app. A.

b. *Other Federal agencies, mixed-ownership Government corporations, and the District of Columbia.* Sections 201(b) and 211(b) of the Property Act authorize the Administrator of General Services to provide GSA sources of supply and services to these organizations upon request.

(1) *Other Federal agencies.* These Federal agencies are those defined in section 3(b) of the Property Act which are not in the executive branch; i.e., any establishment in the legislative or judicial branch of the Government (except the Senate, the House of Representatives, and the Architect of the Capitol and any activities under his direction). To the extent that GSA has made such determinations, the organizations qualifying under this authority are listed in app. B.

(2) *Mixed-ownership Government corporations.* These are included in sections 201(b) and 211(b) of the Property Act and defined in 31 U.S.C. 9101. They are listed in app. B.

(3) *District of Columbia.* The Government of the District of Columbia is eligible to use GSA sources of supply and services. The Government of the District of Columbia, and those parts thereof which have been determined by GSA to be eligible to use its sources of supply and services, are listed in app. B.

c. *The Senate, House of Representatives, and activities under the direction of the Architect of the Capitol.* These organizations are eligible to use GSA sources of supply and services, under section 602(e) of the Property Act, upon request. To the extent that GSA has determined that various activities qualify under this authority, they are listed in app. B.

d. *Other organizations authorized under the authority of the Property Act.* GSA has further determined, under the Property Act, that three other types of organizations are eligible to use its sources of supply and services.

(1) *Cost-reimbursement contractors (and subcontractors) as properly authorized.* Part 51 of the Federal Acquisition Regulation (FAR) provides that agencies may authorize certain contractors (generally cost-reimbursement contractors) to use GSA schedules, GSA stock, and GSA contract travel and transportation services. In each case, the written autorization must conform to the requirements of FAR Part 51, Use of Government Sources by Contractors. Subpart 51.2 prescribes policies and procedures governing Federal agencies in authorizing cost-reimbursement contractors to obtain interagency fleet management system vehicles and related services.

(2) *Fixed-price contractor (and subcontractors) purchasing security equipment.* Under section 201 of the Property Act, the Administrator has determined that fixed-price contractors and lower tier subcontractors who are required to maintain custody of security classified records and information may purchase security equipment for GSA. Procedures regarding these organizations are set forth in FPMR 101–26.507 and 101–26.407.

(3) *Non-Federal firefighting organizations cooperating with the Forest Service.* Under section 201 of the Property Act, it has been determined that certain non-Federal firefighting organizations may purchase wildfire suppression equipment and supplies from the Federal Supply Service (FSS) (Article V, Agreement No. FSS 83–1, January 24, 1984).

(4) *Department of the Interior, Bureau of Indian Affairs.* Under a Memorandum of Understanding between the Department of the Interior and the General Services Administration (FSS–83–1) and Pub. L. 93–638, tribal Government grantees of the Bureau of Indian Affairs may use GSA sources of supply and services.

e. *Other statutes.* Other statutes authorize specific organizations to use GSA sources of supply and services. These organizations are listed in app. B, with appropriate annotations. The major categories of such organizations include:

(1) *Certian charitable institutions.* Pursuant to Pub. L. 95–355, the following activities are eligible to use GSA supply sources and are also listed in app. B:

(a) Howard University;

(b) Gallaudet University;

(c) National Technical Institute for the Deaf; and

(d) American Printing House for the Blind.

(2) *Certain territories.* Certain territories of the United States, as indicated in app. B, are eligible to use GSA sources of supply and services.

(Note: This authority has historically depended on the authorizing provisions being reenacted in the annual Appropriations Act for the Department of the Interior.)

(3) *Foreign entities.* Section 607 of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2357, provides that the President may authorize certain countries and organizations to use GSA sources of supply and services as part of the foreign policy of the United States. To the extent that the Department of State has made determinations on behalf of the President, they are included in app. C. Purchases made by international organizations through GSA sources of supply and services must be for civilian use only.

(4) *Nonappropriated fund activities.* FPMR 101–26.000 provides that military commissaries and nonappropriated fund activities may use GSA sources of supply and services for their own use, not for resale, unless otherwise authorized by the individual Federal agency and concurred in by GSA.

6. *Ineligible activities.* Except for the acquisition of excess personal property through sponsoring agencies, Federal grantees are ineligible to use GSA sources of supply and services. In addition, a cost-reimbursement contractor cannot transfer procurement authorization to a third party leasing company to use GSA sources of supply and services, unless the leasing company has an independent authorization to use GSA contracts.

7. *Excess, surplus, and forfeited property.* The eligibility of activities and organizations to obtain supplies and services from GSA's personal property utilization and disposal programs is governed by FPMR Parts 103–43 thru 101–46, 101–48, and 101–49.

8. *Determination of eligibility.* Activities or organizations other than those covered in the appendixes may be eligible to use GSA sourses of supply and services. Requests to use these services received from activities or organizations whose eligibility is in question must be forwarded to the office of Customer Service and Marketing, Attention: Marketing and Publications Division (FFP), for determination.

**Appendix A—Executive Agencies**

The following have been determined to be "executive agencies," or parts thereof, for the purpose of using GSA sources of supply and services. This list is not all-inclusive; other activities also may be eligible to use GSA on a case-by-case basis (see par. 8). Listed here

are major Federal activities and their subordinate entities about which inquiries have been received.

ACTION
Agency for International Development
Agriculture, Department of
Air Force, Department of
Alaska Natural Gas Transportation System
American Battle Monuments Commission
Army Corps of Engineers
Army, Department of
Board for International Broadcasting
Bonneville Power Administration (administrative and housekeeping items)
Bureau of Land Management
Central Intelligence Agency
Commerce, Department of
Commission on Civil Rights
Commission on Fine Arts
Commodity Credit Corporation
Commodity Futures Trading Commission
Consumer Products Safety Commission
Defense, Department of
Defense, Agencies and Joint Service Schools
Education, Department of
Energy, Department of
Environmental Protection Agency
Equal Employment Opportunity Commission
Executive Office of the President
Export-Import Bank of U.S.
Farm Credit Administration
Federal Communications Commission
Federal Savings and Loan Insurance Corporation
Federal Trade Commission
Forest Service, U.S.
General Services Administration
Government National Mortgage Association
Health and Human Services, Department of
Housing and Urban Development, Department of
Inter-American Foundation
Interior, Department of the
Interstate Commerce Commission
Justice, Department of
Kennedy Center
Labor, Department of
Legal Services Corporation (not its grantees)
Merit Systems Protection Board
National Aeronautics and Space Administration
National Credit Union Administration (not individual credit unions)
National Council on the Handicapped
National Endowment of the Arts
National Endowment for the Humanities
National Labor Relations Board
National Science Foundation
National Transportation Safety Board
Navy, Department of the
Nuclear Regulatory Commission
Occupational Safety and Health Review Commission
Office of Personnel Management
Overseas Private Investment Corporation
Panama Canal Commission
Peace Corps
Pennsylvania Avenue Development Corporation
Pension Benefit Guaranty Corporation
Postal Rate Commission
Railroad Retirement Board
St. Elizabeths Hospital
St. Lawrence Seaway Development Corporation
Securities and Exchange Commission
Selective Service System
Small Business Administration
Smithsonian Institution
State, Department of
Tennessee Valley Authority
Transportation, Department of
Treasury, Department of the
U.S. Arms Control and Disarmament Agency
U.S. Information Agency
U.S. International Development Agency
U.S. International Trade Commission
U.S. Postal Service
Veterans Administration

**Appendix B—Other Eligible Users**

The following have been determined to be eligible to use GSA sources of supply and services, in addition to the organizations listed in appendixes A and C. An asterisk indicates that special limitations may apply (see subpar. 5e(2)). This list is not all-inclusive; other activities also may be eligible to use GSA sources. The eligibility of those will be ruled upon by GSA on a case-by-case basis (see par. 8).

Administrative Conference of the U.S.
Administrative Office of the U.S. Courts
Advisory Commission on Intergovernmental Relations
Advisory Committee on Federal Pay
American Printing House for the Blind
American Samoa, Territorial and Local Governments of**
Architect of the Capitol
Architectural and Transportation Barriers Compliance Board
Central Bank for Cooperatives
Certain nonappropriated fund activities (generally, not for resale)
Coast Guard Auxiliary (through the U.S. Coast Guard)
Committee for Purchase from the Blind and Other Severely Handicapped
Contractors and Subcontractors—cost-reimbursement (as authorized by the applicable agency's contracting official)
Contractors and Subcontractors—fixed-price (security equipment only when so authorized by the applicable agency's contracting official)
Courts, Federal (not court reporters)
Delaware River Basin Commission
District of Columbia, Government of the
Federal Deposit Insurance Corporation
Federal Home Loan Banks
Federal Intermediate Credit Bank
Federal Land Banks
Federal Reserve Board of Governors
Firefighters, Non-Federal (as authorized by the Forest Service, U.S. Department of Agriculture
Gallaudet University
General Accounting Office
Government Printing Office
Guam, Territorial and Local Governments of**
Harry S. Truman Scholarship Foundation
House of Representatives, U.S.
Howard University (including hospital)
Institute of Museum Services***
Japan-United States Friendship Commission
Library of Congress
Marine Mammal Commission
National Buildings Museum
National Capital Planning Commission***
National Gallery of Art
National Guard Activities (only through U.S. Property and Fiscal Officers)
National Railroad Passenger Corporation (i.e., AMTRAK)
National Technical Institute for the Deaf
Navajo & Hopi Indian Relocation Commission
Northern Mariana Islands, Commonwealth of the Territorial and Local Governments*
Office of the Federal Inspector for the Alaska Natural Gas Transportation System
Prospective Payment Assessments Commission
Regional Banks for Cooperatives
Senate, U.S.
Susquehanna River Basin Commission
Trust Territory of the Pacific Islands, Government of****
U.S. Commission on Civil Rights
U.S. Railway Association
U.S. Representative, Office of Joint Economic Commission
CENPRO Project Saudi Arabia (when Saudi Government cannot supply)
U.S. Soldiers' and Airmen's Home
U.S. Synthetic Fuels Corporation
Virgin Islands, Territorial and Local Governments of (including Virgin Islands Port Authority)**
Washington Metropolitan Area Transit Authority
Water Resources Council

**Appendix C—International Organizations**

The following have been determined to be eligible to use GSA sources of supply and services, in addition to the organizations listed in appendixes A and B. This list is not all-inclusive; other activities also may be eligible to use GSA sources. The eligibility of those will be ruled upon by GSA on a case-by-case basis (see par. 8).

African Development Fund
Asian Development Bank
Caribbean Organization
Customs Cooperation Council
European Space Research Organization
Food and Agriculture Organization of the United Nations
Great Lakes Fishery Commission
Inter-American Defense Board
Inter-American Development Bank
Inter-American Institute of Agriculture Sciences
Inter-American Investment Cooperation
Inter-American Statistical Institute
Inter-American Tropical Tuna Commission
Intergovernmental Maritime Consultive Organization
Intergovernmental Committee for European Migration
International Atomic Energy Agency
International Bank of Reconstruction and Development (World Bank)

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*Pursuant to the Department of the Interior appropriation act of 1987 (Pub. L. 99-591).
**Financial Service—accounting and payroll only.
***Financial Service—payroll only.
****Palau only.

International Boundary Commission-United States and Canada
International Boundary and Water Commission-United States and Mexico
International Center for Settlement of Investment Disputes
International Civil Aviation Organization
International Coffee Organization
International Cotton Advisory Committee
International Development Association
International Fertilizer Development Center
International Finance Corporation
International Hydrographic Bureau
International Institute for Cotton (formerly International Cotton Institute)
International Joint Commission-United States and Canada
International Labor Organization
International Maritime Satellite Organization
International Monetary Fund
International Pacific Halibut Commission
International Pacific Salmon Fisheries Commission-Canada
International Secretariat for Volunteer Services
International Telecommunications Satellite Organization
International Telecommunication Union
International Wheat Council
Lake Ontario Claims Tribunal
Multinational Force and Observers
Organization of African Unity
Organization of American States
Organization for Economic Cooperation and Development
Pan American Health Organization
Radio Technical Commission for Aeronautics
South Pacific Commission
United International Bureau for the Protection of Intellectual Property
United Nations
United Nations Educational, Scientific, and Cultural Organization
Universal Postal Union
World Health Organization
World Intellectual Property Organization
World Meteorological Organization
World Tourism Organization

Dated: August 12, 1988.

**William B. Foote,**

*Assistant Commissioner for Customer Service and Marketing.*

[FR Doc. 88-19242 Filed 8-24-88; 8:45 am]

BILLING CODE 6820-24-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Toxic Substances and Disease Registry

### Association of Occupational and Environmental Clinics Managing and Preventing Diseases Related to Hazardous Substances

#### Introduction

The Agency for Toxic Substances and Disease Registry (ATSDR) announces the availability of funds in Fiscal Year 1988 for a cooperative agreement with the Association of Occupational and Environmental Clinics (AOEC) to improve the development and preparation of primary care physicians, medical school residents, and other public health students and practitioners concerning medical surveillance, screening and methods of diagnosing, treating and preventing injury or disease related to the exposure to hazardous substances. No other applications are solicited or will be accepted.

**Authority:** This cooperative agreement is authorized by sections 104(i)(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA). Also, it is authorized by section 301(a) of the Public Health Service Act.

The Catalog of Federal Domestic Assistance is 13.283.

#### Background

As part of its overall mission, the Agency for Toxic Substances and Disease Registry (ATSDR) is responsible for providing national leadership to increase the knowledge and skill level of health care providers and students by developing their capacity to achieve improved public health related to exposures to hazardous substances. In carrying out that responsibility, ATSDR works, according to its legislative mandate, collaboratively with medical colleges and States—especially academic medical center clinics with expertise in environmental health to develop, implement and utilize educational materials and improved programs for diagnosing, treating and preventing injury or disease related to exposure to hazardous substances.

#### Reasons for Proposing Association of Occupational and Environmental Clinics as the Recipient of This Cooperative Agreement

The Association of Occupational and Environmental Clinics is a unique network of primary care health clinics, associated with academic medical centers, that have shown a unique ability to address health care issues associated with hazardous substances. Internally, these clinics emphasize teaching and research based on medical surveillance, screening, biostatistics, and occupational and environmental health. Externally these clinics feature an active public health focus within their communities. They educate medical students, public health personnel, primary care practitioners and State officials to perform educational and administrative services and academically based clinical care, and they promote and maintain the health of the communities in which they are located. In addition, the AOEC provides learning experiences open to all medical and allied health students so as to increase their basic skill and knowledge levels concerning principles of environmental health as related to hazardous substances. Member clinics encourage strong relationships with primary care disciplines throughout their program.

#### Purpose and Cooperative Activities

*Purpose*

The overall goal of this cooperative agreement is to enhance the education and practice of health care providers and medical and public health students in the areas of surveillance, diagnosing, treating and preventing injury or illness associated with exposure to hazardous substances.

Specific objectives of the agreement areas follow:

1. Enhance training of health care providers within an established clinical setting in matters of health effects caused by hazardous substances.

2. Enhance knowledge and skills in health care providers concerning exposure and disease registries so that they may better serve their local communities in providing this service and encouraging its utilization.

3. Assist the AOEC in providing leadership and direction to its membership in encouraging environmentally related primary care activities, and community outreach by health care providers concerning issues associated with exposure to hazardous substances.

4. Expand the clinical curriculum and variety of field experiences for health care providers at the community and State level.

5. Enhance the linkage of local health clinics with traditional problem solving institutions within local communities concerned about the health effects of exposures to hazard substances.

6. Enlarge medical and scientific knowledge concerning the effects of hazardous substances on human health.

*Cooperative Activities*

To achieve the above objectives, the following activities will be performed during a 3-year period:

21. AOEC Activities

a. Build consensus among network members regarding knowledge and skill concerning hazardous substances, as needed by health care providers and students serving their local communities.

b. Enhance the validity of educational materials developed for local health care providers and students by evaluating and testing select materials.

c. Make available to academic medical centers associated with the clinics, knowledge and skills acquired for diagnosing, treating and preventing disease or injury associated with exposure to hazardous substances.

d. Identify promising new educational activities and instructional methods to educate health care providers serving within these communities.

e. Identify promising new methods to communicate risks to communities and States concerned about exposures to hazardous substances.

f. Improve the training of medical students to take an "environmental history" as an integral part of their patient work-up.

g. Develop and make available to all clinical staff, faculty and students techniques for immediate access of information needed to manage emergency exposure to hazardous substances.

h. Serve as a focal point for assisting local community environmental health informational requirements and technical assistance needs related to the development and maintenance of Exposure and Disease Registries.

2. ATSDR Activities

a. Collaborate with AOEC in building consensus among the medical community regarding essential skills and knowledge in medical surveillance, screening, treating and preventing injury or disease related to exposure to hazardous substances.

b. Collaborate with the AOEC in assessing the best and most appropriate mechanisms to enhance skills and knowledge of health practitioners located in communities concerned about exposures to hazardous substances.

c. Collaborate with the AOEC in identifying new educational and instructional activities and methods to provide necessary skills and knowledge to students of medicine and public health.

d. Provide technical assistance and current information to the AOEC on specific hazardous substances (chemicals).

e. Participate with the AOEC in identifying new approaches to risk communication for local communities concerned about exposures to hazardous substances.

f. Provide technical assistance and information concerning knowledge and skills associated with health assessments and disease registries so AOEC members can better serve the informational needs of their communities.

g. Participate with the AOEC in validating and improving their individual exposure and disease registries so that these data may serve as guidance to the development of educational materials for health practitioners and students of medicine and public health directly applicable to local community needs.

h. Participate in workshops, conferences and seminars to exchange current information, opinions and findings concerning diagnosing, treating and preventing inquiry and disease associated with exposure to hazardous substances.

**Review and Evaluation Criteria**

The application will be reviewed in accordance with PHS Grants Administration Manual Part 134, Objective Review of Grant Applications. An ad hoc committee will be convened to determine the merit of the application. The application should include the following:

A. Briefly state the applicant's understanding of the need or problem to be addressed and the purpose of this cooperative agreement.

B. Document the ability to provide the staff, knowledge, financial and other resources required to perform the applicant's responsibilities in this project, and describe the approach to be used in carrying out those responsibilities.

C. Describe clearly the objectives of the project, the steps to be taken in planning and implementing this project, and the respective responsibilities of the applicant, ATSDR and any other entities for carrying out those steps.

D. Provide a proposed schedule for accomplishing each of the activities to be carried out in this project, and a method for evaluating the accomplishments.

E. Describe the names, qualifications, and time allocations of the professional staff to be assigned to this project; the support staff available for performance of this project; and the facilities, space, and equipment available for performance of this project.

F. Specify a proposed plan for administering this project, and the name, qualifications, and time allocations of the individual whom the applicant proposes to make responsible for its administration.

G. Provide a detailed budget which indicates (1) anticipated costs for personnel, travel, communications and postage, equipment, and supplies and (2) the sources of funds to meet those needs.

**Reporting Requirements**

Annual progress and financial status reports are required no later than 90 days after the end of each budget period. Final reports shall be prepared and submitted in accordance with the requirements of 45 CFR Part 74, Subparts I and J, respectively.

**Availability of Funds**

Approximately $75,000 will be available in Fiscal Year 1988 to fund this cooperative agreement. It is expected that the cooperative agreement will begin on or about September 15, 1988 and depending upon fund availability, will be funded for a 12-month budget period within a 3-year project period. The estimated future years funding is $150,000 for year 2 and $150,000 for year 3.

**Other Review Requirements**

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

**Where To Obtain Additional Information**

Information regarding the business aspects of this project may be obtained from Terry Maricle, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., Room 300, Mailstop E14, Atlanta, Georgia 30305 or by calling (404) 842-6575 or FTS 236-6575.

Information regarding the technical aspects of this project may be obtained from Peter Sherman or Max Lum, Ed.D., ATSDR, OEA, (404) 488-4630 or FTS 236-4630.

Dated: August 18, 1988.

**Walter R. Dowdle,**

*Acting Administrator, Agency for Toxic Substances and Disease Registry.*

[FR Doc. 88-19224 Filed 8-24-88; 8:45 am]

BILLING CODE 4160-70-M

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## Centers for Disease Control

## Surveillance and Intervention Program for Cervical Cancer; Program Announcement and Availability of Funds for Fiscal Year 1988

**Introduction**

The Centers or Disease Control (CDC), announces that competitive cooperative agreement applications are being accepted to participate in a project known as Surveillance and Intervention Program for Cervical Cancer.

Authority: This program is authorized under section 317 of the Public Health Service Act.

The Catalog of Federal Domestic Assistance number is 13.283.

**Purpose and Objectives**

*Purpose*

To reduce cervical cancer mortality by improving followup care for women with abnormal Pap smear results.

*Objectives*

A. To expand existing systems or develop and maintain new systems for cervical cancer surveillance that include diagnoses of cancer in situ and invasive cervical cancer. Ideally these systems should be population-based.

B. To develop a surveillance system for Pap smear results which estimates the proportion of Pap smears from women in the proposed surveillance area that are read in out-of-state laboratories, and the number of pap smears from residents of the same surveillance area that are read in in-state laboratories.

C. To develop a mechanism to obtain information on followup care received by women with Class III or higher Pap smear results. This information should become a part of the surveillance system for Pap smears.

D. To develop a mechanism to link the screening and followup surveillance system with the cancer surveillance system.

E. To identify barriers to adequate followup care for women with abnormal Pap smears, at the level of the individual patient and the health care delivery system, and to design intentions to reduce or eliminate these barriers.

**Eligible Applicants**

Eligible applicants are the official health departments of any city, county or State, including the District of Columbia, the Commonwealth of Puerto Rico, and any Territory or possession of the United States with a population of at least 1 million people.

**Cooperative Activities**

*A. Recipient Activities*

1. Design and develop a project plan to be made a part of this agreement for the conduct of a cervical cancer surveillance system based on data from laboratories, health care providers, hospital discharges, death certificates, Medicaid records, Health Care Maintenance Organizations (HMO's), cancer registries, and/or other appropriate sources. The project plan will cover all aspects of this project including the implementation schedule, the selection of geographic areas to be included, training of staff, instrument development, and data collection and analysis.

2. a. Develop, establish, and maintain a surveillance system for Pap smear results with a unique identifier for every woman, utilizing data from laboratories, health care providers, Medicaid records, HMO's, and/or other appropriate sources.

This system should be able to monitor the overall number of Pap smears done and to collect specific information on women with abnormal tests.

b. Develop a system to obtain information on followup care obtained by women with Class III or higher Pap smear readings. This followup system should be a component of the surveillance system for abnormal Pap smears.

3. Develop a mechanism to link the screening and followup surveillance system with the cancer surveillance system. The cancer surveillance system should cover at least the population that is served by the screening and followup surveillance system.

4. Identify the women who receive inadequate followup care, develop appropriate survey instruments, and conduct investigations to determine the causes of inappropriate followup care.

5. Design interventions to reduce or eliminate identified barriers.

To the extent recipient engages in information collection through questionnaires, survey forms, or any related means, there will be no review of such forms or the information collection design by CDC or any other federal agency. However, recipient may request technical consultation from CDC.

*B. Centers for Disease Control (CDC) Activities*

1. Provide technical assistance in the development and linkage of the cervial cancer and Pap smear surveillance systems which is intended to enhance the recipients capacity in both areas.

2. Provide technical assistance in the development of interventions to address barriers to followup care.

**Availability of Funds**

It is expected that approximately $100,000 will be available in Fiscal Year 1988 to fund one award. The award will be funded with a 12-month budget period, and it is planned that at least $100,000 will be available each year. The project period is expected to be three years, with Year 1 devoted to developing the surveillance system that will help identify potential problems in followup care. Years 2 and 3 will be devoted to designing and conducting the interventions and evaluating their effectiveness. The funding estimate outlined above is subject to change.

**Reporting Requirements**

The recipient of this assistance award will submit at least annual progress reports providing details of accomplishments toward the development of the registries and the programmatic component.

Financial status reports must be filed no later than 90 days after the end of each budget period. Final financial status and progress reports are required no later than 90 days after the end of each project period.

**Review Criteria**

Applications will be reviewed and evaluated based on the evidence submitted which specifically describes the applicant's ability to meet the following criteria:

A. The adequacy and completeness of the project plan, methodology and proposed specific time schedule for accomplishing the objectives and activities.

B. Qualifications and time allocation of the applicant's technical and administrative staff and the type and quality of facilities and equipment for the project.

C. The extent to which the objectives of the applications fit the objective for which applications were invited. More specifically, the selection of the award site will be based on the expected number of women at high-risk for cervical cancer in the geographic area or system proposed for this project. Preferably, women served through public and private sector should be included, but given a large enough at-risk population, proposals that deal with women served through either the public or private sector alone also will be considered.

D. The extent to which potential barriers are identified and interventions exist to address these barriers.

E. The extent to which the systems developed within this project could be reproduced and applied by other State and local health departments.

**Application Submission**

The original and two copies of the application (PHS 5161–1 revised 3/86) should be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 225 East Paces Ferry Road, NE., Room 321, Atlanta, Georgia 30305, on or before September 8, 1988.

*A. Deadlines*

Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date, or

2. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants should request a legibly-dated U.S. Postal Service postmark or obtain a legibly-dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

*B. Late Application*

Applications which do not meet the criteria in either paragraph 1 or 2 immediately above are considered late applications and will not be considered in the current competition and will be returned to the applicant.

Other Reviews

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

**Where To Obtain Additional Information**

Information on application procedures, copies of application forms, and other material may be obtained from: Terry Maricle, Grants Management specialist, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., Room 321, Atlanta, Georgia 30305, (404) 262-6575 or FTS 236-6575. Technical assistance may be obtained from the Division of Chronic Disease Control: Lambertina W. J. Freni, M.D., M.S.P.H., Medical Epidemiologist, ESB, Division of Chronic Disease Control, Center for Environmental Health and Injury Control, Centers for Disease Control, Atlanta, Georgia 30333, (404) 448-4380 or FTS 236-4380.

Dated: August 19, 1988.

Robert L. Foster,

*Acting Director, Office of Program Support, Centers for Disease Control.*

[FR Doc. 88-19225 Filed 8-24-88; 8:45 am]

BILLING CODE 4160-18-M

## Food and Drug Administration

**[Docket No. 88M-0278]**

## Boehringer Mannheim Diagnostics Division; Premarket Approval of Enzymun-Test AFP Immunoenzymetric Assay To Aid in the Management of Testicular Cancer

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing its approval of the application by Boehringer Mannheim Diagnostics Division, Indianapolis, IN, for premarket approval, under the Medical Device Amendments of 1976, of the Enzymun-Test AFP Immunoenzymetric Assay to aid in the management of testicular cancer. After reviewing the recommendation of the Immunology Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of July 13, 1988, of the approval of the application.

**DATE:** Petitions for administrative review by September 26, 1988.

**ADDRESS:** Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** S. K. Vadlamudi, Center for Devices and Radiological Health (HFZ-440), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7550.

**SUPPLEMENTARY INFORMATION:** On September 11, 1986, Boehringer Mannheim Diagnostics Division, Indianapolis, IN 46250-0100, submitted to CDRH an application for premarket approval of the Enzymun-Test AFP Immunoenzymetric Assay to aid in the management of testicular cancer. The device is an enzyme immunoassay (immunoenzymetric assay) indicated for the quantitative serial measurement of alpha-fetoprotein (AFP) in human serum to aid in the management of cancer patients with nonseminomatous testicular cancer. Enzymun-Test AFP is for use on Boehringer Mannheim Diagnostics' automated immunoassay systems: Enzymun-Test System ES-22 and ES-600 Immunoassay System.

On January 29, 1987, the Immunology Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On July 13, 1988, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact S. K. Vadlamudi (HFZ-440), address above.

**Opportunity for Administrative Review**

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petiton for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before September 26, 1988, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitioners may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: August 17, 1988.

**Linda A. Suydan,**

*Acting Director, Center for Devices and Radiological Health.*

[FR Doc. 88-19334 Filed 8-24-88; 8:45 am]

BILLING CODE 4160-01-M

## Indian Health Service; Public Health Service

## Geographic Composition of the Health Service Delivery Areas (HSDA) Established by Regulations of the Indian Health Service

**AGENCY:** Indian Health Service.

**ACTION:** Notice.

**SUMMARY:** On September 16, 1987, a final rule establishing new eligibility criteria for Indian Health Service (IHS) programs was published in the **Federal Register**. In the fiscal year 1988 Appropriations Act (section 315, Pub. L. 100-202), the Congress delayed implementation of the regulations from March 16, 1988, to September 16, 1988. Congressional delay to further study the impact of the regulation is possible. This list will help define the parameters of such a study. This designation of HSDA is not effective until September 16, 1988, or such later date as may be established by the Congress.

The new regulation at 42 CFR 36.15(a) provides that:

> (a) The Indian Health Service will designate and publish as a notice in the **Federal Register** specific geographic areas within the United States including Federal Indian reservations and areas surrounding those reservations as Health Service Delivery Areas.[1]

The former contract health service regulation at 42 CFR 36.22(a)(6) provided that:

> With respect to all other reservations [i.e., other than those not specifically listed in 42 CFR 36.22] within the funded scope of the Indian health program, the contract health service delivery area shall consist of a county which includes all or part of a reservation, and any county or counties which have a common boundary with the reservation.

The last update of CHSDA was published in the **Federal Register** on January 10, 1984, and presented the reservations within the funded scope of the IHS program and the State and/or counties which comprised the individual reservation's CHSDA, as well as some CHSDA established by Congress irrespective of the contract health service regulations.

[1] This text is provided for the convenience of the reader.

The preamble to the new rule explains that:

> This rule initially includes as HSDA's all current Contract Health Service Delivery Areas (CHSDA) and non-CHSDA service areas.

Thus, the new regulations grandfathers in as HSDA's all CHSDA and historical non-CHSDA geographical service population areas.

The HSDA's are the geographic areas within which direct and contract health services may be made available by the IHS to *eligible individuals* who reside within the area, subject to the provisions of the regulation. These are to be distinguished from Service Unit boundaries which are established for purposes of planning, administering, and evaluating the Indian Health program. This list presents reservations within the funded scope of the IHS program, and includes exceptions to the rule specifically provided for by the previous contract health service regulation at 42 CFR 36.229(a), several exceptions covering areas which have been traditionally served by IHS and are within the funded scope, exceptions provided by legislation, and includes newly recognized tribes. Listed for each reservation are the counties comprising the HSDA. For convenience, the HSDA counties are also listed by State.

It should be clearly understood that residence within a HSDA by a person who is within the scope of the Indian health program, as set forth in 42 CFR 36.12, creates no legaL entitlement to particular direct or contract health services. Services needed but not available at an IHS facility are provided under the Contract Health Services program dependent upon the availability of funds, the person's relative medical priority, and the actual availability and accessibility of alternate resources in accordance with the regulations.

Any mistakes in the list of HSDA's should be brought to the attention of: Mr. Richard J. McCloskey, Indian Health Service, Room 6A-20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Any corrections of mistaken inclusions or exclusions of a county or counties in a HSDA may be made administratively and included in a later **Federal Register** notice. Also, as explained in the September 16, 1987, notice, redesignations of areas included or excluded from a HSDA for reasons other than a mistake in applying the regulations is governed by the procedures in 42 CFR 316.159(b) and may only be made by the Director, Indian Health Service. This procedure will become available only after the regulation itself become effective.

The HSDA counties for all reservations and service areas within the funded scope of the IHS program are as follows:

HEALTH SERVICE DELIVERY AREAS

| Reservation | HSDA (County/State) |
|---|---|
| Acoma Pueblo | Cibola, NM |
| Agua Caliente Indian Reservation. | Riverside, CA |
| Ak Chin | Pinal, AZ |
| Alabama and Coushatta Tribe of Texas. | Polk, TX [1] |
| Alaska | [2] |
| Alturas Indian Rancheria | Modoc, CA |
| Augustine Reservation | Riverside, CA |
| Bad River | Ashland, WI |
| | Iron, WI |
| Barona Reservation | San Diego, CA |
| Bay Mills | Chippewa, MI |
| Benton Paiute Reservation | Mono, CA |
| Berry Creek Rancheria | Butte, CA |
| Big Bend Rancheria | Shasta, CA |
| Big Lagon Rancheria | Humboldt, CA |
| Big Pine Reservation | Inyo, CA |
| Big Sandy Rancheria | Fresno, CA |
| Big Valley Rancheria | Lake, CA [3] |
| Bishop Colony | Inyo, CA |
| Blackfeet | Glacier, MT |
| | Pondera, MT |
| Blue Lake Rancheria | Humboldt, CA [3] |
| Bridgeport Indian Colony | Mono, CA |
| Brigham City Intermountain School Health Center. | [4] |
| Buena Vista Rancheria | Amador, CA [3] |
| Burns Paiute | Harney, OR |
| Cabazon Reservation | Riverside, CA |
| Cahuilla Reservation | Riverside, CA |
| Campe Verde | Yavapai, AZ |
| Campo Indian Reservation | San Diego, CA |
| Capitan Grande Reservation | Sen Diego, CA |
| Cedarville Rancheria | Modoc, CA |
| Chehalis | Grays Harbor, WA |
| | Thurston, WA |
| Chemehuevi Reservation | San Bernardino, CA |
| | Mohave, AZ |
| Cheyenne River | Corson, SD |
| | Dewey, SD |
| | Haakon, SD |
| | Meade, SD |
| | Perkins, SD |
| | Potter, SD |
| | Stanley, SD |
| | Sully, SD |
| | Walworth, SD |
| | Ziebach, SD |
| Chicken Ranch Rancheria | Tuolumne, CA [3] |
| Chitimacha | St. Mary Parish, LA |
| Choctaw | Attala, MS |
| | Jasper, MS [5] |
| | Jones, MS |
| | Kemper, MS |
| | Leake, MS |
| | Neshoba, MS |
| | Newton, MS |
| | Noxubee, MS [5] |
| | Scott, MS [6] |
| | Winston, MS [6] |
| Cloverdale Rancheria | Sonoma, CA [3] |
| Cochiti Pueblo | Sandoval, NM |
| Cocopah | Yuma, AZ |
| Coeur d'Alene | Benewah, ID |
| | Kootenai, ID |
| | Latah, ID |
| | Spokane, WA |
| | Whitman, WA |
| Cold Springs Rancheria | Fresno, CA |

HEALTH SERVICE DELIVERY AREAS—Continued

| Reservation | HSDA (County/State) |
|---|---|
| Colville | Chelan, WA [7] |
| | Douglas, WA |
| | Ferry, WA |
| | Grant, WA |
| | Lincoln, WA |
| | Okanogan, WA |
| | Stevens, WA |
| Colorado River | La Paz, AZ |
| | Riverside, CA |
| | San Bernardino, CA |
| | Yuma, AZ |
| Colusa Rancheria | Colusa, CA |
| Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians of Oregon. | Coos, OR [8] |
| | Curry, OR [8] |
| | Douglas, OR [8] |
| | Lane, OR [8] |
| | Lincoln, OR [8] |
| Cortina Indian Rancheria | Colusa, CA |
| Coushatta | Allen Parish, LA |
| Cow Creek Band of Umpqua | Douglas, OR [9] |
| | Jackson, OR [9] |
| | Josephine, OR [9] |
| Coyote Valley Rancheria | Mendocino, CA |
| CRIHB Projects in California (additional counties not included in other HSDA). | Kings, CA [10] |
| | Madera, CA [10] |
| | Mariposa, CA [10] |
| | Nevada, CA [10] |
| | Placer, CA [10] |
| | Plumas, CA [10] |
| | Sierra, CA [10] |
| | Siskiyou, CA [10] |
| | Sutter, CA [10] |
| | Tehama, CA [10] |
| | Trinity, CA [10] |
| | Yuba, CA [10] |
| Crow | Big Horn, MT |
| | Carbon, MT |
| | Treasure, MT [10a] |
| | Yellowstone, MT |
| | Big Horn, WY |
| | Sheridan, WY |
| Crow Creek | Brule, SD |
| | Buffalo, SD |
| | Hand, SD |
| | Hughes, SD |
| | Hyde, SD |
| | Lyman, SD |
| | Stanley, SD |
| Cuyapiape Reservation | San Diego, CA |
| Death Valley Timbi-Sha Shoshone Band of California. | Inyo, CA |
| Dry Creek Rancheria | Sonoma, CA |
| Duck Valley | Nevada (see Nevada below) |
| | Owyhee, ID |
| Eastern Band of Cherokees | Cherokee, NC |
| | Graham, NC |
| | Haywood, NC |
| | Jackson, NC |
| | Swain, NC |
| Elk Valley Rancheria | Del Norte, CA [3] |
| Enterprise Rancheria | Butte, CA |
| Flandreau | Moody, SD |
| Flathead | Flathead, MT |
| | Lake, MT |
| | Missoula, MT |
| | Sanders, MT |
| Fond Du Lac | Carlton, MN |
| | St. Louis, MN |
| Fort Apache | Apache, AZ |
| | Coconino, AZ |
| | Gila, AZ |
| | Graham, AZ |
| | Greenlee, AZ |
| | Navajo, AZ |
| Fort Belknap | Blaine, MT |

HEALTH SERVICE DELIVERY AREAS—Continued

| Reservation | HSDA (County/State) |
|---|---|
| | Phillips, MT |
| Fort Berthold | Dunn, ND |
| | Mercer, ND |
| | McKenzie, ND |
| | McLean, ND |
| | Mountrail, ND |
| | Ward, ND |
| Fort Bidwell Reservation | Modoc, CA |
| Fort Hall | Bannock, ID |
| | Bingham, ID |
| | Caribou, ID |
| | Lemihi, ID [11] |
| | Power, ID |
| Fort Independence Reservation | Inyo, CA |
| Fort McDermitt | Nevada (see Nevada below) |
| | Malheur, OR |
| Fort McDowell | Maricopa, AZ |
| Fort Mohave | Nevada (see Nevada below) |
| | Mohave, AZ |
| | San Bernardino, CA |
| Fort Peck | Daniels, MT |
| | McCone, MT |
| | Richland, MT |
| | Roosevelt, MT |
| | Sheridan, MT |
| | Valley, MT |
| Fort Totten (Devil's Lake Sioux Reservation). | Benson, ND |
| | Eddy, ND |
| | Nelson, ND |
| | Ramsey, ND |
| Fort Yuma (Quechan) | Imperial, CA |
| | Yuma, AZ |
| Gila River | Maricopa, AZ |
| | Pinal, AZ |
| Goshute | Nevada (see Nevada below) |
| | Juab, UT |
| | Tooele, UT |
| Grand Portage | Cook, MN |
| Grand Ronde | Polk, OR [12] |
| | Washington, OR [12] |
| | Marion, OR [12] |
| | Yamhill, OR [12] |
| | Tillamook, OR [12] |
| | Multnomah, OR [12] |
| Grand Traverse Band of Ottawa and Chippewa. | Antrim, MI [13] |
| | Benzie, MI [13] |
| | Grand Traverse, MI [13] |
| | Leelanau, MI |
| | Manisee, MI [13] |
| Greenville Rancheria | Plumas, CA [3] |
| Grindstone Indian Rancheria | Glenn, CA |
| Hannahville | Delta, MI |
| | Menominee, MI [4] |
| Haskell Indian Health Center | |
| Havasupai | Coconino, AZ |
| Hoh | Jefferson, WA |
| Hoopa Valley Reservation | Humboldt, CA |
| Hopi | Apache, AZ |
| | Coconino, AZ |
| | Navajo, AZ |
| Hopland Rancheria | Mendocino, CA |
| Houlton Band of Maliseet | Aroostook, ME [14] |
| Hualapai | Coconino, AZ |
| | Mohave, AZ |
| | Yavapai, AZ |
| Inaja and Cosmit Reservation | San Diego, CA |
| Iowa | Brown, KS |
| | Doniphan, KS |
| | Richardson, NE |
| Isabella | Arenac, MI [15] |

HEALTH SERVICE DELIVERY AREAS—Continued

| Reservation | HSDA (County/State) |
|---|---|
| | Clare, MI |
| | Isabella, MI |
| | Midland, MI |
| | Missaukee, MI [15] |
| Isleta Pueblo | Bernalillo, NM |
| | Cibola, NM |
| | Torrance, NM |
| | Valencia, NM |
| Jackson Rancheria | Amador, CA |
| Jamestown Band of Clallam | Clallam, WA |
| Jamul Indian Village | San Diego, CA |
| Jemez Pueblo | Sandoval, NM |
| Jicarilla Apache | Archuleta, CO |
| | Rio Arriba, NM |
| | Sandoval, NM |
| Kaibab | Coconino, AZ |
| | Mohave, AZ |
| | Kane, UT |
| Kalispel | Pend Oreille, WA |
| Kansas Service Unit | Douglas, KS [16] |
| Karok Tribe of California | Humboldt, CA |
| | Siskiyou, CA |
| Katakitegoning (Watersmeet) or Lac Vieux Desert Band. | Gogebic, MI |
| Keweenaw Bay | Baraga, MI |
| | Houghton, MI |
| | Ontonagon, MI |
| Kickapoo | Brown, KS |
| | Doniphan, KS |
| Klamath Indian Tribe of Oregon | Klamath, OR [17] |
| Kootenai | Boundary, ID |
| Lac Courte Oreilles | Sawyer, WI |
| Lac du Flambeau | Iron, WI |
| | Oneida, WI |
| | Vilas, WI |
| La Jolla Reservation | San Diego, CA |
| Laguna Pueblo | Bernalillo, NM |
| | Cibola, NM |
| | Sandoval, NM |
| | Valencia, NM |
| La Posta Indian Reservation | San Diego, CA |
| Laytonville Rancheria | Mendocino, CA |
| Leech Lake | Beltrami, MN |
| | Cass, MN |
| | Hubbard, MN |
| | Itasca, MN |
| Lone Pine Reservation | Inyo, CA |
| Lookout Rancheria | Modoc, CA |
| Los Coyotes Reservation | San Diego, CA |
| Lower Brule | Brule, SD |
| | Buffalo, SD |
| | Hughes, SD |
| | Lyman, SD |
| | Stanley, SD |
| Lower Elwha | Clallam, WA |
| Lower Sioux | Redwood, MN |
| | Renville, MN |
| Lummi | Whatcom, WA |
| Makah | Clallam, WA |
| Manchester—Pt. Arena Rancheria. | Mendocino, CA |
| Manzanita Reservation | San Diego, CA |
| Mashantucket Pequot | New London, CT [18] |
| Menominee | Langlade, WI |
| | Menominee, WI |
| | Oconto, WI |
| | Shawano, WI |
| Mesa Grande Reservation | San Diego, CA |
| Mescalero | Chaves, NM |
| | Lincoln, NM |
| | Otero, NM |
| Middletown Rancheria | Lake, CA |
| Mille Lacs | Aitkin, MN |
| | Kanebec, MN |
| | Mille Lacs, MI |
| | Pine, MN |

HEALTH SERVICE DELIVERY AREAS—Continued

| Reservation | HSDA (County/State) |
|---|---|
| Mole Lake | Forest, WI |
| Montgomery Creek Rancheria | Shasta, CA [3] |
| Mooretown Rancheria | Butte, CA [3] |
| Morongo Reservation | Riverside, CA |
| Muckleshoot | King, WA |
| | Pierce, WA |
| Nambe Pueblo | Santa Fe, NM |
| Narragansett | Washington, RI [20] |
| Navajo (including Alamo Navajo, Ononcito Navajo and Ramah Navajo). | Apache, AZ |
| | Bernalillo, NM |
| | Cibola, NM |
| | Coconino, AZ |
| | Kane, UT |
| | McKinley, NM |
| | Montezuma, CO |
| | Navajo, AZ |
| | Sandoval, NM |
| | San Juan, NM |
| | San Juan, UT |
| | Socorro, NM |
| | Valencia, NM |
| Nett Lake | Itasca, MN |
| | Koochiching, MN |
| | St. Louis, MN |
| Nevada | [21] |
| Nex Perce | Clearwater, ID |
| | Idaho, ID |
| | Latah, ID |
| | Lewis, ID |
| | Nez Perce, ID |
| Nisqually | Pierce, WA |
| | Thurston, WA |
| Nooksack | Whatcom, WA |
| North Fork Rancheria | Madera, CA [3] |
| Northwestern Band of Shoshone Indians of Utah (Washakie). | Box Elder, UT [22] |
| Northern Cheyenne | Big Horn, MT |
| | Carter, MT [24] |
| | Rosebud, MT |
| Oklahoma | [25] |
| Omaha | Burt, NE |
| | Cuming, NE |
| | Monona, IA |
| | Thurston, NE |
| | Wayne, NE |
| Onandaga Nation of New York | Onandaga, NY |
| Oneida Nation of New York | Oneida, NY |
| Oneida Tribe of Indians of Wisconsin. | Brown, WI |
| | Outagamie, WI |
| Paiute Indian Tribe of Utah | Iron, UT [26] |
| | Millard, UT [26] |
| | Sevier, UT [26] |
| | Washington, UT [26] |
| Pala Reservation | San Diego, CA |
| Papago | Maricopa, AZ |
| | Pima, AZ |
| | Pinal, AZ |
| Pasqua-Yagui | Pima, AZ [27] |
| Passamaquoddy | Aroostook, ME [28] |
| | Washington, ME |
| Pauma and Yuima Reservation | San Diego, CA |
| Payson Community (Tonto Apache). | Gila, AZ |
| Pechanga Reservation | Riverside, CA |
| | San Diego, CA |
| Penobscot | Aroostook, ME [28] |
| | Penobscot, ME |
| Picayune Rancheria | Madera, CA [3] |
| Picuris Pueblo | Taos, NM |
| Pine Ridge | Bennett, SD |
| | Cherry, NE |
| | Custer, SD |
| | Dawes, NE |
| | Fall River, SD |
| | Jackson, SD |
| | Melletee, SD |
| | Pennington, SD |
| | Shannon, SD |
| | Sheridan, NE |
| | Todd, SD |
| | Washabaugh, SD |
| Pinoleville Rancheria | Mendocino, CA [3] |
| Pit River Indian Tribe of the X-L Ranch Reservation. | Modoc, CA |
| Poarch Creek Band of Creek Indians of Alabama. | Baldwin, AL [29] |
| | Escambia, AL [29] |
| | Elmore, AL [29] |
| | Mobile, AL [29] |
| | Monroe, AL [29] |
| | Escambia, FL [29] |
| Pojoaque Pueblo | Rio Arriba, NM |
| | Santa Fe, NM |
| Port Gamble | Kitsap, WA |
| Port Madison | Kitsap, WA |
| Potowatomi | Forest, WI |
| | Marinette, WI |
| | Oconto, WI |
| Potawatomi | Jackson, KS |
| Potter Valley Rancheria | Mendocino, CA [3] |
| Prairie Island | Goodhue, MN |
| | Pierce, WI [19] |
| Prior Lake | Scott, MN |
| Puyallup | King, WA |
| | Pierce, WA |
| Quartz Valley Rancheria | Siskiyou, CA [3] |
| Quileute | Clallam, WA |
| | Jefferson, WA |
| Quinault | Grays Harbor, WA |
| | Jefferson, WA |
| Ramona Reservation | Riverside, CA |
| Rapid City | [4] |
| Red Cliff | Bayfield, WI |
| Red Lake | Beltrami, MN |
| | Clearwater, MN |
| | Koochiching, MN |
| | Lake of the Woods, MN |
| | Marshall, MN |
| | Pennington, MN |
| | Polk, MN |
| | Roseau, MN |
| Redding Rancheria | Shasta, CA [3] |
| Redwood Valley Rancheria | Mendocino, CA [3] |
| Resighini Rancheria | Del Norte, CA |
| Rincon Reservation | San Diego, CA |
| Roaring Creek Rancheria | Shasta, CA |
| Robinson Rancheria | Lake, CA |
| Rocky Boy's | Chouteau, MT |
| | Hill, MT |
| | Liberty, MT [30] |
| Rohnerville Rancheria | Humboldt, CA [3] |
| Rosebud | Bennett, SD |
| | Cherry, NE |
| | Mellette, SD |
| | Todd, SD |
| | Tripp, SD |
| Round Valley Reservation | Mendocino, CA |
| Rumsey Indian Rancheria | Yolo, CA |
| Sac and Fox (Iowa) | Tama,IA |
| Sac and Fox (Missouri) | Brown, KS |
| Salt River | Maricopa, AZ |
| Sandia Pueblo | Bernalillo, NM |
| | Sandoval, NM |
| San Carlos | Apache, AZ |
| | Cochise, AZ |
| | Gila, AZ |
| | Graham, AZ |
| | Greenlee, AZ |
| | Pinal, AZ |
| San Felipe Pueblo | Sandoval, NM |
| San Ildefonso | Los Alamos, NM |
| | Rio Arriba, NM |
| | Sandoval, NM |
| | Santa Fe, NM |
| San Juan Pueblo | Rio Arriba, NM |
| San Juan Southern Paiute Tribe | [Located on Navajo Reservation] |
| San Manual Reservation | San Bernardino, CA |
| San Pasqual Reservation | San Diego, CA |
| San Ana Pueblo | Sandoval, NM |
| Santa Clara Pueblo | Los Alamos, NM |
| | Rio Arriba, NM |
| | Sandoval, NM |
| | Santa Fe, NM |
| Santa Rosa Rancheria | Kings, CA |
| Santa Rosa Reservation | Riverside, CA |
| Santa Ynez Reseration | Santa Barbara, CA |
| Santa Ysabel Reservation | San Diego, CA |
| Santee | Bon Homme, SD |
| | Knox, NE |
| Santo Domingo Pueblo | Sandoval, NM |
| | Santa Fe, NM |
| Sauk-Suiattle | Snohomish, WA |
| Sault Ste. Marie Tribe of Chippewa. | Alger, MI [31] |
| | Chippewa, MI [31] |
| | Delta, MI [31] |
| | Luce, MI [31] |
| | Mackinac, MI [31] |
| | Marquette, MI [31] |
| | Schoolcraft, MI [31] |
| Sells Service Unit | Santa Cruz, AZ [32] |
| Seneca | Allegany, NY |
| | Cattaraugus, NY |
| | Chautaugua, NY |
| | Erie, NY |
| | Warren, PA |
| Sheep Ranch Rancheria | Calaveras, CA |
| Sherwood Valley Rancheria | Mendocino, CA |
| Shingle Springs Rancheria (Veronica Tract). | El Dorado, CA |
| Shoal Water | Pacific, WA |
| Siletz | Benton, OR [33] |
| | Lane, OR [33] |
| | Lincoln, OR [33] |
| | Linn, OR [33] |
| | Marion, OR [33] |
| | Polk, OR [33] |
| | Tillamook, OR [33] |
| | Yam Hill, OR [33] |
| Sisseton | Codington, SD |
| | Day, SD |
| | Grant, SD |
| | Marshall, SD |
| | Richland, ND |
| | Roberts, SD |
| | Sargent, ND |
| | Traverse, ND |
| Skokomish | Mason, WA |
| Skull Valley | Tooele, UT |
| Smith River Rancheria | Del Norte, CA [3] |
| Soboba Reservation | Riverside, CA |
| South Florida (including Brighton, Florida State, Hollywood, and Miccosukee). | Broward, FL |
| | Collier, FL |
| | Dade, FL |
| | Glades, FL |
| | Hendry, FL |
| Southern Ute | Archuleta, CO |
| | La Plata, CO |
| | Montezuma, CO |
| | Rio Arriba, NM |
| | San Juan, NM |

HEALTH SERVICE DELIVERY AREAS—Continued

| Reservation | HSDA (County/State) |
|---|---|
| Spokane | Ferry, WA |
| | Lincoln, WA |
| | Stevens, WA |
| Squaxin Island | Mason, WA |
| St. Croix | Barron, WI [23] |
| | Burnett, WI |
| | Pine, NM |
| | Polk, WI |
| | Washburn, WI |
| St. Regis Mohawk | Franklin, NY |
| | St. Lawrence, NY |
| Standing Rock | Adams, ND |
| | Campbell, SD |
| | Corson, SD |
| | Dewey, SD |
| | Emmons, ND |
| | Grant, ND |
| | Morton, ND |
| | Perkins, SD |
| | Sioux, ND |
| | Walworth, SD |
| | Ziebach, SD |
| Stewarts Point Rancheria | Sonoma, CA |
| Stillaguamish | Snohomish, WA |
| Stockbridge-Munsee | Menominee, WI |
| | Shawano, WI |
| Sulpfer Bank Rancheria | Lake, CA |
| Susanville Indian Ranchieria | Lassen, CA |
| Swinomish | Skagit, WA |
| Sycuan Reservation | San Diego, CA |
| Table Bluff Rancheria | Humboldt, CA |
| Table Mountain Rancheria | Fresno, CA |
| Taos Pueblo | Colfax, NM |
| | Taos, NM |
| Tesuque Pueblo | Santa Fe, NM |
| Texas Band of Kickapoo | Maverick, TX [34] |
| Tonawanda Band of Seneca | Genesee, NY |
| | Erie, NY |
| | Niagara, NY |
| Torres-Martinez Reservation | Riverside, CA |
| | Imperial, CA |
| Trinidad Rancheria | Humboldt, CA |
| Tulalip | Snohomish, WA |
| Tule River Indian Reservation | Tulare, CA |
| Tunica-Biloxi | Avoyelles, LA |
| | Rapides, LA [35] |
| Tuolumne Rancheria | Tuolumne, CA |
| Turtle Mountain | Divide, ND [36] |
| | Rolette, ND |
| | Williams, ND [36] |
| Tuscarora Nation of New York | Niagara, NY |
| Twenty-Nine Palms Reservation | San Bernardino, CA |
| Uintah and Ouray | Carbon, UT |
| | Daggett, UT |
| | Duchesne, UT |
| | Emery, UT |
| | Grand, UT |
| | Rio Blanco, CO |
| | Summit, UT |
| | Uintah, UT |
| | Utah, UT |
| | Wasatch, UT |
| Umatilla | Umatilla, OR |
| | Union, OR |
| Upper Lake Rancheria | Lake, CA |
| Upper Sioux | Chippewa, MN |
| | Yellow Medicine, MN |
| Upper Skagit | Skagit, WA |
| Ute Mountain Ute | Apache, AZ |
| | La Plata, CO |
| | Montezuma, CO |
| | San Juan, NM |
| | San Juan, UT |
| Viejas Reservation | San Diego, CA |

HEALTH SERVICE DELIVERY AREAS—Continued

| Reservation | HSDA (County/State) |
|---|---|
| Wampanoag Tribal Council of Gay Head, Inc. | Dukes, MA [37] |
| Warm Springs | Clackamas, OR |
| | Jefferson, OR |
| | Linn, OR |
| | Marion, OR |
| | Wasco, OR |
| Washoe River (Dresslerville Colony). | Alpine, CA |
| | Nevada (see Nevada) |
| Western Oregon Service Unit | Deschutes, OR [38] |
| White Earth | Becker, MN |
| | Clearwater, MN |
| | Mahnomen, MN |
| | Norman, MN |
| | Polk, MN |
| Wind River | Hot Springs, WY |
| | Freemont, WY |
| | Sublette, WY |
| Winnebago (Nebraska) | Dakota, NE |
| | Dixon, NE |
| | Monona, IA |
| | Thurston, NE |
| | Wayne, NE |
| | Woodbury, IA |
| Winnebago (Wisconsin) | Adams, WI [40] |
| | Clark, WI [40] |
| | Columbia, WI [40] |
| | Crawford, WI [40] |
| | Dane, WI [39] |
| | Eau Claire, WI [40] |
| | Houston, MN [40] |
| | Jackson, WI [40] |
| | Juneau, WI [40] |
| | La Crosse, WI [40] |
| | Marathon, WI [40] |
| | Monroe, WI [40] |
| | Sauk, WI [40] |
| | Shawano, WI [40] |
| | Vernon, WI [40] |
| | Wood, WI [40] |
| Yakima | Klickitat, WA |
| | Lewis, WA |
| | Skamania, WA [41] |
| | Yakima, WA |
| Yankton | Bon Homme, SD |
| | Boyd, NE |
| | Charles Mix, SD |
| | Douglas, SD |
| | Gregory, SD |
| | Hutchinson, SD |
| | Knox, NE |
| Yavapai-Prescott | Yavapai, AZ |
| Ysleta Del Sur Pueblo Tribe of Texas Hudspeth, TX [1]. | El Paso, TX [1] |
| Zia Pueblo | Sandoval, NM |
| Zuni Pueblo | Apache, AZ |
| | Cibola, NM |
| | McKinley, NM |
| | Valencia, NM |

[1] Public Law 100-89, Restoration Act for Ysleta Del Sur and Alabama and Coushatta Tribes of Texas establishes service areas for "members of the tribe" by sections 101(3) and 105(a) for the Pueblo and sections 201(3) and 206(a) respectively.

[2] For purposes of this notice Alaska Native Regions are defined as reservations (42 CFR 36.21(i)) and the entire State of Alaska is included as a CHSDA by regulation (42 CFR 36.22(a)(1)).

[3] Restored by Court Order issued December 22, 1983, in Tillie Hardwick v. U.S., Civil No. C-79-1910-SW, U.S. District Court for the Northern District of California.

[4] Special programs established by Congress irrespective of the eligibility regulations. Eligibility for services at these facilities is based on the legislative history of the appropriation of funds for the particular facility, rather than the eligibility regulations and historically, services have been provided at Haskell and Brigham City (House Rept. No. 95-392 and Pub. L. 88-356 respectively). Rapid City South Dakota Hospital was initially funded to provide health care to "indigent Indians in that city" (S. Rept. No. 1154, FY 1967 Interior Approp. 89th Cong. 2d Sess.).

[5] Choctaw Indians residing in Jasper and Noxubee Counties, MS, will continue to be eligible for contract health services pending correction of the inadvertent omission of these two counties from § 36.22 of the regulations.

[6] Historically part of Choctaw Service Unit population since 1970.

[7] Historically part of Colville Service Unit population since 1970.

[8] Members of the tribe residing in these Counties were specified as eligible for Federal services and benefits notwithstanding the existence of a Federal Indian reservation (Pub. L. 98-481, and H. Rept. No. 98-904).

[9] Cow Creek Band of Umpqua recognized by Pub. L. 97-391, signed into law on December 29, 1983. House Rept. No. 97-862 designates Douglas, Jackson, and Josephine Counties as a service area notwithstanding existence of a reservation.

[10] IHS memo, May 7, 1986, designates additional CHSDA counties in California based on 1973 Congressional action providing funds for CRIHB.

[10(a)] Historically part of Crow Service Unit population since 1970.

[11] Historically part of Fort Hall Service Unit population since 1979.

[12] Grand Ronde Tribe of Oregon recognized by Pub. L. 98-165, signed into law on November 22, 1983, provides for eligibility in these six counties without regard to the existence of a reservation.

[13] Historically part of Grand Traverse Service Unit population since 1980.

[14] Public Law 97-428 provides for eligibility in or near the Town of Houlton without regard to existence of a reservation.

[15] Historically part of Isabella Reservation Area and Eastern Michigan Service Unit population since 1979.

[16] Historically part of Kansas Service Unit population since 1979.

[17] Legislative history states that for purposes of Federal services and benefits "members of the tribe residing in Klamath County shall be deemed to be residing in or near a reservation." (Pub. L. 99-398, Sec. 2(c)).

[18] Mashantucket Pequot Indian Claims Settlement Act, Pub. L. 98-134, signed into law on October 18, 1983, provides for a reservation in New London.

[19] Historically part of Minnesota Service Unit population since 1979.

[20] Narragansett Indians recognized by Pub. L. 95-395, signed into law September 30, 1978. Lands in Washington County are now federally restricted and the Bureau of Indian Affairs considers them as the Narragansett Indian Reservation.

[21] The entire State of Nevada is designated a CHSDA by regulation (42 CFR 36.22(a)(2)).

[22] Land in Box Elder County, Utah, taken into trust for the tribe in 1986.

[23] Historically part of Northwestern Wisconsin Service Unit population since 1970.

[24] Historically part of Northern Cheyenne Service Unit population since 1979.

[25] Former reservations in the State of Oklahoma are reservations by regulation (42 CFR 36.21(1)). The entire State of Oklahoma is a CHSDA by regulation (42 CFR 36.22(a)(3)).

[26] Paiute Indian Tribe of Utah Reservation Act, Pub. L. 96-227, provides for extension of services to these four counties without regard to the existence of a reservation.

[27] Legislative history (H.R. Report No. 95-1021) to Pub. L. 95-375, Extension of Federal Benefits to Pascua Yaqui Indians, Arizona, expresses congressional intent that lands conveyed to the tribes pursuant to Act of October 8, 1964, (Pub. L. 88-350) shall be deemed a Federal Indian Reservation.

[28] Included to carry out the intention of Congress to fund and provide contract health services to Penobscot and Passamaquoddy Indians in Aroostook County (Pub. L. 96-420; House Rept. No. 96-1353).

[29] Counties in service area designated by Congress for the Poarch Band of Creek Indians (See H. Rept. 98-886, June 29, 1984; Cong. Record, October 10, 1984, Pg. H11929).

[30] Historically part of Rocky Boy's Service Unit population since 1970.

[31] The counties included in this CHSDA were designed by regulation (42 CFR 36.22(a)(4)).

[32] Historically part of Sells Service Unit population since 1970.

[33] In order to carry out the congressional intent under the Siletz Restoration Act, Pub. L. 95-195, as expressed in H.R. Report No. 95-623, at page 4, Siletz tribal members residing in these counties are eligible for contract health services.

[34] Texas Band of Kickapoo was recognized by Pub. L. 97-429, signed into law on January 8, 1983. The Act provides for eligibility for Kickapoo tribal members residing in Maverick County without regard to the existence of a reservation.

[35] Historically part of Tunica Biloxi Service Unit population since 1982.

[36] Historically part of Turtle Mountain Service Unit population since 1979.

[37] "* * * members of the tribe residing on Martha's Vineyard * * * [are] deemed to be living on or near an Indian reservation." for purposes of eligibility for Federal services (Sec. 12, Pub. L. 100-95).

[38] Historically part of Western Oregon Service Unit population since 1983.

[39] Land in Dane County, WI, was added by the BIA to Wisconsin Winnebago Tribe's reservation by the BIA in 1986 (See FR Vol. 51, No. 222, pg. 41669, Nov. 18, 1986).

[40] The counties included in this CHSDA were designed by regulation (42 CFR 36.22(a)(5)).

[41] Historically part of Yakima Service Unit population since 1979.

## HSDA Counties by State

| State | County |
|---|---|
| Alabama | Baldwin. |
| | Escambia. |
| | Mobile. |
| | Monroe. |
| Alaska | All |
| Arizona | Apache. |
| | Cochise. |
| | Coconino. |
| | Gila. |
| | Graham. |
| | Greenlee. |
| | La Pas. |
| | Maricopa. |
| | Mohave. |
| | Navajo. |
| | Pima. |
| | Pinal. |
| | Santa Cruz. |
| | Yavapai. |
| | Yuma. |
| California | Alpine. |
| | Amador. |
| | Butte. |
| | Calaveras. |
| | Colusa. |
| | Del Norte. |
| | El Dorado. |
| | Fresno. |
| | Glenn. |
| | Humboldt. |
| | Imperial. |
| | Inyo. |
| | Kings. |
| | Lake. |
| | Lassen. |
| | Madera. |
| | Mariposa. |
| | Mendocino. |
| | Modoc. |
| | Mono. |
| | Nevada. |
| | Placer. |
| | Plumas. |
| | Riverside. |
| | San Bernardino. |
| | San Diego. |
| | Santa Barbara. |
| | Shasta. |
| | Sierra. |
| | Siskiyou. |
| | Sonoma. |
| | Sutter. |
| | Tehama. |
| | Trinity. |
| | Tulare. |
| | Tuolumne. |
| | Yolo. |
| | Yuba. |
| Colorado | Archuleta. |
| | La Plata. |
| | Montezuma. |
| | Rio Blanco. |
| Connecticut | New London. |
| Florida | Broward. |
| | Collier. |
| | Dade. |
| | Escambia. |
| | Glades. |
| | Hendry. |
| Idaho | Bannock. |
| | Benewah. |
| | Bingham. |
| | Boundary. |
| | Caribou. |
| | Clearwater. |
| | Idaho. |
| | Kootenai. |
| | Latah. |
| | Lemhi. |
| | Lewis. |
| | Nez Perce. |
| | Owyhee. |
| | Power. |
| Iowa | Monona. |
| | Tama. |
| | Woodbury. |
| Kansas | Brown. |
| | Doniphan. |
| | Douglas. |
| | Jackson. |
| Louisiana | Allen. |
| | Avoyelles. |
| | Rapides. |
| | St. Mary. |
| Maine | Aroostook. |
| | Penobscot. |
| | Washington. |
| Massachusetts | Dukes. |
| Michigan | Alger. |
| | Antrim. |
| | Arenac. |
| | Baraga. |
| | Benzie. |
| | Chippewa. |
| | Clare. |
| | Delta. |
| | Gogebic. |
| | Grand Traverse. |
| | Houghton. |
| | Isabella. |
| | Leelanau. |
| | Luce. |
| | Machinac. |
| | Manistee. |
| | Marquette. |
| | Menominee. |
| | Midland. |
| | Missaukee. |
| | Ontonagon. |
| | Schoolcraft. |
| Minnesota | Aitkin. |
| | Becker. |
| | Beltrami. |
| | Carlton. |
| | Cass. |
| | Chippewa. |
| | Clearwater. |
| | Cook. |
| | Goodhue. |
| | Houston. |
| | Hubbard. |
| | Itasca. |
| | Kanebec. |
| | Koochiching |
| | Lake of the Woods. |
| | Mahnomem. |
| | Marshall. |
| | Mille Lacs. |
| | Norman. |
| | Pennington. |
| | Pine. |
| | Polk. |
| | Redwood. |
| | Renville. |
| | Roseau. |
| | Scott. |
| | St. Louis. |
| | Traverse. |
| | Yellow Medicine. |
| Mississippi | Attala. |
| | Jasper. |
| | Jones. |
| | Kemper. |
| | Leake. |
| | Neshoba. |
| | Newton. |
| | Noxubee. |
| | Scott. |
| | Winston. |

HSDA COUNTIES BY STATE—Continued

| State | County |
|---|---|
| Montana | Big Horn. |
| | Blaine. |
| | Carbon. |
| | Carter. |
| | Chouteau. |
| | Daniels. |
| | Flathead. |
| | Glacier. |
| | Hill. |
| | Lake. |
| | Liberty. |
| | McCone. |
| | Missoula. |
| | Phillips. |
| | Pondera. |
| | Richland. |
| | Roosevelt. |
| | Rosebud. |
| | Sanders. |
| | Sheridan. |
| | Treasure. |
| | Valley. |
| | Yellowstone. |
| Nebraska | Boyd. |
| | Burt. |
| | Cherry. |
| | Cuming. |
| | Dakota. |
| | Dawes. |
| | Dixon. |
| | Knox. |
| | Richardson. |
| | Sheridan. |
| | Thurston. |
| | Wayne. |
| Nevada | All. |
| New Mexico | Bernalillo. |
| | Chaves. |
| | Cibola. |
| | Colfax. |
| | Lincoln. |
| | Los Alamos. |
| | McKinley. |
| | Otero. |
| | Rio Arriba. |
| | San Juan. |
| | Sandoval. |
| | Santa Fe. |
| | Socorro. |
| | Taos. |
| | Valencia. |
| New York | Allegany. |
| | Cattaraugus. |
| | Chautauqua. |
| | Erie. |
| | Franklin. |
| | Genesee. |
| | Niagara. |
| | St. Lawrence. |

HSDA COUNTIES BY STATE—Continued

| State | County |
|---|---|
| North Carolina | Cherokee. |
| | Graham. |
| | Haywood. |
| | Jackson. |
| | Swain. |
| North Dakota | Adams. |
| | Benson. |
| | Divide. |
| | Dunn. |
| | Eddy. |
| | Emmons. |
| | Grant. |
| | McKenzie. |
| | McLean. |
| | Mercer. |
| | Morton. |
| | Mountrail. |
| | Nelson. |
| | Ramsey. |
| | Richland. |
| | Rolette. |
| | Sargent. |
| | Sioux. |
| | Ward. |
| | Williams. |
| Oklahoma | All. |
| Oregon | Benton. |
| | Clackmas. |
| | Coos. |
| | Curry. |
| | Deschutes. |
| | Douglas. |
| | Harney. |
| | Jackson. |
| | Jefferson. |
| | Josephine. |
| | Klamath. |
| | Lane. |
| | Lincoln. |
| | Linn. |
| | Malheur. |
| | Marion. |
| | Multnomah. |
| | Polk. |
| | Tillamook. |
| | Umatilla. |
| | Union. |
| | Wasco. |
| | Washington. |
| | Yamhill. |
| Pennsylvania | Warren. |
| Rhode Island | Washington. |

HSDA COUNTIES BY STATE—Continued

| State | County |
|---|---|
| South Dakota | Bennett. |
| | Bon Homme. |
| | Brule. |
| | Buffalo. |
| | Campbell. |
| | Charles Mix. |
| | Codington. |
| | Corson. |
| | Custer. |
| | Day . |
| | Dewey. |
| | Douglas. |
| | Fall River. |
| | Grant. |
| | Gregory. |
| | Haakon. |
| | Hand. |
| | Hughes. |
| | Hutchinson. |
| | Hyde. |
| | Jackson. |
| | Lyman. |
| | Marshall. |
| | Meade. |
| | Mellette. |
| | Moody. |
| | Pennington. |
| | Perkins. |
| | Potter. |
| | Roberts. |
| | Shannon. |
| | Stanley. |
| | Sully. |
| | Todd. |
| | Tripp. |
| | Walworth. |
| | Zieback. |
| Texas | El Paso. |
| | Hudspeth. |
| | Maverick. |
| | Polk. |
| Utah | Box Elder. |
| | Carbon. |
| | Daggett. |
| | Duchesne. |
| | Emergy. |
| | Grand. |
| | Iron. |
| | Juab. |
| | Kane. |
| | Millard. |
| | San Juan. |
| | Sevier. |
| | Summit. |
| | Tooele. |
| | Uintah. |
| | Utah. |
| | Wasatch. |
| | Washington. |

HSDA COUNTIES BY STATE—Continued

| State | County |
|---|---|
| Washington | Chelan. |
| | Clallam. |
| | Douglas. |
| | Ferry. |
| | Grant. |
| | Grays Harbor. |
| | Jefferson. |
| | King. |
| | Kitsap. |
| | Klickitat. |
| | Lewis. |
| | Lincoln. |
| | Mason. |
| | Okanogan. |
| | Pacific. |
| | Pend Oreille. |
| | Pierce. |
| | Skagit. |
| | Skamania. |
| | Snohomish. |
| | Spokane. |
| | Stevens. |
| | Thurston. |
| | Whatcom. |
| | Witman. |
| | Wisconsin. |
| | Yakima. |
| Wisconsin | Adams. |
| | Ashland. |
| | Barron. |
| | Bayfield. |
| | Brown. |
| | Burnett. |
| | Clark. |
| | Columbia. |
| | Crawford. |
| | Eau Claire. |
| | Forest. |
| | Iron. |
| | Jackson. |
| | Juneau. |
| | La Crosse. |
| | Langlade. |
| | Marathon. |
| | Marinette. |
| | Menominee. |
| | Monroe. |
| | Oconto. |
| | Oneida. |
| | Outagamie. |
| | Pierce. |
| | Polk. |
| | Sauk. |
| | Sawyer. |
| | Shawano. |
| | Vernopn. |
| | Vilas. |
| | Washburn. |
| | Wood. |
| Wyoming | Big Horn. |
| | Fremont. |
| | Hot Springs. |
| | Sheridan. |
| | Sublette |

Date: August 16, 1988.

**Everett R. Rhoades,**

*Director, Indian Health Service.*

[FR Doc. 88-19180 Filed 8-24-88; 8:45 am]

BILLING CODE 4160-16-M

## National Institutes of Health

### National Cancer Institute; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Cancer Research Manpower Review Committee, National Cancer Institute, National Institutes of Health, November 3-4, 1988, at the Guest Quarters Hotel, 7335 Wisconsin Avenue, Bethesda, Maryland 20814.

This meeting will be open to the public on November 3 at 7 p.m. to approximately 7:30 p.m. to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on November 3 from approximately 7:30 p.m. to recess and on November 4 from 8 a.m. to adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, National Institutes of Health, Building 31, Room 10A06, 9000 Rockville Pike, Bethesda, Maryland 20892 (301/496-5708) will provide a summary of the meeting and a roster of Committee members, upon request.

Ms. Cynthia Sewell, Executive Secretary, Cancer Research Manpower Review Committee, National Cancer Institute, National Institutes of Health, Westwood Building, Room 838, 5333 Westbard Avenue, Bethesda, Maryland 20892 (301/496-7721) will provide substantive program information upon request.

Dated: August 11, 1988.

**Betty J. Beveridge,**

*Committee Management Officer, NIH.*

[FR Doc. 88-19336 Filed 8-24-88; 8:45 am]

BILLING CODE 4140-01-M

### National Eye Institute, National Advisory Eye Council; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Advisory Eye Council, National Eye Institute, September 15 and 16, 1988, Building 31, Conference Room 7, National Institutes of Health, Bethesda, Maryland.

This meeting will be open to the public from 9:00 a.m. until approximately 11:30 a.m. on Thursday, September 15. Following opening remarks by the Director, National Eye Institute, there will be presentations by the staff of the Institute concerning Institute programs and various research assistance mechanisms. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public from approximately 11:30 a.m. until closing on September 15; and from 8:30 a.m. until approximately noon on September 16 for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

There will also be an open meeting of the Vision Research Program Planning Subcommittee on Wednesday, September 14, from 7 p.m. until completion to discuss further the plans for *Vision Research: A National Plan 1989-90.* The meeting will be held at the National Eye Institute Conference Room, Building 31, Room 6A35 on the National Institutes of Health campus. Attendance by the public will be limited to space available.

Ms. Lois DeNinno, Committee Management Officer, National Eye Institute, Building 31, Room 6A51, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-9110, will provide summaries of meetings, rosters of committee members, and substantive program information upon request.

(Catalog of Federal Domestic Assistance Programs, Nos. 13.867, Retinal and Choroidal Diseases Research; 13.868, Anterior Segment Diseases Research; and 13.871, Strabismus, Amblyopia and Visual Processing; National Institutes of Health)

Dated: August 11, 1988.

**Betty J. Beveridge,**

*Committee Management Officer, NIH.*

[FR Doc. 88-19337 Filed 8-24-88; 8:45 am]

BILLING CODE 4140-01-M

**National Heart, Lung, and Blood Institute, Research Manpower Review Committee; Meeting**

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Research Manpower Review Committee, National Heart, Lung, and Blood Institute, National Institutes of Health, on September 25–27, 1988, at the Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.

This meeting will be open to the public on September 25, from 8 p.m. to approximately 9:30 p.m. to discuss administrative details and to hear reports concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public is limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on September 26 from approximately 8 a.m. until adjournment on September 27, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of the Committee members.

Mr. Kathryn Ballard, Executive Secretary, NHLBI, Westwood Building, Room 550, Bethesda, Maryland 20892, (301) 496–7361, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.837, Heart and Vascular Diseases Research; 13.838, Lung Diseases Research; and 13.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: August 11, 1988.

**Betty J. Beveridge,**

*Committee Management Officer, NIH.*

[FR Doc. 88–19338 Filed 8–24–88; 8:45 am]

BILLING CODE 4140–01–M

**National Institute of Allergy and Infectious Diseases, National Advisory Allergy and Infectious Diseases Council, Acquired Immunodeficiency Syndrome Subcommittee, Allergy and Immunology Subcommittee, Microbiology and Infectious Diseases Subcommittee; Meeting**

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Allergy and Infectious Diseases Council, National Institute of Allergy and Infectious Diseases, and its subcommittees on September 22–23, 1988 at the National Institutes of Health, Building 31C, Conference Room 10, Bethesda, Maryland 20892.

The meeting will be open to the public on September 22 from approximately 8:30 a.m. to 8:45 a.m. for opening remarks of the Institute Director and from 1 p.m. to recess for meetings of the Council subcommittees. On September 23 the meeting will be open to the public from approximately 8:30 a.m. until 2:00 p.m. for discussion of procedural matters, Council business, and a report from the Institute Director which will include a discussion of budgetary matters. The primary program will include a discussion of minority issues related to AIDS; a report of the Intramural Research Program and a report from each of the Council subcommittees.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, United States Code and section 10(d) of Pub. L. 92–463, the meeting of the NAAIDC Acquired Immunodeficiency Syndrome Subcommittee, NAAIDC Allergy and Immunology Subcommittee and the NAAIDC Microbiology and Infectious Diseases Subcommittee will be closed to the public for approximately four hours for review, evaluation, and discussion of individual grant applications. It is anticipated that this will occur from 8:45 a.m. until approximately 11:30 a.m. on September 22, in conference rooms 10, 7 and 9 respectively. The meeting of the full Council will be closed from approximately 2 p.m. until adjournment on September 23 for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301–496–5717), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. John W. Diggs, Director, Extramural Activities Program, NIAID, NIH, Westwood Building, Room 703, telephone (301–496–7291), will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.855 Pharmacological Sciences; 13.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: August 11, 1988.

**Betty J. Beveridge,**

*Committee Management Officer, NIH.*

[FR Doc. 88–19339 Filed 8–24–88; 8:45 am]

BILLING CODE 4140–01–M

**National Institute of Dental Research, National Advisory Dental Research Council; Meeting**

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the National Advisory Dental Research Council, National Institute of Dental Research, to be held September 26–27, 1988, Conference Room 10, Building 31, National Institutes of Health, Bethesda, Maryland. This meeting will be open to the public from 9 a.m. to recess on September 26 for general discussion and program presentations. Attendance by the public will be limited to space available. The 1988 Seymour J. Kreshover lecture will follow at 3:30 p.m. in the Mortimer B. Lipsett Auditorium in Building 10, NIH.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10 (d) of Pub. L. 92–463, the meeting of the Council will be closed to the public on September 27 from 9 a.m. to adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Preston A. Littleton, Executive Secretary, National Advisory Dental Research Council, and Deputy Director, National Institute of Dental Research, National Institutes of Health, Building 31, Room 2C39, Bethesda, Maryland 20892, (telephone 301–496–9469) will

furnish a roster of committee members, a summary of the meeting, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program Nos. 13.121–Diseases of the Teeth and Support Tissues; Caries and Restorative Materials; Periodontal and Soft Tissue Diseases; 13.122-Disorders of Structure, Function, and Behavior: Craniofacial Anomalies, Pain Control, and Behavioral Studies; 13.845-Dental Research Institutes; National Institutes of Health)

Dated: August 11, 1988.

**Betty J. Beveridge,**

*Committee Management Officer, NIH.*

[FR Doc. 88–19340 Filed 8–24–88; 8:45 am]

BILLING CODE 4140-01-M

## National Institute of Environmental Health Sciences, National Advisory Environmental Health Sciences Council; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Environmental Health Sciences Council, September 19–20, 1988, at the National Institute of Environmental Health Sciences, Building 101 Conference Room, South Campus, Research Triangle Park, North Carolina

This meeting will be open to the public on September 19 from 9 a.m. to approximately 12 noon for the report of the Director, NIEHS, and for discussion of the NIEHS budget, program policies and issues, recent legislation, and other items of interest. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public September 19, from approximately 1 p.m. to adjournment on September 20, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Winona Herrell, Committee Management Officer, NIEHS, Bldg. 31, Rm. 2B55, NIH, Bethesda, Md. 20892 (301) 496–3511, will provide summaries of the meeting and rosters of council members.

Dr. Anne Sassaman, Director, Division of Extramural Research and Training, NIEHS, P.O. Box 12233, Research Triangle Park, North Carolina 27709, (919) 541–7723, FTS 629–7723, will furnish substantive program information.

(Catalog Federal Domestic Assistance Program Nos 13.112, Characterization of Environmental Health Hazards; 13.113, Biological Response to Environmental Health Hazards; 13.114, Applied Toxicological Research and Testing; 13.115, Biometry and Risk Estimation; 13.894, Resource and Manpower Development, National Institutes of Health)

Dated: August 11, 1988.

**Betty J. Beveridge,**

*Committee Management Officer, NIH.*

[FR Doc. 88–19341 Filed 8–24–88; 8:45 am]

BILLING CODE 4140-01-M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of Administration

**[Docket No. N–88–1848]**

### Submission of Proposed Information Collections to OMB

**AGENCY:** Office of Administration, HUD.

**ACTION:** Notices.

**SUMMARY:** The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

**ADDRESS:** Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposals for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

**Authority:** Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

August 19, 1988.

**John T. Murphy,**

*Director, Information Policy and Management Division.*

Proposal: Housing Development Grant Program: Project Settlement Procedures.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: This information is needed to close out the Federal financing for project activities. It is also needed to verify that Federal funds were used in accordance with the Grant Agreement and that all participating parties have fulfilled their obligations.

Form Number: None.

Respondents: State or Local Governments.

Frequency of Submission: On Occasion.

Reporting Burden:

| | Number of respondents | x | Frequency of response | x | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| Settlement Procedures | 65 | | 1 | | 16 | | 1,040 |

Total Estimated Burden Hours: 1,040.

Status: New.

Contact: Freda R. Nicolosi, HUD, (202) 755–6142 John Allison, OMB, (202) 395–6880.

Date: August 19, 1988.

Proposal: Public Housing Tenancy and Administative Grievance Procedure (FR–1164).

Office: Public and Indian Housing.

Description of the Need for the Information and Its Proposed Use: Section 6 of the National Housing Act of 1937 requires Public Housing Agencies (PHAs) to have an administrative grievance procedure that provide tenants with sufficient notification of proposed adverse actions, an opportunity for an impartial hearing, and also permits PHAs to exclude grievances over evictions and lease terminations.

Form Number None.

Respondents: State or Local Governments.

Frequency of Submission: Recordkeeping and On Occasion.

Reporting Burden:

| | Number of respondents | X | Frequency of response | X | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| Written Notification (1) | 3,330 | | 1 | | .67 | | 2,220 |
| Written Notification (2) | 3,330 | | 450 | | .004 | | 6,229 |
| Notice of Proposed Action (1) | 3,330 | | 59.09 | | .008 | | 1,625 |
| Notice of Proposed Action (2) | 3,330 | | 3.90 | | .017 | | 217 |
| Hearing Officer's Decision | 3,330 | | 115.98 | | .083 | | 32,185 |
| PHA's Reversal of Decision | 3,330 | | 2.32 | | .083 | | 644 |
| Due Process Determination | 2,000 | | 1 | | 24 | | 48,000 |
| Notice of Due Process | 2,000 | | 1 | | .333 | | 667 |
| Notice of Ineligible Applicant | 3,330 | | 234.23 | | .008 | | 6,500 |
| Decision of PHA | 3,330 | | 23.42 | | .083 | | 6,500 |
| Recordkeeping | 3,330 | | 6 | | 4.375 | | 47,586 |

Total Estimated Burden Hours: 152,373.

Status: Revision.

Contact: Edward C. Whipple, HUD, (202) 426–0744 John Allison, OMB, (202) 395–6880.

Date: August 19, 1988.

[FR Doc. 88–19288 Filed 8–24–88; 8:45 am]

BILLING CODE 4210–01–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[UT–050–08–4132–12]

### Environmental Assessment; Mt. Pennell Wilderness Study Area, Utah

**AGENCY:** Bureau of Land Management.

**ACTION:** Notice of comment period.

**SUMMARY:** An environmental assessment (EA) has been proposed on an action concerning the re-entering of an old mine on Mt. Pennell, which is within the Mt. Pennell WSA (UT–050–248).

comment period will end 15 days from publication in the **Federal Register.** For further information contact Roy Edmonds at (801) 896–8221. Copies of the EA are available at the Richfield District Office, 150 East 900 North, Richfield, Utah 84701.

Dated: August 19, 1988.

**Larry R. Oldroyd,**

*Acting District Manager, Richfield District Office.*

[FR Doc. 88–19315 Filed 8–24–88; 8:45 am]

BILLING CODE 4310–DQ–M

[AA–340–08–4333–02]

### Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information, related forms, and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer and to the Officer of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 202–395–7340.

*Title:* Permit Fee Envelope, 36 CFR Part 71

*OMB Approval Number:* 1004–0133

*Abstract:* Respondents supply identifying information and data on the campsite number, dates camping, number in party, zip code, fee paid, vehicle license number, and primary purpose of visit. This information allows the Bureau of Land Management (BLM) to determine if all users have paid the required fee, the number of users, and their State of origin.

*Bureau Form Number:* 1370–36

*Frequency:* Whenever someone wishes to camp in a campground where fees are collected.

*Description of Respondents:* Individuals desiring to use the campground.

*Estimated Completion Time:* Three minutes

*Annual Responses:* 60,000

*Annual Burden Hours:* 3,000

*Bureau Clearance Officer:* Rick Iovaine 202–653–8853

Date: August 5, 1988.

**Dean Stepanek,**

*Assistant Director—Land and Renewable Resources.*

[FR Doc. 88–19244 Filed 8–24–88; 8:45 am]

BILLING CODE 4310–84–M

[WY–030–4121–13]

### Availability of Coal Geophysical Logs, Rawlins District, WY

**ACTION:** Public notice of availability of eleven coal geophysical logs from Sweetwater County, Wyoming.

**SUMMARY:** Notice is hereby given that eleven geophysical logs from eleven coal test holes in Sweetwater County, Wyoming, are now available to the public. The test holes are located in Township 23 North, Range 95 West, and were drilled to investigate coal in the Eocene Wasatch Formation in the central part of the Great Divide Basin.

**ADDRESS:** Reproductions of the geophysical logs are available at cost. Bureau of Land Management, Rawlins District Office, 1300 North Third Street, P.O. Box 670, Rawlins, Wyoming 82301.

**FOR FURTHER INFORMATION CONTACT:** William Newby, Assistant District Manager, Division of Minerals, Rawlins District, Bureau of Land Management,

P.O. Box 670, Rawlins, Wyoming 82301. Telephone (307) 324–7171.

**Richard Bastin,**

*District Manager.*

[FR Doc. 88–19294 Filed 8–24–88; 8:45 am]

BILLING CODE 4310-22-M

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**[WY–030–4121–13]**

## Availability of Coal Geophysical Logs, Rawlins District, WY

**ACTION:** Public notice of availability of five coal geophysical logs from Fremont County, Wyoming.

**SUMMARY:** Notice is hereby given that five geophysical logs from five coal test holes in Fremont County, Wyoming, are now available to the public. The test holes are located in Township 38 North, Range 93 West, and were drilled to investigate coal in the Eocene Wind River Formation in the north-central portion of the Wind River Basin.

**ADDRESS:** Reproductions of the geophysical logs are available at cost. Bureau of Land Management, Rawlins District Office, 1300 North Third Street, P.O. Box 670, Rawlins, Wyoming 82301.

**FOR FURTHER INFORMATION CONTACT:** William Newby, Assistant District Manager, Division of Minerals, Rawlins District, Bureau of Land Management, P.O. Box 670, Rawlins, Wyoming 82301. Telephone (307) 324–7171.

**Richard Bastin,**

*District Manager.*

[FR Doc. 88–19295 Filed 8–24–88; 8:45 am]

BILLING CODE 4310-22-M

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## District Advisory Council Meeting; Ukiah, CA

**AGENCY:** Bureau of Land Management.

**ACTION:** Notice of Meeting, Ukiah, California, District Advisory Council.

**SUMMARY:** Pursuant to Pub. L. 94–579 and 43 CFR 1780, the Ukiah District Advisory Council will meet in Arcata, California, September 30, 1988, to discuss issues identified in public input on the Draft Arcata Resource Management Plan.

**DATES:** The meeting will begin at 9:30 a.m. and adjourn at 3:30 p.m. Friday, September 30, 1988.

**ADDRESS:** The meeting will be held at the Bureau of Land Management Office, 1125 16th Street, Arcata, California.

**FOR FURTHER INFORMATION CONTACT:** Barbara Taglio, Ukiah District Office, Bureau of land Management, 555 Leslie Street, Ukiah, California 95482, (707) 462–3873.

**SUPPLEMENTARY INFORMATION:** Most of the public lands covered by the Draft Arcata Resource Management Plan are in Humboldt and Mendocino counties; small tracts are in Trinity and Sonoma counties. Management alternatives for approximately 125,000 acres of public land and 125,000 acres of mineral reserve land (patented land with mineral rights reserved to the United States) are included in the plan. During the public comment period on the plan, BLM received public comments at two public workshops and two public hearings. In addition, written comments in the form of postcards, letters, and petitions were received from over 4,000 individuals.

The meeting is open to the public. Individuals may submit oral or written comments for the Council's consideration. Opportunity for oral comments will be provided at 10:30 a.m. Summary minutes of the meeting will be maintained by the Ukiah District Office and will be available for inspection and reproduction within 30 days of the meeting.

Date: August 15, 1988.

**Alfred W. Wright,**

*District Manager.*

[FR Doc. 88–19246 Filed 8–24–88; 8:45 am]

BILLING CODE 4310-32-M

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**[UT 080–07–4322–02; 7–00152]**

## Vernal District Grazing Advisory Board Meeting.

August 17, 1988.

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given in accordance with Pub. L. 92–463, that a meeting of the Vernal District Grazing Advisory board will be held Friday, September 30, 1988, commencing at 8:00 a.m. The meeting will be held in the District Office conference room at 170 South 500 East, Vernal, Utah.

The agenda items will include: (1) Review of Minutes, (2) Diamond Mountain Resource Area Resource Management Plan, (3) Book Cliffs Range Program Summary update, (4) FY 88 and 89 Range Improvement work and proposals, (5) Predator and Pest Control, (6) Riparian Area Management Program, (7) Review of new Grazing Regulations and Policy, and (8) Items From the Public, if any.

The meeting is open to the public. Interested persons wishing to participate or present a statement should notify the District Manager at the above mentioned address or phone him at (801) 789–1362 no later than September 29, 1988.

**David E. Little,**

*District Manager.*

[FR Doc. 88–19316 Filed 8–24–88; 8:45 am]

BILLING CODE 4310-DQ-M

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**[AZ–020–4332–01]**

## Closure of Public Lands to Camping and Off-Road Vehicle Use; Painted Rocks State Park, Arizona

**ACTION:** Notice of closure.

**SUMMARY:** This notice is to inform the public that the Bureau of Land Management (BLM) intends to close certain public lands in the Painted Rocks State Park area in Maricopa County to camping and off-road vehicle use except designated/signed open roads. The closure will be year-round and will remain in effect until rescinded or modified by the Lower Gila Area Manager. The public lands affected by this closure are specifically identified as follows:

All BLM administered lands in,

T. 4 S., R. 7 W.,
Secs. 30, 31, 32.
T. 4 S., R. 8 W.
Secs. 13, 14, 24, 25.
T. 5 S., R. 7 W.,
Secs. 5, 6, 7, 8, 17, 20.
T. 5 S., R. 8 W.,
Secs. 1, 2, 3, 10, 11, 12.

The designated area will be posted with signs. This closure will go into effect upon completion of signing, approximately October 1, 1988.

The following persons, operating within scope of their official duties are exempt from the provisions of this closure: Employees of the BLM, Arizona Game and Fish, Arizona State Parks, local and federal law enforcement and fire protection personnel. Access by additional parties may be allowed, but must be approved in advance in writing by the Lower Gila Area Manager.

This closure is in accordance with the provisions of the Federal Land Policy and Management Act of 1976/43 (USC 1701), and 43 CFR, Subpart 8364.1. Any person who fails to comply with the provisions of this closure may be subject to penalties outlined in 43 CFR 8360.0–7.

The reason for this closure is to protect vegetation and soil resources, and to eliminate health hazards associated with indiscrimiante dumping of litter and waste. There is an existing organized long-term camping site within the area with sanitation facilities adequate to suport visitor use demands.

**FOR FURTHER INFORMATION CONTACT:** William T. Childress, Lower Gila Area Manager, Phoenix District Office, at (602) 863–4464.

Herman Kast

*Acting District Manager.*

Date: August 18, 1988.

[FR Doc. 88–19245 Filed 8–24–88; 8:45 am]

BILLING CODE 4310–32–M

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[ID–010–08–4212–24; IDI–25539]

## Realty Action; Lease of Public Land for Airport Purposes In Owyhee County, ID

**AGENCY:** Bureau of Land Management, Idaho.

**ACTION:** Notice.

**SUMMARY:** The following-described public lands have been examined and found suitable for lease to the Idaho Bureau of Aeronautics for airport purposes under the Act of May 24, 1928, as amended:

T. 12 S., R. 5 E., B.M., Idaho,
Sec. 21, N½NW¼SW¼NW¼, S½SW¼NW¼NW¼, NW¼NE¼SW¼NW¼, S½SE¼NW¼NW¼, NE¼SE¼NW¼NW¼, SW¼NE¼NW¼, N½SE¼NW¼, S½NE¼NE¼NW¼.

Containing 40 acres.

**DATES:** The previously-described lands are hereby segregated from appropriation under the public land laws including the mining laws for a period of one year from the date of publication of this notice in the Federal Register or until issuance of the lease, whichever occurs first.

For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may sumit comments to the District Manager, Bureau of Land Management, at the address shown below.

**ADDRESS:** Copies of the Environmental Assessment and lease terms are available for public inspection upon request at the Bureau of Land Management, 3948 Development Avenue, Boise, Idaho 83705.

**FOR FURTHER INFORMATION CONTACT:** Peter T. Cizmich, at the above address or by telephone at (208) 334–1582.

**SUPPLEMENTARY INFORMATION:** This airport lease will authorize an exiting airstrip near the community of Grasmere, Idaho, to the Idaho Bureau of Aeronautics. The airstrip was originally authorized in 1951 under a Special Land Use Permit (SLUP). The authority for SLUPs was repealed by the Federal Land Policy and Management Act (FLPMA) of 1976. Therefore, the new lease will be issued under the Act of May 24, 1928. The proposed action is administrative and involves no changes in managment nor any new environmental impacts.

Objections to this Notice of Realty Action will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Date: August 16, 1988.

**Gene L. Schloemer,**

*Associate District Manager.*

[FR Doc. 88–19317 Filed 8–24–88; 8:45 am]

BILLING CODE 4310–GG–M

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[UT–942–08–4212–13; U–47389, U–54564, U–58178, U–60052]

## Conveyance of Public Land; Order Providing for Opening of Lands in Utah

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** This action informs the public of the conveyance of 2,491.19 acres of public land out of Federal ownership. This action will also open a portion of the reconveyed land to surface entry.

**EFFECTIVE DATE:** September 12, 1988.

**FOR FURTHER INFORMATION CONTACT:** Lillie Hikida, BLM Utah State Office, 324 South State, Suite 301, Salt Lake City, Utah, 84111–2303, 801–524–3074.

**SUPPLEMENTARY INFORMATION:** 1. Notice is hereby given that in an exchange of lands made pursuant to Section 206 of the Act of October 21, 1976, 90 Stat. 2756, 43 U.S.C. 1716, a patent has been issued transferring 1,170.17 acres of land in Washington County, Utah from Federal to private ownership.

2. In the exchange, the following described land was reconveyed to the United States:

**Salt Lake Meridian**

T. 39 S., R. 10 W.
Sec. 10, SE¼NE¼, E½SE¼;
Sec. 11, W½W½;
Sec. 14, NW¼SW¼;
Sec. 15, E½NE¼;
Sec. 20, SW¼NE¼, SW¼NW¼, SE¼NW¼, E½SW¼, W½SE¼, SE¼SE¼;
Sec. 21, S½NW¼, SW¼;
Sec. 22, E½NE¼SE¼;
Sec. 27, NW¼, N½S½;
Sec. 28, S½S½, N½SE¼, NE¼SW¼, SE¼NW¼;
Sec. 29, SE¼, E½NE¼;
Sec. 33, NE¼, N½NW¼, SE¼NW¼;
Sec. 34, W½NW¼.

The area described aggregates 2,220.00 acres in Washington County.

3. Notice is also hereby given that in an exchange of lands made pursuant to Section 206 of the Act of October 21, 1976, 90 Stat. 2756, 43 U.S.C. 1716, a patent has been issued transferring 20.00 acres of land in Iron County, Utah from Federal to private ownership.

4. In the exchange, the following described land was reconveyed to the United States:

**Salt Lake Meridian**

T. 38 S., R. 12 W.,
Sec. 18, N½NW¼NE¼.

The area described contains 20.00 acres in Iron County.

5. Notice is also hereby given that in an exchange of lands made pursuant to Section 206 of the Act of October 21, 1976, 90 Stat. 2756, 43 U.S.C. 1716, a patent has been issued transferring 280.00 acres of land in Washington County, Utah from Federal to private ownership.

6. In exchange, the following described land was reconveyed to the United States:

**Salt Lake Meridian**

Beginning at the North quarter corner of Section 1, Township 39 South, Range 10 West, Salt Lake Base and Meridian; thence West 5 rods; thence Southwesterly 257 rods, more or less, to a point 18 rods West of the Northeast corner of the Southwest quarter of the Southwest quarter of Section 1; thence East 18 rods to the Northeast corner of the Southwest quarter of the Southwest quarter of Section 1; thence South 80 rods; thence East 80 rods to the South quarter corner of Section 1; thence North 320 rods to the point of beginning.

The East half of the Southeast quarter of Section 11, Township 39 South, Range 10 West, Salt Lake Base and Meridian.

The Northeast quarter of the Northwest quarter of Section 12, Township 39 South, Range 10 West, Salt Lake Base and Meridian. Also, beginning at the Northeast corner of the Northwest quarter of the Northwest quarter of Section 12, Township 39 South, Range 10 West, Salt Lake Base and Meridian and running thence South 80 rods; thence West 80 rods; thence Northeasterly 92 rods, more or less, to a point 40 rods East of the Northwest corner of Section 12; thence East 40 rods to the point of beginning.

Beginning at the Northeast corner of the Northwest quarter of the Northeast quarter of Section 14, Township 39 South, Range 10 West, Salt Lake Base and Meridian, and running thence South 80 rods; thence West 80 rods; thence Northeasterly to a point 40 rods west of the point of beginning; thence east 40 rods to the point of beginning.

The lands described aggregate 297 acres in Washington County.

7. Notice is hereby given that in an exchange of lands made pursuant to Section 206 of the Act of October 21, 1976, 90 Stat. 2756, 43 U.S.C. 1716, a patent has been issued transferring 481.03 acres of land in Washington

County, Utah from Federal to private ownership.

8. In exchange, the following described land was reconveyed to the United States:

**Salt Lake Meridian**

T. 42 S., R. 9 W.,
Sec. 19, lots 3, 4, E½SW¼, SE¼;
Sec. 29, N½, N½N½S½, S¼NW¼SW¼, W½SW¼SW¼, W½NE¼SW¼SW¼, SE¼NE¼SE¼;
Sec. 30, lot 1, N½NE¼, NE¼NW¼.

The area described contains 923.00 acres in Kane County.

9. At 9:00 a.m. on September 12, 1988, the land described in paragraphs 2, 4, 6 and the lands described in paragraph 8 lying south of the road designated in a map in case filed U–60052 will be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 9:00 a.m., on September 12, 1988, will be considered as simultaneously filed at that time. Those received thereafter will be considered in order of filing.

**Orval L. Hadley,**

*Chief, Branch of Lands and Minerals Operations.*

Date: August 19, 1988.

[FR Doc. 88–19314 Filed 8–24–88; 8:45 am]

BILLING CODE 4310–DQ–M

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**[NV–930–06–4333–11]**

## Camping Stay Limits for Public Lands; Las Vegas, NV District

**AGENCY:** Bureau of Land Management, Department of Interior.

**ACTION:** Establishment of camping stay limit for public lands administered by the BLM in the Las Vegas District, Nevada.

**SUMMARY:** Person(s) may occupy a site or multiple sites within a ten (10) mile radius on public lands not closed or otherwise restricted to camping within the Las Vegas District for a total period of not more than fourteen (14) days during any twenty-eight (28) day period. Following the fourteen (14) day period, persons may not relocate within a distance of ten (10) miles of the site that was just previously occupied until completion of the twenty-eight (28) day period. The fourteen (14) day limit may be reached either through a number of separate visits or through a period of continuous occupations of a site. Under special circumstances and upon request, the authorized officer may give written permission for extension of the fourteen (14) day limit.

Additionally, no person may leave personal property unattended in designated campgrounds, recreation developments or elsewhere on public lands within the Las Vegas District for a period of more than forty-eight (48) hours without written permission from the authorized officer.

This camping stay limit does not apply to Long Term Visitor Use Areas so designated by the Las Vegas District.

**DATE:** This camping stay limit will be effective August 25, 1988.

**FOR FURTHER INFORMATION CONTACT:** Ben F. Collins, District Manager, Las Vegas District Office, 4765 W. Vegas Drive, Las Vegas, Nevada 89125. The mailing address is: P.O. Box 26569, Las Vegas, Nevada 89126.

**SUPPLEMENTARY INFORMATION:** This camping stay limit is being established in order to assist the Bureau in reducing the incidence of long-term occupancy trespass being conducted under the guise of camping on public lands within the Las Vegas District. Of equal importance is the problem of long-term camping, which precludes equal opportunities for other members of the public to camp in the same area, which creates user conflicts.

Authority for this stay limit is contained in CFR Title 43, Chapter II, Part 8360, Subpart 8364.1, Subpart 8365, Subpart 8365.1–2, 8365.1–6, and 8365.2–3.

8360.0–7 PENALTIES: Violations of any regulations in this part by a member of the public, except for the provisions of 8365.1–7, are punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months. Violations of supplementary rules authorized by 8365.1–6 are punishable in the same manner.

**Ben F. Collins,**

*District Manager.*

[FR Doc. 88–19247 Filed 8–24–88; 8:45 am]

BILLING CODE 4210–01–M

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**[WY–060–4121–08]**

## Resource Management Plans; Buffalo Resource Area, Wyoming

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Plan amendment; Buffalo Resource Area, Wyoming.

**SUMMARY:** Notice is hereby given that the Bureau of Land Management has amended the Buffalo Resource Area Resource Management Plan. The amendment modified a decision which precluded the Bureau from considering coal lease applications within a 3-mile buffer zone which surrounds the planning district of the city of Gillette, Wyoming. The new decision allows the Bureau to consider applications for emergency coal leases, exchanges, or lease modifications inside the buffer zone. All applications within the Gillette Buffer Zone would have to be adjacent to an existing mining operation and extend no more than 1 mile beyond the existing coal lease boundaries. The Gillette City Council is in agreement with this amendment and will be consulted with before any new application is approved.

This amendment will become final following a 30-day protest period. Protests should be sent to: Director (202), Bureau of Land Management, 1800 C Street NW., Washington, DC 20240 before the end of the 30-day protest period. Protests should include: (a) The name, mailing address, telephone number, and interest of the person filing the protest; (b) a statement of the issue being protested; (c) a copy of all documents addressing the issue that the protesting party submitted during the planning process, or an indication of the date the issue was discussed for the record; and (d) a concise statement explaining why the proposed amendment is believed to be wrong.

**DATES:** The 30-day protest period will begin on the publication date of this notice.

**FOR FURTHER INFORMATION CONTACT:** For further information on this amendment write or call Glenn Bessinger, Buffalo Resource Area Manager, 189 North Cedar, Buffalo, Wyoming 82834; phone (307) 684–5586.

**Hillary A. Oden,**

*State Director.*

[FR Doc. 88–19248 Filed 8–24–88; 8:45 am]

BILLING CODE 4310–22–M

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**[MT–940–08–4520–11]**

## Filing of Plat of Survey, Land Resource Management; Montana

**AGENCY:** Bureau of Land Management, Montana State Office, Interior.

**ACTION:** Notice of filing of plat of survey.

**SUMMARY:** Plat of survey of the lands described below accepted August 5, 1988, was officially filed in the Montana State Office effective 10 a.m. on August 17, 1988

**Principal Meridian, Montana**

T. 32 N., R. 33 W.

The plat representing the dependent resurvey of portions of the Lake Creek Guide Meridian (on the west boundary), the subdivisional lines, Homestead Entry Survey No. 415 and No. 1057, and

Homestead Entry Survey No. 1051; and the survey of Tract 37 in unsurveyed section 30, Township 32 North, Range 33 West, Principal Meridian Montana. The area described is in Lincoln County.

This survey was executed at the request of the U.S. Forest Service, Region 1.

**EFFECTIVE DATE:** August 17, 1988.

**FOR FURTHER INFORMATION CONTACT:** Bureau of Land Management, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107.

**Robert A. Teegarden,**

*Acting State Director.*

Dated: August 18, 1988.

[FR Doc. 88-19249 Filed 8-24-88; 8:45 am]

BILLING CODE 4310-DN-M

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**[MT-940-08-4520-11]**

## Filing of Plat of Survey, Land Resource Management; Montana

**AGENCY:** Bureau of Land Management, Montana State Office, Interior.

**ACTION:** Notice of filing of plats of survey.

**SUMMARY:** Plats of survey of the lands described below accepted August 2, 1988, were officially filed in the Montana State Office effective 10 a.m. on August 16, 1988.

**Fifth Principal Meridian, North Dakota**

T. 147 N., R. 81 W.

The plat representing the dependent resurvey of portions of the west and north boundaries and subdivisional lines, Township 147 North, Range 81 West, Fifth Principal Meridian, North Dakota. The area described is in McLean County.

**Fifth Principal Meridian, North Dakota**

T. 148 N., R. 81 W.

The plat representing the dependent resurvey of portions of the Eleventh Guide Meridian (east boundary) and subdivisional lines, Township 148 North, Range 81 West, Fifth Principal Meridian, North Dakota. The area described is in McLean County.

**Fifth Principal Meridian, North Dakota**

T. 148 N., R. 80 W.

The plat representing the dependent resurvey of portions of the east boundary and subdivisional lines, Township 148 North, Range 80 West, Fifth Principal Meridian, North Dakota. The area described is in McLean County.

**Fifth Principal Meridian, North Dakota**

T. 147 N., R. 80 W.

The plat representing the dependent resurvey of the Eleventh Guide Meridian (west boundary), a portion of the south boundary, the north boundary, and a portion of the subdivisional lines, Township 147 North, Range 80 West, Fifth Principal Meridian, North Dakota. The area described is in McLean County.

**Fifth Principal Meridian, North Dakota**

T. 146 N., R. 80 W.

The plat representing the dependent resurvey of the Eleventh Guide Meridian (west boundary) and subdivisional lines, Township 146 North, Range 80 West, Fifth Principal Meridian, North Dakota. The area described is in McLean County.

These surveys were executed at the request of the Bureau of Reclamation.

**EFFECTIVE DATE:** August 16, 1988.

**FOR FURTHER INFORMATION CONTACT:** Bureau of Land Management, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107.

Dated: August 18, 1988.

**Robert A. Teegarden,**

*Acting State Director.*

[FR Doc. 88-19250 Filed 8-24-88; 8:45 am]

BILLING CODE 4310-DN-M

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**[OR-942-08-4520-12; GP8-226]**

## 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. 7 S., R. 6 W., accepted 7/15/88
T. 23 S., R. 8 W., accepted 7/15/88
T. 19 S., R. 7 W., accepted 7/25/88
T. 28 S., R. 8 W., accepted 7/25/88

*Washington*

T. 6 N., R. 15 E., accepted 7/25/88
T. 36 N., R. 21 E., accepted 7/25/88

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, 825 NE Multnomah, Portland, Oregon 97208, 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, 825 NE. Multnomah Street, P.O. Box 2965, Portland, Oregon 97208.

**B. LaVelle Black,**

*Chief, Branch of Lands and Minerals Operations.*

Dated: August 15, 1988.

[FR Doc. 88-19251 Filed 8-24-88; 8:45 am]

BILLING CODE 4310-33-M

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**[NM-940-08-4220-11; NM NM 7571]**

## Proposed Continuation of Withdrawal; New Mexico

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The U.S. Department of Agriculture, Forest Service, proposes that a 2,829.13-acre withdrawal of National Forest System land continue for an additional 20 years. The land will remain closed to mining but has been and will remain open to surface entry and mineral leasing.

**DATE:** Comments should be received by November 23, 1988.

**ADDRESS:** Comments should be sent to: BLM, New Mexico State Director, P.O. Box 1449, Santa Fe, NM 87504-1449.

**FOR FURTHER INFORMATION CONTACT:** Clarence Hougland, BLM, New Mexico State Office, 505-988-6554.

The Forest Service proposes that the existing land withdrawal made by Public Land Order No. 5128 be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

New Mexico Principal Meridian

Carson National Forest

*Cabresto Canyon Campground (formerly Cabresto Campground)*

T. 29 N., R. 14 E.,
Sec. 19, S½N½SW¼, N½S½SW¼, excluding HES 340 (unsurveyed).

*Santa Barbara Campground*

T. 21 N., R. 12 E.,
Sec. 1, E½E½NE¼, (partially unsurveyed) including that portion within the Santa Barbara Grant survey.
T. 22 N., R. 12 E.,
Sec. 36, SW¼SE¼NE¼, W½NE¼SE¼, (unsurveyed) including that portion within the Santa Barbara Grant survey.
T. 21 N., R. 13 E. (unsurveyed),
Sec. 6, W½W½NW¼, including that portion within the Santa Barbara Grant survey.

*Sangre de Cristo Winter Sports Area*

T. 27 N., R. 14 E.,
Secs. 1 and 12 excluding that portion lying within the Wheeler Peak Widerness Area (Pub. L. 96–550).
T. 28 N., R. 14 E. (unsurveyed),
Sec. 36, S½SW¼, SE¼, except that portion lying within HES 102.
T. 27 N., R. 15 E. (unsurveyed),
Sec. 6, W½W½E½, W½, except that portion lying within HES 102 and that portion lying within the Wheeler Peak Wilderness Area (Pub. L. 96–550).
Sec. 7, W½W½E½, W½, except that portion lying within the Wheeler Peak Wilderness Area (Pub. L. 96–550).
Sec. 18, W½W½NE¼, NW¼, except that portion lying within the Wheeler Peak Wilderness Area (Pub. L. 96–550).
T. 28 N., R. 15 E. (unsurveyed),
Sec. 31, SW¼, except that portion lying within HES 102 and that portion lying within the Wheeler Peak Wilderness Area (Pub. L. 96–550).

*OK Canyon Campground (formerly La Jara Campground)*

T. 25 N., R. 15 E.,
Sec. 9, SW¼NE¼SE¼, SE¼NW¼SE¼, NE¼SW¼SE¼, NW¼SE¼SE¼.

*Silver Bell Overflow Camp Area (formerly Silver Bell Campground)*

T. 28 N., R. 13 E.,
Sec. 1, SE¼NE¼SE¼SW¼, SE¼SE¼SW¼, SE¼SW¼NW¼SE¼, SE¼NW¼SE¼, N½SW¼SW¼SE¼ (unsurveyed).

The areas described aggregate approximately 2,829.13 acres in Taos County.

The purpose of the withdrawal is to protect five sites in the Camino Real and Questa Ranger Districts. The withdrawal segregates the land from location and entry under the mining laws. No change is proposed in the purpose or segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the New Mexico State Director at the address indicated above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued, and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register.** The existing withdrawal will continue until such final determination is made.

**Monte G. Jordan,**

*Associate State Director.*

Dated: August 18, 1988.

[FR Doc. 88–19252 Filed 8–24–88; 8:45 am]

BILLING CODE 4310-FB-M

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**[OR-943-08-4220-11; GP-08-227; ORE-011235, ORE-015247, OR-657]**

## Proposed Continuation of Withdrawals; Oregon

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The U.S. Army Corps of Engineers proposes that three separate land withdrawals continue for an additional 100 years and requests that the lands involved remain closed to mining, and to surface entry where presently closed.

**FOR FURTHER INFORMATION CONTACT:** Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503–231–6905.

The U.S. Army Corps of Engineers proposes that the following identified land withdrawals be continued for a period of 100 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714. The lands are within the Green Peter and the Blue River Reservoir Projects and are described as follows:

1. ORE–011235), Public Land Order No. 2952 of February 28, 1963. Green Peter Reservoir Project, containing 870.00 acres. Located in Linn County, approximately 35 miles southeast of Albany, Oregon.
   T. 12 S., R. 3 E., W.M., Oregon.
2. ORE–015247, Public Land Order No. 3643 of April 15, 1965. Blue River Reservoir Project, containing 901.00 acres. Located in Lane County, approximately 30 miles northeast of Eugene, Oregon.
   Tps. 15 and 16 S., Rs. 4 and 5 E., W.M., Oregon.
3. OR–657, Public Land Order No. 4279 of September 18, 1967. Blue River Reservoir Project, containing 430.06 acres. Located in Lane County, approximately 30 miles northeast of Eugene, Oregon.
   T. 16 S., R. 4 E., W.M., Oregon.

The withdrawal made by Public Land Order No. 2952 currently segregates the land from operation of the public land laws generally, including the mining laws. The other two withdrawals segregate the lands from mining only. The U.S. Army Corps of Engineers requests no changes in the purpose or segregative effect of the withdrawals.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuations may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawals will be continued and if so, for how long. The final determination on the continuation of the withdrawals will be published in the **Federal Register.** The existing withdrawals will continue until such final determination is made.

**B. LaVelle Black,**

*Chief, Branch of Lands and Minerals Operations.*

Dated: August 16, 1988.

[FR Doc. 88–19253 Filed 8–24–88; 8:45 am]

BILLING CODE 4310-33-M

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## Minerals Management Service

### Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collections of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the telephone number listed below. Comments and suggestions on the requirements should be made directly to

the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone (202) 395–7340, with copies to Gerald D. Rhodes, Chief, Branch of Rules, Orders, and Standards; Offshore Rules and Operations Division; Mail Stop 646, Room 6A110; Minerals Management Service; 12203 Sunrise Valley Drive; Reston, Virginia 22091.

*Title:* Oil and Gas and Sulphur Operations in the Outer Continental Shelf (OCS), 30 CFR Part 250.

*OMB Approval Number:* 1010–0046.

*Abstract:* Respondents submit the following form to the Minerals Management Service's (MMS) District Supervisors to be evaluated and approved or disapproved for the adequacy of the equipment and/or procedures which the lessee plans to use during the conduct of production and well-completion and well-workover operations including recompletion. It is also used to evaluate remedial action in the event of well-equipment failure or well-control loss.

*Bureau Form Number:* Form MMS–330.

*Frequency:* On occasion.

*Description of Respondents:* OCS oil and gas lessees.

*Estimated Completion Time:* 1 hour.

*Annual Responses:* 2,500.

*Annual Burden Hours:* 2,500.

*Bureau clearance officer:* Dorothy Christopher (703) 435–6213.

Date: August 4, 1988.

**Carolita Kallaur,**

*Associate Director for Offshore Minerals Management.*

[FR Doc. 88–19254 Filed 8–24–88; 8:45 am]

BILLING CODE 4310-MR-M

## Development Operations Coordination Document; Samedan Oil Corp.

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

**SUMMARY:** Notice is hereby given that Samedan Oil Corporation has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 5670, Block 33, West Delta Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Venice, Louisiana.

**DATES:** The subject DOCD was deemed submitted on August 17, 1988. Comments must be received on or before September 9, 1988, or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

**ADDRESSES:** A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael D. Joseph; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2875.

**SUPPLEMENTARY INFORMATION:** The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: August 17, 1988.

**J. Rogers Pearcy,**

*Regional Director, Gulf of Mexico OCS Region.*

[FR Doc. 88–19255 Filed 8–24–88; 8:45 am]

BILLING CODE 4310-MR-M

## INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

### Agency for International Development

### Board for International Food and Agricultural Development; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the Ninetieth Meeting of the Board for International Food and Agricultural Development (BIFAD) on September 15, 1988.

The purposes of this Meeting are: (a) Review the status of the Collaborative Research Support Programs (CRSP's), planning for the Triennial Reviews and considering future funding for the Nutrition CRSP, and (b) Review the results of the "Getting Ready for the 90's" Symposium, making projections for a final report on the activity.

The September 15, 1988 Meeting will be held in the Department of State Building, Rm. 3524, 21st and C Streets, Washington, DC 20523. The Meeting will be held from 3:00 p.m. to 5:00 p.m. Any interested person may attend and may present oral statements in accordance with procedures established by the Board and to the extent the time available for the meeting permits.

Curtis Jackson, Bureau of Science and Technology, Office of University Relations, Agency for International Development is designated as A.I.D. Advisory Committee Representative at this Meeting. It is suggested that those desiring further information write to Dr. Jackson, in care of the Agency for International Development, Rm. 309, SA–18, Washington, DC 20523, or telephone him on (703) 235–8929.

Date: August 18, 1988.

**Lynn Pesson,**

*Executive Director, BIFAD.*

[FR Doc. 88–19243 Filed 8–24–88; 8:45 am]

BILLING CODE 6116-01-M

## OVERSEAS PRIVATE INVESTMENT CORPORATION

### Agency Report Forms Under OMB Review

**AGENCY:** Overseas Private Investment Corporation.

**ACTION:** Request for Comments.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit information collection requests to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the Agency has

made such a submission. The proposed form under review is summarized below.

**DATE:** Comments must be received within 14 calendar days of this notice. If you anticipate commenting on the form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Submitting Officer of your intent as early as possible.

**ADDRESS:** Copies of the subject form and the request for review submitted to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the Agency Submitting Officer and the OMB Reviewer.

**FOR FURTHER INFORMATION CONTACT:**

*OPIC Agency Submitting Officer:* L. Jacqueline Brent, Office of Personnel and Administration, Overseas Private Investment Corporation, Suite 461, 1615 M Street, NW., Washington, DC 20527; Telephone (202) 457–7151.

*OMB Reviewer:* Francine Picoult, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; Telephone (202) 395–7340.

**Summary of Form Under Review**

*Type of Request:* Revision
*Title:* Project Information Report
*Form Number:* OPIC–71 (OMB No. 3420–0004)
*Frequency of Use:* On occasion—a function of the sampling criteria
*Type of Respondent:* Business or other institutions (except farms)
*Standard Industrial Classification Codes:* All
*Description of Affected Public:* Business and other institutions
*Number of Responses:* 50 per year
*Reporting Hours:* 1½ hours per application
*Authority for Information Collection:* Section 231(k)(2) [Title 22 USC 2191 (k)(2)] and 239(h) [Title 22 USC 2199(h)] of the Foreign Assistance Act of 1961, as amended.
*Abstract (Needs and Uses):* The Project Information Report is necessary to elicit and record the information on the developmental, evnironmental, and U.S. economic effects of OPIC-assisted projects. The information will be used by OPIC's staff and management solely as a basis for monitoring these projects and reporting the results, as required by Congress, in aggregate form.

Date: August 19, 1988.

**James R. Offutt,**

*Office of the General Counsel.*

[FR Doc. 88–19319 Filed 8–24–88; 8:45 am]

BILLING CODE 3210–01–M

## INTERNATIONAL TRADE COMMISSION

### Agency Form Submitted for OMB Review

**AGENCY:** United States International Trade Commission.

**ACTION:** In accordance with the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), as amended, the Commission has submitted a proposal for the collection of information to the Office of Management and Budget for review.

*Purpose of Information Collection:* The proposed information collection is for use by the Commission in connection with investigation No. 332–356, The Western U.S. Steel Market, instituted under the authority of section 332 of the Tariff Act of 1930 (19 U.S.C. 1332).

*Summary of Proposal:*

(1) *Number of forms submitted:* Three.

(2) *Title of forms:* The Western U.S. Steel Market—Questionnaires for Western U.S. Producers, Eastern U.S. Producers and Distributors, and Western U.S. Purchasers.

(3) *Type of request;* New.

(4) *Description of respondents:* Firms which produce, purchase, or distribute steel products.

(5) *Estimated reporting burden:*

| | Western U.S. producers | Eastern U.S. producers and distributors | Western U.S. purchasers |
|---|---|---|---|
| Estimated average burden per response (hours) | 60 | 20 | 20 |
| Proposed frequency of response | 1 | 1 | 1 |
| Estimated number of respondents | 150 | 150 | 150 |
| Estimated total annual burden (hours) | 9,000 | 3,000 | 3,000 |

Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

*Additional Information or Comment:* Copies of the proposed form and supporting documents may be obtained from James Brandon (USITC, tel. No. 202–252–1433). Comments about the proposal should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Attention: Francine Picoult, Desk Officer for the U.S. International Trade Commission. If you anticipate commenting on a form but find that time to prepare comments will prevent you from submitting the promptly you should advise OMB of your intent within two weeks of the date this notice appears in the **Federal Register.** Ms. Picoult's telephone number is 202–395–7231. Copies of any comments should be provided to Charles Ervin (United States International Trade Commission, 500 E Street SW., Washington, DC 20436).

Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 252–1810.

By order of the Commission.

**Kenneth R. Mason,**

*Secretary.*

Issued: August 19, 1988.

[FR Doc. 88–19227 Filed 8–24–88; 8:45 am]

BILLING CODE 7020–02–M

**[Investigation No. 337–TA–285]**

### Certain Chemiluminescent Compositions and Components Thereof and Methods of Using the Same; Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Institution of investigation pursuant to 19 U.S.C. 1337.

**SUMMARY:** Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on July 21, 1988, under section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), on behalf of American Cyanamid Company, One Cyanamid Plaza, Wayne, New Jersey 07470. The complaint was supplemented on August 9, 1988. The complaint, as supplemented, alleges unfair methods of competition and unfair acts in the importation into and sale within the United States of certain chemiluminescent compositions and components thereof, by reason of alleged direct infringement of claims 1–5 and 7–10 of U.S. Letters Patent No. 3,749,679, claims 1, 2, 4–6 and 8 of U.S. Letters Patent No. 3,775,336, claims 1–6 and 10 of U.S. Letters Patent No. 3,888,786, clams 1, 4 and 5 of U.S. Letters Patent No. 4,313,843; contributory and

induced infringement of claims 1, 2, 4, 6 and 7 of U.S. Letters Patent No. 3,729,426 and claims 1, 3 and 4 of U.S. Letters Patent No. 4,076,645; and contributory and induced infringement of U.S. Registered Trademark Nos. 925,341, 1,133,583 and 1,141,455. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

**FOR FURTHER INFORMATION CONTACT:** William M. Nugent, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–252–1581.

**Authority:** The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12).

*Scope of Investigation:* Having considered the complaint, as supplemented, the U.S. International Trade Commission, on August 18, 1988, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a) of Section 337 in the unlawful importation into the United States of certain chemiluminescent compositions and components thereof, or in their sale, by reason of alleged direct infringement of claims 1–5 or 7–10 of U.S. Letters Patent 3,749,679, claims 1, 2, 4–6 or 8 of U.S. Letters Patent 3,775,336, claims 1–6 or 10 of U.S. Letters Patent 3,888,786, claims 1, or 5 of U.S. Letters Patent 4,313,843; contributory or induced infringement of claims 1, 2, 4, 6, or 7 of U.S. Letters Patent 3,729,426 or claims 1, 3 or 4 or U.S. Letters Patent 4,076,645; and contributory or induced infringement of Registered Trademark Nos. 925,341, 1,133,583, and 1,141,455, the effect or tendency of which is to destroy or substantially injure an industry efficiently and economically operated, in the United States;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—American Cyanamid Company, One Cyanamid Plaza, Wayne, New Jersey 07470

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Societe Prolufab, 26 Rue Emile Duclaux, 92150 Suresnes, France

Luc Noel, 279 South Windsor, Los Angeles, California 90004.

(c) William M. Nugent, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401F, Washington, DC 20436, shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with § 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to §§ 201.16(d) and 210.21(a) of the rules (19 CFR 201.16(d) and 210.21(a)), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–252–1802. Hearing-impaired individuals are advised that information on this matter can be obtaind by contacting the Commission's TDD terminal on 202–252–1810.

By order of the Commission.

Issued: August 19, 1988.

**Kenneth R. Mason,**

*Secretary.*

[FR Doc. 88–19228 Filed 8–24–88; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337–TA–276]

## Certain Erasable Programmable Read Only Memories, Components Thereof, Products Containing Such Memories, and Processes for Making Such Memories; Commission Decision Not To Review Initial Determination Terminating One Respondent on the Basis of a Consent Order; Issuance of Consent Order

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Termination of respondent Hyundai Electronics America, Inc. (HEA) on the basis of a consent order; issuance of consent order.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 128) issued by the presiding administrative law judge (ALJ) terminating respondent HEA in the above-captioned investigation on the basis of a consent order.

Termination of respondent HEA on the basis of the consent order furthers the public interest by conserving Commission resources and those of the parties involved.

**FOR FURTHER INFORMATION CONTACT:** Michael J. Buchenhorner, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1097.

**SUPPLEMENTARY INFORMATION:** On July 14, 1988, the presiding ALJ issued an ID terminating the investigation with respect to HEA. The ID granted the joint motion of complainant Intel Corporation and respondents HEA, Hyundai Electronics Industry Co., Ltd.; Cypress Electronics, a division of Braydas Corporation; All American Semiconductor, Inc.; and Pacesetter Electronics, Inc. to terminate the investigation with respect to HEA on the basis of a consent order. No petitions for review of the ID or government agency or public comments were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and 19 CFR 210.53(h).

Copies of the consent order, the nonconfidential version of the ID, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW.,

Washington, DC 20436, telephone 202–252–1000.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

By order of the Commission.

Issued: August 16, 1988.

**Kenneth R. Mason,**

*Secretary.*

[FR Doc. 88–19230 Filed 8–24–88; 8:45 am]

BILLING CODE 7020–02–M

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**[Investigations Nos. 731–TA–385 and 386 (Final)]**

## Granular Polytetrafluoroethylene Resin From Italy and Japan

### Determinations

On the basis of the record [1] developed in the subject investigations, the Commission unanimously determines, pursuant to section 735(b) of the tariff Act of 1930 (19 U.S.C. 1673d(b)), that an industry in the United States is materially injured by reason of imports from Italy and Japan of granular polytetrafluoroethylene resin, provided for in item 445.54 of the Tariff Schedules of the United States (TSUS), that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

### Background

The Commission instituted these investigations effective April 19, 1988, following preliminary determinations by the Department of Commerce that imports of granular polytetrafluoroethylene resin from Italy and Japan were being sold at LTFV within the meaning of section 731 of the Act (19 U.S.C. 1673). Notice of the institution of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of May 4, 1988 (53 FR 15902). The hearing was held in Washington, DC, on July 13, 1988, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on August 16, 1988. The views of the Commission are contained in USITC Publication 2112 (August 1988), entitled "Granular Polytetrafluoroethylene Resin from Italy and Japan: Determinations of the Commission in Investigations Nos. 731–TA–385 and 386 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations."

By order of the Commission:

Issued: August 16, 1988.

**Kenneth R. Mason,**

*Secretary.*

[FR Doc. 88–19286 Filed 8–24–88; 8:45 am]

BILLING CODE 7020–02–M

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**[Investigations Nos. 701–TA–293–295 (Preliminary) and 731–TA–412–419 (Preliminary)]**

## Industrial Belts From Israel, Italy, Japan, Singapore, South Korea, Taiwan, The United Kingdom, and West Germany

### Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines, pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)), that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from Israel, Singapore, and South Korea of industrial belts,[2] provided for in items 358.02, 358.06, 358.08, 358.09, 358.11, 358.14, 358.16, 657.25, and 773.35 of the Tariff Schedules of the United States, that are alleged to be subsidized by the Governments of Israel, Singapore, and South Korea. The Commission also determines, pursuant to section 733(a) of the Tafiff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from Israel, Italy, Japan Singapore, South Korea, Taiwan, the United Kingdom, and West Germany of industrial belts that are alleged to be sold in the United States at less than fair value (LTFV).

### Background

On June 10, 1988, a petition was filed with the Commission and the Department of Commerce by The Gates Rubber Co., Denver, CO, alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized imports of industrial belts from Israel, Singapore, and South Korea and by reason of LTFV imports from Israel, Italy, Japan, Singapore, South Korea, Taiwan, the United Kingdom, and West Germany. Accordingly, effective June 30, 1988, the Commission instituted preliminary countervailing duty investigations Nos. 701–TA–293–295 (Preliminary) and preliminary antidumping investigations Nos. 731–TA–412–419 (Preliminary).

Notice of the institution of the Commission's investigations and of a purblic conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of July 7, 1988 (53 FR 25550). The conference was held in Washington, DC, on July 22, 1988, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on August 15, 1988. The views of the Commission are contained in USITC Publication 2113 (August 1988), entitled "Industrial Belts from Israel, Italy, Japan, Singapore, South Korea, Taiwan, the United Kingdom, and West Germany: Determinations of the Commission in Investigations Nos. 701–TA–293–295 (Preliminary * * * [and] Investigations Nos. 731–TA–412–419 (Preliminary) Under the Tariff Act of 1930, Together With the Information obtained in the Investigations."

By order of the Commission:

Issued: August 15, 1988.

**Kenneth R. Mason,**

*Secretary.*

[FR Doc. 88–19231 Filed 8–24–88; 8:45am]

BILLING CODE 7020–02–M

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**[Investigation No. 337–TA–286**

## Certain Track Lighting System Components, Including Plugboxes; Investigation

**AGENCY:** U.S. International Trade Commission.

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[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(i)).

[2] For purposes of these investigations, the subject industrial belts include belting and belts for machinery, in part or wholly of rubber or plastics. These belts are used for transmitting power and may be finished or unfinished whether cured or uncured, and are included regardless of cross-sectional configuration. Imports excluded from the scope of these investigations are conveyor belts and automotive belts.

**ACTION:** Institution of investigation pursuant to 19 U.S.C. § 1337.

**SUMMARY:** Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on July 22, 1988, under section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), on behalf of Cooper Industries, Inc., First City Tower, Suite 4000, P.O. Box 4446, Houston, Texas 77210. The complaint was amended and supplemented on August 5, 1988. The complaint, as amended and supplemented, alleges unfair methods of competition and unfair acts in the importation into the United States of certain track lighting system components, including plugboxes, and in their sale, by reason of alleged (1) infringement of common law trademark, (2) misrepresentation of source, and (3) passing off. The complaint, as amended and supplemented, further alleges that the effect of tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

**FOR FURTHER INFORMATION CONTACT:** David A. Guth, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–252–1574.

**Authority:** The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12).

Scope of Investigation; Having considered the complaint, the U.S. International Trade Commission, on August 18, 1988, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation into the United States of certain track lighting system components, including plugboxes, or in their sale, by reason of alleged (1) common law trademark infringement or (2) false representation of source, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Cooper Industries, Inc., First City Tower, Suite 4000, P.O. Box 4446, Houston, Texas 77210.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Marvin Electric Manufacturing Company, d/b/a/ MARCO or Marvin Electric, 6100 Wilmington, Los Angeles, California 90001

Jin You Industrial Co., Ltd., No. 278 Shyder Road, Peiliu Chun, Wu Feng, Shang, Taichung, Taiwan

Crest Industries, Inc., 2011 Northwest 89th Place, Miami, Florida 33172

Liform Lite Industrial, Third Floor, Lane 425, 48 Chungyang North Road, Section 4, Pei-Tou, Taipei, Taiwan

Metropolis Electric Illumination Co. Ltd., No. 33, Section 2, Chi Nam Road, Taipei, Taiwan

Three's Clever Enterprises Co., Ltd., 73–17, Section 2, Chung Hsing Road, Ta Li Taichung, Taiwan

Encon-Trac-Tec, 6901 Snowden, Fort Worth, Texas 76140

Bravo Track Lighting, G Street & Erie Avenue, P.O. Box 26902, Philadelphia, Pennsylvania 19134–1386

(c) David A. Guth, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Suite 401, Washington, DC 20436, shall be the Commission Investigative Attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with § 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to §§ 201.16(d) and 210.21(a) of the rules (19 CFR 201.16(d) and 210.21(a)), such response will be considered by the Commission if received not later than 20 days after the date of service of the complaint. An extension of time for submitting a response will not be granted unless good cause therefore is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone 202–252–1892. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

By order of the Commission.

Issued: August 19, 1988.

**Kenneth R. Mason,**

*Secretary.*

[FR Doc. 88–19229 Filed 8–24–88; 8:45 am]

BILLING CODE 7020–02–M

## INTERSTATE COMMERCE COMMISSION

**[Docket No. AB–290 (Sub-No. 41X)]**

### Norfolk and Western Railway Co. Discontinuance of Service Exemption—Grant County, IN

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to discontinue service over its 8.02-mile line of railroad between milepost TS–144.20, at Van Buren, IN, and milepost TS-152.22, at Marion, IN, in Grant County.

Applicant has certified that (1) no local or overhead traffic has moved over the line for at least 2 years and (2) no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the discontinuance of service shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial

assistance has been received, this exemption will be effective September 24, 1988, (unless stayed pending reconsideration). Petitions to stay regarding matters that do not involve environmental issues [1] and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) [2] must be filed by August 31, 1988, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by September 9, 1988, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Roger A. Petersen, Norfolk Southern Corporation, One Commercial Pl., Norfolk, VA 23510–2191.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this discontinuance of service.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will serve the EA on all parties by August 25, 1988. Other interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275–7316.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: August 12, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 88–19101 Filed 8–24–88; 8:45 am]

BILLING CODE 7035–01–M

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See* Ex Parte No. 274 (Sub-No. 8), *Exemption of Out-of-Service Rail Lines* (not printed), served March 8, 1988.

[2] *See Exemption of Rail Line Abandonments or Discontinuance—Offers of Financial Assistance,* 4 I.C.C.2d 164, served December 21, 1987, and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440–48446).

## DEPARTMENT OF JUSTICE

### Lodging of Consent Decree; Browning Ferris Industries-Chemical Services, Inc., and CECOS International

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on August 12, 1988, a proposed Consent Decree in United States v. Browning Ferris Industries-Chemical Services, Inc., and CECOS International, Civil Action No. 87–317 (M.D. LA.) was lodged with the United States District Court for the Middle District of Louisiana.

The Complaint in this enforcement action was filed on April 28, 1987, against the defendants under Section 3008 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6928, seeking civil penalties and injunctive relief for violations of the operating regulations for an interim status hazardous waste facilities. The Complaint seeks injunctive relief against the defendants to require them to comply with all applicable laws and conduct a groundwater contamination assessment. The proposed Consent Decree ("Decree") requires the defendants to, *inter alia,* conduct an environmental audit of the facility, institute computer waste tracking at the facility, install upgradient and downgradient groundwater monitoring wells and comply with the facility's Louisiana Water discharge permit limits for the discharge of pollutants from its wastewater treatment facilities and its underdrain waters. It further provides for stipulated penalties for failure to comply with the Decree and for payment of a $2,000,000 civil penalty for past violations of the Act and a $500,000 payment to Louisiana State University for the establishment of an endowment for the study of hazardous waste problems.

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, Land and Natural Resources Division, U.S. Department of Justice, Washington, D.C. 20530, and should refer to *United States v. BFI/CECOS,* D.J. No. 90–7–1–404.

The proposed Consent Decree may be examined at the office of the United States Attorney, 352 Florida Street, Baton Rouge, Louisiana 70804 and at the United States Environmental Protection Agency, Region VI, 1445 Ross Avenue, Dallas, Texas 75202–2733. Copies of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Room 1521, U.S. Department of Justice, 10th and Pennsylvania Avenue, NW., Washington, DC 20530. In requesting a copy please enclose a check in the amount of $1.50 payable to the Treasurer of the United States.

**Roger J. Marzullia,**

*Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc. 88–19256 Filed 8–24–88; 8:45 am]

BILLING CODE 4410–01–M

## Antitrust Division

### National Cooperative Research Act of 1984 Notification; Dialkyl Project

Notice is hereby given that, on August 3, 1988, pursuant to Section 6(a) of the National Cooperative Research Act of 184, 15 U.S.C. 4301 *et seq.* ("the Act"), Lonza Inc., filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the Dialkyl Project and (2) the nature and objectives of the Project. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the Dialkyl Project and its general areas of planned activities are given below.

The parties to the Project are Lonza Inc., Huntington Laboratories, Inc., Mason Chemical Company, and Stepan Company. The objective of the project is to sponsor and conduct toxicological research pursuant to a Data Call-In Notice issued by the U.S. Environmental Protection Agency ("EPA") on March 4, 1987 with respect to members of the Dialkyl quaternary ammonium compound family. These compounds are the active ingredients in certain commercially available pesticide products. The results of such research will be submitted to EPA in connection with the registration and data call-in of pesticides containing these compounds as active ingredients.

**Joseph H. Widmar,**

*Director of Operations, Antitrust Division.*

[FR Doc. 88–19257 Filed 8–24–88; 8:45 am]

BILLING CODE 4410–01–M

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Arts In Education Advisory Panel; Meeting

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 Arts in Education Advisory Panel (Challenge II/Advancement Section) to the National Council on the Arts, will be held on September 13, 1988, from 9:00 a.m.—5:30 p.m. in room M–14 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is 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 discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: August 19, 1988.

**Yvonne M. Sabine,**

*Director, Council and Panel Operations, National Endowment for the Arts.*

[FR Doc. 88–19354 Filed 8–24–88; 8:45 am]

BILLING CODE 7537–01–M

### National Council on The Arts, Design Arts Advisory Panel (Overview Section); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Design Arts Advisory Panel (Overview Section) to the National Council on the Arts will be held on September 8, 1988, from 3:30 p.m.–5:30 p.m., at the Vietnam Veterans War Memorial, Constitution Avenue at 21st Street, NW., Washington, DC, and on September 9, 1988, from 9:00 a.m.–5:00 p.m. in room M–14 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of the meeting will be open to the public on September 8, from 3:30–5:30 p.m.; on September 9, from 9:00 a.m.–3:00 p.m.; and on September 9, from 3:15–5:00 p.m. The topics for discussion will include: Issues and Opportunities in Design Arts, Grant Programs, Leadership Initiative, Five-Year Plan and Guidelines.

The remaining session of this meeting on September 9, from 3:00–3:15 p.m. is for discussion and development of confidential FY 89 and FY 90 budgetary projections and related plans to be submitted to the Office of Management and Budget and the Congress. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

Dated: August 16, 1988.

**Yvonne M. Sabine,**

*Director, Council and Panel Operations National Endowment for the Arts.*

[FR Doc. 88–19258 Filed 8–25–88; 8:45 am]

BILLING CODE 7537–01–M

## NATIONAL SCIENCE FOUNDATION

### Forms Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting this notice of information collection that will affect the public.

*Agency Clearance Officer:* Herman G. Fleming, (202) 357–9520.

*OMB Desk Officer:* Written comments to: Office of Information and Regulatory Affairs. ATTN: Jim Houser, Desk Officer, OMB, 722 Jackson Place, Room 3208, NEOB, Washington, DC 20503

*Title:* Assessment of the NSF College Science Instrumentation Program.

*Affected Public:* Non-profit institutions.

*Responses/Burden Hours:* 809 responses; 43 minutes per response.

*Abstract:* This study of the impacts of the College Science Instrumentation Program during its first three years will identify factors which tend to impede or facilitate project development and will determine effects CSIP has had on students, faculty, and institutions. Program strengths and weaknesses will be identified and used for (CSIP) improvement.

Dated: August 19, 1988.

**Herman G. Fleming,**

*NSF Clearance Officer.*

[FR Doc. 88–19306 Filed 8–24–88; 8:45 am]

BILLING CODE 7555–01–M

### Permit Applications Received Under the Antarctic Conservation Act of 1978

**AGENCY:** National Science Foundation.

**ACTION:** Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978, Pub. L. 95–541.

**SUMMARY:** The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

**DATES:** Interested parties are invited to submit written data, comments, or views with respect to these permit applications by September 23, 1988. Permit applications may be inspected by interested parties at the Permit Office, address below.

**ADDRESS:** Comments should be addressed to Permit Office, Room 627, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

**FOR FURTHER INFORMATION CONTACT:** Charles E. Myers at the above address or (202) 357–7934.

**SUPPLEMENTARY INFORMATION:** The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed in 1964 by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctic and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest. Additional information was published in the **Federal Register** on June 21, 1988.

The applications received are as follows:

**1. Applicant**

John L. Bengtson, National Marine Mammal Laboratory, 7600 Sand Point Way, NE., Seattle, Washington 98115.

*Activity for Which Permit Requested*

Taking; Import into the U.S.A. The applicant proposes to take seals as part of a study of the feeding ecology, reproduction, and population dynamics of Antarctic Seals and to examine their role in the marine ecosystem. When logistically possible, time-depth recorders, radio transmitters, and satellite-lined electronics will be deployed on seals of various species to monitor their feeding and diving behavior. Recorders will be retrieved from seals up to 90 days after initial deployment.

*Location*

Antarctic Peninsula area and offshore islands; circumpolar pack ice areas.

*Dates*

January 1989–December 1990.

**2. Applicant**

John L. Bengtson, National Marine Mammal Laboratory, 7600 Sand Point Way, NE., Seattle, Washington 98115.

*Activity for Which Permit Requested*

Taking. The applicant is conducting research and monitoring studies on selected seabirds as part of the Convention for the Conservation of Antarctic Marine Living Resources (CCAMLR) ecosystem monitoring program.

A principal aim of this work is to quantify variability in food web dynamics and selected aspects of seabird life history parameters. The species to be examined are Chinstrap penguin, Macaroni penguin, Cape Petrel, Wilson's Storm Petrel, and American Sheathbill.

*Location*

Antarctic Peninsula and South Shetland Islands.

*Dates*

December 1988–December 1990.

**3. Applicant**

John L. Bengtson, National Marine Mammal Laboratory, 7600 Sand Point Way, NE., Seattle, Washington 98115.

*Activity for Which Permit Requested*

Enter Cape Shirreff Specially Protected Area (SPA). Enter Byers Peninsula Site of Special Scientific Interest (SSSI). The applicant requests permission to enter protected geographic areas to census Antarctic fur seals and penguins as part of the Antarctic Marine Living Resources program. No speciments will be taken.

*Location*

Cape Shirreff, SPA, and Byers Peninsula, SSSI.

*Dates*

January 1989–December 1990

**4. Applicant**

David F. and Jean M. Parmelee, 349 Bell Museum, University of Minnesota, Minneapolis, Minnesota 55455.

*Activity for Which Permit Requested*

Taking; Import into U.S.A.; Enter Sites of Special Scientific Interest; and Enter Specially Protected Areas. The applicants are writing a monograph on the Birds of the Palmer Archipelago. They request permission to examine previously banded birds and salvage dead specimens of banded birds. Salvaged specimens will be returned to the Bell Museum.

*Location*

Palmer Archipelago, Antarctica.

*Dates*

January–March 1989.

**5. Applicant**

David G. Ainley, Point Reyes Bird Observatory, Stinson Beach, California 94970.

*Activity for Which Permit Requested*

Taking. The applicants are investigating certain life history parameters of seabirds as indicators of changes in food web dynamics of the marine ecosystem. It is proposed to capture, band, weigh, measure and examine Adelie penguins, South Polar Skuas and Brown Skuas. Some birds will undergo stomach pumping and/or affixing/removing radio transmitters.

*Location*

Palmer Station and vicinity, Antarctica.

*Dates*

December 1988–March 1989.

**6. Applicant**

David G. Ainley, Point Reyes Bird Observatory, Stinson Beach, California 94970.

*Activity for Which Permit Requested*

Enter Specially Protected Area. The applicant proposes to visit Litchfield Island on 3 different days during the period of December 1988 to March 1989 to count penguins and other seabirds. This is a part of the Antarctic Marine Living Resources Program.

*Location*

Litchfield Island, Arthur Harbor, Antarctica.

*Dates*

December 1988–March 1989.

**Charles E. Myers,**

*Permit Officer.*

[FR Doc. 88–19259 Filed 8–24–88; 8:45 am]

BILLING CODE 7555–01–M

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## Advisory Committee on Chemical, Biochemical, and Thermal Engineering; Meeting

The National Science Foundation announces the following meeting:

*Name:* Advisory Committee on Chemical, Biochemical, and Thermal Engineering

*Date and Time:*

September 12, 1988–8:30 a.m. to 5:00 p.m.

September 13, 1988–8:30 a.m. to 4:00 p.m.

*Place:* Room 1243, 1800 G Street, NW., Washington, DC

*Type of Meeting:* Open

*Contact Person:* Dr. E. M. Sparrow, Division Director for Chemical, Biochemical, and Thermal Engineering, Room 1126, National Science Foundation, Washington, DC 20550 Telephone: 202–357–9606

*Minutes:* May be obtained from contact person listed above.

*Purpose of Committee:* To provide directions to Chemical, Biochemical, and Thermal Engineering research

*Agenda:* Monday, September 12, 1988—Open

8:30 a.m.—Brief overview of the Chemical, Biochemical, and Thermal Engineering Division

9:00 a.m.—Presentations of models and methodologies for utilization and transfer of research results and technology within and between organizations

12:30 p.m.—Recess

1:30 p.m.—Additional presentation of models and methodologies

2:10 p.m.—Discussion and formulation of approaches for enhancing utilization and transfer of CBTE-supported research results

5:30 p.m.—Adjournment for the day

Tuesday, September 13, 1988—Open

8:30 a.m.—(a) Drafting of report on enhancing utilization and transfer —(b) Overview of specific CBTE Programs

12:00 Noon—recess

1:00 p.m.—(a) Continuation of report

on enhancing utilization and transfer
—(b) Drafting of reports on Program overviews
4:00 p.m.—Adjourn

M. Rebecca Winkler,
*Committee Management Officer.*
August 22, 1988.
[FR Doc. 88-19307 Filed 8-24-88; 8:45 am]
BILLING CODE 7555-01-M

### Division of Earth Sciences; Meeting

The National Science Foundation announces the following meeting:

*Name:* Earth Sciences Proposal Review Panel
*Date:* September 21, 22, and 23, 1988
*Time:* 8:00 a.m. to 6:00 p.m. each day
*Place:* The National Science Foundation, Room 543, 1800 G. Street, NW, Washington, DC 20550
*Type of Meeting:* Closed
*Contact Person:* Dr. Ian D. MacGregor, Division Director, Earth Sciences, Room 602, National Science Foundation, Washington, DC 20550; Telephone: (202) 357-7958
*Summary Minutes:* May be obtained from the Contact Person at the above address
*Purpose of Meeting:* To provide advice and recommendations concerning support for research in Earth Sciences
*Agenda:* To review and evaluate research proposals and projects as part of the selection process for awards
*Reason for Closing:* The proposals being reviewed include information of proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

M. Rebecca Winkler,
*Committee Management Officer.*
August 22, 1988.
[FR Doc. 88-19308 Filed 8-24-88; 8:45 am]
BILLING CODE 7555-01-M

### Advisory Committee for Emerging Engineering Technologies; Meeting

The National Science Foundation announces the following meeting:

*Name:* Advisory Committee for Emerging Engineering Technologies
*Date and Time:*
September 19, 1988, 8:30 am to 6:00 pm;
September 20, 1988, 8:30 am to 12:30 pm.
*Place:* 1800 G Street, NW., Washington, DC: Rm 523
*Type of Meeting:* Closed
*Contact Person:* Frank L. Huband, Division Director, Emerging Engineering Technologies, 1800 G Street, NW., Washington, DC 20550, (202) 357-7962
*Minutes:* May be obtained from contact person listed above.
*Purpose of Meeting:* Perform oversight of program management, overall program balance, and other aspects of program performance.
*Agenda:* Committee Review of the Biotechnology Program, including examination of proposal jackets, reviewer comments, and other privileged materials; and Committee drafting of a report.
*Reason for Closing:* The meeting will consist of a review of grant and declination jackets that contain the names of applicant institutions and principal investigators and privileged information contained in declined proposals. The meeting will also include a review of the peer review documentation pertaining to the applicants. These matters are within exemptions 4 and 6 of the Government in the Sunshine Act.

M. Rebecca Winkler,
*Committee Management Officer.*
[FR Doc. 88-19309 Filed 8-24-88; 8:45 am]
BILLING CODE 7555-01-M

### Advisory Committee for Emerging Engineering Technologies; Meeting

The National Science Foundation announces the following meeting:

*Name:* Advisory Committee for Emerging Engineering Technologies
*Date and Time:*
September 26, 1988, 8:30 am to 6:00 pm;
September 27, 1988, 8:30 am to 12:30 pm.
*Place:* 1800 G Street, NW., Washington, DC: Rm 540
*Type of Meeting:* Closed
*Contact Person:* Frank L. Huband, Division Director, Emerging Engineering Technologies, 1800 G Street, NW., Washington, DC 20550, (202) 357-7962
*Minutes:* May be obtained from contact person listed above.
*Purpose of Meeting:* Perform oversight of program management, overall program balance, and other aspects of program performance.
*Agenda:* Committee Review of the Biotechnology Program, including examination of proposal jackets, reviewer comments, and other privileged materials; and Committee drafting of a report.
*Reason for Closing:* The meeting will consist of a review of grant and declination jackets that contain the names of applicant institutions and principal investigators and privileged information contained in declined proposals. The meeting will also include a review of the peer review documentation pertaining to the applicants. These matters are within exemptions 4 and 6 of the Government in the Sunshine Act.

M. Rebecca Winkler,
*Committee Management Officer.*
August 22, 1988.
[FR Doc. 88-19310 Filed 8-24-88; 8:45 am]
BILLING CODE 7555-01-M

### Advisory Panel for Science and Technology; Meeting

*Name:* Advisory Panel for Science and Technology Centers
*Place:* Room 540, National Science Foundation, 1800 G Street, NW., Washington, DC 20550
*Date and Time:*
September 14, 1998, 2:00 p.m. to 5:00 p.m.
September 15, 16 & 17 1988, 9:00 a.m. to 5:00 p.m.
*Type of Meeting:* Closed
*Contact Person:* Dr. William C. Harris, Acting Director, Office of Science and Technology Centers Development, Room 533, National Science Foundation, Washington, DC 20550. Telephone: 202/357-9808.
*Purpose of Meeting:* To provide advice and recommendations concerning support for Science and Technology Centers.
*Summary Minutes:* May be obtained from the Contact Person at the above address
*Agenda:* Review and evaluation of research proposals and projects as part of the selection process of awards.
*Reason for Closing:* The proposals being reviewed include information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C.

552b(c), Government in the Sunshine Act.

**M. Rebecca Winkler,**

*Committee Management Officer.*

August 22, 1988.

[FR Doc. 88-19311 Filed 8-24-88; 8:45 am]

BILLING CODE 7555-01-M

### Task Force on Women, Minorities and the Handicapped in Science and Technology; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of a meeting of the Task Force on September 29, 1988.

Meeting

*Name:* Task Force on Women, Minorities, and the Handicapped in Science and Technology
*Date:* September 29, 1988
*Time:* 9:00 a.m. to 1:00 p.m.
*Place:* U.S. Department of Agriculture, 14th and Independence Avenue NW., Room 104A, Washington, DC 20250
*Type of Meeting:* Open
*Purpose:* Discussion 1) dissemination of the task force interim report; 2) progress on data colleciton by agencies; and 3) status of each agencies plans for implementation of the task force interim report.

**Sue Kemnitzer,**

*Executive Director. (202) 245-7477.*

July 21, 1988.

[FR Doc. 88-19312 Filed 8-24-88; 8:45 am]

BILLING CODE 7555-01-M

## NUCLEAR REGULATORY COMMISSION

### Regional State Liaison Officers' Meeting

On September 28 and 29, 1988, the Nuclear Regulatory Commission (NRC) will sponsor a regional meeting with the Governor-appointed Stated Liaison Officers from Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio and Wisconsin. The subjects which will be discussed include waste management, licensee performance, decommissioning, radioactive contamination, as well as other items of mutual regulatory interest.

The meeting will be conducted at the NRC Region III office, 799 Roosevelt Road, Building 4, Glen Ellyn, Illinois. The meeting is open to the public for attendance and observation and will take place from 8:30 a.m. until 5:00 p.m. on Wednesday, September 28, and from 8:30 a.m. until 1:00 p.m. on Thursday, September 29, 1988.

Questions regarding this meeting should be directed to Mr. Roland Lickus, at 312/790-5666.

Dated at Glen Ellyn, Illinois, this 16th day of August, 1988.

For the Nuclear Regulatory Commission.

**A. Bert Davis,**

*Regional Administrator.*

[FR Doc. 88-19323 Filed 8-24-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-320]

### Meeting of the Advisory Panel for the Decontamination of Three Mile Island

Notice is hereby given pursuant to the Federal Advisory Committee Act that the Advisory Panel for the Decontamination of Three Mile Island, Unit 2 (TMI-2) will be meeting on September 7, 1988 from 7:00 p.m. to 10:00 p.m. at the Holiday Inn, 23 S. Second Street, Harrisburg, Pennsylvania. The meeting will be open to the public.

At this meeting, the Panel will receive a status report on the progress of defueling from the licensee, GPU Nuclear Corporation.

The Panel will also conduct a working session to review the recently issued draft supplement to the Programmatic Environmental Impact Statement (NUREG-0683, Supplement 3) dealing with the licensee's plans for post-defueling monitored storage and subsequent cleanup of TMI-2. Members of the public will be given the opportunity to address the Panel.

Further information on the meeting may be obtained from Dr. Michael T. Masnik, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-1373.

Dated: August 19, 1988.

For the Nuclear Regulatory Commission.

**John C. Hoyle,**

*Advisory Committee, Management Officer.*

[FR Doc. 88-19324 Filed 8-24-88; 8:45 am]

BILLING CODE 7590-01-M

[Operator License No. 6010-2 EA 88-164; Docket No. 55-08347; ASLBP No. 88-577-02-EA]

### Maurice P. Acosta, Jr.; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the Federal Register, 37 FR 28710 (1972), and § 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding.

Maurice P. Acosta, Jr., Operator License No. 6010-2, EA 88-164.

This Board is being established pursuant to the Licensee's request for a hearing regarding an Order issued by the Executive Director for Operations, dated June 15, 1988, entitled "Order Suspending License (Effective Immediately) and Notice of Denial of Application for Renewal of License."

The Board is comprised of the following Administrative Judges:

B. Paul Cotter, Jr., Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Judge Harry Foreman, 1564 Burton Avenue, St. Paul, Minnesota 55108.

Judge Kenneth A. McCollom, 1107 West Knapp Street, Stillwater, Oklahoma 74075.

Issued at Bethesda, Maryland, this 18th day of August 1988.

**B. Paul Cotter, Jr.,**

*Chief Administrative Judge, Atomic Safety and Licensing Board Panel.*

[FR Doc. 88-19325 Filed 8-24-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-458]

### Gulf States Utilities Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-47, issued to Gulf States Utilities Company (the licensee), for operation of the River Bend Station, Unit 1 located in West Feliciana Parish, Louisiana.

The amendment would revise the Technical Specifications to reduce the minimum water coverage for irradiated fuel and control rods during their handling in accordance with the licensee's application for amendment dated August 12, 1988.

Prior to 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.

By September 26, 1988, 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 petitions 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. 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 fifteen (15) days prior to the first prehearing conference scheduled in the proceedings, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. 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.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram identification Number 3737 and the following message addressed to Jose A. Calvo: Petitioner's name and telephone number; date Petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037, 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).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated August 12, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC and at the Local Public Document Room, Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas and the Washburn University School of Law Library, Topeka, Kansas.

Dated at Rockville, Maryland this 17th day of August 1988.

For the Nuclear Regulatory Commission.

**Jose A. Calvo,**

*Director, Project Directorate—IV, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.*

[FR Doc. 88–19326 Filed 8–24–88; 8:45 am]

BILLING CODE 7590-01-M

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**[Docket No. 50–416]**

## System Energy Resources, Inc.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–29 issued to Mississippi Power & Light Company, South Mississippi Electric Power Association and System Energy Resources, Inc. (the licensees) for operation of the Grand Gulf Nuclear Station, Unit 1, located in Claiborne County, Mississippi. This notice relates to the licensees' revised application for an amendment dated August 3, 1988 and supersedes a previous notice published in the **Federal Register** on January 27, 1988 (53 FR 2302), which related to the licensees' initial application for an amendment dated December 16, 1987.

The proposed amendment would delete a condition in the Facility Operating License (OL) and revise provisions in the Technical Specifications (TS) related to the qualifications and training of operating personnel for the facility. These changes would implement an amendment to 10 CFR Part 55, "Operator's Licenses," which became effective May 26, 1987. The specific proposed changes are described as follows:

1. OL Condition 2.C.(30) states, "Permanent training center instructors and consultants assigned to training who, after initial criticality will teach systems, integrated responses, transients, and simulator courses to license candidates or NRC-licensed personnel, shall either demonstrate or have previously demonstrated their competence to the NRC staff by successful completion of a senior operator examination prior to teaching licensed operators."

SERI proposes to delete this condition, since the Grand Gulf Nuclear Station (GGNS) operator training program is now INPO accredited and based on a systems approach to training.

2. TS 6.3 states, "Each member of the unit staff shall meet or exceed the

minimum qualifications of ANSI N18.1–1971 for comparable positions and the supplemental requirements specified in Section A and C of Enclosure 1 of the March 28, 1980 NRC letter # to all licensees, except for the Chemistry/Radiation Control Superintendent who shall meet or exceed the qualifications of Regulatory Guide 1.8, September 1975##; the Shift Technical Advisor who shall meet or exceed the qualifications referred to in Section 2.2.1.b of Enclosure I of the October 30, 1979 NRC letter to all operating nuclear power plants * * *"

SERI proposes to delete the phrase "and the supplemental requirements specified in Section A and C of Enclosure 1 of the March 28, 1980 NRC letter to all licensees except for the Chemistry/Radiation Control Superintendent who shall meet or exceed the qualifications of Regulatory Guide 1.8, September 1975##; the Shift Technical Advisor who shall meet or exceed the qualifications referred to in Section 2.2.1.b of Enclosure I of the October 30, 1979 NRC letter to all operating nuclear power plants" from the above TS and replace it with, "except for the Chemistry/Radiation Control Superintendent and Shift Technical Advisor, who shall meet or exceed the education and experience requirements of ANSI/ANS 3.1–1981 as endorsed by Regulatory Guide 1.8, Revision 2, 1987, and licensed personnel who shall meet or exceed the criteria of the accredited license training program." This change will make GGNS TS consistent with the revision to 10 CFR Part 55 and Regulatory Guide 1.8, Revision 2, 1987.

3. Footnote # to TS 6.3 and 6.4 states, "Except that the experience and other training information provided in the licensee's letter to the NRC dated July 29, 1985 are acceptable for the individuals listed in that letter." Footnote ## to T.S. 6.3 states, "Except that the individual identified in MP&L's [Mississippi Power & Light Company's] letter to the NRC dated December 11, 1985 is considered qualified to hold the position of Chemistry/Radiation Control Superintendent based on the experience, education, and other information provided or referenced in that letter."

SERI proposes to delete these footnotes. Footnote # modified Section A of Enclosure 1 of the March 28, 1980 NRC letter which SERI proposes deleting under changes 2 and 4. The individual identified in the referenced MP&L letter in Footnote ## complies with the requirements of Regulatory Guide 1.8, Revision 2, 1987.

4. TS 6.4 states, "A retraining and replacement training program for the unit staff * * * shall meet or exceed the requirements and recommendations of Section 5.5 of ANSI N18.1–1971 and Appendix "A" of 10 CFR Part 55 and the supplemental requirements specified in Sections A and C of Enclosure 1 of the March 28, 1980 NRC letter # to all licensees * * *"

SERI proposes to: (a) Delete the phrase "the requirements and recommendations of Section 5.5 of ANSI N18.1–1971" and replace it with "INPO accreditation criteria"; (b) delete the reference to "Appendix A" since the revision to 10 CFR Part 55 deleted this appendix; and, (c) delete the phrase "and supplemental requirements specified in Sections A and C of Enclosure 1 of the March 28, 1980 NRC letter # to all licensees" to make GGNS TS consistent with the revision to 10 CFR Part 55, which superseded the referenced letter.

Prior to 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.

By September 26, 1988, the licensees 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 hearing and a petition for leave to intervene. Requests for a hearing and petitions 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. 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 of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. 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.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Elinor G. Adensam: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of General Counsel, U.S. Nuclear Regulatory Commission, Washington,

DC 20555, and to Nicholas S. Reynolds, Esquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street, NW., Washington, DC 20036, attorney for the licensees.

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).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated December 16, 1987, as revised August 3, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC. 20555, and at the Hinds Junior College, McLendon Library, Raymond, Mississippi 39154

Dated at Rockville, Maryland, this 18th day of August 1988.

For the Nuclear Regulatory Commission.

Lester L. Kintner,

*Acting Director, Project Directorate II–1, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 88–19327 Filed 8–24–88; 8:45 am]

BILLING CODE 7590–01–M

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[Docket No. 50–416]

## System Energy Resources, Inc., et al., Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment of Facility Operating License No. NPF–29 issued to Mississippi Power & Light Company, South Mississippi Electric Power Association and System Energy Resources, Inc. (the licensees) for operation of the Grand Gulf Nuclear Station, Unit 1, located in Claiborne County, Mississippi.

The proposed amendment would change Technical Specification 3/4.8.1 "A.C. Sources," by separating the 24-hour surveillance test of diesel generators from the surveillance test simulating loss of offsite power in conjunction with an ECCS actuation signal. This separation of tests would provide more flexibility in scheduling tests during refueling outages.

Prior to 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.

By September 26, 1988, the licensees 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 hearing and a petition for leave to intervene. Requests for a hearing and 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. 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 of 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 petitioners; 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 to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

No later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set for the with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. 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.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Elinor G. Adensam; petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Nicholas S. Reynolds, Esquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street, NW., Washington, DC 20036, attorney for the licensees.

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).

If a request for hearing is received, the Commission's staff may issue the

amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated July 26, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Dated at Rockville, Maryland, this 18th day of August, 1988.

For The Nuclear Regulatory Commission.

**Lester L. Kintner,**

*Acting Director, Project Directorate II-1 Division of Reactor Projects I/II Office of Nuclear Reactor Regulation.*

[FR Doc. 88-19328 Filed 8-24-88; 8:45 am]

BILLING CODE 7590-01-M

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**[Docket No. 50-416]**

## System Energy Resources, Inc., et al.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-29 issued to Mississippi Power & Light Company, South Mississippi Electric Power Association and System Energy Resources, Inc. (the licensees) for operation of the Grand Gulf Nuclear Station, Unit 1, located in Claiborne County, Mississippi.

The proposed amendment would change Technical Specification 3/4.7.4, "Snubbers," and associated Bases 3/4.7.4 by deleting Sample Plan 3 for snubber functional tests and by deleting the reject region from Figure 4.7.4-1, "Sample Plan 2 for Snubber Functional Tests." Sample Plan 3 is not used. The change to Sample Plan 2 will eliminate the possibility of unnecessarily requiring 100% testing of snubbers and associated unnecessary radiological exposure of personnel.

Prior to 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.

By September 26, 1988, the licensees 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 petition for leave to intervene shall be filed in accordance with the Commission's "Rule for Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. 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 of 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 result 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 to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than (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 that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. 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.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 in (Missouri 1-800-324-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Elinor G. Adensam; petitioner's name and telephone number; date petition was mailed, plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Nicholas S. Reynolds, Esquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street, NW., Washington, DC 20036, attorney for the licensees.

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).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated July 25, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Dated at Rockville, Maryland, this 18th day of August 1988.

For the Nuclear Regulatory Commission.

**Lester L. Kintner,**

*Acting Director, Project Directorate II–1, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 88–19329 Filed 8–24–88; 8:45 am]

BILLING CODE 7590–01–M

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**[Docket No. 50–346]**

### Toledo Edison Co., et al.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 116 to Facility Operating License No. NPF–3, issued to The Toledo Edison Company and The Cleveland Electric Illuminating Company (the licensee), which changed the license and revised the Technical Specifications for operation of the Davis-Besse Nuclear Power Station, Unit No. 1 (the facility) located in Ottawa County, Ohio. The amendment was effective as of the date of its issuance.

The amendment changed a license condition and the Technical Specifications to revise the existing pressure temperature limits and extend the operation period of the limits up to 10 effective full power years; the amendment also approved revision of the existing surveillance capsule removal schedule.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on May 4, 1988 (53 FR 15932). No request for hearing or petition for leave to intervene was filed following this notice.

For further details with respect to this action see (1) the application for amendment dated March 30, 1988 as supplemented May 4, 1988, (2) Amendment No. 116 to License No. NPF–3, (3) the Commission's related Safety Evaluation dated August 19, 1988 and (4) the Environmental Assessment dated July 7, 1988 (53 FR 27095). All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III, IV, V and Special Projects.

Dated at Rockville, Maryland, this 19th day of August 1988.

For the Nuclear Regulatory Commission.

**Albert W. De Agazio, Sr.,**

*Project Manager, Project Directorate III–3, Division of Reactor Projects—III, IV, V and Special Projects.*

[FR Doc. 88–19330 Filed 8–24–88; 8:45 am]

BILLING CODE 7590–01–M

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## SECURITIES AND EXCHANGE COMMISSION

### Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Inc.

August 22, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

Angell Real Estate Co., Inc.
Common Stock, No Par Value (File No. 7–3723)

Adams Express Co.
Common Stock, $.10 Par Value (File No. 7–3724)

Burlington Coat Factory Warehouse Corp.
Common Stock, $1 Par Value (File No. 7–3725)

Bemis, Inc.
Common Stock, $5 Par Value (File No. 7–3726)

CoastAmerica Corp.
Common Stock, $.01 Par Value (File No. 7–3727)

CalFed Income Partners L.P.
Depository Units, No Par Value (File No. 7–3728)

Daniel Industries, Inc.
Common Stock, $1.25 Par Value (File No. 7–3729)

Data Design Laboratories, Inc.
Capital Stock, $.33⅓ Par Value (File No. 7–3730)

Emerald Homes, LP
Units of Limited Partnership Interest, No Par Value (File No. 7–3731)

Equimark Corp.
Common Stock, $.33⅓ Par Value (File No. 7–3732)

First Financial Funds, Inc.
Common Stock, $.001 Par Value (File No. 7–3733)

Foothill Group, Inc.
Class A Common Stock, No Par Value (File No. 7–3734)

Gleason Corp.
Common Stock, $1 Par Value (File No. 7–3735)

Harmon International Industries, Inc.
Common Stock, $.01 Par Value (File No. 7–3736)

Hills Department Stores, Inc.
Common Stock, $.01 Par Value (File No. 7–3737)

ICM Property Investors, Inc.
Common Stock, $1 Par Value (File No. 7–3738)

Foodmaker, Inc. $.01 Par Value (File No. 7–3739)

JWP, Inc.
Common Stock, $.10 Par Value (File No. 7–3740)

Koger Properties, Inc.
Common Stock, $.10 Par Value (File No. 7–3741)

Leggett & Platt, Inc.
Common Stock, $1 Par Value (File No. 7–3742)

Laclede Gas Co
Common Stock, $2 Par Value (File No. 7–3743)

Metropolitan Financial Corp.
Common Stock, $.01 Par Value (File No. 7–3744)

NAFCO Financial Group, Inc.
Common Stock, $.01 Par Value (File No. 7–3745)

NERCO, Inc.
Common Stock, No Par Value (File No. 7–3746)

Pacific Scientific Co.
Common Stock, $1 Par Value (File No. 7–3747)

Rodman & Renshaw Capital Group, Inc.
Common Stock, $.09 Par Value (File No. 7–3748)

Schafer Value Trust, Inc.
Common Stock, $.01 Par Value (File No. 7–3749)

Santa Fe Energy Partners, LP
Depository Units, No Par Value (File No. 7–3750)

Thor Industries, Inc.
Common Stock, $.06⅔ Par Value (File No. 7–3751)

Transcanada Pipeline, Ltd.
Common Stock, $.33⅓ Par Value (File No. 7–3752)

United Kingdom Funds, Inc.
Common Stock, $.01 Par Value (File No. 7–3753)

Winners Corp.
Common Stock, $.05 Par Value (File No. 7–3754)

Zenith National Insurance Corp.
Common Stock, $.01 Par Value (File No. 7–3755)

These securitiese are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 12, 1988, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 88–19350 Filed 8–24–88; 8:45 am]

BILLING CODE 8010–01–M

## Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

August 22, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

India Growth Fund, Inc. (The)
Common Stock, $.01 Par Value (File No. 7–3756)
First Union Corp.
Common Stock, $3.33 ⅓ Par Value (File No. 7–3757)
Rexene Corp.
Common Stock, $.01 Par Value (File No. 7–3758)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 12, 1988, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 88–19351 Filed 8–24–88; 8:45 am]

BILLING CODE 8010–01–M

## SMALL BUSINESS ADMINISTRATION

### National Advisory Council Executive Committee Meeting

The U.S. Small Business Administration, Office of Advisory Councils, located in the geographical area of Washington, DC., will hold a National Advisory Council Executive Committee meeting, from 8:30 a.m. on Thursday, August 25, 1988 to noon Friday, August 26, 1988, at the Little America Hotel, 500 S. Main Street, Salt Lake City, Utah 84101, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Jean M. Nowak, Director, U.S. Small Business Administration, Office of Advisory Councils, 1441 L Street NW., Room 503–E, Washington, DC. 20416 (202) 653–6748.

**Jean M. Nowak,**

*Director, Office of Advisory Councils.*

August 17, 1988.

[FR Doc. 88–19289 Filed 8–24–88; 8:45 am]

BILLING CODE 8025–01–M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

**[CGD8 88–14]**

### Vessel Certificates and Exemptions Under the International Regulations for Preventing Collisions at Sea (72 COLREGS)

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of Granting of Certificates of Alternative Compliance to Vessels.

**SUMMARY:** This notice lists commercial vessels granted Certificates of Alternative Compliance by the Commander, Eighth Coast Guard District, since 24 February 1988. This notice lists vessels which, due to their special construction and purpose, cannot comply fully with certain provisions of the International Navigation Rules for Preventing Collisions at Sea (72 COLREGS) without interfering with the vessel's special functions. The intent of this notice is to advise the mariner of those vessels that have been granted Certificates of Alternative Compliance.

**EFFECTIVE DATE:** August 25, 1988.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Robert L. Knapp, USCG, c/o Commander, Eighth Coast Guard District (mvs), Hale Boggs Federal Building, Room 1341, 500 Camp Street, New Orleans, LA 70130–3396. Telephone (504) 589–6271.

**SUPPLEMENTARY INFORMATION:** Under the provisions of subsection 1605(c) of Title 33 United States Code, the Coast Guard publishes, in the **Federal Register**, a listing of vessels granted Certificates of Alternative Compliance. Certificates of Alternative Compliance are based on a determination that a vessel cannot comply fully with International Rules for light(s), shape(s), and sound signal provisions without interference with the vessel's special function. The alternative allowed results in the closest possible compliance with Annex I of the 72 COLREGS. The Eighth Coast Guard District has on record a total of six vessels to which it granted Certificates of Alternative Compliance since 24 February 1988. These vessels are incapable of complying with the 72 COLREGS light provisions. Following is a list of commercial vessels that are not in compliance with the 72 COLREGS and have been issued Certificates of Alternative Compliance.

The following vessels carry the after (second) masthead light at the noted horizontal distance from the forward masthead light:

| Vessel | Official No. | After masthead light carried at the designated horizontal distance (in meters) from the forward masthead light |
|---|---|---|
| Caribbean Sentry | 693268 | 15.24 M |
| Gulf Sentry | 667650 | 15.24 M |
| Pacific Sentry | 659398 | 15.24 M |
| Golden Saint | 569686 | 14.63 M |
| Golden Shore | 561981 | 14.63 M |

The following vessel carries the side lights forward of the masthead (single) light:

| Vessel | Official No. | Sidelights carried at designated horizontal distance (in meters) forward of the masthead (single) light |
|---|---|---|
| Elissa | 697285 | 3.65 M |

Dated: August 11, 1988.

**W.F. Merlin,**

*Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.*

[FR Doc. 88-19348 Filed 8-24-88; 8:45 am]

BILLING CODE 4910-14-M

## Federal Highway Administration

### Environmental Impact Statement: City of Ponce, PR

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for the construction of Highway PR-9, East-West Expressway, in the city of Ponce, Puerto Rico.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Juan O. Cruz, Division Administrator, Federal Highway Administration, Puerto Rico Division, U.S. Courthouse and Federal Building, Room 329, Carlos Chardon Street, Hato Rey, Puerto Rico 00918

Mr. Jorge Rivera Jimenez, Environmental Studies Office, Department of Transportation and Public Works, Box 41269, Minillas Station, Santurce, Puerto Rico 00940, Phone (809) 728-6290.

**SUPPLEMENTARY INFORMATION:** The proposed project consists of the construction of Route PR-9 East-West Expressway, through the northern limits of the urbanized area of the city of Ponce, located in the southern part of Puerto Rico. It will be a four (4) lane divided freeway, with (three (3.00) meters wide) paved shoulders at both sides) and a median 14.60 meters wide. The proposed project will begin at the northeast of the city of Ponce, with an interchange with Route PR-14 and will end at an interchange with Route PR-10, for a total length of 6.1 kilometers. At present, highway users that want to by-pass the city core have to use the existing PR-2 By-pass, which is highly congested and has a lot of traffic lights, or may use as an alternate route existing local streets, which are narrow and congested, not having the capacity for the traffic demand.

Alternatives to the proposed action include a different location alignment with a reduced facility, that will require a lot of relocation of businesses and residences, and the no-build alternative.

The proposed scoping process for the proposed action will include coordination with all concerned Federal and State agencies through a consultation process by letter and the holding of a scoping meeting to be held before the environmental studies and the preparation of the Draft EIS is started and meetings or visits to the project area with public officials who could have significant comments related to the proposed action.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: August 1, 1988.

**Juan O. Cruz,**

*Division Administrator, San Juan, Puerto Rico.*

[FR Doc. 88-19260 Filed 8-24-88; 8:45 am]

BILLING CODE 4910-22-M

## Urban Mass Transportation Administration

### UMTA Sections 3 and 9 Grant Obligations

**AGENCY:** Urban Mass Transportation Administration (UMTA), DOT.

**ACTION:** Notice.

**SUMMARY:** The Department of Transportation and Related Agencies Appropriations Act, 1988, included in the Omnibus Appropriations Act, Pub. L. 100-202 signed into law by President Reagan on December 22, 1987, contained a provision requiring the Urban Mass Transportation Administration to publish an announcement in the **Federal Register** each time a grant is obligated pursuant to sections 3 and 9 of the Urban Mass Transportation Act of 1964, as amended. The statute requires that the announcment include the grant number, the grant amount, and the transit property receiving each grant.

This notice provides the information as required by statute.

**FOR FURTHER INFORMATION CONTACT:** Edward R. Fleischman, Chief, Resource Management Division, Department of Transportation, Urban Mass Transportation Administration, Office of Grants Management, 400 Seventh Street, SW., Room 9305, Washington, DC 20590, (202) 366-2053.

**SUPPLEMENTARY INFORMATION:** The section 3 program was established by the Urban Mass Transportation Act of 1964 to provide capital assistance to eligible recipients in urban areas. Funding for this program is distributed on a discretionary basis. The section 9 formula program was established by the Surface Transportation Assistance Act of 1982. Funds appropriated to this program are allocated on a formula basis to provide capital and operating assistance in urbanized areas. Pursuant to the statute UMTA reports the following grant information:

SECTION 3 GRANTS

| Transit property | Grant number | Grant amount | Date obligated |
|---|---|---|---|
| Commuter Rail Division of the Regional Transportation Authority, Chicago, IL | IL-03-0138 | $8,188,500 | 8/2/88 |
| Kansas City Area Transportation Authority, Kansas City, MO | MO-03-0026 | 22,834,755 | 8/5/88 |
| Utica Transit Authority, Utica, NY | NY-03-0232 | 486,000 | 7/25/88 |
| County of Westchester Department of Transportation, New York, NY | NY-03-0231 | 1,086,750 | 6/30/88 |
| Seattle Metro, Seattle, WA | WA-03-0059-02 | 67,162,500 | 8/8/88 |

Issued on August 18, 1988.

Alfred A. DelliBovi,

*Administrator.*

[FR Doc. 88-19352 Filed 8-24-88; 8:45 am]

BILLING CODE 4910-57-M

## VETERANS ADMINISTRATION

### Agency Form Under OMB Review

**AGENCY:** Veterans Administration.

**ACTION:** Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) a description of the need and its use, (5) how often the form must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form, and (9) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

**ADDRESSES:** Copies of the forms and supporting documents may be obtained from John Turner, Department of Veterans Benefits (203C), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-2744.

Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316.

**DATES:** Comments on the information collection should be directed to the OMB Desk Officer on or before September 26, 1988.

Dated: August 17, 1988.

By direction of the Administrator.

**David N. Stone,**

*Executive Assistant, Office of Information Management and Statistics.*

**Extension**

1. Department of Veterans Benefits.

2. Manufactured Home Loan Claim Under Loan Guaranty (Manufactured Home Unit Only); Manufactured Home Loan Claim Under Loan Guaranty Combination Loan—Manufactured Home Unit And Lot Or Lot Only; and Records Maintained by Holders of Loans for Manufactured Homes and Lots.

3. VA Forms 26-8629 and 26-8630.

4. The forms are completed and submitted by holders of foreclosed VA guaranteed manufactured home unit combination loans as prerequisite to payment of claim.

5. On occasion.

6. Individuals or households, and business or other for-profit.

7. 3,835 responses.

8. 1,582 recordkeepers.

9. 1,279 hours.

10. Not applicable.

**Extension**

1. Department of Veterans Benefits.

2. Loan Guaranty Funding Fee Transmittal.

3. VA Form 26-8986.

4. This form is used by lending institutions to transmit funding fees required for VA-guaranteed home loans to a lockbox depository.

5. On occasion.

6. Individuals or households, and business or other for-profit.

7. 450,000 responses.

8. 75,000 hours.

9. Not applicable.

[FR Doc. 88-19262 Filed 8-24-88; 8:45 am]

BILLING CODE 8320-01-M

### Agency Form Under OMB Review; Epidemiologic Study of the Health of Vietnam Veterans—Selected Cancers

**AGENCY:** Veterans Administration.

**ACTION:** Notice.

The Veterans Administration has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The department sponsoring the study; (2) study title; (3) the agency form number; (4) a description of the need and its use; (5) frequency of study; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the study; and (9) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

**ADDRESSES:** Copies of the study and supporting documents may be obtained from Ann Bickoff, Department of Medicine and Surgery (136E), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-2282. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503 (202) 395-7316.

**DATES:** Comments on the information collection should be directed to the OMB Desk Officer on or before September 26, 1988.

Dated: August 17, 1988.

By direction of the Administrator.

**David N. Stone,**

*Executive Assistant, Office of Information Management and Statistics.*

**Extension**

1. Department of Medicine and Surgery.

2. Epidemiologic Study of the Health of Vietnam Veterans—Selected Cancers Study.

3. VA Form 10-20851 a and b.

4. To be used in the solicitation of information on the health status of Vietnam veterans/controls in support of research related to the Selected Cancers Study (SCS) component of the Centers for Disease Control's Epidemiologic Study of Health of Vietnam Veterans.

5. Non-recurring.

6. Individuals or households.

7. 1700 responses.

8. 1411 hours.

9. Not applicable.

[FR Doc. 88-19263 Filed 8-24-88; 8:45 am]

BILLING CODE 8320-01-M

# Sunshine Act Meetings

Federal Register
Vol. 53, No. 165
Thursday, August 25, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**FEDERAL ELECTION COMMISSION**

**DATE AND TIME:** Tuesday, August 30, 1988, 10:00 a.m.

**PLACE:** 999 E Street, NW., Washington, DC.

**STATUS:** This meeting will be closed to the public.

**ITEMS TO BE DISCUSSED:**

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

**DATE AND TIME:** Thursday, September 1, 1988, 10:00 a.m.

**PLACE:** 999 E Street, NW., Washington, DC (Ninth Floor).

**STATUS:** This meeting will be open to the public.

**MATTERS TO BE CONSIDERED:**

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Eligibility Report for Candidates to Receive Presidential Primary Matching Funds.
Draft AO 1988-33: Jan W. Baran on behalf of the Republican Party of Florida and its Federal political committee.
Expedited Compliance Procedures for the 1988 General Election
Final FY 1990 Budget Document
Administrative Matters

**PERSON TO CONTACT FOR INFORMATION:** Mr. Fred Eiland, Information Officer, Telephone: 202-376-3155.

**Marjorie W. Emmons,**
*Secretary of the Commission.*

[FR Doc. 88-19373 Filed 8-23-88; 12:31 pm]
BILLING CODE 6715-01-M

**FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS**

**TIME AND DATE:** 10:00 a.m., Wednesday, August 31, 1988.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: August 23, 1988.

**William W. Wiles,**
*Secretary of the Board.*

[FR Doc. 88-19470 Filed 8-23-88; 3:49 pm]
BILLING CODE 6210-01-M

**UNITED STATES INTERNATIONAL TRADE COMMISSION**

**[USITC SE-88-22A]**

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** 53 FR 30162—dated August 10, 1988.

**PREVIOUSLY ANNOUNCED STATUS OF THE MEETING:** Open.

**CHANGE IN STATUS OF THE MEETING:** Closed, in part.

In conformity with 19 CFR 201.37(b), Commissioners Brunsdale, Lodwick, Liebeler, Rohr, and Cass determined that Commission business required the change in status of the meeting on August 18, 1988, and affirmed that no earlier announcement of the change to the status was possible, and directed the issuance of this notice at the earliest practicable time. Commissioner Eckes voted against closing the meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Kenneth R. Mason, Secretary (202) 252-1000.

**Kenneth R. Mason,**
*Secretary.*

August 18, 1988

[FR Doc. 88-19409 Filed 8-23-88; 1:49 pm]
BILLING CODE 7020-02-M

# Corrections

Federal Register
Vol. 53, No. 165
Thursday, August 25, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Part 180**

**[PP 8E3605/P456; FRL-3417-5]**

### Pesticide Tolerance for Metalaxyl

*Correction*

In proposed rule document 88-16323 beginning on page 27370 in the issue of Wednesday, July 20, 1988, make the following correction:

On page 27370, in the first column, under "**SUMMARY**", in the 10th line, "Interregulational" should read "Interregional".

BILLING CODE 1505-01-D

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP-42064; FRL-3410-5]**

### Intent to Approve Department of Energy Plan for Certification of Applicators of Restricted Use Pesticides

*Correction*

In notice document 88-15230 appearing on page 26498 in the issue of Wednesday, July 13, 1988, make the following correction:

On page 26498, in the first column, under "**SUPPLEMENTARY INFORMATION**", in the 13th line, after the word "plan" insert "or".

BILLING CODE 1505-01-D

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP-30000/39A; FRL-3407-2]**

### Preliminary Determination to Cancel Registrations of Aldicarb Products and Notice of Availability of Technical Support Document

*Correction*

In notice document 88-14614 beginning on page 24630 in the issue of Wednesday, June 29, 1988, make the following corrections:

1. On page 24632, in the third column, in the sixth line, "oldicarb's" should read "aldicarb's".

2. On page 24633, in the first column, in the fourth complete paragraph, in the ninth line, "an done" should read "and one".

3. On page 24638, in the second column, in the third complete paragraph, in the 11th line and in the 16th line, "Health" should read "Heath".

4. On the same page, in the third column, in the first paragraph, in the 10th line, "Health" should read "Heath".

5. On the same page, in the same column, in the second paragraph, in the eighth line, after the word "many" insert "wells".

6. On page 24639, in the first column, in the first complete paragraph, in the 11th line, "Health" should read "Heath"; and in the 13th line and the 15th line "to" should read "for".

7. On the same page, in the second column, in the second complete paragraph, in the 13th line, "section" should read "certain".

BILLING CODE 1505-01-D

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

**Public Health Service**

### Health Resources and Services Administration; Statement of Organization, Functions and Delegations of Authority

*Correction*

In notice document 88-18084 appearing on page 30103 in the issue of Wednesday, August 10, 1988, make the following correction:

In the third column, in the first complete paragraph, in the first and second lines, the heading should read, "*Division of Special Populations Program Development (HBCB).*"

BILLING CODE 1505-01-D

federal register

Thursday
August 25, 1988

Part II

# Department of Labor

## Mine Safety and Health Administration

30 CFR Parts 56 and 57

**Safety Standards for Loading, Hauling, and Dumping and Machinery and Equipment at Metal and Nonmetal Mines; Final Rule**

**DEPARTMENT OF LABOR**

**Mine Safety and Health Administration**

**30 CFR Parts 56 and 57**

# Safety Standards for Loading, Hauling, and Dumping and Machinery and Equipment at Metal and Nonmetal Mines

**AGENCY:** Mine Safety and Health Administration, Labor.

**ACTION:** Final rule.

**SUMMARY:** This final rule updates and clarifies the Mine Safety and Health Administration's (MSHA) safety standards for loading, hauling, and dumping and machinery and equipment at metal and nonmetal mines. These revisions reorganize standards, upgrade provisions consistent with advances in mining technology, eliminate duplicative and unnecessary standards, reduce recordkeeping requirements, and provide alternative methods of compliance.

**DATES:** This final rule is effective on October 24, 1988. The incorporations by reference of certain publications listed in this final rule have been approved by the Director of the **Federal Register** as of October 24, 1988.

**FOR FURTHER INFORMATION CONTACT:** Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA; phone (703) 235–1910.

**SUPPLEMENTARY INFORMATION:**

## I. Rulemaking Background.

MSHA announced the availability of preproposal drafts for the machinery and equipment (Subpart M) and loading, hauling and dumping (Subpart H) standards on February 11, 1983 (48 FR 6489) and April 22, 1983 (48 FR 17513), respectively.

After reviewing suggestions and recommendations from mine operators, labor groups, equipment manufacturers, and other interested parties, MSHA published a proposed rule in the **Federal Register** for machinery and equipment on March 6, 1984 (49 FR 8375) and a proposed rule for loading, hauling and dumping on December 18, 1984 (49 FR 49202). Public hearings were held in June 1984 for the machinery and equipment standards and August 1985 for the loading, hauling, and dumping standards. MSHA received and reviewed written and oral statements on both proposed rules from all segments of the mining community. The final rule for Subpart M contains more standards than were included in the proposed rule due to the inclusion of standards originally proposed in Subpart H, but which more precisely and appropriately address machinery and equipment requirements. Additionally, a new standard addressing restricted clearance for foot travel on travelways is added to Parts 56 and 57, Subpart J (Travelways and Escapeways). The standards in Part 56 apply to all surface metal and nonmetal mines; those in Part 57 apply to underground and surface areas of underground metal and nonmetal mines.

## II. Discussion and Summary of the Final Rule.

### *A. General Discussion.*

Hazards associated with loading, hauling, and dumping activities and the use of machinery, equipment, and tools in mining have resulted in many serious injuries and fatalities. Precautions against these hazards and the proper use of the equipment involved are essential parts of any effective mine safety program.

Although fatalities and injuries in general have shown a downward trend in metal and nonmetal mines, machinery and equipment-related injuries and fatalities, as a percentage of the total, have been increasing over the past few years. This trend is, in part, due to increasing mechanization of the mining industry. During the past two decades, activity in metal and nonmetal mining nationally has shifted from underground to largely surface mining. This development has resulted in a substantial increase in the number and size of haulage vehicles being used at mine sites. While improving productivity, these changes have also exposed miners to additional potential hazards.

Accidents related to powered haulage continue to represent a significant portion of the fatalities in metal and nonmetal mines. Transportation accidents involving large equipment tend to result in the most serious types of accidents. Between 1978 and 1987, an average of 76 fatalities and 12,600 nonfatal injuries occurred annually in metal and nonmetal mines. During this period, fatalities involving powered haulage averaged about 24 annually and nonfatal injuries involving powered haulage averaged 972 annually.

Machinery and equipment accidents were also a significant cause of injuries and fatalities in mines during this period. An average of 1,675 nonfatal injuries, and 11 fatalities occurred annually, caused by either accidental contact with or misuse of machinery and equipment ranging from small, portable hand tools to large, stationary machinery, crushers and conveyors.

MSHA examined fatality reports for the years 1982–1987 to determine projected benefits from this final rule for Subparts H and M. Over the last 6 years, the Agency estimates that 127 fatalities could have been prevented by full compliance with all the provisions of the final rule. Based on this estimate, MSHA projects that full compliance will result in between 10 and 15 lives saved per year.

While increased mechanization has created potential hazards, technological improvements have also created opportunities to ensure a safer working environment for miners. Technological advances aid in reducing hazards because many safeguards are integral design features on new products. Also, improved engineering and work practices in loading, hauling, and dumping operations can contribute to enhanced protection of persons working on mining property.

These revised standards are intended to improve safety by recognizing and incorporating many of these technological improvements and bringing MSHA's standards up-to-date. In addition, standards are included to ensure safety in areas not previously addressed; but where the data show that accidents are occurring and duplicative and unnecessary standards are eliminated.

MSHA's review of the existing standards and comments received has resulted in revisions to reflect both the Agency's experience and the concerns of commenters, including small mine operators. In developing this final rule, MSHA has been responsive, to the extent possible, to the many comments received from the mining public. These changes are consistent with the goals of the Federal Mine Safety and Health Act of 1977, Executive Order 12291, the Paperwork Reduction Act, and the Regulatory Flexibility Act, in that the final rule provides new compliance alternatives to accommodate advances in mining technology while offering the most effective protection for persons working at mines.

Throughout the rulemaking process a number of commenters expressed concern about the applicability of individual standards and the relationship of the loading, hauling, and dumping standards contained in Subpart H, to the machinery and equipment standards contained in Subpart M, particularly since many of the standards in Subpart H address equipment.

In drafting the final rule, it became evident that the most logical organizational approach would be to realign the standards into "hazard or

task-related" groups within separate subparts. Accordingly, many of the standards which appeared in the proposed rule for Subpart H have been transferred to Subpart M. The final rule continues to provide the necessary safety for workers at metal and nonmetal mines. Changes made to all of the existing standards are discussed fully below.

The standards that address safe conduct of loading, hauling, and dumping activities are contained in Subpart H under the following headings: Traffic Safety; Transportation of Persons and Materials; and Safety Devices, Provisions, and Procedures for Roadways, Railroads, and Loading and Dumping Sites. The standards contained in Subpart M address: Safety Devices and Maintenance Requirements; and Safety Practices and Operational Procedures for various types of machinery and equipment, including those used in loading, hauling and dumping activities. Standards for Subpart H and Subpart M are published together in the **Federal Register** for the convenience of readers to assist then in understanding the realignment of the standards and to clarify the relationship between Subpart H and Subpart M.

The Agency believes this realignment of standards and restructuring of subcategories will aid in clarifying the intent of each standard and will help users locate the various standards within the Code of Federal Regulations (CFR).

*B. Transfers and Deletions.*

The following table lists the transferred standards.

| Final rule number | Existing number |
|---|---|
| 56/57.14100 | 56/57.9001, 56/57.9002, 56/57.9073 |
| 56/57.13101 | 56/57.9003 |
| 56/57.14102 | 56/57.9048 |
| 56/57.14103 | 56/57.9010, 56/57.9011, 56/57.9012 |
| 56/57.14104 | 56/57.9069 |
| 56/57.14109 | 56/57.9007 |
| 56/57.14111 | 56/57.9015 |
| 56/57.14113 | 56/57.9013 |
| 56/57.14114 | 56/57.9026 |
| 56/57.14130 | 56/57.9088 |
| 56/57.14132 | 56/57.9087 |
| 56/57.14160 | 57.9115 |
| 56/57.14161 | 57.9098 |
| 56/57.14162 | 57.9112 |
| 56/57.14200 | 56/57.9005 |
| 56/57.14201 | 56/57.9006 |
| 56/57.14206 | 56/57.9031, 56/57.9032 |
| 56/57.14207 | 56/57.9036, 56/57.9037 |
| 56/57.14208 | 56/57.9049, 56/57.9068 |
| 56/57.14209 | 56/57.9070 |
| 56/57.14210 | 56/57.9025 |
| 56/57.14214 | 56/57.9009 |
| 56/57.14215 | 56/57.9065, 57.9097 |
| 56/57.14216 | 56/57.9046 |
| 56/57.14217 | 56/57.9047 |
| 56/57.14218 | 56/57.9066 |
| 56/57.14219 | 56/57.9052 |

At the suggestion of several commenters and on the basis of the Agency's enforcement experience, the final rule deletes five existing standards. Standard 56/57.9019 which requires blocking of track guardrails, lead rails, and frogs is deleted because MSHA analysis showed no evidence of injuries associated with the performance of this task. Standard 56/57.9042 which requires that rocker-bottom and bottom-dump railcars be equipped with locking devices is deleted because these type railcars do not operate without locking devices. Standard 57.9114, which requires the designation of discharge and boarding points where mantrips are used, is deleted because final standard 56/57.9318 addresses the hazard of getting on or off moving equipment. Standard 56/57.14009 which addresses grinding wheels is also deleted because the hazard of operating such devices is covered by final standard 56/57.14205, which requires that equipment be used within the manufacturer's specifications and instructions unless no hazard to persons is created. Standard 56/57.14027, which requires that competent persons be assigned to the operation of machinery or equipment is deleted because the training requirements in 30 CFR Part 48 cover the competency of persons operating machinery or equipment.

*C. Other Changes.*

The final rule includes a new § 56/57.11008 for Subpart J (Travelways and Escapeways). The standard addresses restricted clearances encountered by persons traveling on foot. The standard is added in response to several commenters who urged that existing § 56/57.9060, addressing restricted overhead clearance hazards in general, be limited to situations where persons are traveling in mobile equipment. The proposal suggested the restricted clearance areas be conspicuously marked where a hazard is created. However, commenters believed the standard should only apply where the restricted clearance creates a hazard to persons on travelways. MSHA agrees with commenters who stated that, without this limitation to travelways, a multitude of other restricted clearance locations might unnecessarily have to be marked. Commenters also opposed having the standard specify how the area should be marked. In this instance, the primary compliance action relates to alerting persons to hazards presented by restricted clearnces. Under this final rule, where marking is required, and method of conspicuous marking alerting persons would be permitted. Restricted clearances that create hazards to persons on mobile equipment are addressed in final § 56/57.9306.

The provisions of existing § 56/57.14014 addressing eye protection while using grinding wheels is a "personal protection" standard which the Agency has determined would be more appropriately grouped with other personal protection standards for metal and nonmetal miners. The final rule redesignates § 56/57.14014 as § 56/57.15014 in Subpart N. No changes have been made in the requirements of the standard.

*D. Petitions for Modification.*

Operators with petitions for modification that involve the standards revised in this rulemaking need to determine the status of those petitions before the effective date of this final rule. If there are sections of this rule which are renumbered but remain substantively unchanged from the existing standards, operators with modifications granted for these standards need not reapply. However, operators with modifications granted for standards that have been revised will need to comply with the new rule on its effective date. New petitions for modification of the final rule may be submitted in accordance with 30 CFR Part 44. If Agency assistance is needed, questions should be directed to the appropriate MSHA District Office.

*E. Definitions.*

Subpart H contains two defined terms: *Berm* and *mobile equipment*. Subpart M also contains two defined terms: *Mobile equipment*, and *travelway*. In the proposed rule for Subpart H, *berm* was defined as "A pile or mound of material along an elevated roadway capable of moderating or limiting the force of a vehicle in order to impede the vehicle's passage over the bank of the roadway." Commenters supported this definition which is retained in the final rule.

Several commenters suggested clarification of the proposed rule's definitions for mobile and self-propelled equipment. In the proposed rule for Subpart H, mobile equipment was defined as "equipment capable of moving or being moved readily," and self-propelled equipment as "equipment capable of moving itself." Both subparts now define *mobile equipment* as "wheeled, skid-mounted, track-mounted, or rail-mounted equipment capable of

moving or being moved." Wherever the final rule refers to equipment capable of moving itself, it uses the term *self-propelled mobile equipment*, for which a separate definition is not necessary.

The definition of *travelway* has been revised in Subpart M to include "a passage, walk, or way regularly used or designated for persons to go from one place to another." This revision recognizes that walkways that are regularly used, in addition to those which are designated, are also included within the scope of the safety standards.

*Mantrip*, as proposed in Subpart H, has been deleted from the final rule because commenters indicated that mantrip is a readily understood mining term. Likewise, *trip light* has been deleted since it is also fully recognized and understood within the affected mining community.

*F. Incorporations by Reference.*

Subpart H does not contain any incorporations by reference. Subpart M contains two standards which incorporate by reference national consensus standards: § 56/57.14130, which addresses roll-over protective structures (ROPS) and seat belts, and § 56/57.14131, which requires the use of seat belts on certain equipment which is not fitted with ROPS. These incorporations by reference were approved by the Director of the Federal Register, and are discussed in detail in the section-by-section analysis, below.

*G. Section-by-Section Discussion of Subpart H.*

The following section-by-section analysis discusses the issues raised during this rulemaking.

Traffic Safety

*Section 56/57.9100 Traffic control.* This standard revises existing § 56/57.9071. It requires the establishment and posting of traffic safety rules, signs and signals. The standard provides for the safe operation of self-propelled mobile equipment. The final rule clarifies several provisions of the proposal and expands the scope of the required traffic safety rules.

The failure to establish traffic rules and post warning signs has been cited as a contributing factor in mining accidents. Fatalities have occurred where rules governing direction of equipment movement were not established and where signs warning of hazardous curves and steep declines were not provided.

The final standard contains two requirements. Under paragraph (a) each mine is required to establish and follow traffic rules governing equipment speed, right-of-way, direction of movement and the use of headlights. The latter requirement is added to emphasize the importance of using lights where necessary to prevent collisions and other hazards associated with operating self-propelled mobile equipment in conditions of limited visibility. The requirement is compatible with and a logical extension of the requirement in § 56/57.9101 that operating speeds be consistent with visibility. Paragraph (b) requires that warning signs or signals be placed at appropriate locations in order to alert equipment operators of the need to take appropriate precautions. For example, a sign warning the equipment operator to check a vehicle's brakes and use a low gear may be needed in advance of a steep decline.

Commenters stated that the proposal's provision for traffic rules to be posted was impractical for some mining operations since rules can change as often as each shift. MSHA agrees that this situation can exist at some mines, and the final rule deletes the posting requirement for rules but, not warning signs. However, rules would have to be established at the mine for miners' training and awareness.

Commenters also asked whether the standard would require an increase in the number of signs already required. The final rule does not require additional signs to be installed. However, it does require that the signs "warn of hazardous conditions". A second concern was the proposal's provision that each sign be uniform in size and shape for each purpose. Several commenters believed this provision was inappropriate since low clearances may sometimes make uniformity impossible, particularly underground. Commenters also stated that larger signs may be needed in some situations. MSHA agrees that while standardization may enhance warning recognition, compliance may be difficult in some situations; therefore, the final rule deletes the uniformity requirement.

Some commenters questioned the phrase "appropriate locations on roadways" and were not sure where signs or signals would be required. The final rule clarifies that signs or signals are required to be positioned so that hazardous conditions are known in advance. For example, signs must be appropriately placed to warn drivers of hazards which they are approaching, such as intersections, steep grades, and sharp turns.

Commenters also questioned the scope of the standard as it relates to underground operations. As with the existing standard, the final rule applies to surface as well as underground locations since traffic control hazards exist in both situations. While MSHA realizes that rules of the road and signs may have to be different to accommodate confined environments, they must appropriately address underground hazards.

*Section 56/57.9101 Operating speeds and control of equipment.* This standard revises and consolidates existing §§ 56/57.9017, 56/57.9023, 56/57.9024, and 57.9113 which address equipment speed and control. The final rule requires that operators of self-propelled mobile equipment maintain control of equipment while it is in motion. It also requires that operating speeds be consistent with conditions of the roadway or tracks, other traffic, visibility and the type of equipment used. Commenters supported this consolidation and the final rule retains the proposed language.

*Section 56/57.9102 Movement of independently operating rail equipment.* This standard revises existing § 56/57.9035. To prevent collision of independently operated trains, the final rule requires that movement of two or more pieces of rail equipment operating independently on the same track be controlled for safe operation.

A commenter recommended that the standard permit "control for safe operation" to be achieved by either an equipment operator or a safety device. For clarification, operators can use either approach as long as safety is achieved. Some examples of control methods are: Train dispatchers using electronic switchboards; block light systems; flagmen and switchmen.

The final rule retains the proposed language.

*Section 56/57.9103 Clearance on adjacent tracks.* This standard revised existing § 56/57.9050. It prohibits the parking of railcars on side tracks unless clearance is provided for traffic on adjacent tracks to pass by. No comments were received on this standard as proposed, and the final rule clarifies the proposed language to explain that clearance is needed in order for traffic to pass.

*Section 56/57.9104 Railroad crossings.* This standard revises existing § 56/57.9059. The final rule requires that designated railroad crossings be posted with warning signs or signals or, as an alternative, guarded when trains are passing. For example, brakemen and switchmen can guard crossings in lieu of installing signs, as long as the goal of warning workers is achieved. The final rule retains the requirement that crossing points be planked or filled between the rails.

Some commenters believed this standard should only apply to surface rail equipment. These commenters were concerned that MSHA could require the entire length of underground rails to be planked or filled since persons often use the rails as travelways. The final standard continues to apply to both surface and underground locations since the hazards exist in either situation. However, the final rule clarifies that the standard applies only to those "designated" locations where persons or equipment cross the tracks. It also deletes the proposal's reference to "permanent" crossings since the appropriate consideration is whether the location is a designated crossing point.

*Section 57.9160 Train movement during shift changes.* This standard revises existing § 57.9116 which applies to underground areas of underground mines. Pedestrian traffic increases considerably in most track haulage areas during shift changes. Therefore, at those times, the final rule requires that production train travel be limited to areas where pedestrian traffic is not affected.

A commenter believed that the standard should be expanded to include persons who are exposed to rail or truck haulage traffic at open pit operations. However, the final rule retains the scope of the existing standard because underground operations generally have limited areas for persons to escape from moving equipment.

Transportation of Persons and Materials

*Section 56/57.9200 Transporting persons.* This standard revises and consolidates existing §§ 56/57.9040, 56/57.9041, 56/57.9067, and 56/57.9085. Each of these standards involve safety practices related to transporting persons on mobile equipment. Commenters supported the consolidation of these standards; however, the final rule modifies the proposal in several respects as discussed below.

In the proposal, paragraph (a) would have prohibited transporting persons in or on dippers, forks, clamshells, or buckets. Commenters requested that MSHA include the provision contained in existing § 56/57.9049 which permits persons to be transported in shaft buckets under limited circumstances. MSHA agrees and the final rule allows persons to be transported in shaft buckets during shaft-sinking operations, or during inspection, maintenance, and repair of shafts. Several commenters questioned whether paragraph (a) would prevent persons from working from raised platforms. The final rule addresses dippers, forks, clamshells and buckets, not raised platforms. However, raised platforms are discussed in Subpart M, §§ 56/57.14211, which addresses equipment in a raised position and the use of mobile work platforms.

Paragraph (b) of the proposal prohibited transporting persons in beds of mobile equipment or railcars unless they were seated and provisions were made for secure travel. Paragraph (f) of the proposal addressed the related aspect of transporting persons in moblile equipment provided with unloading devices unless provisions were made to prevent accidental starting of the unloading devices. Commenters suggested that these related paragraphs be combined and the final rule for paragraph (b) reflects this consolidation.

Commenters questioned whether paragraph (b) would always require persons to be seated, even if provisions were made for their secure travel. For example, they cited instances of persons being safely transported while standing on platforms attached to the rear of mobile equipment. MSHA does not believe that it is always necessary for persons to be seated, so long as provisions are made for secure travel. Therefore, the final rule for paragraph (b) deletes the requirement for persons to be seated; depending upon the situation, "secure travel" may require that persons be seated or that other precautions be taken.

Paragraph (c) prohibits the transportation of persons on top of loads in mobil equipment. Except for an editorial change substituting the words "loads in" for "loaded," the final rule for paragraph (c) is the same as the proposal.

Paragraph (d) prohibits transporting persons on the outside of cabs, equipment operators' stations, or beds of mobil equipment except when necessary for maintenance, testing, or training purposes. Some commenters were concerned that the proposal's use of the term "equipment operators' stations" could prohibit the transportation of persons in cabs that are designed to accommodate more than just the operator of the equipment. MSHA did not intend to restrict the use of such cabs, and the final rule includes the term "cabs" to remove any ambiguity. As with the proposal, paragraph (d) of the final rule retains the exclusion of rail equipment.

Paragraph (e), with certain exceptions, prohibits persons from riding in locations on trains and locomotives which expose them to hazards from train movement. The proposal prohibited all persons from riding in hazardous locations on trains. Many commenters objected to the scope of this prohibition, stating that there was no basis to conclude that riding between railcars was hazardous. During the past two years, MSHA has reviewed 6 fatality reports involving persons who rode between railcars of trains, and on the leading end of trains or railcars. These victims were performing train-related work duties, such as car dropping, at the time of the fatal occurrences. In nearly every instance, the use of a safety belt and line may have avoided the fatality. Commenters agreed that use of safety belt and line during car dropping eliminates the hazard of persons falling off the platform and being run over by a train. Therefore, paragraph (e) allows car droppers to ride on the leading end of trains as long as they are secured with a safety belt and line which will prevent them from falling off the work platform. Further, commenters were concerned that paragraph (e) would prohibit gravity dropping of railcars. The final rule does not prohibit gravity dropping, which is the practice of using gravity forces and braking power to reposition cars, rather than locomotive power. Commenters also pointed out that car droppers will at times be on the leading end of a railcar since the brake wheel and platform will come on to the line on the car's leading end about half of the time. During car dropping, a person must be at the end of the railcar that has the brake wheel and platform in order to control the railcar being dropped.

The final rule for paragraph (e) specifically addresses brakemen who typically have duties such as coupling and uncoupling cars, throwing switches, setting mechanical brakes on uncoupled cars, and giving signals to the engineer. Such duties may require these workers to be in locations between railcars. It also addresses trainmen who typically run the locomotive with a remote control device; go from one end of the train to the other; and, in some instances, must leave the train in order to arrange for the loading of cars. The final rule allows these workers to take actions necessary to perform their work functions, but specifically prohibits them from riding between cars of moving trains. Commenters agreed with MSHA that when persons are being transported on trains, there should be strict adherence to the standard's prohibited riding locations.

Paragraph (f) prohibits transportation of persons in overcrowded mobile equipment. Equipment is determined to be "overcrowded" when the stability of the equipment is affected or the presence of persons would interfere with the driver's ability to safely operate

the controls. The final rule retains the proposed language.

Paragraph (g) of the final rule prohibits transporting persons in mobile equipment with materials or equipment, unless those items are secured. Several commenters believed the standard should exempt small items that can be hand-carried, such as lunch boxes and mechanic's tools. Other commenters were concerned that if MSHA permitted such an exception, items that could pose a hazard due to their size or weight, such as mining bars and drill steel, could be construed as "hand-carried" items. The final rule addresses these concerns and permits small hand tools or other items to be hand-carried in mobile equipment if a hazard to persons is not created. Items such as mining bars or drill steel could pose hazards to persons and, therefore, would not be permitted in mobile equipment when persons are being transported unless they are secured.

Editorially, paragraph (h) of the proposal has become paragraph (g) of the final rule because of the consolidation of paragraph (b) and (f) in the final rule.

Paragraph (h) of the final rule is derived from existing §§ 56/57.9014. It appeared in the proposal for Subpart M (Machinery and Equipment) and addressed the hazard of persons riding on conveyors that are used to transport material or supplies. With the reorganization of standards, it has been retained in this subpart. Paragraph (h) prohibits persons from riding on conveyors unless the conveyors are designed to safely transport persons.

*Section 56/57.9201 Loading, hauling, and unloading of equipment and supplies.* This standard revises existing § 56/57.9045 which addresses the hazard of equipment and supplies falling or shifting during the process of loading, transporting, and unloading. The final rule requires that each of these procedures be performed in a manner which does not create a falling or shifting hazard that could injure persons.

Commenters questioned whether the standard could be interpreted as requiring all loads to be physically secured without regard to the presence of a hazard. For example, unsecured items are often transported in the beds of pickup trucks without posing a hazard to persons in the truck's cab or to other persons. Under the final rule, loads do not have to be secured if a hazard to persons does not exist.

Commenters also asked if the standard would prohibit dropping loads when that is the customary method of unloading a particular item. The final rule would permit this activity, so long as it did not create a hazard to persons.

*Section 56/57.9202 Loading and hauling large rocks.* This standard consolidates existing §§ 56/57.9034 and 56/57.9062. The final rule prohibits loading rocks in haulage vehicles when the rocks are too large to be handled safely. It also requires that when mobile equipment is used to haul mined material, the equipment must be loaded to minimize spillage where a hazard to persons could be created. In addition to creating a hazard to foot traffic, the spillage could also create a hazard to other vehicle operators.

Some commenters stated that the standard should apply only where persons "will" be endangered if rocks are not broken before loading. However, in order to prevent hazards from developing, MSHA believes that it is important to require that large rocks be broken prior to loading if their size could endanger persons or affect the stability of equipment. Several fatalities have resulted from equipment being overturned by rocks too large for the equipment.

As pointed out by commenters, the size of the equipment picking up or transporting the rock, and the size, weight, and shape of the rock are factors involved in determining whether a hazard will be created. Due to these highly variable factors, the standard is written to ensure that vehicles of appropriate size and design will be used, or that the rock is reduced to an appropriate size for the vehicle involved.

Some commenters, referring to the provision for minimizing spillage, believed that the standard should also require that loaded materials be centered. However, MSHA agrees with those commenters who noted that while operators normally attempt to center loads, a requirement to do so in all instances would be impractical given the methods typically used to load mined material. While it is impossible to prevent total spillage, the standard requires operators to take all reasonable actions to minimize spillage of material.

*Section 57.9260 Supplies, materials, and tools on mantrips.* This standard revises existing § 57.9099 and applies to underground operations. It prohibits the transportation of supplies, materials, and tools (except small hand tools that can be carried without creating a hazard) with persons in mantrips. It also specifies that mantrips must be operated independently of ore and supply trips. No comments were received on this standard as proposed, and the final rule clarifies the proposed language on small hand tools.

*Section 57.9261 Transporting tools and materials on locomotives.* This standard revises existing § 57.9096 and applies to underground mining operations. The standard prohibits the transportation of materials on top of locomotives because of the potential hazards to the train operator and miners. Derailing devices are exempted from the prohibition provided they are properly located and secured. No comments were received on this standard as proposed, and the final rule retains the proposed language.

Safety Devices, Provisions, and Procedures for Roadways, Railroads, and Loading and Dumping Sites

*Section 56/57.9300 Berms or guardrails.* This standard revises existing §§ 56/57.9022 which addresses berms. The final rule requires berms or guardrails to be provided and maintained on the banks of roadways where a drop-off exists which is of sufficient grade or depth to cause a vehicle to overturn or endanger persons in equipment. The final rule also includes a height requirement for berms and guardrails. While evaluating hazards presented by different types of roadways, MSHA identified over 90 fatalities occurring between 1969 and 1984 on haulage, service, and access roadways where a berm could have minimized the seriousness of the accident resulting from an out-of-control vehicle. In all documented instances, the roadway had a drop-off sufficient to cause equipment to overturn or otherwise endanger persons riding in the vehicle.

The existing berm standard applied to all elevated roadways, regardless of their function or frequency of use. Commenters questioned both the scope and nature of the berm provision. Many commenters believed that, under certain circumstances, the Agency should permit alternatives to the installation of berms or guardrails. Other commenters took the position that berms or guardrails should only be required on roadways that are used to haul the mine's ore and waste products. Others believed that infrequently traveled secondary roadways which are only used by small service or maintenance equipment, should be exempt from the standard. However, all of these commenters agreed that if certain roadways were exempted, alternative methods would be necessary to protect equipment operators on such roadways. MSHA has provided an option for those infrequently traveled roadways which are traveled only by service and maintenance vehicles.

MSHA discussed this issue in its public hearing notice published on July 3, 1985 (50 FR 27568), and outlined criteria to be followed should an alternative compliance method be permitted for infrequently traveled roadways which are only used by service or maintenance equipment. The Agency received public comment and testimony and agrees that an alternative to berms or guardrails on infrequently traveled roadways is appropriate and will provide necessary protection for workers. Under the final rule, berms or guardrails are not required for infrequently traveled roadways used only by service or maintenance vehicles. For those roadways, the final rule includes an alternative compliance method. Specifically, locked gates, warning signs, reflectors along the roadway's perimeter, and controlled speeds would have to be used where a berm or guardrail is not installed. These roadways cannot be traveled when traction is impaired by the presence of sleet or snow unless corrective measures are taken to improve the traction. All of these criteria must be met to diminish the likelihood of equipment going over the bank of an elevated roadway. MSHA believes that many service and secondary roadways, such as tailings dam roads can effectively use this alternative compliance method.

Some commenters also urged MSHA to exempt roadways that are under construction. However, during construction there is frequent use of the roadways, posing continual exposure to hazardous dropoffs. In these instances, the installation of the berm or guardrail should concurrently proceed with road construction. Since these roadways are in constant use and drop-off hazards exist, the alternative compliance method would not be effective. After construction, depending on the type and frequency of vehicles that use the roadway, berms or guardrails may be required or the alternative method may be used for roads used by service and maintenance vehicles.

Some commenters asked that MSHA explain the basis for requiring berms and guardrails to be mid-axle height of the largest self-propelled equipment which usually travels the roadway. Mid-axle height is the minimum height needed to (1) ensure under-carriage contact with the restraint, (2) alert the equipment operator of the hazardous situation, (3) moderate the force of the equipment, (4) provide time for corrective action, and (5) assist the operator in regaining control of the equipment. Studies have shown that berms or guardrails less than mid-axle height are not capable of limiting the force of the equipment or impeding passage over the bank of the elevated roadway. There were no adverse comments regarding the mid-axle requirement. (See Bureau of Mines Information Circular No. 8758, 1977). Where berms or guardrails are required, the final rule requires that they be at least mid-axle height of the largest self-propelled equipment which ususally travels the roadway. Therefore, the height of the berm would not need to be increased where equipment with greater mid-axle height infrequently travels the roadway.

Some commenters were concerned that berms could cause pools of water to be created along roadways which could affect the structual integrity of roads, particularly on tailings dams. MSHA realizes that water accumulation can be a problem, and the final rule permits openings along bermed areas to the extent necessary for roadway drainage.

*Section 56/57.9301 Dump site restraints.* This standard revises existing §§ 56/57.9054 which requires that berms, bumper blocks, safety hooks, or similar means be provided at dumping locations to prevent overtravel and overturning of mobile equipment.

Several commenters believed that the proposal's use of the words "restrain" and "prevent" was vague, and pointed out that the devices may not prevent equipment from overtravel or overturning in all cases. MSHA agrees that these devices may not provide an absolute barrier. They do, however, provide a restraint or impedance in the form of a physical obstruction to overtravel at the dump site. The final rule clarifies that these devices are intended to impede overtravel or overturning.

Some commenters also suggested that truck spotters be allowed as an alternative to using impeding devices. While the final rule does not prohibit using truck spotters in conjunction with these devices, truck spotters alone are not permitted. Truck spotters would not be able to provide an equivalent means of protection since they may not always be visible to the truck driver, nor can they provide the physical resistance that an impeding device can offer. Procedures for truck spotters are addressed in §§ 56/57.9305.

*Section 56/57.9302 Protection against moving or runaway railroad equipment.* This standard revises and consolidates existing §§ 56/57.9020 and 56/57.9056. The final rule requires the installation of stopblocks, derail devices, or other equivalent devices where they are necessary to protect persons from moving or runaway railroad equipment.

A commenter believed that the proposal's requirements were vague, open to interpretation, and that these deivices should be installed in accordance with the American Railway Enginering Association (A.R.E.A.) standards. MSHA has reviewed the A.R.E.A. recommended practices, and the final rule is consistant with them. Both the A.R.E.A. standards and MSHA's final rule recognize the diversity of conditions at mining operations and allow mine operators to independently assess their particular conditions when determining which type of device is appropriate. At surface mines, these protective devices are necessary where rail equipment enters work areas such as repair shops and at railcar storage areas in the proximity of work or travel sites. In underground mines, these devices provide protection against overtravel at shaft collars, level landings, and rail car storage areas where equipment or material is loaded or unloaded near work or travel sites. The final rule does not change the wording of the proposal.

*Section 56/57.9303 Construction of ramps and dumping facilities.* This standard revises existing §§ 56/57.9063. The final rule requires that ramps and dumping facilities be constructed of materials that are capable of supporting the loads to which they will be subjected. These ramps and dumping facilities must also provide adequate width, clearance, and headroom to safely accommodate the equipment using the facilities. No comments were received on this standard as proposed and the final rule editorially clarifies the proposed language.

*Section 56/57.9304 Unstable ground.* This standard clarifies the provisions of existing §§ 56/57.9055 which addresses the hazard of unstable ground at dumping locations. The final rule requires that dumping locations be inspected prior to work commencing, and as ground conditions warrant. It also provides for actions to be taken when there is evidence that the ground at a dumping location may fail.

MSHA stated in the preamble to the proposed rule that the standard would require periodic examination of dumping locations for signs of instability. Some commenters believed the standard should expressly include this examination requirement whereas others were opposed to such a requirement. The final rule includes a requirement to visually inspect dumping locations prior to work commencing and

thereafter as ground conditions warrant. Numerous accidents have occurred when dumping locations deteriorate and become unable to support the weight of the equipment using them. Therefore, the final rule also requires that where there is evidence that the ground at a dumping location may fail to support the equipment, loads are to be dumped a safe distance away from the edge of the unstable area of the bank.

*Section 56/57.9305 Truck spotters.* This standard revises existing §§ 56/57.9058 which establishes safety procedures to be followed when truck spotters are used for guiding trucks during dumping. No comments were received on this standard as proposed and the final rule makes grammatical changes to the proposed language.

*Section 56/57.9306 Warning devices for restricted clearances.* This standard revises existing §§ 56/57.9060 and 56/57.9104. The final rule addresses instances where restricted clearance creates a hazard to persons on mobile equipment, and requires that a warning device be installed in advance of the restricted area and the area be conspicuously marked.

Commenters suggested that the standard be limited to restricted clearances along roadways and that rail equipment be excluded from its scope on the basis that proposed §§ 56/57.9330 covered those hazards. MSHA agrees that the standard should be limited to roadways since it would be impractical to anticipate and mark every off-road location that has a restricted clearance. However, rail equipment is retained in this standard because §§ 56/57.9330 applies only to side clearance and is limited to surface equipment. In addition, §§ 56/57.9330 does not require an advance warning device, and marking is only required where the minimum side clearance cannot be met at surface operations. Similarly, although commenters suggested that new §§ 56/57.11008 could adequately address restricted clearances, that standard pertains only to pedestrian exposure to these hazards.

*Section 56/57.9307 Design, installation, and maintenance of railroads.* This standard revises existing §§ 56/57.9016. The final rule requires that road beds and all elements of the railroad track be designed, installed, and maintained to prevent accidents and injuries which could result when rail equipment is operated at speeds too fast for the condition of the tracks. Trackage elements include such items as rails, joints, switches, and frogs. The proposed rule included the reference which limited the standard's application to trackage elements "subject to the control of the mine operator". The Agency recognizes that these type of jurisdictional issues are sometimes addressed when citations are litigated. Matters of jurisdiction are not, however, at issue in the development of safety and health standards for miners. Therefore, the phrase has been deleted from the final rule. MSHA will examine the circumstances to determine who is responsible for correction of the violation.

*Section 56/57.9308 Switch throws.* This standard revises existing §§ 56/57.9028 which requires that switch throws be installed to protect switchmen from contact with moving trains. No comments were received on the standard as proposed and the final rule retains the proposed language.

*Section 56/57.9309 Chute design.* This standard revised existing §§ 56/57.9064 which requires that chute-loading installations be designed so that a person is placed in a safe location while "pulling" a chute. A safe location is needed to prevent the chute puller from either being struck by material that is being loaded, or by the vehicle involved. No comments were received on this standard as proposed and the final rule editorially clarifies the proposed language.

*Section 56/57.9310 Chute hazards.* This standard consolidates and revises existing §§ 56/57.9072, 57.9105, and 57.9106. Each of these standards address hazards such as uncontrolled rock movement and improper use of tools to free lodged material in chutes.

Paragraph (a) requires that prior to chute-pulling, persons who may be affected by the draw, or otherwise exposed to danger, must be warned and given time to clear the hazardous area. A commenter was concerned that paragraph (a) would prohibit persons from working on grizzlies above the chute during chute-pulling even if they were secured with a safety line. Persons working above the chute who are using safety lines would not be affected by the draw; therefore, the requirements of paragraph (a) would not apply in those situations.

Paragraph (b) addresses safety practices for persons attempting to free chute hangups. Commenters stated that the proposal's reference to "barring down" material did not fully describe all the methods used to dislodge chute hangups. MSHA agrees, and the final rule requires that proper tools be used to free material. Another commenter believed that paragraph (b) should retain the existing standard's requirement that persons attempting to free hangups be experienced and understand the hazards involved. MSHA agrees that this work is extremely hazardous and has revised paragraph (b) of the standard to include experience and knowledge requirements.

Some commenters believed that the term "chute" was not descriptive of equipment found in some surface operations. For example, some surface operations place material in bins and stockpiles and then draw from the under portion through feeders. MSHA's use of "chute" in the final rule is intended as a general term to include draw points, feeders or gates, each of which serve the common purpose of providing an extraction point mechanism for the transfer of muck or material. The final rule would cover surface bins and stockpiles from which material is drawn.

Paragraph (c) requires that empty chutes be either equipped with guards to contain flying rock or material prior to dumping broken rock or material, or that persons be isolated from the hazards of flying rock or material. A commenter recommended that paragraph (c) be deleted from the standard, stating it had no application to surface operations. The final rule retains this requirement because many surface stone operations use these type of chutes.

*Section 56/57.9311 Anchoring stationary sizing devices.* This standard editorially revises existing §§ 56/57.9057 which requires that grizzlies and other stationary sizing devices be securely anchored.

A commenter asked whether this standard would prohibit use of grizzlies or grates that can be pivoted or raised to allow for cleaning. As long as the structure itself remains securely anchored, the final rule would allow use of a hinge feature to permit cleaning.

*Section 56/57.9312 Working around drawholes.* This standard revises exising § 57.9107 which prohibits persons from standing over drawholes if there is danger that material may be withdrawn or may collapse unless platforms or safety lines are used. No comments were received on this standard as proposed and the final rule retains the proposed language.

*Section 56/57.9313 Roadway maintenance.* This standard was considered for deletion in the proposed rule. The Agency originally believed that two other existing standards adequately addressed these roadway maintenance hazards §§ 56/57.4050, which prohibits the accumulation of waste materials in quantities that could create a fire hazard; and §§ 56/57.20003, which requires that workplaces, passageways and rooms be kept clean and orderly. However, some commenters requested

that MSHA retain and revise existing §§ 56/57.9053 because the hazard presented by the accumulation of water, debris, and spilled material on roadways in a loading, hauling, and dumping environment is not adequately addressed by either of these existing standards.

In response to this concern, MSHA reviewed 207 accidents associated with these hazards and found 43 haulage accidents which resulted from rough roadways, extended pools of roadway water, and spilled haulage material. In a study "MSHA Analysis of Underground Load, Haul, Dump Accidents" which addressed the cause of accidents that occurred from 1978 through 1980, rough roadways or roadway debris was a contributing factor in twenty percent of the accidents occurring during that period. Based on this information, the standard has been retained. Editorially, the standard has been revised to clarify that it applies to instances where water, debris, or spilled material on roadways creates a hazard to the operation of mobile equipment.

*Section 56/57.9314 Trimming of stockpile and muckpile faces.* This standard makes editorial changes to existing § 57.9061 which requires that stockpile and muckpile faces be trimmed to prevent hazards to persons. Some commenters suggested as an alternative method "that MSHA allow stockpile and muckpile faces to be either guarded or barricaded and posted until the hazard is removed". The final rule does not permit guarding, barricading, or posting as an alternative because the suggested language would allow the hazardous condition to exist indefinitely since stockpiles and muckpiles are used on a regular basis in the mining cycle. In addition, workers who are required to be in the immediate area above and below these stockpiles and muckpiles on a regular basis would not be provided with protection.

*Section 56/57.9315 Dust control.* This standard clarifies and revises existing §§ 56/57.9074 which requires dust control at muck piles, material transfer points, crushers, and on haulage roads where hazards to persons may be created as a result of impaired visibility.

Some commenters believed that the requirement to control dust where hazards "may" be created was too speculative, and suggested that the standard take effect when hazards "are" or "will be" created. MSHA agrees that "may" could be construed as being too speculative. In MSHA's view, to be effective, dust control measures must be instituted before the hazard to persons is created. Therefore, the final rule uses the term "would".

*Section 56/57.9316 Notifying the equipment operator.* This standard revises existing §§ 56/57.9027. It requires persons to notify the operator of self-propelled mobile equipment before getting on or off that equipment when the operator is present. The intent of the standard is to prevent serious injuries from occurring because equipment operators are unaware of the presence of persons near the equipment who intend to or attempt to get on or off it. The final rule retains the proposed language.

*Section 56/57.9317 Suspended loads.* This standard revises existing §§ 56/57.9030 which prohibits persons from working or passing under the buckets or booms of loaders in operation. No comments were received on this standard and the final rule retains the proposed language.

*Section 56/57.9318 Getting on or off moving equipment.* This standard revises existing §§ 56/57.9039 which prohibits persons from getting on or off moving mobile equipment. The proposal included an exception for trainmen who, because of their work duties, are required to get on and off slowly moving trains. Commenters requested that brakemen and car droppers also be exempt because their work duties entail getting off slowly moving trains. MSHA agrees, and the final rule clarifies that trainmen, brakemen, and car droppers are permitted to get on or off slowly moving trains in the performance of their work duties.

*Section 56/57.9319 Going over, under, or between railcars.* This standard revises existing §§ 56/57.9051 which establishes safety practices to be followed to prevent persons from being accidentally run over by the sudden movement of railcars. No comments were received on this standard as proposed and the final rule retains the proposed language.

*Section 56/57.9330 Clearance for surface equipment.* This standard makes editorial changes to existing §§ 56/57.9083. It is applicable to surface mines and surface areas of underground mines. It requires that where possible, at least 30 inches of continuous clearance from the farthest projection of moving railroad equipment be maintained on at least one side of the railroad tracks at surface installations. This 30-inch clearance is necessary to protect persons who work or travel along haulageways from the hazards of moving railroad equipment. Places that are less than 30 inches must be conspicuously marked. No comments were received on this standard as proposed and the final rule retains the proposed language.

*Section 57.9360 Shelter holes.* This standard consolidates and clarifies the requirements of existing §§ 57.9110 and 57.9111. The final rule requires that when continuous clearance of at least 30 inches cannot be maintained on at least one side of underground haulageways, shelter holes be provided at intervals which are adequate to assure the safety of persons along the haulageway. In response to comments, the standard provides that only areas having less than 30 inches of continuous clearance need to be evaluated, since the critical concern is access to a safe clearance area. For example, a commenter described a situation where 90 percent of an underground haulageway had at least 30 inches of clearance. To comply with the final rule, the mine operator would need to evaluate only the area where the minimum clearance could not be maintained and determine the distance to the nearest area that has the minimum 30-inch clearance. Where it would be questionable if persons can safely reach adequate clearance areas, shelter holes would need to be constructed. However, in most instances MSHA does not believe that additional shelter holes will need to be constructed to comply with the final rule.

Several commenters raised issues concerning the prohibition on using shelter holes for storage. They believed that as long as the minimum clearance was maintained, storage should be permitted. Other commenters supported the ban on storage and other uses. MSHA agrees with those commenters who noted that the critical factor is maintaining the minimum clearance. Therefore, the final rule allows shelter holes to be used for storage as long as the minimum clearance of 40 inches from the farthest projection of moving equipment is strictly maintained. This approach is consistent with the existing requirement, and avoids the need for the construction of additional storage facilities which may have been required under the proposal.

*Section 57.9361 Drawholes.* This standard clarifies existing § 57.9103 which requires that collars of open drawholes underground be kept free of muck or material.

Some commenters believed that it is impractical to keep drawholes free of material when normal practice calls for continuous or intermittent flow of materials. The accumulation of material around the collars of drawholes presents tripping and falling hazards to persons who work around the collar, and falling material hazards to those who work at the bottom of the drawhole. The final rule clarifies that

the standard does not apply when muck or material is being transferred through the drawhole.

*Section 57.9362 Protection of signalmen.* This standard revises existing § 57.9102 which provides that signalmen used during slushing operations must be positioned in a safe place. The proposal clarified that signalmen must be located away from possible contact with cables, sheaves, or slusher buckets during slushing operations in underground mines because broken cables can cause serious injuries. No comments were received on this standard. The final rule clarifies the proposed language, consistent with the intent of the standard to protect signalmen from contact with slushing hazards.

*H. Section-by-Section Discussion of Subpart M*

Safety Devices and Maintenance Requirements

*Section 56/57.14100 Safety defects; examination, correction and records.* This final standard is derived from existing and proposed standards which appeared in Subparts H and M. It consolidates the equipment examination, defect correction and recording requirements of existing §§ 56/57.9001, 56/57.9002, 56/57.9073, and 56/57.14026. The rule addresses machinery and powered haulage accidents by establishing procedures for detection and correction of defects.

Powered haulage accidents and machinery and equipment accidents in metal and nonmetal mines are among the leading causes of fatalities and serious injuries. These accidents are often attributable to defects in the machinery and equipment which can develop at any time. During a five year period ending in December 1987, 104 fatalities occurred on equipment which is required to be examined for defects by this section. An additional 60 fatalities were recorded during this same period on machinery and equipment addressed by the defect correction requirements of this section.

Self-propelled mobile equipment is specifically required to be examined prior to use on each shift where it is to be placed in operation. This specific requirement is included in the standard in view of the fact that defects affecting safety become more critical when they occur on a piece of equipment which is mobile throughout the mine.

If safety defects are detected on any equipment, machinery or tools, the required compliance measures vary with the degree of the hazard. The final rule requires that all safety defects be corrected in a timely manner and that, in instances where continued use would pose a risk of injury, the correction must be made immediately unless the defective equipment is removed from service and identified as defective. The defective condition must be corrected before the equipment is returned to service.

The time allowed to correct a safety defect will vary, depending upon the specific circumstances involved. For example, broken windshield wipers would constitute a defect affecting safety which would require timely repair. However, if this defect existed at a time when the wipers were needed because of rain, snow, or other conditions which affected visibility, then the removal from service or repair would have to be immediate. The primary reason for this differentiation among safety defects is to ensure that safety defects that impose an immediate hazard to persons are corrected before the equipment is used. It also provides that other safety defects will be corrected before they present a hazard to persons. It is expected that defects not creating an immediate hazard will be attended to without delay, normally at the end of the shift in which the defect is discovered.

When safety defects on self-propelled mobile equipment are not corrected immediately, the defect must be reported to the mine operator. Reports of these defects must be recorded by the mine operator and retained until the defect has been corrected. If no defects affecting safety are found, no documentation is required. This reporting and recording procedure which was contained in the proposed rule for Subpart H, will ensure that persons in authority are made aware of defects and can arrange for appropriate correction while also keeping the recordkeeping burden to a minimum.

Some commenters believed that there should be no recordkeeping requirement when corrective action is taken immediately upon detection of the defect. Others believed that, as in the existing standard, there should be a record made in each instance and that these records should be retained for some period of time in order to build accountability for repairs. MSHA notes that it is a common practice to make on the spot repairs on equipment in the field. In these circumstances the Agency believes that it would be unnecessary to require a record to be made of the defect. From a safety standpoint, the critical consideration is the correction of the defect. Therefore, the final rule provides that no record need be made where the corrective action is immediate.

Some commenters suggested that the recordkeeping requirements of this section be expanded to cover all mobile equipment, regardless of whether it is self-propelled. Others believed that the scope of the standard should continue to apply only to self-propelled mobile equipment. In MSHA's view, the inclusion of all mobile equipment within the scope of this standard would unnecessarily increase recordkeeping requirements; therefore, the final rule continues to limit this requirement to self-propelled mobile equipment.

Commenters also focused on the requirement to tag or otherwise effectively mark equipment that is taken out of service. Some commenters believed that tagging was a minimal burden that should be required in all instances. Others took the position that, in addition to tagging or marking defective equipment, the standard should also permit an alternative of allowing equipment to be placed in a designated repair area. These commenters stated that such placement was a common practice and that persons do not mistakenly use defective equipment under this arrangement.

Under the final rule this alternative is permitted as long as the equipment is placed in a designated area that is posted for defective equipment. Equipment located within a repair shop or repair yard would be considered in compliance with this requirement. Tagging or some other effective method of marking must be used whenever the equipment is not immediately removed to a designated repair area.

*Section 56/57.14101 Brakes.* This final standard sets forth minimum performance requirements for braking systems on self-propelled mobile equipment and requires that all braking systems be maintained in functional condition. It replaces existing §§ 56/57.9003 which required that the equipment be provided with adequate brakes. The rule provides for service brake tests on surface-operated equipment to determine the capability of a vehicle's braking system, clarifies the existing standard regarding adequate brakes, and also prevents the hazard by setting out specific braking requirements. In addition, it provides the mine operator with a specific means of testing his vehicles' brakes prior to inspection by MSHA. Rail equipment is excluded from this standard and is addressed by §§ 56/57.14103.

In the past three years, there were 88 accidents related to brake failure involving loading, hauling, and dumping

equipment, of which 3 resulted in fatal injuries. During FY 86, under existing §§ 56/57.9002, 680 violations were cited for faulty braking systems and during FY 87, 763 violations were issued.

Nearly all types of self-propelled mobile equipment found at mining properties are equipped with one or more braking systems. The service braking system is the primary system for stopping and holding equipment during normal use. Some large equipment also utilizes retarding mechanisms to supplement service braking systems. Most equipment also is provided with a parking (secondary) brake system. Service braking systems must be capable of stopping and holding the equipment, with its typical load, on the maximum grade it travels.

Some commenters pointed out that several types of equipment, such as some self-propelled lawn mowers, are not manufactured with brakes. The final rule takes this into consideration by providing that the standard does not apply to equipment which is not originally manufactured with brakes unless the equipment is used in a manner which requires the use of brakes for safe operation. Some commenters suggested that battery and air-powered equipment be exempted from the rule. However, this equipment is often used in a manner which necessitates the use of brakes.

The rule also requires that self-propelled mobile equipment equipped with parking brakes shall be capable of holding the equipment with its typical load on the maximum grade it travels. Several commenters to this provision urged MSHA to limit this performance requirement to a maximum grade of 15 percent. They noted that the Society of Automotive Engineers (SAE) document J 1152 has this performance limitation.

The final rule retains the performance requirement that the parking brake be capable of holding the equipment on the maximum grade traveled. MSHA notes that the SAE document establishes only the minimum acceptable performance. Although grades in excess of 15 percent are not common at mining operations, equipment must be able to perform safely under the conditions to which it is subjected. The steeper the grade, the more demand is placed on the brakes. If the brake does not perform, the vehicle will roll. Of the few operations having grades that are greater than 15 percent, MSHA estimates that most if not all mine operators would choose to regrade rather than incur costs to retrofit existing braking systems. These increased regrading costs would be offset by reduced equipment operating costs. MSHA expects that the cost savings will offset the cost of regrading.

The second part of this rule addresses service brake system testing. It provides for tests on surface-operated self-propelled mobile equipment which is capable of traveling at least 10 miles per hour when there is reason to believe that the service brake system does not function as required. MSHA will not be conducting routine or random testing of equipment. The purpose of the test is to determine the performance of the service brake system. To pass the service brake test, equipment must not exceed the maximum stopping distance for its weight class at the speed tested. The maximum stopping distances are listed in Table M–1 of the standard.

The brake test is based on recommended minimum performance standards for service brakes which are set forth in the SAE document J 1152. MSHA's test combines different machine categories and weights from the SAE document, extracts the appropriate stopping distances from each group, and adds a one second response time. MSHA brake testing requirements, while differing somewhat from those in SAE J 1152 because of conditions likely to be encountered in the mining environment, are nevertheless based on widely accepted criteria. The requirements of this standard will provide the necessary measure of safety at the mine site.

Field testing of equipment is not expected to be frequent, and would not impose a significant burden on the mining operation. In its field tests, MSHA found that four brake test runs were typically completed in less than ten minutes. Under the final rule, equipment which passes the first test will not be tested further.

Some commenters favored the deletion of the testing provision. These commenters were concerned that testing could be dangerous since it would involve equipment with brakes which are already suspect. The final rule contains several provisions to ensure that brake testing will be performed safely. Testing will not occur when the mine operator agrees that the equipment's service brakes do not function as required and orders that the equipment be removed from service for repair. Although some commenters wanted mine operators to have the option of removing equipment for inspection instead of repair, others agreed that if the mine operator chooses to test, repair action should be initiated. The operator has the option to conduct testing and repair prior to inspection by MSHA. Testing would only be utilized in those instances when there is disagreement about the performance capabilities of the service brakes. To further ensure safety, an MSHA inspector may independently determine that the equipment would be too hazardous to test in the field. For example, the inspector would not permit testing in any instance where a brakeline was plugged. The inspector will also inquire as to whether the equipment operator or mine operator is aware of any defect on the equipment about to be tested.

Testing is not to occur unless there is an appropriate test site at the mining operation. Working with the mine operator to ensure that no hazard will be presented by testing, the MSHA inspector will instruct the equipment operator before any testing to activate the equipment's emergency brakes should the service brakes fail completely. The mine operator can designate the person who will operate the equipment during the test. Most testing sites will also provide a course of sufficient length to allow the equipment to come to a rolling stop in the event of complete failure of all braking systems.

MSHA inspectors will also be trained to safely conduct these tests. Persons and equipment will be clear of the approach and measured course during testing. While testing places demands upon the equipment's service brakes, these demands are comparable to those that would be encountered in the continued performance of the equipment's routine functions at the mine site.

Several commenters who favored the deletion of the proposed rule's brake testing provision urged MSHA to substitute the "stall test" in its place. This test measures, under certain conditions, the equipment's mechanical braking capability against engine power.

MSHA did not adopt the stall test in the final rule for several reasons. The stall test only measures the static holding capability of the equipment's service brakes. As noted by commenters, for larger equipment it is the dynamic braking which does most of the work in slowing equipment for a stop.

For large equipment which utilizes some form of dynamic braking, mechanical braking becomes important at speeds below 10 mph. Unlike the stall test, the final rule's brake testing procedure does evaluate dynamic braking. The stall test cannot generally be applied to all equipment. The limited information provided by a stall test is only valid when the manufacturer has

specifically designed the test for the exact equipment in question.

Several comments were directed toward the issue of which brakes may be applied in a service brake test. Some commenters were concerned that the use of the term "service brakes" in the proposed rule would prohibit the use of dynamic brakes during tests. The final rule allows the use of "auxiliary retarders" when they are simultaneously activated by the application of the service brake control. The term "dynamic brakes" and "auxiliary retarders" are often used interchangably. The final rule clarifies MSHA's intent that all braking systems which are designed to bring the equipment to a stop under normal operating circumstances may be used during the test. Parking and emergency brakes or, as they are sometimes described, secondary brakes, are not to be used during a test since they are not designed or intended to stop equipment under normal braking circumstances.

Another aspect of testing involves the load carried by the vehicle being tested. In the proposed rule, MSHA provided that service brakes were to be tested with the equipment "fully loaded." Several commenters objected to this provision. They favored testing vehicles which were loaded to their gross vehicle weight, while others took the position that either of those measures would be inappropriate where a mining operation routinely fills its haul trucks below their capacity.

The final rule responds to these concerns by providing that equipment is to be tested with a load which is typical for the particular model of equipment at the mining operations. Gross vehicle weight was not utilized as the measure for loading because it would be necessary to weigh equipment before a test. Scales are not always present at operations and even where present, the load for some equipment may exceed the scale's measuring capacity.

MSHA notes that the testing provisions of the brake standard is not limited to haulage trucks. It applies to all types of self-propelled mobile equipment which is capable of traveling at least 10 miles per hour. For non-haulage vehicles, the typical load consists of the load, if any, that is normally carried by the equipment to be tested.

Several commenters were concerned that front-end loaders with full buckets might have less stability during testing and could spill some of their load. To ensure safety, the final rule provides that front-end loaders are to be tested with the loader bucket empty. For safety reasons the final rule also provides that equipment carrying hazardous loads, such as explosives, may not be tested with those loads. In such instances, the hazardous load must be removed and an equivalent substitute weight placed on the equipment before testing.

Some commenters also believed that the table which sets forth the maximum allowable distances should have a separate weight category and longer stopping distances added for equipment weighing over 600,000 pounds. The final rule does not provide an additional category because the heaviest weight class already specifically includes all equipment which exceeds 400,000 pounds. The major reason for allowing greater stopping distances for heavier equipment is to take into account the increased time it takes for the service brake system to respond to the application of the brake. This "system response time" does not significantly increase for equipment which exceeds 400,000 pounds.

Commenters also questioned whether the standard should include testing of equipment underground. The proposed rule provided that testing would apply to all equipment capable of traveling at least 10 miles per hour. Many commenters objected to testing of equipment underground due to restricted roadway widths, the presence of drift walls, and limited lighting. Other commenters believed that while some underground roadways would be inappropriate, each situation should be independently assessed. MSHA has considered both of these viewpoints but, in recognition of the limitations for brake testing underground, the final rule limits testing to equipment which is used at surface locations. Therefore, testing applies to surface locations at underground mines and all surface mines.

Several comments were directed toward the details of testing. As pointed out by commenters, some equipment with defective brakes could, technically, pass a brake test by sliding sideways as long as the maximum distance was not exceeded.

In such a situation, more than the braking system in at work in stopping the equipment since lateral motion is involved. Equipment is not designed or intended to stop in this manner. For this reason, the final rule provides that a valid test requires that the equipment not slide sideways or exhibit other lateral motion while braking.

The proposed rule also provided that the roadway approach have sufficient length and uniformity of grade to enable the equipment to maintain a stable rate of speed. The proposal stated that the braking portion of the test course was to be generally level, dry, and packed. Some commenters believed these ground conditions would be difficult to find and could be a source of controversy. MSHA's field testing disclosed that appropriate test sites will exist at most mines. As mentioned in the proposed rule, a distance of less than one-sixth of a mile is needed. However, where no appropriate site is present, no tests would be required. Test sites are not required to be constructed under this standard, although some mining operations may decide to designate their own test sites as a useful method of field testing their own equipment after repairs.

The final rule clarifies that the approach is to be of sufficient length to allow the equipment operator to reach and maintain a constant speed between 10 and 20 miles per hour prior to entering the 100 foot measured area. In response to comments, the final rule states that the roadway is to be wide enough to adequately accommodate the size of the equipment being tested. It also explains that ground moisture may be present to the extent that it does not adversely affect the braking surface. Some degree of ground moisture has the effect of improving stopping performance. Although some commenters expressed concern that spillage during testing could affect whether the ground remains generally level, MSHA has determined that this will be unlikely since testing will typically involve a single piece of equipment. The testing of front-end loaders with their buckets empty should also diminish this likelihood. Should this problem arise, the course could also be regraded, but MSHA's field testing revealed that limited amounts of spillage did not affect the outcome or safety of the tests.

Although some commenters suggested that the equipment's power train be permitted to be disengaged during braking, the final rule does not allow this action unless the equipment is designed to function that way. Disengaging the power train may improve braking performance, since it disengages the rotational inertia of the electric motors on some equipment. However, except where so designed as part of the service brake system for stopping, this procedure would be inconsistent with the equipment's normal method of stopping. MSHA's field testing revealed that all well-maintained properly functioning equipment, regardless of its age, was able to readily pass the brake tests without this assistance.

As confirmed by MSHA's field studies, the brake testing provision provides an objective, safe and reliable means for mine management and MSHA to resolve questions about the performance of service brake systems on surface equipment. It provides means to quantitatively measure the performance of the brake systems in question.

Where there is not an appropriate test site at the mining operation or the equipment is not capable of traveling at least 10 miles per hour, service brake tests will not be conducted. In such cases, the inspector will rely upon other available evidence to determine whether the service brake system meets the performance requirement of this standard.

*Section 56/57.14102 Brakes for rail equipment.* This final standard revises existing §§ 56/57.9048 by clarifying that braking systems on railroad cars and locomotives are required to be maintained in functional condition.

Several commenters wanted this section to apply only in those instances when rail equipment is under the control of the mine operator. These commenters noted that there is great diversity in the business relationships between mine operators and railroads as to ownership, maintenance, and control over rail equipment. MSHA's objective is to provide for safe rail equipment on mine property, regardless of who owns or controls the equipment. However, when a violation of a standard pertaining to rail equipment is involved, MSHA will examine the circumstances to determine who is responsible for correction of the violation.

Some commenters considered it unnecessary for all railroad car braking systems to be functioning if there were a sufficient number of cars with functioning systems to be able to stop the train. MSHA has considered this approach but the final rule requires each railroad car equipped with a braking system to be functional. That system must be maintained in functional condition for several reasons. First, cars are often handled individually and their braking systems must function individually. Second, if the braking systems on all cars were not maintained, numerous cars could be linked together with no functional brakes.

The final rule does not require the installation of braking systems, but rather requires that provided systems be maintained in functional condition.

*Section 56/57.14103 Operators' stations.* This final standard sets forth several safety requirements relating to the operator's station on self-propelled mobile equipment. It consolidates existing §§ 56/57.9010, 56/57.9011, and 56/57.9012.

Paragraph (a) requires that when windows are provided on equipment they are to be of safety glass or a material with an equivalent safety characteristic maintained to provide safe operating visibility. Commenters asked MSHA to explain what would be equivalent to safety glass. Safety glass is a general term which refers to a type of glass which breaks into relatively harmless granules upon impact, instead of sharp pieces. Therefore, any glass or plastic product with equivalent performance qualities meets the requirements of this paragraph.

Some commenters also suggested that this paragraph retain the existing requirement that windows be kept "clean", instead of the proposed rule's wording that windows be maintained to provide safe operating visibility. MSHA retained the wording of the proposed rule because it more accurately describes the desired performance objective of the standard.

Paragraph (b) addresses damaged windows. It requires the removal and in some instances, replacement of windows when they have been damaged in a manner which either obscures operating visibility or poses a risk of injury to the equipment operator. Replacement is required where the absence of a window would leave the equipment operator exposed to hazardous environmental conditions which would affect the ability to safely operate the equipment.

While some commenters believed that the rule should specifically name the hazardous environmental conditions which would require replacement of windows, others stated that the performance language of the proposed rule permitted flexibility to address each circumstance. The final rule requires window replacement only when hazardous environmental conditions such as extreme cold weather, rain, snow, or dust affect the ability of the equipment operator to safely operate the equipment.

Paragraph (c) requires that operators' stations be free of materials which could impair safe operation of the equipment and prohibits modification of the station in a manner which would impair visibility. Commenters were concerned that the standard, as proposed, could be interpreted as prohibiting some factory installed equipment options. The standard would only prohibit options that obscure visibility or otherwise affect safety. It is unlikely that factory installed equipment would hinder safe operation or impair visibility since manufacturers take these concerns into account in designing equipment.

*Section 56/57.14104 Tire repairs.* This final standard appeared in the proposed rule for loading, hauling, and dumping and replaces existing §§ 56/57.9069. It addresses the safety procedures and devices to be employed when tires are being repaired. Serious injuries and fatalities have occurred to miners who have been engaged in tire repair. In several instances, multi-piece rims have separated during repair. Tremendous force can accompany such a separation. For example, a size ten hundred twenty tire inflated to 100 psi, creates a pressure of 41,600 pounds against the rim flange. In the proposed rule, these hazards were addressed by requiring tire deflation before repairs were started and by using devices during tire inflation to constrain wheel components in the event of an explosive separation. As an alternative, the proposal would have permitted devices that allow persons to stand clear of the trajectory of such a separation. In response to commenters, the final rule clarifies several aspects of these requirements.

The proposed rule required that tires be deflated before repairs are started. The final rule retains this requirement and specifies that before repairing a tire, the valve core must be partially removed to allow for gradual deflation. The proposed rule also provided that when repair was necessary on either tire of a dual wheel, both tires were to be deflated before either was removed from the equipment. Many commenters objected to this provision. They believed that this requirement could increase the probability of a hazard since two tires would need to be reinflated after repair of the defective tire had been completed. The commenters believed that the hazards associated with tire repairs were greatest during re-inflation of the tire. MSHA had proposed that both tires be deflated where dual wheels were involved because in some repair instances the inner wheel rim has separated violently, forcing the outer tire and rim to fly off. However, this hazard must be weighed against the hazards associated with tire inflation. MSHA agrees that requiring both tires to be deflated would increase the probability of an injury since wheel rim separation is always a risk during tire inflation. For this reason, the final rule does not contain the requirement to deflate both tires. MSHA notes that the final rule's provision for the use of devices that allow persons to stand outside of the potential trajectory of the lock ring should diminish the potential

for injury in the event of separation of the inner wheel's rim.

Several comments were directed to the scope of the standard. One commenter asked whether the standard would apply where brake or axle repair was involved. Another questioned whether re-inflation of a tire, apart from any repair, is covered by the standard. The standard is intended to address hazards to persons which are associated with the performance of repair work on tires. Since brake and axle repair do not directly involve tire work the standard does not apply to those situations. However, tire re-inflation, even apart from any repair, involves direct work on tires and can pose the same hazard of sudden wheel rim failure. Therefore, the provisions of paragraph (b), involving the use of a restraining device or a stand-off inflation device, apply to tire inflation in all situations. Should a malfunction occur while using a stand-off inflation device which requires the need to approach the tire, the following precautions should be taken: The tire should either be deflated, or a safety cage, chain or restraint should be used, and the tire should be approached from the side.

Commenters also stated that the standard should apply to single as well as multi-piece wheel rims. Other commenters believed that the standard should adopt the Occupational Safety and Health Administration's (OSHA) provisions for the servicing of wheels (29 CFR 1910.177) which applies to single and multi-piece wheels. MSHA agrees that both wheel types can present hazards during deflation and inflation, and the requirements of the rule apply to both. Similarly, in answer to one commenter's request for clarification, this standard applies to all wheeled vehicles, both on and off road types. A review of mining accidents from 1978 to 1980 associated with tire repairs, indicates that 54 injuries occurred which included 6 fatalities from tire explosions. After reviewing these accidents and the OSHA provisions, MSHA believes that the final rule will provide the appropriate level of protection against the hazards associated with tire repairs.

Commenters stated that the standard did not specify the strength required for tire cages or other restraining devices. The final rule includes performance language which requires that the device must be capable of constraining all wheel rim components during an explosive separation. Although some commenters did not believe that a stand-off inflation device should be permitted as an alternative to a restraining device, MSHA has allowed this alternative since both devices furnish protection from explosive separation. One commenter noted that the standard did not clarify whether tire repairs could be performed on loaded, or unloaded, jacked-equipment. These related repair aspects are addressed by §§ 56/57.14105. Editorially, the standard uses the more commonly recognized "multi-piece rim" in place of the proposed rule's reference to "wheel locking rims".

*Section 56/57.14105 Procedures during repairs or maintenance.* This final standard clarifies the requirements of existing §§ 56/57.14029. Prior to the performance of repairs or maintenance on machinery or equipment, the power must be off and the machinery or equipment blocked against hazardous motion. The final rule allows an exception to this requirement which permits machinery and equipment motion or activation to the extent necessary for adjustment or testing, as long as persons are not exposed to hazardous motion. The existing standard had permitted this exception only when it was necessary for making adjustments.

The proposed rule included a requirement that the power also be "locked-out". Commenters pointed out that for some types of mechanical equipment this requirement was not practical. For example, some types of self-propelled mobile equipment start without an ignition key system. These commenters also noted that where electrically powered equipment is involved, §§ 56/57.12016 and 56/57.12017 require that power switches be locked-out. MSHA agrees that many types of mechanically-powered equipment cannot be locked-out practically and that other standards address lock-out requirements for electrically powered equipment. The final rule, therefore, does not contain the proposed "lock-out" requirement.

*56/57.14106 Falling object protection.* This final standard revises and clarifies existing §§ 56/57.14013 and was proposed in Subpart H. It addresses the injuries and fatalities which have occurred to operators of certain types of mining equipment as a result of falling objects. The rule requires that protective structures be provided on fork-lift trucks, front-end loaders, and bulldozers if the equipment is used in an area where falling objects could present a hazard to the equipment operator.

The existing standard required that this equipment be provided with "substantial canopies when necessary to protect the operator." The final rule retains the performance-oriented language while requiring that the strength of the structure be consistent with the anticipated loads. It further clarifies that the protection is required when the equipment is used in an environment which could create a hazard of falling objects. If hazards such as falling ground near a bank, highwall or face, or toppling materials at a storage facility or materials handling site could be anticipated, a structure must be provided. An evaluation would be necessary to determine the anticipated weights and forces of the falling object so that sufficient strength can be built into the structure.

In many instances, fork-lift trucks, front-end loaders, and bulldozers are equipped at time of manufacture with structures which meet the applicable falling object protective structures (FOPS) specifications of SAE or the American National Standards Institute (ANSI). These specifications are based on extensive engineering studies which have taken into account anticipated weights and forces of falling objects. Structures meeting these specifications, therefore, would comply with this standard.

The standard also allows for on-site fabrication and installation of structures other than those which meet the specifications of SAE and ANSI standards provided that the necessary strength requirements are considered.

The proposed rule provided for compliance through incorporation by reference of the SAE and ANSI standards. Some commenters preferred the approach of the existing standard's requirement to provide "substantial" canopies on the listed equipment. They considered the incorporation by reference in the proposal to be an "unnecessary complexity". In contrast, other commenters preferred the incorporation by reference approach because it required a measured degree of safety. A third group of commenters requested that the standard permit both approaches. Agency experience has indicated that the necessary degree of safety can be achieved through either alternative and the final rule, therefore, recognizes structures which meet the SAE or ANSI standards as well as those which meet the standards' performance requirements as acceptable for compliance with the rule.

Commenters also contended that the incorporated documents contained in the proposed rule may not address all types and sizes of the listed equipment which is found at metal and nonmetal mines and may not be appropriate in all situations.

In view of these comments and the Agency's desire to replace incorporations by reference with specific performance-oriented requirements where possible, this standard contains no incorporation by reference. To assist mine operators in meeting the performance criteria for falling object protective structures, an appendix of applicable national consensus standards is included as an informational aid.

*Section 56/57.14107 Moving machine parts.* This final standard revises and consolidates existing §§ 56/57.14001 and 56/57.14003. As with the existing standard, the final standard requires the installation of guards to protect persons from coming into contact with hazardous moving machine parts. The standard clarifies that the objective is to prevent contact with these machine parts. The guard must enclose the moving parts to the extent necessary to achieve this objective. It also provides that guarding by location is recognized as an alternative to a physical guard in instances where the exposed moving parts are elevated at least seven feet above walking or working surfaces.

The proposed rule would not have permitted guarding by location for fan blades. This was based upon a concern that the blades could become projectiles upon disengagement from the fan shaft. Commenters questioned whether a guard would be able to contain a fan projectile and whether guarding was needed at all for elevated ventilation fans which operate at low speeds. MSHA agrees that in several situations a guard would not be able to provide effective containment, and in other situations would not be practical or necessary. For these reasons, the final standard permits guarding by elevated location for fan blades, as well as for the other classes of moving machine parts. This change is consistent with the standard's intent to protect persons from contacting moving machine parts, as opposed to protecting persons from machine parts which have become projectiles after becoming disengaged from a machine.

Some commenters suggested that the standard also permit an exception for situations where the exposed moving parts are "located out of reach." However, this phrase would create uncertainty as to the standard's application. Under the final rule, the standard applies where the moving machine parts can be contacted and cause injury. Some commenters believed that guards should provide protection against inadvertent, careless, or accidental contact but not against deliberate or purposeful actions. They considered guards which totally enclose moving parts as counter-productive to other safety considerations such as proper work procedures, training, and general attention to hazardous conditions.

In reviewing the statistics in which persons working in mines have lost hands, arms, legs, and their lives to moving machine parts, MSHA notes that in most of those instances the persons were performing deliberate or purposeful work-related actions with the machinery. The installation of a guard to enclose the moving machine parts would have prevented most of those injuries. Guards provide a physical barrier, which offers the most effective protection from hazards associated with moving machine parts. MSHA recognizes that guards provide only one of several safety measures for preventing injuries which can result from contact with moving machine parts. Proper work procedures, safety training, and attentiveness to hazards all play a role in reducing those injuries.

Some commenters questioned whether the standard would require guarding beyond that provided by the manufacturer for the engine cooling fan on small vehicles such as vans or pickup trucks. In those situations the vehicle size and the engine hood would act to prevent access and contact with the exposed moving parts, and no additional guard would be required. However, larger, off-road vehicles present special hazards because of the greater accessibility to their moving machine parts. In some instances persons can walk directly under the vehicle to inspect the engine and be exposed to its moving parts. In most instances, these parts are already guarded by the manufacturer but guards are sometimes removed during repair work and not replaced. MSHA's objective is to ensure that these guards remain in place.

Commenters also questioned whether the guarding requirement would reduce equipment inspection and maintenance capability by obscuring the ability to make observations of belt slippage or breakage. The commenters also believed that guards which met the performance objective of the proposed standard would be heavy and, therefore, pose risks of strained backs, hernias, and injured hands during installation or removal for maintenance.

The final rule does not require guards which are different from those currently required. Instead, the standard is intended to clarify the performance objective of guards. The standard does not specify the type of material to be used for guarding, but expanded metal or transparent safety plastics are examples of alternatives which provide lightweight means to enclose the moving parts so that they cannot be contacted while also allowing observation during machinery operation.

*Section 56/57.14108 Overhead drive belts.* This final standard revises existing §§ 56/57.14002. It requires guarding of overhead drive belts in instances where the whipping action of a broken belt could be hazardous to persons. The existing standard applied only where the whipping action could affect persons beneath the overhead belt. The final rule clarifies that the standard applies to drive belts and that containment of the hazardous whipping action is required for all directions where the danger exists.

*Section 56/57.14109 Unguarded conveyors with adjacent travelways.* This final standard revises existing §§ 56/57.9007. It requires that unguarded conveyors next to travelways be equipped with emergency stop devices or protective railings. Emergency stop devices must be located so that a person falling on or against the conveyor can readily de-activate the conveyor. If railings are used as an alternative to stop devices, the railings must be placed in a position which will provide protection for the person and must be capable of preventing persons from falling on or against the conveyor. Under the existing standard, railings have been permitted by MSHA policy.

Commenters questioned whether the emergency stop devices must run the length of the conveyor or the length of the travelway. The standard has been revised to clarify that it applies only to the extent that the travelway is along an adjacent and unguarded conveyor. Where portions of the travelway and conveyor are not adjacent, emergency stop devices are not required.

Some commenters were concerned that the alternative permitting railings as a means of compliance would limit the standard to pipe railings and prohibit the use of other materials. The standard does not restrict the type of material used. The important consideration is that the railing meet the standard's performance requirements by being positioned properly and structurally capable of preventing persons from falling on or against the conveyor.

The railings must be able to withstand the anticipated forces such as vibration, shock and wear, to which they would be subjected during normal operations. Consideration must also be given to construction material and maintenance

so that the railing does not pose a hazard. For example, if wire ropes or wood are used, they must not be frayed or have jagged ends which could create a puncture or laceration hazard to a person traveling in the area.

*Section 56/57.14110 Flying or falling materials.* This final standard revises existing §§ 56/57.14011 and addresses those instances where a hazard is created by flying or falling materials generated from the operation of screens, crushers, or conveyors. The existing standard did not specify the sources of the flying or falling material. The final standard requires guards, shields, or equivalent protection to be provided in areas where persons are exposed to hazards from those sources. Some commenters believed the standard should address all instances where a hazard is created by flying or falling materials. MSHA has limited the scope of the standard in the final rule to those hazards associated with the operation of screens, crushers, or conveyors because several other safety standards already provide protection from other specific sources of flying or falling materials.

*Section 56/57.14111 Slusher, backlash guards and securing.* This final standard revises existing §§ 56/57.9015. It requires that safety devices be provided when slushers are used. A slusher is a versatile piece of machinery which is used to move material or other machinery by means of a hoisting engine, cables, and two drums on which the cable is wound. It is distinguished from a similar machine known as an "air tugger" which has a single drum and cable.

Commenters suggested that the proposed rule's requirement to securely anchor slushers and equip them with rollers and drum covers be limited to situations where persons are exposed to slushing operations. MSHA agrees and the final rule adds this qualification to address situations where slushing operations are performed by remote control or from protective enclosures. Commenters also suggested that cable guides be permitted in place of rollers. MSHA did not adopt this suggestion because guides can cause burrs to develop on the cable and increase the chance of a hangup or break in the cable.

In response to commenters, the final rule expressly states that the standard does not apply to air tuggers of 10 horsepower or less that have only one cable and one drum. As noted in the preamble to the proposed rule, this standard is not intended to apply to such devices since their low horsepower minimizes the hazards associated with slushers.

*Section 56/57.14112 Construction and maintenance of guards.* This final standard replaces and consolidates existing §§ 56/57.14006 and 56/57.14007. As with the existing standards, it addresses construction characteristics, maintenance, and safe practice requirements for guards. To be useful and effective, guards must not themselves create a hazard and must be able to withstand the vibration, shock, and wear to which they would be subjected during normal operations. In response to commenters, the rule does not include the proposed rule's reference to "all reasonable" vibration, shock, and wear and clarifies that guards must be able to stand up to the stresses they will be subjected to during normal operation. Both the existing standard, and the new standard require that guards remain securely in place while machinery is being operated. However, the final standard permits removal of the guard when the testing or adjustment of the machinery could not otherwise be performed. The existing standard had permitted guard removal only for testing.

*Section 56/57.14113 Inclined conveyors: backstop or brakes.* This final standard clarifies existing §§ 56/57.9013. It requires the installation of backstops or brakes on drive units of inclined conveyors to prevent the conveyors from running in reverse and exposing persons to the risk of material rushing downward which can occur when the incline causes the conveyor and the material being conveyed to reverse direction. The final standard clarifies that these devices are installed on the drive units of inclined conveyors.

Commenters were concerned that the standard's requirement for devices which "prevent" conveyors from running in reverse might prohibit the slight backward motion which occurs when the brake is setting up. Because the standards performance objective is to prevent conveyors from "running" in reverse, the momentary backward motion as the brake engages would not constitute a violation.

*Section 56/57.14114 Air valves for pneumatic equipment.* This final standard clarifies the requirements of existing §§ 56/57.9026. It requires a manual master quick-close type air valve on all pneumatic-powered equipment if there is risk of uncontrolled movement of the equipment when the air supply is activated. The valve is required to be closed unless the equipment is being operated.

Some commenters wanted the standard to be revised to apply only to operator controlled self-propelled pneumatic powered equipment which is used for loading, hauling, and dumping. In MSHA's view, all types of pneumatic powered equipment which present a potential for uncontrolled movement upon activation of the air supply, need to be equipped with this safety valve. MSHA notes that these valves are a standard feature on most types of pneumatic equipment which have this hazard potential. MSHA is aware that some equipment is provided with a control trigger switch and cannot be activated unless the trigger is depressed. Pneumatic powered equipment provided with a trigger switch control is not required to have a master valve since no uncontrolled motion could occur until the trigger is depressed.

Some commenters opposed the proposed rule's requirement that the valve be closed unless the equipment is being operated. They believed it was unnecessary to have the valve closed when the equipment was not connected to the air supply. Other commenters favored having the valve remain closed except during operation of the equipment. MSHA retained this requirement in the final rule to avoid the potential for injury which may occur when equipment with an open valve is inadvertently connected to an open air supply, thereby creating sudden movement of the pneumatic equipment.

*Section 56/57.14115 Stationary grinding machines.* This final standard revises and clarifies existing §§ 56/57.14008. As with the existing standard, the final standard requires peripheral hoods, safety washers, and adjustable tool rests as safety devices for stationary grinding machines. It specifies the maximum allowable opening between adjustable tool rests and grinding wheels. The tool rest opening is an important safety consideration because a gap which is larger than the width of the material being ground can allow the material to be drawn into the grinding wheel and cause serious injury. To eliminate this hazard, the standard requires that the opening be set so that all points between the grinding surface of the wheel and the tool rest are not greater than ⅛ inch.

The existing standard required the tool rest opening to be set as close as practical to the wheel. In the preproposal draft, the agency included a performance oriented requirement that would have permitted a variable tool rest opening, as long as the opening was smaller than the material being worked. The proposed rule provided that the opening not exceed ⅛ inch. Although some commenters preferred the variable

opening requirement, other commenters supported the ⅛ inch requirement.

The ⅛ inch opening has been recognized as a setting which provides reliable protection from the serious hazard of material being drawn into the grinding wheel. The opening is also identical to the ANSI recommended practice for grinding wheel tool rest settings which that organization has advocated for four decades.

A risk associated with the variable setting approach is that each individual may have to adjust the tool rest opening prior to using the grinding machine. Failure to make the adjustment or misjudgment as to the maximum safe opening, could cause a serious injury if the material gets drawn into the grinder. Maintaining a maximum ⅛ inch opening provides protection regardless of the size of the material being worked or whether the opening is checked prior to use. For these reasons, MSHA believes that a fixed ⅛ inch maximum opening more effectively addresses the hazard than would a requirement permitting variable openings.

Commenters also suggested that the standard include two additional safety practices for stationary grinding machines. One suggestion was the inclusion of the "ring test" to verify that new grinding wheels are nondefective prior to their installation on a grinding machine. Another commenter suggested that the standard prohibit the practice of grinding items on the side of the wheel, instead of the surface edge. These situations are addressed by §§ 56/57.14205, which require that tools and equipment be used according to the manufacturer's specification and instructions.

*Section 56/57.14116 Hand-held power tools.* This final standard revises existing §§ 56/57.14010. It addresses operating controls for certain classes of hand-held power tools. The existing standard required constant pressure operating switches, or their equivalent, for these tools. The final standard clarifies these requirements and lists the tools to which it applies. It requires power drills, disc sanders, grinders, circular saws, and chain saws to be equipped with operating controls requiring constant hand or finger pressure. Many power drills, disc sanders, and grinders are also equipped with devices which can lock-on the operating controls. Under the final rule, these tools are to be operated only by using the constant pressure switch when they are being operated by hand. Circular saws and chain saws are prohibited from having devices which "lock-on" the operating controls.

Under the proposed rule, the standard would have prohibited the presence, as well as the use, of lock-on devices for each of these classes of power tools. Although commenters agreed that circular and chain saws should not be equipped with lock-on devices, several commenters objected to the proposal's requirement to forbid lock-on devices on power drills, disc sanders, and grinders because many of them are sold with these devices and the proposal would have required their removal. Commenters suggested that improper removal of the devices could result in increased hazards for persons using the tools in the hand-held mode. Commenters also were concerned that the devices were permitted for certain work areas regulated by OSHA, but under the proposal would have been prohibited at mines.

The final standard recognizes that many power drills, sanders, and grinders are manufactured with lock-on devices as a standard feature. One reason these tools come equipped with lock-on devices is to permit their use in machine stands. For example, a hand-held drill secured in a machine stand can serve as a drill press. Although the lock-on devices need not be removed, the standard continues to prohibit their use when the tool is operated in the hand-held mode. Commenters acknowledge the potential for serious injury when loss of control occurs. Some manufacturers of these power tools have also recognized the potential hazards and advise that the lock-on feature be utilized only when the portable tool is placed in a stationary machine. By not requiring the lock-on feature to be removed, these power tools can be used in stationary machines at mines and can continue to be used at work sites inspected by OSHA, to the extent permitted by applicable standards.

Some commenters believed that use of a lock-on device could lessen fatigue for the tool operator. MSHA, however, believes that the devices should not be substituted for rest when the users of power tools become fatigued.

*Section 56/57.14130 Roll-over protective structures (ROPS) and seat belts.* This final standard is derived from and replaces existing §§ 56/57.9088. It applies only to surface mining equipment, and specifies the types of equipment which must have roll-over protective structures and seat belts to protect equipment operators in event of an accident.

Many commenters were directed to the scope of equipment covered by this standard. Some commenters wanted the standard to include underground equipment while others were opposed to such an extension. A third group wanted to exempt equipment which operates in flat areas.

The final standard retains the existing standard's scope and would apply to surface mines and surface areas of underground mines. MSHA's accident data does not support requiring ROPS in underground mines. However, accident data strongly supports the need for ROPS for surface equipment. From 1983 through 1986, 21 miners were killed while operating the type of equipment addressed by the roll-over and seat belt protection requirements of this standard. In 16 of these fatal accidents the equipment rolled over. In 11 instances no roll-over protective structures (ROPS) were provided. In 18 of these accidents seat belts were not worn; either because they were not provided (12) or, were provided but not worn (6). As to the suggested exemption for flat areas, mining equipment is exposed to varying terrains, and equipment may be susceptible to a roll-over in level or near level areas under certain conditions, often depending upon the distribution of the load on the equipment. The final standard updates the existing standard's references to SAE documents to reflect the most current publications.

The terminology used to describe the equipment is taken from the referenced SAE documents, but the rule does not expand the classes of equipment from those addressed by the existing rule. In the proposed rule, MSHA published a table which compared the existing standard's terminology with the new terminology for these classes of self-propelled mobile equipment. To aid in the transition to this new terminology, the comparison table has been republished in this preamble:

COMPARISON TABLE

| Current SAE and final rule terminology | Existing standard terminology |
|---|---|
| Crawler tractors and crawler loaders. | Front-end loaders, tractors, and dozers. |
| Graders | Motor graders |
| Wheel loaders and wheel tractors. | Front-end loaders and tractors. |
| The tractor portion of semi-mounted scrapers, dumpers, water wagons, bottom-dump wagons, rear dump wagons and towed fifth wheel attachments. | Self-propelled scrapers. Off-road wheeled prime movers. |

COMPARISON TABLE—Continued

| Current SAE and final rule terminology | Existing standard terminology |
|---|---|
| Skid-steer loaders | Front-end loaders |
| Agricultural tractors | Agricultural tractors. |

Commenters questioned whether particular types of equipment would require ROPS. The Comparison Table is intended to assist in answering these questions and will resolve most matters. For example, one commenter asked whether fork-lift trucks are required to have ROPS. Since this equipment is not listed in the standard or the comparison table, it is not required to have ROPS. The specific SAE documents can also be consulted in resolving particular questions and MSHA district offices will assist mine operators in these matters.

The standard requires roll-over protective structures (ROPS) and seat belts for certain classes of self-propelled mobile equipment. The performance requirements for these safety devices are based upon technical documents developed by SAE. These documents are incorporated by reference in this rule in recognition of the extensive engineering criteria which must be considered when constructing and installing roll-over protective structures. ROPS must be able to provide protection from varying forces exerted from numerous directions in a roll-over situation. A predictable level of performance is best provided by construction which meets the specifications of these SAE documents.

Some commenters suggested that the ROPS label information be made available at the mine as an alternative to affixing it to the structure. This concept has not been included in the final rule because it could result in a mix-up as to which equipment was matched to a particular model of ROPS. In most instances, these labels are secured to the structure by welding, riveting or some other relatively permanent method. The chance of dislodgment during equipment use is remote.

The proposed rule would have required ROPS to be installed in accordance with the recommendations of the manufacturer and also specified the grades of bolts to be used for attachment purposes. Some commenters were concerned that this provision could result in the use of inappropriate bolts in some instances. In response to these comments, the final rule does not refer to specific bolts since the manufacturer's recommendations will provide the correct grade of bolt to be used.

This final standard also requires that ROPS be maintained to assure that the performance requirements continue to be met. When a ROPS is subjected to a roll-over, or abnormal structural loading, either the equipment manufacturer or a registered professional engineer with knowledge and experience in ROPS design must recertify that the ROPS continues to meet the performance requirements of this standard. A similar recertification would also be in order if the ROPS undergoes modifications or repairs for any other reason.

Several manufacturers of ROPS stated that proper repairs or alterations require knowledge as to how the specific type of ROPS performs during plastic deformation. Some of these commenters believed that only manufacturers should be permitted to make repairs, while other commenters believed that engineers with the experience described above were fully qualified. Plastic deformation relates to the designed partial collapse of some ROPS during a roll-over or abnormal structural loading, in order to absorb some of the impact from those events. Sometimes a ROPS may outwardly appear to be sound after such an event while having undergone subtle damaging effects to its integrity. In the final rule, MSHA has retained the provision allowing registered engineers with knowledge and experience in ROPS design to certify that the ROPS complies with the standard. This knowledge and experience should include, where applicable, information relating to performance of the specific type of ROPS during plastic deformation.

The final rule continues the existing exemption for equipment manufactured prior to July 1, 1969, since much of that equipment could not structurally support ROPS.

Some commenters were concerned that ROPS which were acceptable under the existing standard would no longer be in compliance. The final standard's updated references apply only as of the effective date of this rule. The standard's new requirement applies to ROPS installed after the effective date of this rule. Equipment currently in compliance under existing §§ 56/57.9088 will continue to be in full compliance with the new standard as long as the affected piece of equipment remains in service.

Commenters also addressed the requirement for equipment operators to wear seat belts. Many commenters supported this provision. Others noted that its successful implementation will require educational efforts and, in some intances, disciplinary sanctions for failure to abide by the provision. To address commenters' concerns and after reviewing the above statistics, the final rule requires that seat belts be worn by the equipment operator. Some commenters also urged that an exception be permitted for situations when the equipment operator needs to stand in order to operate the equipment. Graders and loaders were cited as examples of equipment which require the operator to stand occasionally. MSHA has reviewed these concerns but concludes that a harness and safety line must be used in the limited instances where equipment operators might be required to stand while operating the equipment. Standing exposes the equipment operator to a higher risk of losing control of the equipment and falling from it. Commenters noted that in many instances equipment operators have been run over by their own equipment after jumping or falling off. Assisting equipment operators in maintaining control of the equipment by keeping the operator seated and in command of the equipment's controls diminishes the potential for a roll-over. Therefore, where operators must stand, the standard requires that a harness and safety line be used. Standing should rarely be required since the controls on graders and loaders are designed to be properly operated from a seated position.

Many comments were directed to the requirement for seat belts. The proposed rule referenced a single document for seat belts, SAE J386, April 1980, which requires equipment operators to wear seat belts. The final standard incorporates by reference, SAE's latest publication, SAE J386, "Operator Restraint Systems for Off-Road Work Machines", 1985.

Some commenters believed that the standard should also add SAE document J 1194 for agricultural tractor seat belts. MSHA agrees and the final rule includes this reference.

The final standard also provides that belts shall be maintained in functional condition, and replaced when necessary to assure proper performance.

Commenters also stated "that it would be extremely difficult to keep seat belts 'free' from grease, oil, or other deteriorating agents as proposed". The final rule deletes this requirement for clean belts but retains the criteria for maintenance and replacement of seat belts.

*Section 56/57.14131 Seat belts for surface haulage trucks.* This new standard requires that seat belts be

provided and worn in haulage trucks at surface mines and surface areas of underground mines. Under the existing §§ 56/57.9088, seat belts are required only for equipment which was provided with ROPS. Commenters stated that the seat belt requirement should be expanded to include haulage trucks. At the public hearings, commenters continued to advocate this position and they cited the occurrence of many fatalities involving haulage trucks which may have been avoided had seat belts been present and in use. No commenters were opposed to requiring seat belts for haulage trucks.

MSHA agrees that seat belts in haulage trucks would save lives provided that they were appropriate for the equipment in which they were installed. A review of 308 accidents from 1982 to 1984, involving off-highway trucks with seat belts, indicates that 130 were related to the nonuse of seat belts, including 6 fatalities. Therefore, the final rule adds haulage trucks as a category of equipment for which seat belts are required and specifies that the belts meet SAE requirements. MSHA expects that this requirement will have only a minimal cost effect since, as stated by one equipment manufacturer at the public hearings, seat belts are a standard feature on such equipment whether ROPS are present or not.

*Section 56/57.14132 Horns and backup alarms for surface equipment.* This revises existing §§ 56/57.9087. It requires that manually-operated horns or other audible warning devices provided on self-propelled mobile equipment be maintained in a functional manner. It is applicable to surface mines and surface areas of underground mines only, because the construction of load, haul, dump vehicles generally used underground, is such that the view to the rear is less likely to be obstructed. The standard protects persons from the hazard of backing equipment when the equipment operator's view to the rear is obstructed. Where there is an obstructed view, reverse movement alarms or the presence of an observer is required. This revised standard clarifies the application of the horn and backup alarm requirements, provides alternative compliance methods and exempts rail equipment.

Horns are provided on self-propelled mobile equipment for several purposes. An equipment operator may sound a horn to signal that equipment motion is imminent. The operator may also need to warn nearby persons of the presence of the moving equipment in their work area. Horns are also sounded to attract the attention of other equipment operators in the area when a collision may be likely to occur. Equipment manufacturers evalute the need for horns on self-propelled mobile equipment as part of the design process and take into account factors which include: The size and operating speed of the equipment; the operating noise of the equipment and other equipment in the area; the likelihood that persons traveling on foot might be in the area; and the presence or absence of a cab or enclosure on the affected equipment or nearby equipment.

Standards 56/57.9087 required that these audible warning devices be provided on all "heavy duty" mobile equipment. "Heavy duty" was not defined, and application of the horn requirement was a source of confusion and controversy. During the rulemaking process, commenters suggested that "certain types of equipment be exempted from the rule if it is small, slow-moving, provide good visibility for the operator, is track equipment operated at extremely slow speeds coupled with high engine noise, or is not equipped with horns and would have to be retrofitted."

Several commenters felt that a horn was not necessary so long as the operator's view to the front was not obstructed. MSHA believes that the equipment operator's good visibility to the front does not negate the need for a functioning horn since persons on foot or aboard other equipment may need to be warned of a developing hazard.

The Agency recognizes that many of the commenters' concerns are taken into account by equipment designers when determining whether or not a horn should be provided on a specific type of self-propelled mobile equipment. The final rule, therefore does not require that a horn be installed on specific types of equipment. However, where a horn is provided as a design feature on a piece of equipment it must be maintained in functional condition.

The standard also addresses situations where the equipment is operated in a reverse direction with the operator's view to the rear obstructed. Under these circumstances, reverse movement alrams or the presence of an observer is required. Existing §§ 56/57.9087, requires an automatic reverse signal alarm which is audible above the surrounding noise level or an observer to signal when it was safe to back up. The final rule retains these two alternatives and provides additional compliance methods which have been developed in recent years.

Wheel-mounted bell alarms are permitted provided they sound at least once for each three feet of reverse movement. Bell alarms are appropriate and effective in some instances because they do not rely upon an electrical source for initiation. In muddy conditions, however, they can become clogged and rendered useless. Mine operators must evaluate roadway conditions at their mine site to determine whether bell alarms would be appropriate.

Recent advances in backup alarm technology have resulted in the development of discriminating backup alarms, commonly referred to as proximity devices, which are an acceptable compliance alternative under the revised standard provided that they offer coverage of the entire "blind area". These discriminating backup alarm systems employ infrared light, ultrasonics or radar and the alarm is activated only when a person or object is detected in the obstructed area of view. Ultrasonic and radar systems have been found to provide more effective coverage of the "blind area". One of the advantages of these new systems is the fact that the alarm is sounded only when a hazard exists, rather than every time equipment is put in reverse. The constant sounding of a conventional backup alarm system may become an accustomed sound of the mining environment and therefore be less noticeable and effective as a warning. Additional information on discriminating backup alarms is available from the Bureau of Mines, 2401 E Street NW., Washington, DC, 20241 (see Technology News Bulletin No. 255, August, 1986, and Information Circular No. 9079, 1986).

All audible reverse alarm systems acceptable as complying with this standard must be sufficiently loud to be heard above the surrounding noise level.

MSHA has received numerous petitions for modification of the audible backup alarm requirement from mining operations which are located near residential areas and operate on multiple shifts. In these instances, mine operators requested that they be allowed to use reverse-activated strobe lights in order to comply with local noise ordinances. Strobe lights are effective as warning devices under darkened conditions. The final rule provides that these strobe lights may be used in place of audible alarms during night operations only.

*Section 57.14160 Mantrip trolley wire hazards underground.* This final standard appears as proposed. No comments were received. It is derived from existing § 57.9115, and is applicable underground only. It provides

protection for miners being transported on trolley-powered mantrips by requiring that the mantrip be covered if there is a danger of persons contacting the energized trolley wire.

*Section 57.14161 Makeshift couplings.* This final standard appears as proposed since no comments were received. It is derived from existing § 57.9098, and is applicable underground only. It addresses the hazards which exist when improper devices are used for connecting individual cars or components of a train. Couplings other than those designed for the specific equipment are permitted only during the movement of disabled rail equipment provided that no hazard to persons is created.

*Section 57.14162 Trip lights.* This final standard appears as proposed since no comments were received. It is derived from existing § 57.9112, and is applicable underground only. It provides for a visible signal in the darkened underground environment as an indication to miners that passing trains have cleared their area and that backing trains are approaching.

Safety Practices And Operational Procedures

*Section 56/57.14200 Warnings prior to starting or moving equipment.* This final standard revises existing §§ 56/57.9005. It requires that equipment operators give an effective warning prior to starting crushers and before moving self-propelled equipment.

Commenters were concerned about the scope of the proposed standard since it did not specify the types of equipment to which it applied. They also noted that some types of equipment would need to be started in order to actuate the warning devices.

The final standard specifies that it applies to self-propelled mobile equipment and crushers. It also clarifies that a warning must be given before starting a crusher and before moving the equipment.

*Section 56/57.14201 Conveyor start-up warning.* This final standard revises existing §§ 56/57.9006. It addresses the concern that persons be clear of conveyors before they are started. As with the existing standard, the final standard provides that in situations where the conveyor operator can observe the entire lenth of the conveyor from the starting switch, a visual check is required to make certain that persons are in the clear. Where the conveyor operator cannot view the entire conveyor length from the starting switch, a system which provides visible or audible warning of the impending conveyor movement is required. The final standard also requires that the warning must be repeated if conveyor motion does not occur within 30 seconds after the warning is given.

Commenters questioned how the standard would be applied for multi-conveyor systems. Whether a single belt or several belts are involved in the conveyor system, the deciding factor in determining whether a visual check or a warning device is required is the ability of the conveyor operator to see the entire length of the conveyor from the starting switch. Where the entire length cannot be seen, the warning device is required.

Some commenters believed the 30-second interval between the warning and the start of the conveyor is too short and recommended a 60-second interval be permitted to allow multiple belt systems sufficient time to start. MSHA has retained the 30 second interval to assure that the warning will be effective. Longer intervals may result in a lapse of attention or disregard of the warning. In most instances, belt systems will be able to start within 30 seconds after the warning is given. MSHA believes that in the few instances where systems take longer to start, improved safety will be provided by repeating the warning when motion does not begin within 30 seconds.

The standard does not specify the minimum amount of time between the warning and the conveyor start-up. Sufficient time must be allowed, however, for affected persons to leave the hazardous area.

*Section 56/57.14202 Manual cleaning of conveyor pulleys.* This final standard renumbers, but otherwise does not change, existing §§ 56/57.14033. Commenters supported the retention of this standard which prohibits manual cleaning of conveyor pulleys when the conveyor is in motion to prevent entanglement of persons in the pulleys.

*Section 56/57.14203 Application of belt dressing.* This final standard replaces and clarifies existing §§ 56/57.14034. As with the existing standard, the final standard prohibits the manual application of belt dressing while belts are in motion except where a pressurized-type applicator is used that does not require reaching inside the guards.

Some commenters believed that any applicator which does not require reaching inside the guard should be permitted. MSHA did not adopt this suggestion because only pressurized belt dressing applicators afford protection from the risk of persons or the applicator becoming ensnared by belt movement. Because this standard applies only to the manual application of belt dressing, it does nor restrict the use of mechanical means of application, such as drip-type devices.

*Section 56/57.14204 Machinery lubrication.* This final standard replaces and revises existing §§ 56/57.14035. Manual lubrication of machinery while it is in motion often exposes persons to a risk of harm. Serious injuries have occurred when persons have attempted to apply lubricant from outside a guard by using a hand-held extension, such as a stick coated with lubricant. For these reasons, the final standard continues to prohibit the manual lubrication of machinery while it is in motion, where application of the lubricant may expose persons to injury.

The existing standard and the proposed standard specifically allowed for lubrication of operating machinery through the use of extended fittings and cups. This provision has been removed from the final standard at the suggestion of commenters because it is unnecessary. The performance-oriented language of the final standard allows for the use of these types of devices since they do not expose persons to the hazards addressed.

*Section 56/57.14205 Machinery, equipment, and tools.* This final standard makes editorial changes to existing § 56/57.14036.

Some commenters considered the requirement to use machinery, equipment, and tools according to the manufacturer's specifications and instructions as proposed in § 58.14208, to be unrealistic in some mining situations. They proposed that this standard be deleted. MSHA agrees that the manufacturers' specifications and instructions could go beyond the intent of this regulation. However, MSHA notes that serious mining accidents can occur from the misuse of equipment. For example, haulage trucks can be loaded beyond their design capacity, and braking and suspension systems can fail. MSHA has therefore, retained the requirement that machinery, equipment, and tools shall not be used beyond the design capacity intended by the manufacturer where such use may create a hazard to persons.

This final standard permits mine operators to modify the machinery, equipment, or tools they purchase from manufacturers to suit their particular mining needs provided that hazards to persons aren't created. Overloading of equipment, such as haulage vehicles and cranes, that can create a hazard to equipment operators and other persons in the area would not be permitted by this standard.

Some commenters also considered this standard to be duplicative of § 56/57.14200 (defects affecting the safe operation of machinery, equipment, or tools). The focus of this standard is the safe use and modification of mining equipment while § 56/57.14200 address defective equipment. Defects may exist or develop in equipment even when used within the design capacity intended by the manufacturers or when it has been modified safely.

*Section 56/57.14206 Securing movable parts.* This final standard consolidates existing §§ 56/57.9031 and 56/57.9032. Together these standards address safety procedures to be followed to secure movable parts when moving equipment between work areas, and when this type of equipment is unattended or not in use.

Paragraph (a) addresses the procedures to be used when moving this equipment between workplaces. Commenters believed the standard should recognize that the extent to which a movable part needs to be secured depends on the type of equipment involved. These commenters were concerned that the proposed rules's requirement for movable parts to be secured in a safe travel position could imply type of physical or mechanical restraint system in each instance. The final rule clarifies that the movable part is to be positioned in the travel mode. Mechanical securing would only be necessary when required for safe travel. For example, when a drill mast or boom is mounted on a piece of mobile equipment it would be insufficient to only place the boom in its travel mode. The drill mast would also need to be mechanically secured to prevent it from moving about during travel between workplaces. In contrast, securing a bulldozer blade would require lowering of the blade to the normal travel position.

Paragraph (b), which addresses the procedures for securing these movable parts when equipment is unattended or not in use, has also been clarified in the final rule to reflect that the method of securing depends upon the movable part involved. In each instance the objective is to prevent movement of the movable part when it could create a hazard to persons.

*Section 56/57.14207 Parking procedures for unattended equipment.* This final standard consolidates existing §§ 56/57.9036 and 56/57.9037 and sets forth the procedures to be followed to prevent mobile equipment from moving when left unattended. Whenever equipment is unattended, the standard requires that the controls be placed in the park position and the parking brake, if provided on the equipment, be set. In addition, when mobile equipment is parked on a grade, the wheels or tracks must also be either chocked or turned into bank or rib. Except for an editorial change deleting the reference to the underground term "rib" in Part 56, the final standard adopts the wording of the proposed standard.

Several comments were directed to the proposed standard's requirement for setting the parking brake. Some commenters stated that they experienced continual maintenance problems with parking brakes because employees chronically forget to disengage them before moving equipment. Others stated that maintenance problems with parking brakes develop from the failure to use them. These commenters believed that it would be better to save the parking brake for emergency situations. As an alternative, they suggested having the vehicle cut a ditch in the road or be turned into a berm or rib. They also believed that it was unnecessary to apply the parking brake when the vehicle was on level ground. MSHA has considered each of these viewpoints, but believes that parking brakes should be fully utilized for their intended purpose. Although a parking brake might be engaged as a last resort to provide an additional means of slowing a vehicle in an emergency situation, it is not designed or intended for that purpose. Parking brakes are intended for the purpose of keeping stopped equipment stationary. In contrast, many types of self-propelled mobile equipment used in mining are designed with an emergency braking system that is distinct from the parking brake. Manufacturers advise, in their equipment operating instructions, that parking brakes are to be applied any time the equipment is stopped and is to remain stationary. In some instances vehicle manufacturing design prevents starting of the equipment unless the brake is engaged.

The requirement for application of the parking brake applies regardless of whether a level surface or a grade is involved. In some situations it would be difficult to accurately detect whether the surface is level or on a grade which may cause a vehicle to overcome its own rolling resistance. Grades as little as one to three percent can cause a vehicle to overcome its own inertia. In those limited situations where training is ineffective to remind employees to disengage the parking brake before moving vehicles, warning lights or an inter-lock system that prevents equipment from moving until the brake is released can be installed.

Commenters also asked MSHA to explain the standard's requirement to place the operating controls in the park position. These commenters noted that placing the controls in neutral is the park position for some vehicles, while low gear is used for others. Due to these variations, MSHA used the term "park position" to convey that the controls are to be placed in the position recommended by the manufacturer when equipment is unattended.

*Section 56/57.14208 Warning devices.* This final standard consolidates existing §§ 56/57.9049 and 56/57.9068, The proposed standard addressed the need for warning devices in three distinct situations involving mobile equipment. It required warning devices when parked mobile equipment creates a hazard to persons in vehicles; when mobile equipment is carrying extended loads; and when restricted clearances create a hazard to persons in mobile equipment. During the realignment of standards within Subparts H and M, it became apparent that the third situation, restricted clearances, addressed warnings which would be located on roadways, railroads, and loading and dumping sites rather than warnings affixed to the machinery and equipment. This requirement was, therefore, transferred to Subpart H as §§ 56/57.9306. Warnings on parked mobile equipment and extended loads being transported on equipment are retained within this final standard.

Paragraph (a) is derived from existing §§ 56/57.9068 and requires that visible warning devices be used when parked mobile equipment creates a hazard to persons in vehicles. Warning devices are required when the location of a parked vehicle poses a risk that a moving piece of equipment may strike it. The warning device alerts the operator of the moving equipment of the presence and hazardous location of the parked equipment.

Paragraph (b) is derived from existing §§ 56/57.9049. The final standard provides that when mobile equipment has loads that extend beyond its sides, or more than four feet beyond its rear, warning flags, or where visibility is limited, warning lights, must be at the end of the projection. Commenters believed the standard should permit the alternative of allowing persons to walk alongside the extended load, carrying the warning flag or light. MSHA agrees and the final standard permits this procedure.

Although some commenters believed the standard should only require warning flags or lights when visibility is

limited, MSHA has retained these requirements for all instances involving extended loads. Even where visibility is not limited, the fact that a load is extended may not always be readily recognizable. The warning device serves to alert other persons of this condition and acts as a depth perception aid.

Commenters also suggested that the standard permit a vehicle to travel behind an extended load as an alternative to the flag or light. The requirement to provide a warning flag or light is a standard safety practice regardless of whether a vehicle with an extended load would be traveling on a mine site or highway. Since the warning flag or light also serves as a perception aid, even to a trailing vehicle, MSHA believes that the warning device is still needed on the projecting loads in those instances.

Commenters also suggested that rail equipment be excluded on the basis that §§ 56/57.9330 address those hazards. Under this final standard, rail equipment continues to be covered because the same hazards to persons exist with regard to the equipment, regardless of the type of wheels or tracks used.

*Section 56/57.14209 Safety procedures for towing.* This final standard replaces existing §§ 56/57.9070. It sets forth the safety procedures to be followed when a piece of equipment is being towed. The final standard clarifies the requirements of the existing standard by stating the practices required to ensure that the towed piece of equipment remains under control.

The standard requires that a tow bar or other effective means of control be used for towing. In addition to this primary rigging, a safety chain or wire rope must be used as a secondary control mechanism, unless there is a person on the towed piece of equipment who has control over its braking and steering. One commenter asked MSHA to clarify whether the tongue of a utility trailer would constitute the primary rigging. Primary rigging refers to the principal means of connection between the towing and towed equipment. For a trailer, this would typically be the tongue. In each instance, the principal consideration is the use of an effective primary means of control in conjunction with a secondary mechanism to control the towed equipment should the primary connection fail.

Commenters also questioned whether this standard would apply when small trailers are being towed at slow speeds. These procedures apply whenever mobile equipment is being towed, since the potential for loss of control always exists.

Procedures for moving rail equipment are contained in §§ 56/57.14218.

*Section 56/57.14210 Movement of dippers, buckets, loading booms, or suspended loads.* This final standard is derived from existing §§ 56/57.9025. It prohibits dippers, buckets, loading booms, or suspended loads from being located over the operators' stations of self-propelled mobile equipment until the equipment operator is out of the station and in a safe location. However, an exception was provided for equipment that is specifically designed to protect the equipment operator from falling objects. Commenters supported the wording of the proposed standard and it is unchanged in this final standard.

*Section 56/57.14211 Blocking equipment in a raised position.* This final standard is derived from existing §§ 56/57.14030. Because of the realignment of standards, the standard is now retained in Subpart M.

When persons work on top of, under, or from mobile equipment in a raised position, or a raised portion of that equipment, there is a hazard that the raised portion may descend without warning. Miners have been seriously injured or killed when raised equipment or raised components of equipment have fallen unexpectedly. This standard sets forth safety requirements that are intended to prevent these occurrences.

Several aspects of the proposal have been clarified in the final rule. Although commenters recognized that this standard addresses both raised mobile equipment and raised components of such equipment, they requested clarification and stated that the standard should separate these different aspects. The final standard does this by providing separate paragraphs.

Paragraph (a) addresses the situation when the mobile equipment itself has been raised and persons are working on top of, under, or working from it to reach objects that are otherwise not accessible. In those situations, the equipment must be blocked or mechanically secured to prevent it from accidentally rolling or falling.

Paragraph (b) provides the same requirement to block or mechanically secure a raised component on a piece of mobile equipment when persons are working on top of, under, or working from it. In addition, when work on a raised component is being performed, the mobile equipment itself must be blocked or secured to prevent it from rolling.

Commenters asked whether it was necessary to block the raised component if work is being performed on an entirely separate component. The final standard clarifies, in paragraph (c), that securing must be done if persons are exposed to the hazard of accidental lowering of the component.

Paragraph (d) provides a compliance alternative for blocking of raised components. Elevated mobile work platforms and other types of equipment provided with functional load-locking devices or devices that prevent free and uncontrolled descent need not be blocked against falling. As discussed during the public hearings, load-locking devices work by fixing the raised component in position to prevent it from an unplanned descent. The devices can operate mechanically or hydraulically. The final standard also permits use of any other device that prevents free and uncontrolled descent should there be a sudden failure of the system that is holding up the raised component. An example of this type of device would be a check valve or flow restrictor which provides a controlled drift-down rate.

Some commenters stated that "the standard should permit persons to work from the buckets of front-end loaders when performing quick repairs, thereby avoiding the need to use specifically designed mobile work platforms". MSHA does not believe this use of loader buckets is safe unless the buckets are provided with a device that controls descent. As noted by other commenters, loaders are designed to handle ore and materials and are not intended to be used as work platforms. Unstable footing inside the loader bucket and the potential for accidental unloading by the relatively quick-action dumping mechanism of the bucket make front-end loaders unsafe as makeshift mobile work platforms, unless a load-locking device, or other device that prevents free and uncontrolled descent is installed on the equipment. In those instances, the equipment would be effectively modified to be considered a specifically designed mobile work platform.

Similarly, a forklift truck with an attached work basket and load-locking device would be permitted.

Although some commenters favored having the standard only address the hazards associated with raised components, MSHA's experience has been that many accidents and fatalities have occurred when the mobile equipment itself is raised and it has not been sufficiently secured to prevent accidental rolling or falling.

A few commenters also questioned the requirement for blocking the mobile equipment when a component is raised if the equipment is on level ground. Even when it is possible to assure that the

equipment is on level ground, blocking is a sound precaution. At times, work from the raised component may cause the mobile equipment to move due to drive line slack or the shifting of the elevated weight. There is also a possibility that another vehicle may bump the equipment. Blocking the mobile equipment provides an element of additional security for these situations. Editorially, the final standard substitutes the words "on top of" for "on" in referring to work performed on the mobile equipment or its raised component. Commenters suggested this change to permit persons to perform non-hazardous activities such as changing bits on a lowered boom of a jumbo drill when standing to the side of the boom. Paragraph (c) also recognizes these non-hazardous situations, by requiring the securing of raised components only when persons are exposed to the hazard of accidental lowering.

Another issue raised by commenters was whether cranes would be specifically excluded from the scope of this standard. Some commenters favored such an exclusion, preferring to have a separate rulemaking for cranes. Others believed that while cable systems on cranes should be excluded, hydraulic systems on cranes should be included. They stated that equipment such as a crane, which uses a hydraulic telescoping boom with a cable on the end, or a cherry picker should have load-locking devices on the hydraulic system portion when they are used as elevated mobile work platforms.

If a crane is modified to be used as a mobile work platform, then it also must comply with paragraph (d) of this standard and have either a load-locking or an anti-free-descent device installed. These devices were also accepted as compliance with the existing standards.

*Section 56/57.14212 Chains, ropes and drive belts.* This final standard consolidates and replaces existing §§ 56/57.14031 and 56/57.14032. It addresses the hand and arm injuries which can occur when chain, rope, or drive belts are moved onto sprockets, pulleys or drums while in motion. The standard requires that these chains, ropes, and drive belts be guided mechanically unless the equipment has been specifically designed for hand feeding. Commenters supported the consolidation of these standards.

*Section 56/57.14213 Ventilation and shielding for welding.* This final standard revises existing §§ 56/57.14045. As with the existing standard, this final standard requires that welding operations be well-ventilated. It also clarifies that shielding must be provided where arc flash could be hazardous to persons. Without the protection provided by shielding, the intensity of light from arc flash can damage the eyesight of persons exposed. Shielding also provides protection from metals being projected during welding.

Welding fumes and gases are created as a direct by-product of the work activity and as a result, unlimited amounts of these harmful fumes and gases are continuously released into the work environment during welding in a manner which could impair visibility. For these reasons the standard requires that the welding area be well-ventilated to remove the fumes and gases from the work environment. This is especially important where the welding is carried out in confined spaces.

One commenter suggested that the ventilation requirement be deleted on the basis that the air quality standards address this hazard. MSHA has retained the welding ventilation requirement of this standard in the final rule because of the always present fumes and gases from welding, in areas which are not well-ventilated. The accumulation of welding fumes and gases can present a safety hazard by impairing visibility of the welder and other workers in the area if no ventilation is provided. If inhaled, welding fumes and gases can rapidly lead to disorientation and irreversible physical harm to the welder.

*Section 56/57.14214 Train warnings.* This final standard, revises existing §§ 56/57.9009 and sets forth situations when train operators are required to sound an audible warning.

A commenter questioned whether a switch engine would be considered a train if no railcar were attached. The hazard to persons exists when locomotives are moved individually as well as when they are coupled to railcars. The standard is applicable in both situations.

*Section 56/57.14215 Coupling or uncoupling cars.* This final standard, consolidates existing §§ 56/57.9065 and 57.9097. It sets forth the safety procedures to be followed when coupling or uncoupling railcars so that persons will not be injured by the movement of the train or be placed in a hazardous position while performing the coupling or uncoupling.

Some commenters suggested that this standard be deleted from Part 56 on the basis that it was not applicable to surface mining operations. However, the final standard continues to apply to both Part 56 and Part 57 since some surface operations use rail haulage.

*Section 56/57.14216 Backpoling.* This final standard, prohibits backpoling of trolleys except where it is unavoidable due to inadequate clearance to reverse the trolley pole. It retains the substantive requirements of existing §§ 56/57.9046. Backpoling is the practice of moving a trolley wire-powered train with the trolley pole pointed in the direction of movement rather than trailing the movement. When backpoling, the pole is more likely to become disengaged from the trolley wire or to catch an object and break. Miners have been electrocuted from such backpoling hazards. The final rule prohibits this practice except where it is absolutely unavoidable. Where backpoling is necessary, the standard provides that it be done only at the minimum tram speed of the trolley.

Some commenters believed this standard was not applicable to surface mining operations. MSHA recognizes that trolleys are more commonly encountered at underground mines; however, they are used at some surface operations. In either setting, the hazards of backpoling exist. Therefore, the final standard continues to apply to surface as well as underground mining operations.

*Section 56/57.14217 Securing parked railcars.* This final standard revises existing §§ 56/57.9047. It is applicable to surface and underground mines and provides protection for miners against unintended movement of railcars. No comments were received on this standard and it appears in the final rule as proposed.

*Section 56/57.14218 Movement of equipment on adjacent tracks.* This final standard replaces existing §§ 56/57.9066. It is applicable to surface and underground mines and requires that any connective devices between a locomotive on one track and rail equipment on another track be of sufficient strength for the task. When inappropriate connecting devices are used to move rail equipment, the device can fail during movement and the uncontrolled rail equipment can pose a hazard to miners in the area. No comments were received on this standard and it appears in the final rule as proposed.

*Section 56/57.14219 Brakeman signals.* This final standard replaces existing §§ 56/57.9052. It is applicable to surface and underground mines and requires that when communicative signals cannot be clearly understood they shall be interpreted as a stop signal so that the instructions can be verified and train movement can proceed safely. No comments were received on this standard and it appears in the final rule as proposed.

*I. Derivation Table.*

The following derivation table lists the number of each standard in both subparts of the final rule, the number of the standard in the applicable proposed rule, and the number of the existing standard.

| New No. | Proposed No. | Old No. |
|---|---|---|
| 56/57.900 | 56/57.9000 | 56/57.2 |
| 56/57.9100 | 56/57.9101 | 56/57.9071 |
| 56/57.9101 | 56/57.9205 | 56/57.9017, .9023, .9024, 57.9113 |
| 56/57.9102 | 56/57.9305 | 56/57.9035 |
| 56/57.9103 | 56/57.9307 | 56/57.9050 |
| 56/57.9104 | 56/57.9313 | 56/57.9059 |
| 57.9160 | 57.9362 | 57.9116 |
| 56/57.9200 | 56/57.9102 | 56/57.9040, .9041, .9067, .9085 |
| 56/57.9200(h) | 56/57.14202 | 56/57.9014 |
| 56/57.9201 | 56/57.9104 | 56/57.9045 |
| 56/57.9202 | 56/57.9105, .9106 | 56/57.9062, .9034 |
| 57.9260 | 57.9160 | 57.9099 |
| 57.9261 | 57.9360 | 57.9096 |
| 56/57.9300 | 56/57.9203 | 56/57.9022 |
| 56/57.9301 | 56/57.9402 | 56/57.9054 |
| 56/57.9302 | 56/57.9303 | 56/57.9020, .9056 |
| 56/57.9303 | 56/57.9400 | 56/57.9063 |
| 56/57.9304 | 56/57.9404 | 56/57.9055 |
| 56/57.9305 | 56/57.9403 | 56/57.9058 |
| 56/57.9306 | 56/57.9112(c) | 56/57.9060, 57.9104 |
| 56/57.9307 | 56/57.9311 | 56/57.9016 |
| 56/57.9308 | 56/57.9310 | 56/57.9028 |
| 56/57.9309 | 56/57.9500 | 56/57.9064 |
| 56/57.9310 | 56/57.9501 | 56/57.9072, 57.9105, .9106 |
| 56/57.9311 | 56/57.9401 | 56/57.9057 |
| 56/57.9312 | 56/57.9502 | 57.9107 |
| 56/57.9313 | Delete | 56/57.9053 |
| 56/57.9314 | 56/57.9405 | 56/57.9061 |
| 56/57.9315 | 56/57.9204 | 56/57.9074 |
| 56/57.9316 | 56/57.9206 | 56/57.9027 |
| 56/57.9317 | 56/57.9208 | 56/57.9030 |
| 56/57.9318 | 56/57.9103 | 56/57.9039 |
| 56/57.9319 | 56/57.9308 | 56/57.9051 |
| 56/57.9330 | 56/57.9330 | 56/57.9083 |
| 57.9360 | 57.9363 | 57.9110, .9111 |
| 57.9361 | 57.9560 | 57.9103 |
| 57.9362 | 57.9660 | 57.9102 |
| Deleted | Deleted | 56/57.9019 |
| Deleted | Deleted | 56/57.9042 |
| Deleted | Deleted | 57.9114 |
| 56/57.14100 | 56/57.9100, 56/57.9200, 58.14200. | 56/57.9001, 56/57.9002, .9073, 58.14026 |
| 56/57.14101 | 56/57.9202 | 56/57.9003 |
| 56/57.14102 | 56/57.9300 | 56/57.9048 |
| 56/57.14103 | 56/57.9201 | 56/57.9010, .9011, .9012 |
| 56/57.14104 | 56/57.9111 | 56/57.9069 |
| 56/57.14105 | 58.14203 | 56/57.14029 |
| 56/57.14106 | 56/57.9209 | 56/57.14013 |
| 56/57.14107 | 58.14100 | 56/57.14001, .14003 |
| 56/57.14108 | 58.14101 | 56/57.14002 |
| 56/57.14109 | 58.14103 | 56/57.9007 |
| 56/57.14110 | 58.14107 | 56/57.14011 |
| 56/57.14111 | 56/57.9600 | 56/57.9015 |
| 56/57.14112 | 58.14102 | 56/57.14006, .14007 |
| 56/57.14113 | 58.14104 | 56/57.9013 |
| 56/57.14114 | 56/57.9700 | 56/57.9026 |
| 56/57.14115 | 58.14105 | 56/57.14008 |
| 56/57.14116 | 58.14106 | 56/57.14010 |
| 56/57.14130 | 56/57.9230 | 56/57.9088 |
| 56/57.14131 | N/A | N/A |
| 56/57.14132 | 56/57.9231 | 56/57.9087 |
| 57.14160 | 57.9361 | 57.9115 |
| 57.14161 | 57.9364 | 57.9098 |
| 57.14162 | 57.9365 | 57.9112 |
| 56/57.14200 | 56/57.9701 | 56/57.9005 |
| 56/57.14201 | 56/57.14201(G) | 56/57.9006 |
| 56/57.14202 | 58.14205(G) | 56/57.14033 |
| 56/57.14203 | 58.14206(G) | 56/57.14034 |
| 56/57.14204 | 58.14207(G) | 56/57.14035 |
| 56/57.14205 | 58.14208(G) | 56/57.14036 |
| 56/57.14206 | 56/57.9108 | 56/57.9031, .9032 |
| 56/57.14207 | 56/57.9109 | 56/57.9036, .9037 |
| 56/57.14208 | 56/57.9112 | 56/57.9068, .9049 |
| 56/57.14209 | 56/57.9107 | 56/57.9070 |
| 56/57.14210 | 56/57.9207 | 56/57.9025 |
| 56/57.14211 | 56/57.9110 | 56/57.14030 |
| 56/57.14212 | 58.14204(G) | 56/57.14031, .14032 |
| 56/57.14213 | 58.14209(G) | 56/57.14045 |
| 56/57.14214 | 56/57.9312 | 56/57.9009 |
| 56/57.14215 | 56/57.9309 | 56/57.9065, 57.9097 |
| 56/57.14216 | 56/57.9301 | 56/57.9046 |
| 56/57.14217 | 56/57.9302 | 56/57.9047 |
| 56/57.14218 | 56/57.9304 | 56/57.9066 |
| 56/57.14219 | 56/57.9306 | 56/57.9052 |
| 56/57.9200(h) | 58.14202 | 56/57.9014 |
| 56/57.15014 | N/A | 56/57.14014 |

*J. Distribution Table.*

For the convenience of the reader, the following distribution table has been included as a guide in cross-referencing existing standard numbers with the section numbers used in both final rules.

| Old No. | New No. |
|---|---|
| 56/57.2 | 56/57.9000 |
| 56/57.9001 | 56/57.14100 |
| 56/57.9002 | 56/57.14100 |
| 56/57.9003 | 56/57.14101 |
| 56/57.9005 | 56/57.14200 |
| 56/57.9006 | 56/57.14201 |
| 56/57.9007 | 56/57.14108 |
| 56/57.9009 | 56/57.14214 |
| 56/57.9010 | 56/57.14103 |
| 56/57.9011 | 56/57.14103 |
| 56/57.9012 | 56/57.14103 |
| 56/57.9013 | 56/57.14113 |
| 56/57.9014 | 56/57.9200(h) |
| 56/57.9015 | 56/57.14111 |
| 56/57.9016 | 56/57.9307 |
| 56/57.9017 | 56/57.9101 |
| 56/57.9019 | Removed |
| 56/57.9020 | 56/57.9302 |
| 56/57.9022 | 56/57.9300 |
| 56/57.9023 | 56/57.9101 |
| 56/57.9024 | 56/57.9101 |
| 56/57.9025 | 56/57.14210 |
| 56/57.9026 | 56/57.14114 |
| 56/57.9027 | 56/57.9316 |
| 56/57.9028 | 56/57.9308 |
| 56/57.9030 | 56/57.9317 |
| 56/57.9031 | 56/57.14206 |
| 56/57.9032 | 56/57.14206 |
| 56/57.9034 | 56/57.9202 |
| 56/57.9035 | 56/57.9102 |
| 56/57.9036 | 56/57.14207 |
| 56/57.9037 | 56/57.14207 |
| 56/57.9039 | 56/57.9318 |
| 56/57.9040 | 56/57.9200 |
| 56/57.9041 | 56/57.9200 |
| 56/57.9042 | Removed |
| 56/57.9045 | 56/57.9201 |
| 56/57.9046 | 56/57.14216 |
| 56/57.9047 | 56/57.9302 |
| 56/57.9048 | 56/57.14102 |
| 56/57.9049 | 56/57.14208 |
| 56/57.9050 | 56/57.9103 |
| 56/57.9051 | 56/57.9319 |
| 56/57.9052 | 56/57.14219 |
| 56/57.9053 | 56/57.9313 |
| 56/57.9054 | 56/57.9301 |
| 56/57.9055 | 56/57.9304 |
| 56/57.9056 | 56/57.9302 |
| 56/57.9057 | 56/57.9311 |
| 56/57.9058 | 56/57.9305 |
| 56/57.9059 | 56/57.9104 |
| 56/57.9060 | 56/57.9306 |
| 56/57.9061 | 56/57.9314 |
| 56/57.9062 | 56/57.9202 |
| 56/57.9063 | 56/57.9303 |
| 56/57.9064 | 56/57.9309 |
| 56/57.9065 | 56/57.14215 |
| 56/57.9066 | 56/57.14218 |
| 56/57.9067 | 56/57.9200 |
| 56/57.9068 | 56/57.14208 |
| 56/57.9069 | 56/57.14105 |
| 56/57.9070 | 56/57.14209 |
| 56/57.9071 | 56/57.9100 |
| 56/57.9072 | 56/57.9310 |
| 56/57.9073 | 56/57.14100 |
| 56/57.9074 | 56/57.9315 |
| 56/57.9083 | 56/57.9330 |
| 56/57.9085 | 56/57.9200 |
| 56/57.9087 | 56/57.14132 |
| 56/57.9088 | 56/57.14130 |
| 57.9096 | 57.9261 |
| 57.9097 | 56/57.14215 |
| 57.9098 | 57.14161 |
| 57.9099 | 57.9260 |
| 57.9102 | 57.9362 |
| 57.9103 | 57.9361 |
| 57.9104 | 57.9306 |
| 57.9105 | 57.9310 |
| 57.9106 | 57.9310 |
| 57.9107 | 57.9312 |
| 57.9110 | 57.9360 |
| 57.9111 | 57.9360 |
| 57.9112 | 57.14162 |
| 57.9113 | 57.9101 |
| 57.9114 | Removed |
| 57.9115 | 57.14160 |
| 57.9116 | 57.9160 |
| 56/57.9001, .9002 | 56/57.14100 |
| 56/57.9003 | 56/57.14101 |
| 56/57.9005 | 56/57.14200 |
| 56/57.9006 | 56/57.14201 |
| 56/57.9007 | 56/57.14109 |
| 56/57.9009 | 56/57.14214 |
| 56/57.9010, .9011, .9012 | 56/57.14103 |
| 56/57.9013 | 56/57.14113 |
| 56/57.9015 | 56/57.14110 |
| 56/57.9025 | 56/57.14210 |
| 56/57.9026 | 56/57.14114 |
| 56/57.9031, .9032 | 56/57.14206 |
| 56/57.9036, .9037 | 56/57.14207 |
| 56/57.9046 | 56/57.14216 |
| 56/57.9047 | 56/57.14217 |
| 56/57.9048 | 56/57.14102 |
| 56/57.9049, .9068 | 56/57.14208 |
| 56/57.9052 | 56/57.14102 |
| 56/57.9065 | 56/57.14215 |

| Old No. | New No. |
|---|---|
| 56/57.9066 | 56/57.14218 |
| 56/57.9069 | 56/57.14104 |
| 56/57.9070 | 56/57.14209 |
| 56/57.9073 | 56/57.14100 |
| 56/57.9087 | 56/57.14132 |
| 56/57.9088 | 56/57.14130 |
| 57.9097 | 56/57.14215 |
| 57.9098 | 57.14161 |
| 57.9112 | 57.14162 |
| 57.9115 | 57.14160 |
| 56/57.14001 | 56/57.14107 |
| 56/57.14002 | 56/57.14108 |
| 56/57.14003 | 56/57.14107 |
| 56/57.14006, .14007 | 56/57.14112 |
| 56/57.14008 | 56/57.14115 |
| 56/57.14010 | 56/57.14116 |
| 56/57.14011 | 56/57.14110 |
| 56/57.14013 | 56/57.14106 |
| 56/57.14014 | 56/57.15014 |
| 56/57.14026 | 56/57.14100 |
| 56/57.14029 | 56/57.14105 |
| 56/57.14030 | 56/57.14211 |
| 56/57.14031, .14032 | 56/57.14212 |
| 56/57.14033 | 56/57.14202 |
| 56/57.14034 | 56/57.14203 |
| 56/57.14035 | 56/57.14204 |
| 56/57.14036 | 56/57.14205 |
| 56/57.14045 | 56/57.14213 |

### III. Executive Order 12291 and the Regulatory Flexibility Act

In accordance with Executive Order 12291, MSHA has prepared an analysis to identify potential costs and benefits associated with the revisions to the Agency's standards for machinery and equipment and for loading, hauling, and dumping at metal and nonmetal mines. The Agency has incorporated this analysis into the Regulatory Flexibility Analysis required by the Regulatory Flexibility Act. The Agency prepared a separate analysis for each of Subpart H and Subpart M. Because of the interrelationship between these two subparts, however, MSHA has combined these separate analyses in the summary below. MSHA has determined that the final rule will neither result in major cost increases nor have a combined effect of $100 million or more annually on the economy. Because the final rule does not meet the criteria for a major rule, a Regulatory Impact Analysis is not necessary.

The Regulatory Flexibility Act requires that, in developing regulatory proposals, agencies evaluate and include, wherever possible, compliance alternatives which minimize any adverse impact on small businesses. For purposes of the Regulatory Flexibility Act, MSHA has defined small business entities as mining operations with fewer than 20 employees. The final rule contains several alternatives to the existing regulations, some of which will especially benefit small operations. In addition, the final rule clarifies compliance responsibilities, updates standards to reflect advances in technology, adopts more performance-oriented criteria, and transfers standards to more appropriate subparts. Performance-oriented standards maximize flexibility by establishing safety objectives without limiting the means to achieve them.

The primary benefit of the final rule, however, is the improved protection that the standards will provide to persons who could be endangered by hazards associated with loading, hauling, and dumping activities and the use of machinery and equipment. During the five year period from January 1983 through December 1987, the metal and nonmetal mining industry experienced 316 work-related fatalities. Fifty two percent (164) of these fatalities were directly related to haulage accidents and mishaps in the use of machinery and equipment. The Health and Safety Analysis Center of the Agency has categorized these 164 deaths as follows: Powered haulage—104; nonpowered haulage—2; machinery—55; and, handtools—3. Twenty five of these incidents occurred in underground mines; 139 at surface operations. The Agency anticipates that full compliance with these improved standards will prevent between 10 and 15 fatalities on an annual basis.

In the following summary of the Regulatory Flexibility Analysis, MSHA has compared the costs and benefits associated with the final rule with the costs of the existing requirements. A copy of the full analysis for Subpart H and for Subpart M is available upon request.

In developing cost estimates, the Agency has taken into consideration industry-wide safety practices. Current compliance costs are related to the requirements for labor and equipment purchase and maintenance. In calculating the costs of the existing requirements and the final rule, the Agency annualized capital expenditures and included annual operating costs.

MSHA estimates that the annualized capital costs and operating costs for compliance with the existing requirements amount to approximately $36.1 million, compared to approximately $37.4 million for the final rule. The final rule represents a $1.3 million (3.5%) increase in annual compliance costs over the existing standards. One final standard contributes new compliance costs of about $18,590 for the installation of seat belts on surface haulage trucks. Revision of two existing requirements, for testing brakes and replacing cab windows, increases compliance costs by $1,376,731 under the final rule. Revision of three existing requirements, for makeshift couplings, for records of examinations, and for warnings prior to starting equipment, decreases compliance costs by $114,890 under the final rule. In addition, under the final rule, 38 standards do not pose compliance costs and 37 standards impose the same compliance costs as under the existing rule.

The final rule affects about 11,290 metal and nonmetal mining operations employing about 189,101 miners. About 84% of the mines or 9,465 are considered as small business entities and they employ about 31% or 57,704 of the miners. Annual compliance costs under the final rule average about $1,936 per small mine which represents a 4.9% increase over that required for compliance with the existing requirements. Small mines incur about 48% of the total compliance cost under the existing standard and about 49% of the total compliance cost under the final rule. The final rule does not represent a significant economic impact on a substantial number of small businesses under the criteria of the Regulatory Flexibility Act.

### IV. Paperwork Reduction Act

Subpart H does not contain any recordkeeping or retention requirements subject to the Paperwork Reduction Act of 1980. The retention provision of the recordkeeping requirement in existing standard 56/57.9001, which is replaced by standard 56/57.14100, would be modified in the final rule to require that records of equipment defects affecting the safety of self-propelled mobile equipment be retained from the date they are recorded until the defects are corrected. The recordkeeping burden itself has been modified in that only those defects not corrected immediately are required to be recorded.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB), under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB control number 1219–0089.

### V. List of Subjects in 30 CFR Parts 56 and 57

Mine safety and health, Incorporation by reference, Loading, hauling, and dumping, Machinery and equipment, Metal and nonmetal mining, Personal protection, Travelways.

Date: August 15, 1988.

**David C. O'Neal,**

*Deputy Assistant Secretary for Mine Safety and Health.*

Title 30, Chapter I, Subchapter N of the Code of Federal Regulations, Parts 56 and 57, is amended as set forth below:

## PART 56—SAFETY AND HEALTH STANDARDS—SURFACE METAL AND NONMETAL MINES

1. The authority citation for Part 56 continues to read as follows:

**Authority:** 30 U.S.C. 811.

### Subpart A—General

**§ 56.2 [Amended]**

2. In § 56.2 the definitions of "berm" and "trip light" are removed.

3. Subpart H is revised to read as follows:

### Subpart H—Loading, Hauling, and Dumping

Sec.



### Subpart H—Loading, Hauling, and Dumping

**§ 56.9000 Definitions.**

The following definitions apply in this subpart:

*Berm.* A pile or mound of material along an elevated roadway capable of moderating or limiting the force of a vehicle in order to impede the vehicle's passage over the bank of the roadway.

*Mobile equipment.* Wheeled, skid-mounted, track-mounted, or rail-mounted equipment capable of moving or being moved.

#### Traffic Safety

**§ 56.9100 Traffic control.**

To provide for the safe movement of self-propelled mobile equipment—

(a) Rules governing speed, right-of-way, direction of movement, and the use of headlights to assure appropriate visibility, shall be established and followed at each mine; and

(b) Signs or signals that warn of hazardous conditions shall be placed at appropriate locations at each mine.

**§ 56.9101 Operating speeds and control of equipment.**

Operators of self-propelled mobile equipment shall maintain control of the equipment while it is in motion. Operating speeds shall be consistent with conditions of roadways, tracks, grades, clearance, visibility, and traffic, and the type of equipment used.

**§ 56.9102 Movement of independently operating rail equipment.**

Movement of two or more pieces of rail equipment operating independently on the same track shall be controlled for safe operation.

**§ 56.9103 Clearance on adjacent tracks.**

Railcars shall not be left on side tracks unless clearance is provided for traffic on adjacent tracks.

**§ 56.9104 Railroad crossings.**

Designated railroad crossings shall be posted with warning signs or signals, or shall be guarded when trains are passing. These crossings shall also be planked or filled between the rails.

#### Transportation of Persons and Materials

**§ 56.9200 Transporting persons.**

Persons shall not be transported—

(a) In or on dippers, forks, clamshells, or buckets except shaft buckets during shaft-sinking operations or during inspection, maintenance and repair of shafts.

(b) In beds of mobile equipment or railcars, unless—

(1) Provisions are made for secure travel, and

(2) Means are taken to prevent accidental unloading if the equipment is provided with unloading devices;

(c) On top of loads in mobile equipment;

(d) Outside cabs, equipment operators' stations, and beds of mobile equipment, except when necessary for maintenance, testing, or training purposes, and provisions are made for secure travel. This provision does not apply to rail equipment.

(e) Between cars of trains, on the leading end of trains, on the leading end of a single railcar, or in other locations on trains that expose persons to hazards from train movement.

(1) This paragraph does not apply to car droppers if they are secured with safety belts and lines which prevent them from falling off the work platform.

(2) Brakemen and trainmen are prohibited from riding between cars of moving trains, but may ride on the leading end of trains or other locations when necessary to perform their duties;

(f) To and from work areas in overcrowded mobile equipment;

(g) In mobile equipment with materials or equipment unless the items are secured or are small and can be carried safely by hand without creating a hazard to persons; or

(h) On conveyors unless the conveyors are designed to provide for their safe transportation.

**§ 56.9201 Loading, hauling, and unloading of equipment or supplies.**

Equipment and supplies shall be loaded, transported, and unloaded in a manner which does not create a hazard to persons from falling or shifting equipment or supplies.

**§ 56.9202 Loading and hauling large rocks.**

Large rocks shall be broken before loading if they could endanger persons or affect the stability of mobile equipment. Mobile equipment used for haulage of mined material shall be loaded to minimize spillage where a hazard to persons could be created.

#### Safety Devices, Provisions, and Procedures for Roadways, Railroads, and Loading and Dumping Sites

**§ 56.9300 Berms or guardrails.**

(a) Berms or guardrails shall be provided and maintained on the banks of roadways where a drop-off exists of sufficient grade or depth to cause a vehicle to overturn or endanger persons in equipment.

(b) Berms or guardrails shall be at least mid-axle height of the largest self-

propelled mobile equipment which usually travels the roadway.

(c) Berms may have openings to the extent necessary for roadway drainage.

(d) Where elevated roadways are infrequently traveled and used only by service or maintenance vehicles, berms or guardrails are not required when the following criteria are met:

(1) Locked gates are installed at the entrance points to the roadway.

(2) Signs are posted warning that the roadway is not bermed.

(3) Reflectors are installed at 25-foot intervals along the perimeter of the elevated roadway.

(4) A maximum speed limit of 15 miles per hour is posted.

(5) Road surface traction is not to be impaired by weather conditions, such as sleet and snow, unless corrective measures are taken to improve traction.

(e) This standard is not applicable to rail beds.

**§ 56.9301 Dump site restraints.**

Berms, bumper blocks, safety hooks, or similar impeding devices shall be provided at dumping locations where there is a hazard of overtravel or overturning.

**§ 56.9302 Protection against moving or runaway railroad equipment.**

Stopblocks, derail devices, or other devices that protect against moving or runaway rail equipment shall be installed wherever necessary to protect persons.

**§ 56.9303 Construction of ramps and dumping facilities.**

Ramps and dumping facilities shall be designed and constructed of materials capable of supporting the loads to which they will be subjected. The ramps and dumping facilities shall provide width, clearance, and headroom to safely accommodate the mobile equipment using the facilities.

**§ 56.9304 Unstable ground.**

(a) Dumping locations shall be visually inspected prior to work commencing and as ground conditions warrant.

(b) Where there is evidence that the ground at a dumping location may fail to support the mobile equipment, loads shall be dumped a safe distance back from the edge of the unstable area of the bank.

**§ 56.9305 Truck spotters.**

(a) If truck spotters are used, they shall be in the clear while trucks are backing into dumping position or dumping.

(b) Spotters shall use signal lights to direct trucks where visibility is limited.

(c) When a truck operator cannot clearly recognize the spotter's signals, the truck shall be stopped.

**§ 56.9306 Warning devices for restricted clearances.**

Where restricted clearance creates a hazard to persons on mobile equipment, warning devices shall be installed in advance of the restricted area and the restricted area shall be conspicuously marked.

**§ 56.9307 Design, installation, and maintenance of railroads.**

Roadbeds and all elements of the railroad tracks shall be designed, installed, and maintained to provide safe operation consistent with the speed and type of haulage used.

**§ 56.9308 Switch throws.**

Switch throws shall be installed to provide clearance to protect switchmen from contact with moving trains.

**§ 56.9309 Chute design.**

Chute-loading installations shall be designed to provide a safe location for persons pulling chutes.

**§ 56.9310 Chute hazards.**

(a) Prior to chute-pulling, persons who could be affected by the draw or otherwise exposed to danger shall be warned and given time to clear the hazardous area.

(b) Persons attempting to free chute hangups shall be experienced and familiar with the task, know the hazards involved, and use the proper tools to free material.

(c) When broken rock or material is dumped into an empty chute, the chute shall be equipped with a guard or all persons shall be isolated from the hazard of flying rock or material.

**§ 56.9311 Anchoring stationary sizing devices.**

Grizzlies and other stationary sizing devices shall be securely anchored.

**§ 56.9312 Working around drawholes.**

Unless platforms or safety lines are used, persons shall not position themselves over drawholes if there is danger that broken rock or material may be withdrawn or bridged.

**§ 56.9313 Roadway maintenance.**

Water, debris, or spilled material on roadways which creates hazards to the operation of mobile equipment shall be removed.

**§ 56.9314 Trimming stockpile and muckpile faces.**

Stockpile and muckpile faces shall be trimmed to prevent hazards to persons.

**§ 56.9315 Dust control.**

Dust shall be controlled at muck piles, material transfer points, crushers, and on haulage roads where hazards to persons would be created as a result of impaired visibility.

**§ 56.9316 Notifying the equipment operator.**

When an operator of self-propelled mobile equipment is present, persons shall notify the equipment operator before getting on or off that equipment.

**§ 56.9317 Suspended loads.**

Persons shall not work or pass under the buckets or booms of loaders in operation.

**§ 56.9318 Getting on or off moving equipment.**

Persons shall not get on or off moving mobile equipment. This provision does not apply to trainmen, brakemen, and car droppers who are required to get on or off slowly moving trains in the performance of their work duties.

**§ 56.9319 Going over, under, or between railcars.**

Persons shall not go over, under, or between railcars unless:

(a) The train is stopped; and

(b) The train operator, when present, is notified and the notice acknowledged.

**§ 56.9330 Clearance for surface equipment.**

Continuous clearance of at least 30 inches from the farthest projection of moving railroad equipment shall be provided on at least one side of the tracks at all locations where possible or the area shall be marked conspicuously.

4. Subpart J is amended by adding a new § 56.11008, to read as follows:

## Subpart J—Travelways and Escapeways

**§ 56.11008 Restricted clearance.**

Where restricted clearance creates a hazard to persons, the restricted clearance shall be conspicuously marked.

5. Subpart M is revised to read as follows:

## Subpart M—Machinery and Equipment

Sec.

## Subpart M—Machinery and Equipment

### § 56.14000 Definitions.

The following definitions apply in this subpart.

*Mobile equipment.* Wheeled, skid-mounted, track-mounted, or rail-mounted equipment capable of moving or being moved.

*Travelway.* A passage, walk, or way regularly used or designated for persons to go from one place to another.

### Safety Devices and Maintenance Requirements

### § 56.14100 Safety defects; examination, correction and records.

(a) Self-propelled mobile equipment to be used during a shift shall be inspected by the equipment operator before being placed in operation on that shift.

(b) Defects on any equipment, machinery, and tools that affect safety shall be corrected in a timely manner to prevent the creation of a hazard to persons.

(c) When defects make continued operation hazardous to persons, the defective items including self-propelled mobile equipment shall be taken out of service and placed in a designated area posted for that purpose, or a tag or other effective method of marking the defective items shall be used to prohibit further use until the defects are corrected.

(d) Defects on self-propelled mobile equipment affecting safety, which are not corrected immediately, shall be reported to and recorded by the mine operator. The records shall be kept at the mine or nearest mine office from the date the defects are recorded, until the defects are corrected. Such records shall be made available for inspection by an authorized representative of the Secretary.

### § 56.14101 Brakes.

(a) *Minimum requirements.* (1) Self-propelled mobile equipment shall be equipped with a service brake system capable of stopping and holding the equipment with its typical load on the maximum grade it travels. This standard does not apply to equipment which is not originally equipped with brakes unless the manner in which the equipment is being operated requires the use of brakes for safe operation. This standard does not apply to rail equipment.

(2) If equipped on self-propelled mobile equipment, parking brakes shall be capable of holding the equipment with its typical load on the maximum grade it travels.

(3) All braking systems installed on the equipment shall be maintained in functional condition.

(b) *Testing.* (1) Service brake tests shall be conducted when an MSHA inspector has reasonable cause to believe that the service brake system does not function as required, unless the mine operator removes the equipment from service for the appropriate repair;

(2) The performance of the service brakes shall be evaluated according to Table M–1.

TABLE M–1

| Gross vehicle weight lbs. | Equipment speed, MPH | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 |
| | Service Brake Maximum Stopping Distance—Feet | | | | | | | | | | |
| 0–36000 | 34 | 38 | 43 | 48 | 53 | 59 | 64 | 70 | 76 | 83 | 89 |
| 36000–70000 | 41 | 46 | 52 | 58 | 62 | 70 | 76 | 83 | 90 | 97 | 104 |
| 70000–140000 | 48 | 54 | 61 | 67 | 74 | 81 | 88 | 95 | 103 | 111 | 119 |
| 140000–250000 | 56 | 62 | 69 | 77 | 84 | 92 | 100 | 108 | 116 | 125 | 133 |
| 250000–400000 | 59 | 66 | 74 | 81 | 89 | 97 | 105 | 114 | 123 | 132 | 141 |
| Over 400000 | 63 | 71 | 78 | 86 | 94 | 103 | 111 | 120 | 129 | 139 | 148 |

Stopping distances are computed using a constant decleration of 9.66 FPS$^2$ and system response response times of .5.1, 1.5, 2, 2.25 and 2.5 seconds for each increasing weight category respectively. Stopping distance values include a one-second operator response time.

TABLE 2.—THE SPEED OF A VEHICLE CAN BE DETERMINED BY CLOCKING IT THROUGH A 100-FOOT MEASURED COURSE AT CONSTANT VELOCITY USING TABLE 2. WHEN THE SERVICE BRAKES ARE APPLIED AT THE END OF THE COURSE, STOPPING DISTANCE CAN BE MEASURED AND COMPARED TO TABLE 1.

| Miles per hour | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Seconds Required to Travel 100 Feet | 6.8 | 6.2 | 5.7 | 5.2 | 4.9 | 4.5 | 4.3 | 4.0 | 3.8 | 3.6 | 3.4 |

(3) Service brake tests shall be conducted under the direction of the mine operator in cooperation with an according to the instructions provided by the MSHA inspector as follows:

(i) Equipment capable of traveling at least 10 miles per hour shall be tested with a typical load for that particular piece of equipment. Front-end loaders shall be tested with the loader bucket empty. Equipment shall not be tested when carrying hazardous loads, such as explosives.

(ii) The approach shall be sufficient length to allow the equipment operator to reach and maintain a constant speed between 10 and 20 miles per hour prior to entering the 100 foot measured area. The constant speed shall be maintained up to the point when the equipment operator receives the signal to apply the brakes. The roadway shall be wide enought to accommodate the size of the equipment being tested. The ground shall be generally level, packed, and dry in the braking portion of the test course. Ground moisture may be present to the extent that it does not adversely affect the braking surface.

(iii) Braking is to be performed using only those braking systems, including auxiliary retarders, which are designed to bring the equipment to a stop under normal operating conditions. Parking or emergency (secondary) brakes are not to be actuated during the test.

(iv) The tests shall be conducted with the transmission in the gear appropriate for the speed the equipment is traveling except for equipment which is designed for the power train to be disengaged during braking.

(v) Testing speeds shall be a minimum of 10 miles per hour and a maximum of 20 miles per hour.

(vi) Stopping distances shall be measured from the point at which the equipment operator receives the signal to apply the service brakes to the final stopped position.

(4) Test results shall be evaluated as follows:

(i) If the initial test run is valid and the stopping distance does not exceed the corresponding stopping distance listed in Table 1, the performance of the service brakes shall be considered acceptable. For tests to be considered valid, the equipment shall not slide sideways or exhibit other lateral motion during the braking portion of the test.

(ii) If the equipment exceeds the maximum stopping distance in the initial test run, the mine operator may request from the inspector up to four additional test runs with two runs to be conducted in each direction. The performance of the service brakes shall be considered acceptable if the equipment does not exceed the maximum stopping distance on at least three of the additional tests.

(5) Where there is not an appropriate test site at the mine or the equipment is not capable or traveling at least 10 miles per hour, service brake tests will not be conducted. In such cases, the inspector will rely upon other available evidence to determine whether the service brake system meets the performance requirement of this standard.

**§ 56.14102 Brakes for rail equipment.**

Braking systems on railroad cars and locomotives shall be maintained in functional condition.

**§56.14103 Operators stations.**

(a) If windows are provided on operators' stations of self-propelled mobile equipment, the windows shall be made of safety glass or material with equivalent safety characteristics. The windows shall be maintained to provide visibility for safe operation.

(b) If damaged windows obscure visibility necessary for safe operation, or create a hazard to the equipment operator, the windows shall be replaced or removed. Damaged windows shall be replaced if absence of a window would expose the equipment operator to hazardous evironmental conditions which would affect the ability of the equipment operator to safely operate the equipment.

(c) The operator's stations of self-propelled mobile equipment shall—

(1) Be free of materials that could create a hazard to persons by impairing the safe operation of the equipment; and

(2) Not be modified, in a manner that obscures visibility necessary for safe operation.

**§ 56.14104 Tire repairs.**

(a) Before a tire is removed from a vehicle for tire repair, the valve core shall be partially removed to allow for gradual deflation and then removed. During deflation, to the extent possible, persons shall stand outside of the potential trajectory of the lock ring of a multi-piece wheel rim.

(b) To prevent injury from wheel rims during tire inflation, one of the following shall be used:

(1) A wheel cage or other restraining device that will constrain all wheel rim components during an explosive separation of a multi-piece wheel rim, or during the sudden release of contained air in a single piece rim wheel; or

(2) A stand-off inflation device which permits persons to stand outside of the potential trajectory of wheel components.

**§ 56.14105 Procedures during repairs or maintenance.**

Repairs of maintenance of machinery or equipment shall be performed only after the power is off, and the machinery or equipment blocked against hazardous motion. Machinery or equipment motion or activation is permitted to the extent that adjustments or testing cannot be performed without motion or activation, provided that persons are effectively protected from hazardous motion.

**§ 56.14106 Falling object protection.**

(a) Fork-lift trucks, front-end loaders, and bulldozers shall be provided with falling object protective structures if used in an area where falling objects could create a hazard to the equipment operator.

(b) The protective structure shall be capable of withstanding the falling object loads to which it would be subjected.

**§ 56.14107 Moving machine parts.**

(a) Moving machine parts shall be guarded to protect persons from contacting gears, sprockets, chains, drive, head, tail, and takeup pulleys, flywheels, couplings, shafts, fan blades, and similar moving parts that can cause injury.

(b) Guards shall not be required where the exposed moving parts are at least seven feet away from walking or working surfaces.

**§ 56.14108 Overhead drive belts.**

Overhead drive belts shall be guarded to contain the whipping action of a broken belt if that action could be hazardous to persons.

**§ 56.14109 Unguarded conveyors with adjacent travelways.**

Unguarded conveyors next to the travelways shall be equipped with—

(a) Emergency stop devices which are located so that a person falling on or against the conveyor can readily deactivate the conveyor drive motor; or

(b) Railings which—

(1) Are positioned to prevent persons from falling on or against the conveyor;

(2) Will be able to withstand the vibration, shock, and wear to which they will be subjected during normal operation; and

(3) Are constructed and maintained so that they will not create a hazard.

**§ 56.14110 Flying or falling materials.**

In areas where flying or falling materials generated from the operation of screens, crushers, or conveyors present a hazard, guards, shields, or other devices that provide protection against such flying or falling materials shall be provided to protect persons.

**§ 56.14111 Slusher, backlash guards and securing.**

(a) When persons are exposed to slushing operations, the slushers shall be equipped with rollers and drum covers and anchored securely before slushing operations are started.

(b) Slushers rated over 10 horsepower shall be equipped with backlash guards, unless the equipment operator is otherwise protected.

(c) This standard does not apply to air tuggers of 10 horsepower or less that have only one cable and one drum.

**§ 56.14112 Construction and maintenance of guards.**

(a) Guards shall be constructed and maintained to—

(1) Withstand the vibration, shock, and wear to which they will be subjected during normal operation; and

(2) Not create a hazard by their use.

(b) Guards shall be securely in place while machinery is being operated, except when testing or making adjustments which cannot be performed without removal of the guard.

**§ 56.14113 Inclined conveyors: backstops or brakes.**

Backstops or brakes shall be installed on drive units of inclined conveyors to prevent the conveyors from running in reverse, creating a hazard to persons.

**§ 56.14114 Air valves for pneumatic equipment.**

A manual master quick-close type air valve shall be installed on all pneumatic-powered equipment if there is a hazard of uncontrolled movement when the air supply is activated. The valve shall be closed except when the equipment is being operated.

**§ 56.14115 Stationary grinding machines.**

Stationary grinding machines, other than special bit grinders, shall be equipped with—

(a) Peripheral hoods capable of withstanding the force of a bursting wheel and enclosing not less than 270 of the periphery of the wheel;

(b) Adjustable tool rests set so that the distance between the grinding surface of the wheel and the tool rest in not greater than ⅛ inch; and

(c) A safety washer on each side of the wheel.

**§ 56.14116 Hand-held power tools.**

(a) Power drills, disc sanders, grinders and circular and chain saws, when used in the hand-held mode shall be operated with controls which require constant hand or finger pressure.

(b) Circular saws and chain saws shall not be equipped with devices which lock-on the operating controls.

**§ 56.14130 Roll-over protective structures (ROPS) and seat belts.**

(a) *Equipment included.* Roll-over protective structures (ROPS) and seat belts shall be installed on—

(1) Crawler tractors and crawler loaders;

(2) Graders;

(3) Wheel loaders and wheel tractors;

(4) The tractor portion of semi-mounted scrapers, dumpers, water wagons, bottom-dump wagons, rear-dump wagons, and towed fifth wheel attachments;

(5) Skid-steer loaders; and

(6) Agricultural tractors.

(5) *ROPS construction.* ROPS shall meet the requirements of the following Society of Automotive Engineers (SAE) publications, as applicable, which are incorporated by reference:

(1) SAE J1040, "Performance Criteria for Roll-Over Protective Structures (ROPS) for Construction, Earthmoving, Forestry, and Mining Machines,", 1986; or

(2) SAE J1194, "Roll-Over Protective Structures (ROPS) for Wheeled Agricultural Tractors", 1983.

(c) *ROPS labelling.* ROPS shall have a label permanently affixed to the structure identifying—

(1) The manufacturer's name and address;

(2) The ROPS model number; and

(3) The make and model number of the equipment for which the ROPS is designed.

(d) *ROPS installation.* ROPS shall be installed on the equipment in accordance with the recommendations of the ROPS manufacturer.

(e) *ROPS maintenance.* (1) ROPS shall be maintained in a condition that meets the performance requirements applicable to the equipment. It the ROPS is subjected to roll-over a abnormal structural loading, the equipment manufacturer or a registered professional engineer with knowledge and experience in ROPS design shall recertify that the ROPS meets the applicable performance requirements before it is returned to service.

(2) Alterations or repairs on ROPS shall be performed only with approval from the ROPS manufacturer or under the instructions of a registered professional engineer with knowledge and experience in ROPS design. The manufacturer or engineer shall certify that the ROPS meets the applicable performance requirements.

(f) *Exemptions.* (1) This standard does not apply to—

(i) Self-propelled mobile equipment manufactured prior to July 1, 1969;

(ii) Over-the-road type tractors that pull trailers or vans on highways;

(iii) Equipment that is only operated by remote control; and

(2) Self-propelled mobile equipment manufactured prior to October 24, 1988, that is equipped with ROPS and seat belts that meet the installation and performance requirements of 30 CFR 56.9088 (1986 edition) shall be considered in compliance with paragraphs (b) and (c) of this section.

(g) *Wearing seat belts.* Seat belts shall be worn by the equipment operator except that when operating graders from a standing position, the grader operator shall wear safety lines and a harness in place of a seat belt.

(h) *Seat belts construction.* Seat belts shall meet the requirements of SAE J386, "Operator Restraint Systems for Off-Road Work Machines", 1985; or SAE J1194, "Roll-Over Protective Structures (ROPS) For Wheeled Agricultural Tractors", 1983, as applicable, which are incorporated by reference.

(i) *Seat belt maintenance.* Seat belts shall be maintained in functional condition, and replaced when necessary to assure proper performance.

(j) *Publications.* Publications incorporated by reference in this section have been approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a). Copies are available from the Administrator for Metal and Nonmetal Mine Safety and Health, MSHA, 4015 Wilson Blvd., Arlington, Virginia 22203, and may be examined at any Metal and Nonmetal District Office. Copies may also be obtained from the Society of Automotive Engineers, 400 Commonwealth Drive, Warrendale, PA 15096.

(Approved by the Office of Management and Budget under Control Number 1219–0089)

**§ 56.14131 Seat belts for haulage trucks.**

(a) Seat belts shall be provided and worn in haulage trucks.

(b) Seat belts shall be maintained in functional condition, and replaced when necessary to assure proper performance.

(c) Seat belts required under this section shall meet the requirements of SAE J386, "Operator Restraint Systems for Off-Road Work Machines", 1985, which is incorporated by reference in accordance with 5 U.S.C. 552(a).

(d) Publications incorporated by reference in this section have been approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a). Copies are available from the Administrator for Metal and Nonmetal Mine Safety and Health, (MSHA), 4015 Wilson Blvd., Arlington, VA 22203, and may be examined at any Metal and Nonmetal District Office. Copies may also be obtained from the Society of Automotive Engineers, 400 Commonwealth Drive, Warrendale, PA 15096.

**§ 56.14132 Horns and backup alarms.**

(a) Manually-operated horns or other audible warning devices provided on self-propelled mobile equipment as a safety feature shall be maintained in functional condition.

(b)(1) When the operator has an obstructed view to the rear, self-propelled mobile equipment shall have—

(i) An automatic reverse-activated signal alarm;

(ii) A wheel-mounted bell alarm which sounds at least once for each three feet of reverse movement;

(iii) A discriminating backup alarm that covers the area of obstructed view; or

(iv) An observer to signal when it is safe to back up.

(2) Alarms shall be audible above the surrounding noise level.

(3) An automatic reverse-activated strobe light may be used at night in lieu of an audible reverse alarm.

(c) This standard does not apply to rail equipment.

**Safety Practices and Operational Procedures**

**§ 56.14200 Warnings prior to starting or moving equipment.**

Before starting crushers or moving self-propelled mobile equipment, equipment operators shall sound a warning that is audible above the surrounding noise level or use other effective means to warn all persons who could be exposed to a hazard from the equipment.

**§ 56.14201 Conveyor start-up warnings.**

(a) When the entire length of a conveyor is visible from the starting switch, the conveyor operator shall visually check to make certain that all persons are in the clear before starting the conveyor.

(b) When the entire length of the conveyor is not visible from the starting switch, a system which provides visible or audible warning shall be installed and operated to warn persons that the conveyor will be started. Within 30 seconds after the warning is given, the conveyor shall be started or a second warning shall be given.

**§ 56.14202 Manual cleaning of conveyor pulleys.**

Pulleys of conveyors shall not be cleaned manually while the conveyor is in motion.

**§ 56.14203 Application of belt dressing.**

Belt dressings shall not be applied manually while belts are in motion unless a pressurized-type applicator is used that allows the dressing to be applied from outside the guards.

**§ 56.14204 Machinery lubrication.**

Machinery or equipment shall not be lubricated manually while it is in motion where application of the lubricant may expose persons to injury.

**§ 56.14205 Machinery, equipment, and tools.**

Machinery, equipment, and tools shall not be used beyond the design capacity intended by the manufacturer where such use may create a hazard to persons.

**§ 56.14206 Securing movable parts.**

(a) When moving mobile equipment between workplaces, booms, forks, buckets, beds, and similar movable parts of the equipment shall be positioned in the travel mode and, if required for safe travel, mechanically secured.

(b) When mobile equipment is unattended or not in use, dippers, buckets and scraper blades be lowered to the ground. Other movable parts, such as booms, shall be mechanically secured or positioned to prevent movement which would create a hazard to persons.

**§ 56.14207 Parking procedures for unattended equipment.**

Mobile equipment shall not be left unattended unless the controls are placed in the park position and the parking brake, if provided, is set. When parked on a grade, the wheels or tracks of mobile equipment shall be either chocked or turned into a bank.

**§ 56.14208 Warning devices.**

(a) Visible warning devices shall be used when parked mobile equipment creates a hazard to persons in other mobile equipment.

(b) Mobile equipment, other than forklifts, carrying loads that project beyond the sides or more than four feet beyond the rear of the equipment shall have a warning flag at the end of the projection. Under conditions of limited visibility these loads shall have a warning light at the end of the projection. Such flag or lights shall be attached to the end of the projection or be carried by persons walking beside or behind the projection.

**§ 56.14209 Safety procedures for towing.**

(a) A properly sized tow bar or other effective means of control shall be used to tow mobile equipment.

(b) Unless steering and braking are under the control of the equipment operator on the towed equipment, a safety chain or wire rope capable of withstanding the loads to which it could be subjected shall be used in conjunction with any primary rigging.

(c) This provision does not apply to rail equipment.

**§ 56.14210 Movement of dippers, buckets, loading booms, or suspended loads.**

(a) Dippers, buckets, loading booms, or suspended loads shall not be swung over the operators' stations of self-propelled mobile equipment until the equipment operator is out of the operator's station and in a safe location.

(b) This section does not apply when the equipment is specifically designed to protect the equipment operator from falling objects.

**§ 56.14211 Blocking equipment in a raised position.**

(a) Persons shall not work on top of, under, or work from mobile equipment in a raised position until the equipment has been blocked or mechanically secured to prevent it from rolling or falling accidentally.

(b) Persons shall not work on top of, under, or work from a raised component of mobile equipment until the component has been blocked or mechanically secured to prevent accidental lowering. The equipment must also be blocked or secured to prevent rolling.

(c) A raised component must be secured to prevent accidental lowering when persons are working on or around mobile equipment and are exposed to the hazard of accidental lowering of the component.

(d) Under this section, a raised component of mobile equipment is considered to be blocked or mechanically secured if provided with a functional load-locking device or a device which prevents free and uncontrolled descent.

(e) Blocking or mechanical securing of the raised component is required during repair or maintenance of elevated mobile work platforms.

**§ 56.14212 Chains, ropes, and drive belts.**

Chains, ropes, and drive belts shall be guided mechanically onto moving pulleys, sprockets, or drums except where equipment is designed specifically for hand feeding.

**§ 56.14213 Ventilation and shielding for welding.**

(a) Welding operations shall be shielded when performed at locations where arc flash could be hazardous to persons.

(b) All welding operations shall be well-ventilated.

**§ 56.14214 Train warnings.**

A warning that is audible above the surrounding noise level shall be sounded—

(a) Immediately prior to moving trains;

(b) When trains approach persons, crossings, other trains on adjacent tracks; and

(c) Any place where the train operator's vision is obscured.

**§ 56.14215 Coupling or uncoupling cars.**

Prior to coupling or uncoupling cars manually, trains shall be brought to a complete stop, and then moved at minimum tram speed until the coupling or uncoupling activity is completed. Coupling or uncoupling shall not be attempted from the inside of curves unless the railroad and cars are designed to eliminate hazards to persons.

**§ 56.14216 Backpoling.**

Backpoling of trolleys is prohibited except where there is inadequate clearance to reverse the trolley pole. Where backpoling is required, it shall be done only at the minimum tram speed of the trolley.

**§ 56.14217 Securing parked railcars.**

Parked railcars shall be blocked securely unless held effectively by brakes.

**§ 56.14218 Movement of equipment on adjacent tracks.**

When a locomotive on one track is used to move rail equipment on adjacent tracks, a chain, cable, or drawbar shall be used which is capable of meeting the loads to which it could be subjected.

**§ 56.14219 Brakeman signals.**

When a train is under the direction of a brakeman and the train operator cannot clearly recognize the brakeman's signals, the train operator shall bring the train to a stop.

**Appendix I for Subpart M—National Consensus Standards**

Mine operators seeking further information regarding the construction and installation of falling object protective structures (FOPS) may consult the following national consensus standards, as applicable.

MSHA STANDARD 56.14106, FALLING OBJECT PROTECTION.

| Equipment | National consensus standard |
|---|---|
| Front-end loaders and bulldozers. | Society of Automotive Engineers (SAE) minimum performance criteria for falling object protective structures (FOPS) SAE J231—January, 1981. |
| Fork-lift trucks | American National Standards Institute (ANSI) safety standard for low lift and high lift trucks, B 56.1, section 7.27—1983; or, American National Standards Institute (ANSI) standard, rough terrain fork lift trucks, B56.6—1987. |

6. Subpart N is amended by adding a new § 56.15014 to read as follows:

**Subpart N—Personal Protection**

**§ 56.15014 Eye protection when operating grinding wheels.**

Face shields or goggles in good condition shall be worn when operating a grinding wheel.

## PART 57—SAFETY AND HEALTH STANDARDS—UNDERGROUND METAL AND NONMETAL MINES

7. The authority citation for Part 57 continues to read as follows:

Authority: 30 U.S.C. 811.

**Subpart A—General**

**§ 57.2 [Amended]**

8. In § 57.2 the definitions of "berm" and "trip light" are removed.

9. Subpart H is revised to read as follows:

**Subpart H—Loading, Hauling, and Dumping**

Sec.

57.9000 Definitions.

**Traffic Safety**

57.9100 Traffic control.
57.9101 Operating speeds and control of equipment.
57.9102 Movement of independently operating rail equipment.
57.9103 Clearance on adjacent tracks.
57.9104 Railroad crossings.

**Transportation of Persons and Materials**

57.9200 Transporting persons.
57.9201 Loading, hauling, and unloading of equipment or supplies.
57.9202 Loading and hauling large rocks.
57.9260 Supplies, materials, and tools on mantrips.
57.9261 Transporting tools and materials on locomotives.

**Safety Devices, Provisions, and Procedures for Roadways, Railroads, and Loading and Dumping Sites**

57.9300 Berms or guardrails.
57.9301 Dump site restraints.
57.9302 Protection against moving or runaway railroad equipment.
57.9303 Construction of ramps and dumping facilities.
57.9304 Unstable ground.
57.9305 Truck spotters.
57.9306 Warning devices for restricted clearances.
57.9307 Design, installation, and maintenance of railroads.
57.9308 Switch throws.
57.9309 Chute design.
57.9310 Chute hazards.
57.9311 Anchoring stationary sizing devices.
57.9312 Working around drawholes.
57.9313 Roadway maintenance.
57.9314 Trimming stockpile and muckpile faces.
57.9315 Dust control.
57.9316 Notifying the equipment operator.
57.9317 Suspended loads.
57.9318 Getting on or off moving equipment.
57.9319 Going over, under, or between railcars.
57.9330 Clearance for surface equipment.
57.9360 Shelter holes.
57.9361 Drawholes.
57.9362 Protection of signalmen.

## Subpart H—Loading, Hauling, and Dumping

### § 57.9000 Definitions.

The following definitions apply in this subpart:

*Berm.* A pile or mound of material along an elevated roadway capable of moderating or limiting the force of a vehicle in order to impede the vehicle's passage over the bank of the roadway.

*Mobile equipment.* Wheeled, skid-mounted, track-mounted, or rail-mounted equipment capable of moving or being moved.

### Traffic Safety

### § 57.9100 Traffic control.

To provide for the safe movement of self-propelled mobile equipment—

(a) Rules governing speed, right-of-way, direction of movement, and the use of headlights to assure appropriate visibility, shall be established and followed at each mine; and

(b) Signs or signals that warn of hazardous conditions shall be placed at appropriate locations at each mine.

### § 57.9101 Operating speeds and control of equipment.

Operators of self-propelled mobile equipment shall maintain control of the equipment while it is in motion. Operating speeds shall be consistent with conditions of roadways, tracks, grades, clearance, visibility, and traffic, and the type of equipment used.

### § 57.9102 Movement of independently operating rail equipment.

Movement of two or more pieces of rail equipment operating independently on the same track shall be controlled for safe operation.

### § 57.9103 Clearance on adjacent tracks.

Railcars shall not be left on side tracks unless clearance is provided for traffic on adjacent tracks.

### § 57.9104 Railroad crossings.

Designated railroad crossings shall be posted with warning signs or signals, or shall be guarded when trains are passing. These crossings shall also be planked or filled between the rails.

### § 57.9160 Train movement during shift changes.

During shift changes, the movement of underground trains carrying rock or material shall be limited to areas where the trains do not present a hazard to persons changing shifts.

### Transportation of Persons and Materials

### § 57.9200 Transporting persons.

Persons shall not be transported—

(a) In or on dippers, forks, clamshells, or buckets except shaft buckets during shaft-sinking operations or during inspection, maintenance and repair of shafts.

(b) In beds of mobile equipment or railcars, unless—

(1) Provisions are made for secure travel, and

(2) Means are taken to prevent accidental unloading if the equipment is provided with unloading devices;

(c) On top of loads in mobile equipment;

(d) Outside cabs, equipment operators' stations, and beds of mobile equipment, except when necessary for maintenance, testing, or training purposes, and provisions are made for secure travel. This provision does not apply to rail equipment.

(e) Between cars of trains, on the leading end of trains, on the leading end of a single railcar, or in other locations on trains that expose persons to hazards from train movement.

(1) This paragraph does not apply to car droppers if they are secured with safety belts and lines which prevent them from falling off the work platform.

(2) Brakemen and trainmen are prohibited from riding between cars of moving trains but may ride on the leading end of trains or other locations when necessary to perform their duties;

(f) To and from work areas in overcrowded mobile equipment;

(g) In mobile equipment with materials or equipment unless the items are secured or are small and can be carried safely by hand without creating a hazard to persons; or

(h) On conveyors unless the conveyors are designed to provide for their safe transportation.

### § 57.9201 Loading, hauling, and unloading of equipment or supplies.

Equipment and supplies shall be loaded, transported, and unloaded in a manner which does not create a hazard to persons from falling or shifting equipment or supplies.

### § 57.9202 Loading and hauling large rocks.

Large rocks shall be broken before loading if they could endanger persons or affect the stability of mobile equipment. Mobile equipment used for haulage of mined material shall be loaded to minimize spillage where a hazard to persons could be created.

### § 57.9260 Supplies, materials, and tools on mantrips.

Supplies, materials, and tools, other than small items that can be carried by hand, shall not be transported underground with persons in mantrips. Mantrips shall be operated independently of ore or supply trips.

### § 57.9261 Transporting tools and materials on locomotives.

Tools or materials shall not be carried on top of locomotives underground except for secured rerailing devices located in a manner which does not create a hazard to persons.

### Safety Devices, Provisions, and Procedures for Roadways, Railroads, and Loading and Dumping Sites

### § 57.9300 Berms or guardrails.

(a) Berms or guardrails shall be provided and maintained on the banks of roadways where a drop-off exists of sufficient grade or depth to cause a vehicle to overturn or endanger persons in equipment.

(b) Berms or guardrails shall be at least mid-axle height of the largest self-propelled mobile equipment which usually travels the roadway.

(c) Berms may have openings to the extent necessary for roadway drainage.

(d) Where elevated roadways are infrequently traveled and used only by service or maintenance vehicles, berms or guardrails are not required when the following criteria are met.

(1) Locked gates are installed at the entrance points to the roadway.

(2) Signs are posted warning that the roadway is not bermed.

(3) Reflectors are installed at 25-foot intervals along the perimeter of the elevated roadway.

(4) A maximum speed limit of 15 miles per hour is posted.

(5) Road surface traction is not to be impaired by weather conditions, such as sleet and snow, unless corrective measures are taken to improve traction.

(e) This standard is not applicable to rail beds.

### § 57.9301 Dump site restraints.

Berms, bumper blocks, safety hooks, or similar impeding devices shall be provided at dumping locations where there is a hazard of overtravel or overturning.

### § 57.9302 Protection against moving or runaway railroad equipment.

Stopblocks, derail devices, or other devices that protect against moving or runaway rail equipment shall be installed wherever necessary to protect persons.

### § 57.9303 Construction of ramps and dumping facilities.

Ramps and dumping facilities shall be designed and constructed of materials capable of supporting the loads to which they will be subjected. The ramps and

dumping facilities shall provide width, clearance, and headroom to safely accommodate the mobile equipment using the facilities.

**§ 57.9304 Unstable ground.**

(a) Dumping locations shall be visually inspected prior to work commencing and as ground conditions warrant.

(b) Where there is evidence that the ground at a dumping location may fail to support the mobile equipment, loads shall be dumped a safe distance back from the edge of the unstable area of the bank.

**§ 57.9305 Truck spotters.**

(a) If truck spotters are used, they shall be in the clear while trucks are backing into dumping position or dumping.

(b) Spotters shall use signal lights to direct trucks where visibility is limited.

(c) When a truck operator cannot clearly recognize the spotter's signals, the truck shall be stopped.

**§ 57.9306 Warning devices for restricted clearances.**

Where restricted clearance creates a hazard to persons on mobile equipment, warning devices shall be installed in advance of the restricted area and the restricted area shall be conspicuously marked.

**§ 57.9307 Design, installation, and maintenance of railroads.**

Roadbeds and all elements of the railroad tracks shall be designed, installed, and maintained to provide safe operation consistent with the speed and type of haulage used.

**§ 57.9308 Switch throws.**

Switch throws shall be installed to provide clearance to protect switchmen from contact with moving trains.

**§ 57.9309 Chute design.**

Chute-loading installations shall be designed to provide a safe location for persons pulling chutes.

**§ 57.9310 Chute hazards.**

(a) Prior to chute-pulling, persons who could be affected by the draw or otherwise exposed to danger shall be warned and given time to clear the hazardous area.

(b) Persons attempting to free chute hangups shall be experienced and familiar with the task, know the hazards involved, and use the proper tools to free material.

(c) When broken rock or material is dumped into an empty chute, the chute shall be equipped with a guard or all persons shall be isolated from the hazard of flying rock or material.

**§ 57.9311 Anchoring stationary sizing devices.**

Grizzlies and other stationary sizing devices shall be securely anchored.

**§ 57.9312 Working around drawholes.**

Unless platforms or safety lines are used, persons shall not position themselves over drawholes if there is danger that broken rock or material may be withdrawn or bridged.

**§ 57.9313 Roadway maintenance.**

Water, debris, or spilled material on roadways which creates hazards to the operation of mobile equipment shall be removed.

**§ 57.9314 Trimming stockpile and muckpile faces.**

Stockpile and muckpile faces shall be trimmed to prevent hazards to persons.

**§ 57.9315 Dust control.**

Dust shall be controlled at muck piles, material transfer points, crushers, and on haulage roads where hazards to persons would be created as a result of impaired visibility.

**§ 57.9316 Notifying the equipment operator.**

When an operator of self-propelled mobile equipment is present, persons shall notify the equipment operator before getting on or off that equipment.

**§ 57.9317 Suspended loads.**

Persons shall not work or pass under the buckets or booms of loaders in operation.

**§ 57.9318 Getting on or off moving equipment.**

Persons shall not get on or off moving mobile equipment. This provision does not apply to trainmen, brakemen, and car droppers who are required to get on or off slowly moving trains in the performance of their work duties.

**§ 57.9319 Going over, under, or between railcars.**

Persons shall not go over, under, or between railcars unless—

(a) The train is stopped; and

(b) The train operator, when present, is notified and the notice acknowledged.

**§ 57.9330 Clearance for surface equipment.**

Continuous clearance of at least 30 inches from the farthest projection of moving railroad equipment shall be provided on at least one side of the tracks at all locations where possible or the area shall be marked conspicuously.

**§ 57.9360 Shelter holes.**

(a) Shelter holes shall be—

(1) Provided at intervals adequate to assure the safety of persons along underground haulageways where continuous clearance of at least 30 inches cannot be maintained from the farthest projection of moving equipment on at least one side of the haulageway; and

(2) At least four feet wide, marked conspicuously, and provide a minimum 40-inch clearance from the farthest projection of moving equipment.

(b) Shelter holes shall not be used for storage unless a 40-inch clearance is maintained.

**§ 57.9361 Drawholes.**

To prevent hazards to persons underground, collars of open drawholes shall be free of muck or materials except during transfer of the muck or material through the drawhole.

**§ 57.9362 Protection of signalmen.**

Signalmen used during slushing operations underground shall be located away from possible contact with cables, sheaves, and slusher buckets.

10. Subpart J is amended by adding a new § 57.11008, to read as follows:

## Subpart J—Travelways and Escapeways

**§ 57.11008 Restricted clearance.**

Where restricted clearance creates a hazard to persons, the restricted clearance shall be conspicuously marked.

11. Subpart M is revised to read as follows:

## Subpart M—Machinery and Equipment

Sec.

## Subpart M—Machinery and Equipment

### § 57.14000 Definitions.

The following definitions apply in this subpart.

*Mobile equipment.* Wheeled, skid-mounted, track-mounted, or rail-mounted equipment capable of moving or being moved.

*Travelway.* A passage, walk, or way regularly used or designated for persons to go from one place to another.

### Safety Devices and Maintenance Requirements

### § 57.14100 Safety defects; examination, correction and records.

(a) Self-propelled mobile equipment to be used during a shift shall be inspected by the equipment operator before being placed in operation on that shift.

(b) Defects on any equipment, machinery, and tools that affect safety shall be corrected in a timely manner to prevent the creation of a hazard to persons.

(c) When defects make continued operation hazardous to persons, the defective items including self-propelled mobile equipment shall be taken out of service and placed in a designated area posted for that purpose, or a tag or other effective method of marking the defective items shall be used to prohibit further use until the defects are corrected.

(d) Defects on self-propelled mobile equipment affecting safety, which are not corrected immediately, shall be reported to, and recorded by, the mine operator. The records shall be kept at the mine or nearest mine office from the date the defects are recorded, until the defects are corrected. Such records shall be made available for inspection by an authorized representative of the Secretary.

### § 57.14101 Brakes.

(a) *Minimum requirements.* (1) Self-propelled mobile equipment shall be equipped with a service brake system capable of stopping and holding the equipment with its typical load on the maximum grade it travels. This standard does not apply to equipment which is not originally equipped with brakes unless the manner in which the equipment is being operated requires the use of brakes for safe operation. This standard does not apply to rail equipment.

(2) If equipped on self-propelled mobile equipment, parking brakes shall be capable of holding the equipment with its typical load on the maximum grade it travels.

(3) All braking systems installed on the equipment shall be maintained in functional condition.

(b) *Testing.* (1) Service brake tests shall be conducted on surface-operated equipment at underground mines when an MSHA inspector has reasonable cause to believe that the service brake system does not function as required, unless the mine operator removes the equipment from service for the appropriate repair;

(2) The performance of the service brakes shall be evaluated according to Table M–1.

TABLE M–1

| Gross vehicle weight lbs. | Equipment Speed, MPH | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 |
| | Service Brake Maximum Stopping Distance—Feet | | | | | | | | | | |
| 0–36,000 | 34 | 38 | 43 | 48 | 53 | 59 | 64 | 70 | 76 | 83 | 89 |
| 36,000–70,000 | 41 | 46 | 52 | 58 | 62 | 70 | 76 | 83 | 90 | 97 | 104 |
| 70,000–14,0000 | 48 | 54 | 61 | 67 | 74 | 81 | 88 | 95 | 103 | 111 | 119 |
| 140,000–250,000 | 56 | 62 | 69 | 77 | 84 | 92 | 100 | 108 | 116 | 125 | 133 |
| 250,000–400,000 | 59 | 66 | 74 | 81 | 89 | 97 | 105 | 114 | 123 | 132 | 141 |
| Over–400,000 | 63 | 71 | 78 | 86 | 94 | 103 | 111 | 120 | 129 | 139 | 148 |

Stopping distances are computed using a constant deceleration of 9.66 FPS $^2$ and system response times of .5.1, 1.5, 2, 2.25 and 2.5 seconds for each of increasing weight category respectively. Stopping distance values include a one-second operator response time.

TABLE 2.—THE SPEED OF A VEHICLE CAN BE DETERMINED BY CLOCKING IT THROUGH A 100-FOOT MEASURED COURSE AT CONSTANT VELOCITY USING TABLE 2. WHEN THE SERVICE BRAKES ARE APPLIED AT THE END OF THE COURSE, STOPPING DISTANCE CAN BE MEASURED AND COMPARED TO TABLE 1.

| Miles per hour | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Seconds required to travel 100 feet.. | 6.8 | 6.2 | 5.7 | 5.2 | 4.9 | 4.5 | 4.3 | 4.0 | 3.8 | 3.6 | 3.4 |

(3) Service brake tests shall be conducted under the direction of the mine operator in cooperation with and according to the instructions provided by the MSHA inspector as follows:

(i) Equipment capable of traveling at least 10 miles per hour shall be tested with a typical load for that particular piece of equipment. Front-end loaders shall be tested with the loader bucket empty. Equipment shall not be tested when carrying hazardous loads, such as explosives.

(ii) The approach shall be of sufficient length to allow the equipment operator to reach and maintain a constant speed between 10 and 20 miles per hour prior to entering the 100 foot measured area. The constant speed shall be maintained up to the point when the equipment operator receives the signal to apply the brakes. The roadway shall be wide enough to accommodate the size of the equipment being tested. The ground shall be generally level, packed, and dry in the braking portion of the test course. Ground moisture may be present to the extent that it does not adversely affect the braking surface.

(iii) Braking is to be performed using only those braking systems, including auxiliary retarders, which are designed to bring the equipment to a stop under normal operating conditions. Parking or emergency (secondary) brakes are not to be actuated during the test.

(iv) The tests shall be conducted with the transmission in the gear appropriate for the speed the equipment is traveling except for equipment which is designed for the power train to be disengaged during braking.

(v) Testing speeds shall be a minimum of 10 miles per hour and a maximum of 20 miles per hour.

(vi) Stopping distances shall be measured from the point at which the equipment operator receives the signal to apply the service brakes to the final stopped position.

(4) Test results shall be evaluated as follows:

(i) If the initial test run is valid and the stopping distance does not exceed the corresponding stopping distance listed in Table 1, the performance of the service brakes shall be considered acceptable. For tests to be considered valid, the equipment shall not slide sideways or exhibit other lateral motion during the braking portion of the test.

(ii) If the equipment exceeds the maximum stopping distance in the initial test run, the mine operator may request from the inspector up to four additional test runs with two runs to be conducted in each direction. The performance of the service brakes shall be considered acceptable if the equipment does not exceed the maximum stopping distance on at least three of the additional tests.

(5) Where there is not an appropriate test site at the mine or the equipment is not capable of traveling at least 10 miles per hour, service brake tests will not be conducted. In such cases, the inspector will rely upon other available evidence to determine whether the service brake system meets the performance requirements of this standard.

**§ 57.14102 Brakes for rail equipment.**

Braking systems on railroad cars and locomotives shall be maintained in functional condition.

**§ 57.14103 Operators' stations.**

(a) If windows are provided on operators' stations of self-propelled mobile equipment, the windows shall be made of safety glass or material with equivalent safety characteristics. The windows shall be maintained to provide visibility for safe operation.

(b) If damaged windows obscure visibility necessary for safe operation, or create a hazard to the equipment operator, the windows shall be replaced or removed. Damaged windows shall be replaced if absence of a window would expose the equipment operator to hazardous environmental conditions which would affect the ability of the equipment operator to safely operate the equipment.

(c) The operators' stations of self-propelled mobile equipment shall—

(1) Be free of materials that may create a hazard to persons by impairing the safe operation of the equipment; and

(2) Not be modified, in a manner that obscures visibility necessary for safe operation.

**§ 57.14104 Tire repairs.**

(a) Before a tire is removed from a vehicle for tire repair, the valve core shall be partially removed to allow for gradual deflation and then removed. During deflation, to the extent possible, persons shall stand outside of the potential trajectory of the lock ring of a multi-piece wheel rim.

(b) To prevent injury from wheel rims during tire inflation, one of the following shall be used:

(1) A wheel cage or other restraining device that will constrain all wheel rim components during an explosive separation of a multi-piece wheel rim, or during the sudden release of contained air in a single piece rim wheel; or

(2) A stand-off inflation device which permits persons to stand outside of the potential trajectory of wheel components.

**§ 57.14105 Procedures during repairs or maintenance.**

Repairs or maintenance on machinery or equipment shall be performed only after the power is off, and the machinery or equipment blocked against hazardous motion. Machinery or equipment motion or activation is permitted to the extent that adjustments or testing cannot be performed without motion or activation, provided that persons are effectively protected from hazardous motion.

**§ 57.14106 Falling object protection.**

(a) Fork-lift trucks, front-end loaders, and bulldozers shall be provided with falling object protective structures if used in an area where falling objects could create a hazard to the operator.

(b) The protective structure shall be capable of withstanding the falling object loads to which it could be subjected.

**§ 57.14107 Moving machine parts.**

(a) Moving machine parts shall be guarded to protect persons from contacting gears, sprockets, chains, drive, head, tail, and takeup pulleys, flywheels, coupling, shafts, fan blades; and similar moving parts that can cause injury.

(b) Guards shall not be required where the exposed moving parts are at

least seven feet away from walking or working surfaces.

**§ 57.14108 Overhead drive belts.**

Overhead drive belts shall be guarded to contain the whipping action of a broken belt if that action could be hazardous to persons.

**§ 57.14109 Unguarded conveyors with adjacent travelways.**

Unguarded conveyors next to travelways shall be equipped with—

(a) Emergency stop devices which are located so that a person falling on or against the conveyor can readily deactivate the conveyor drive motor; or

(b) Railings which—

(1) Are positioned to prevent persons from falling on or against the conveyor;

(2) Will be able to withstand the vibration, shock, and wear to which they will be subjected during normal operation; and

(3) Are constructed and maintained so that they will not create a hazard.

**§ 57.14110 Flying or falling materials.**

In areas where flying or falling materials generated from the operation of screens, crushers, or conveyors present a hazard, guards, shields, or other devices that provide protection against such flying or falling materials shall be provided to protect persons.

**§ 57.14111 Slusher, backlash guards and securing.**

(a) When persons are exposed to slushing operations, the slushers shall be equipped with rollers and drum covers and anchored securely before slushing operations are started to protect against hazardous movement before slushing operations are started.

(b) Slushers rated over 10 horsepower shall be equipped with backlash guards, unless the equipment operator is otherwise protected.

(c) This standard does not apply to air tuggers of 10 horsepower or less that have only one cable and one drum.

**§ 57.14112 Construction and maintenance of guards.**

(a) Guards shall be constructed and maintained to—

(1) Withstand the vibration, shock, and wear to which they will be subjected during normal operation; and

(2) Not create a hazard by their use.

(b) Guards shall be securely in place while machinery is being operated, except when testing or making adjustments which cannot be performed without removal of the guard.

**§ 57.14113 Inclined conveyors: backstops or brakes.**

Backstops or brakes shall be installed on drive units of inclined conveyors to prevent the conveyors from running in reverse, creating a hazard to persons.

**§ 57.14114 Air valves for pneumatic equipment.**

A manual master quick-close type air value shall be installed on all pneumatic-powered equipment if there is a hazard of uncontrolled movement when the air supply is activated. The valve shall be closed except when the equipment is being operated.

**§ 57.14115 Stationary grinding machines.**

Stationary grinding machines, other than special bit grinders, shall be equipped with—

(a) Peripheral hoods capable of withstanding the force of a bursting wheel and enclosing not less than 270— of the periphery of the wheel;

(b) Adjustable tool rests set so that the distance between the grinding surface of the wheel and the tool rest is not greater than ⅛ inch; and

(c) A safety washer on each side of the wheel.

**§ 57.14116 Hand-held power tools.**

(a) Power drills, disc sanders, grinders and circular and chain saws, when used in the hand-held mode shall be operated with controls which require constant hand or finger pressure.

(b) Circular saws and chain saws shall not be equipped with devices which lock-on the operating controls.

**§ 57.14130 Roll-over protective structures (ROPS) and seat belts for surface equipment.**

(a) *Equipment included.* Roll-over protective structures (ROPS) and seat belts shall be installed on—

(1) Crawler tractors and crawler loaders;

(2) Graders;

(3) Wheel loaders and wheel tractors;

(4) The tractor portion of semi-mounted scrapers, dumpers, water wagons, bottom-dump wagons, rear-dump wagons, and towed fifth wheel attachments;

(5) Skid-steer loaders; and

(6) Agricultural tractors.

(b) *ROPS construction.* ROPS shall meet the requirements of the following Society of Automotive Engineers (SAE) publications, as applicable, which are incorporated by reference:

(1) SAE J1040, "Performance Criteria for Roll-Over Protective Structures (ROPS) for Construction, Earthmoving, Forestry, and Mining Machines,", 1986; or

(2) SAE J1194, "Roll-Over Protective Structures (ROPS) for Wheeled Agricultural Tractors", 1983.

(c) *ROPS labeling.* ROPS shall have a label permanently affixed to the structure identifying—

(1) The manufacturer's name and address;

(2) The ROPS model number; and

(3) The make and model number of the equipment for which the ROPS is designed.

(d) *ROPS installation.* ROPS shall be installed on the equipment in accordance with the recommendations of the ROPS manufacturer.

(e) *ROPS maintenance.* (1) ROPS shall be maintained in a condition that meets the performance requirements applicable to the equipment. If the ROPS is subjected to a roll-over or abnormal structural loading, the equipment manufacturer or a registered professional engineer with knowledge and experience in ROPS design shall recertify that the ROPS meets the applicable performance requirements before it is returned to service.

(2) Alterations or repairs on ROPS shall be performed only with approval from the ROPS manufacturer or under the instructions of a registered professional engineer with knowledge and experience in ROPS design. The manufacturer or engineer shall certify that the ROPS meets the applicable performance requirements.

(f) *Exemptions.* (1) This standard does not apply to—

(i) Self-propelled mobile equipment manufactured prior to July 1, 1969;

(ii) Over-the-road type tractors that pull trailers or vans on highways;

(iii) Equipment that is only operated by remote control; and

(2) Self-propelled mobile equipment manufactured prior to [insert date 60 days after date of publication], that is equipped with ROPS and seat belts that meet the installation and performance requirements of 30 CFR 57.9088 (1986 edition) shall be considered in compliance with paragraphs (b) and (c) of this section.

(g) *Wearing seat belts.* Seat belts shall be worn by the equipment operator except that when operating graders from a standing position, the grader operator shall wear safety lines and a harness in place of a seat belt.

(h) *Seat belts construction.* Seat belts shall meet the requirements of SAE J386, "Operator Restraint Systems for Off-Road Work Machines", 1985; or SAE J1194, "Roll-Over Protective Structures (ROPS) For Wheeled Agricultural Tractors", 1983, as applicable, which are incorporated by reference.

(i) *Seat belt maintenance.* Seat belts shall be maintained in functional condition, and replaced when necessary to assure proper performance.

(j) *Publications.* Publications incorporated by reference in this section have been approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a). Copies are available from the Administrator for Metal and Nonmetal Mine Safety and Health, MSHA, 4015 Wilson Blvd., Arlington, Virginia 22203, and may be examined at any Metal and Nonmetal District Office. Copies may also be obtained from the Society of Automotive Engineers, 400 Commonwealth Drive, Warrendale, PA 15096.

(Approved by the Office of Management and Budget under Control Number 1219–0089)

**§ 57.14131 Seat belts for surface haulage trucks.**

(a) Seat belts shall be provided and worn in haulage trucks.

(b) Seat belts shall be maintained in functional condition, and replaced when necessary to assure proper performance.

(c) Seat belts required under this section shall meet the requirements of SAE J386, "Operator Restraint Systems for Off-Road Work Machines", 1985, which is incorporated by reference in accordance with 5 U.S.C. 552(a).

(d) Publications incorporated by reference in this section have been approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a). Copies are available from the Administrator for Metal and Nonmetal Mine Safety and Health, MSHA, 4015 Wilson Blvd., Arlington, VA 22203, and may be examined at any Metal and Nonmetal District Office. Copies may also be obtained from the Society of Automotive Engineers, 400 Commonwealth Drive, Warrendale, PA 15096.

**§ 57.14132 Horns and backup alarms for surface equipment.**

(a) Manually-operated horns or other audible warning devices provided on self-propelled mobile equipment as a safety device shall be maintained in a functional condition.

(b)(1) When the operator has an obstructed view to the rear, self-propelled mobile equipment shall have—

(i) An automatic reverse-activated signal alarm;

(ii) A wheel-mounted bell alarm which sounds at least once for each three feet of reverse movement;

(iii) A discriminating backup alarm that covers the area of obstructed view; or

(iv) An observer to signal when it is safe to back up.

(2) Alarms shall be audible above the surrounding noise level.

(3) An automatic reverse-activated strobe light may be used at night in lieu of an audible reverse alarm.

(c) This standard does not apply to rail equipment.

**§ 57.14160 Mantrip trolley wire hazards underground.**

Mantrips shall be covered if there is danger of persons contacting the trolley wire.

**§ 57.14161 Makeshift couplings.**

Couplings used on underground rail equipment shall be designed for that equipment, except that makeshift couplings may be used to move disabled rail equipment for repairs if no hazard to persons is created.

**§ 57.14162 Trip lights.**

On underground rail haulage, trip lights shall be used on the rear of pulled trips and on the front of pushed trips.

**Safety Practices and Operational Procedures**

**§ 57.14200 Warnings prior to starting or moving equipment.**

Before starting crushers or moving self-propelled mobile equipment, equipment operators shall sound a warning that is audible above the surrounding noise level or use other effective means to warn all persons who could be exposed to a hazard from the equipment.

**§ 57.14201 Conveyor start-up warnings.**

(a) When the entire length of a conveyor is visible from the starting switch, the conveyor operator shall visually check to make certain that all persons are in the clear before starting the conveyor.

(b) When the entire length of the conveyor is not visible from the starting switch, a system which provides visible or audible warning shall be installed and operated to warn persons that the conveyor will be started. Within 30 seconds after the warning is given, the conveyor shall be started or a second warning shall be given.

**§ 57.14202 Manual cleaning of conveyor pulleys.**

Pulleys of conveyors shall not be cleaned manually while the conveyor is in motion.

**§ 57.14203 Application of belt dressing.**

Belt dressings shall not be applied manually while belts are in motion unless a pressurized-type applicator is used that allows the dressing to be applied from outside the guards.

**§ 57.14204 Machinery lubrication.**

Machinery or equipment shall not be lubricated manually while it is in motion where application of the lubricant may expose persons to injury.

**§ 57.14205 Machinery, equipment, and tools.**

Machinery, equipment, and tools shall not be used beyond the design capacity intended by the manufacturer, where such use may create a hazard to persons.

**§ 57.14206 Securing movable parts.**

(a) When moving mobile equipment between workplaces, booms, forks, buckets, beds, and similar movable parts of the equipment shall be positioned in the travel mode and, if required for safe travel, mechanically secured.

(b) When mobile equipment is unattended or not in use, dippers, buckets and scraper blades shall be lowered to the ground. Other movable parts, such as booms, shall be mechanically secured or positioned to prevent movement which would create a hazard to persons.

**§ 57.14207 Parking procedures for unattended equipment.**

Mobile equipment shall not be left unattended unless the controls are placed in the park position and the parking brake, if provided, is set. When parked on a grade, the wheels or tracks of mobile equipment shall be either chocked or turned into a bank or rib.

**§ 57.14208 Warning devices.**

(a) Visible warning devices shall be used when parked mobile equipment creates a hazard to persons in other mobile equipment.

(b) Mobile equipment, other than forklifts, carrying loads that project beyond the sides or more than four feet beyond the rear of the equipment shall have a warning flag at the end of the projection. Under conditions of limited visibility these loads shall have a warning light at the end of the projection. Such flags or lights shall be attached to the end of the projection or be carried by persons walking beside or behind the projection.

**§ 57.14209 Safety procedures for towing.**

(a) A properly sized tow bar or other effective means of control shall be used to tow mobile equipment.

(b) Unless steering and braking are under the control of the equipment operator on the towed equipment, a

safety chain or wire rope capable of withstanding the loads to which it could be subjected shall be used in conjunction with any primary rigging.

(c) This provision does not apply to rail equipment.

**§ 57.14210 Movement of dippers, buckets, loading booms, or suspended loads.**

(a) Dippers, buckets, loading booms, or suspended loads shall not be swung over the operators' stations of self-propelled mobile equipment until the equipment operator is out of the operator's station and in a safe location.

(b) This section does not apply when the equipment is specifically designed to protect the equipment operator from falling objects.

**§ 57.14211 Blocking equipment in a raised position.**

(a) Persons shall not work on top of, under, or work from mobile equipment in a raised position until the equipment has been blocked or mechanically secured to prevent it from rolling or falling accidentally.

(b) Persons shall not work on top of, under, or work from a raised component of mobile equipment until the component has been blocked or mechanically secured to prevent accidental lowering. The equipment must also be blocked or secured to prevent rolling.

(c) A raised component must be secured to prevent accidental lowering when persons are working on or around mobile equipment and are exposed to the hazard of accidental lowering of the component.

(d) Under this section, a raised component of mobile equipment is considered to be blocked or mechanically secured if provided with a functional load-locking device or devices which prevent free and uncontrolled descent.

(e) Blocking or mechanical securing of the raised component is required during repair or maintenance of elevated mobile work platforms.

**§ 57.14212 Chains, ropes, and drive belts.**

Chains, ropes, and drive belts shall be guided mechanically onto moving pulleys, sprockets, or drums except where equipment is designed specifically for hand feeding.

**§ 57.14213 Ventilation and shielding for welding.**

(a) Welding operations shall be shielded when performed at locations where arc flash could be hazardous to persons.

(b) All welding operations shall be well-ventilated.

**§ 57.14214 Train warnings.**

A warning that is audible above the surrounding noise level shall be sounded—

(a) Immediately prior to moving trains;

(b) When trains approach persons, crossing, other trains on adjacent tracks; and

(c) Any place where the train operator's vision is obscured.

**§ 57.14215 Coupling or uncoupling cars.**

Prior to coupling or uncoupling cars manually, trains shall be brought to a complete stop, and then moved at minimum tram speed until the coupling or uncoupling activity is completed. Coupling or uncoupling shall not be attempted from the inside of curves unless the railroad and cars are designed to eliminate hazards to persons.

**§ 57.14216 Backpoling.**

Backpoling of trolleys is prohibited except where there is inadequate clearance to reverse the trolley pole. Where backpoling is required, it shall be done only at the minimum tram speed of the trolley.

**§ 57.14217 Securing parked railcars.**

Parked railcars shall be blocked securely unless held effectively by brakes.

**§ 57.14218 Movement of equipment on adjacent tracks.**

When a locomotive on one track is used to move rail equipment on adjacent tracks, a chain, cable, or drawbar shall be used which is capable of withstanding the loads to which it could be subjected.

**§ 57.14219 Brakeman signals.**

When a train is under the direction of a brakeman and the train operator cannot clearly recognize the brakeman's signals, the train operator shall bring the train to a stop.

**Appendix I for Subpart M—National Consensus Standards**

Mine operators seeking further information regarding the construction and installation of falling object protective structures (FOPS) may consult the following national consensus standards, as applicable.

MSHA STANDARD 57.14106, FALLING OBJECT PROTECTION

| Equipment | National consensus standard |
|---|---|
| Front-end loaders and bulldozers. | Society of Automotive Engineers (SAE) minimum performance criteria for falling object protective structures (FOPS) SAE J231—January, 1981. |
| Fork-lift trucks | American National Standards Institute (ANSI) safety standard for low lift and high lift trucks, B 56.1, section 7.27—1983; or American National Standards Institute (ANSI) standard, rough terrain fork lift trucks, B 56.6—1987. |

12. Subpart N is amended by adding a new § 57.15014 to read as follows:

## Subpart N—Personal Protection

**§ 57.15014 Eye protection when operating grinding wheels.**

Face shields or goggles in good condition shall be worn when operating a grinding wheel.

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Part III

# Department of Energy

**Office of Conservation and Renewable Energy**

**10 CFR Part 435**

**Energy Conservation Mandatory Performance Standards for New Federal Residential Buildings; Final Interim Rule and Proposed Modification of Final Interim Rule**

**DEPARTMENT OF ENERGY**

**Office of Conservation and Renewable Energy**

**10 CFR Part 435**

**[Docket No. CAS-RM-79-112-B]**

# Energy Conservation Mandatory Performance Standards for New Federal Residential Buildings

**AGENCY:** Office of Conservation and Renewable Energy, DOE.

**ACTION:** Final interim rule.

**SUMMARY:** In accordance with Title III of the Energy Conservation and Production Act, the U.S. Department of Energy (DOE) is developing energy conservation performance standards for new buildings. The law provides that the standards will be voluntary for new non-Federal buildings, but will be mandatory for new Federal buildings.

Today, after due consideration of public comment, DOE is promulgating interim energy conservation mandatory performance standards for new Federal residential buildings. The interim standards require a Federal agency to establish an energy consumption goal for the design of a new Federal residential building using the computerized calculation procedure provided in a designated Federal micro-computer program and to adopt such procedures as may be necessary to assure that the design of a new Federal residential building is not less energy conserving than the energy consumption goal established for the design.

The interim standards were designed specifically to accommodate the types of Federal construction most commonly built, Federal economic parameters, and Federal procurement procedures. The Department is in the process of developing energy conservation voluntary standards, that would be more applicable to the non-Federal residential and commercial sectors to be issued at a future date. The Department recognizes that the standards established today could be modified for other than Federal use. It cautions any person or entity that wishes to do so. The Department does not recommend use of the interim standards for non-Federal sector application without a substantial review of the interim standards for applicability to the particular use.

**EFFECTIVE DATE:** February 21, 1989.

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**SUPPLEMENTARY INFORMATION:** Today, the U.S. Department of Energy (DOE) is promulgating interim energy conservation performance standards that will be mandatory for new Federal residential buildings as required by the Energy Conservation Standards for New Buildings Act of 1976, as amended, (Act) 42 U.S.C. 6831 *et seq.* The interim standards require Federal agencies to design new Federal residential buildings in accordance with the energy conservation requirements of § 435.303 of the interim standards. The interim standards do not regulate non-Federal construction. The interim standards have been developed specifically for Federal agencies that construct residential buildings. The calculation procedures used to apply the interim standards to Federal residential construction are not intended for use by the non-Federal sector. DOE intends to develop and promulgate a more appropriate format for voluntary interim energy conservation performance standards for use in the private sector at some future date.

Prior to the promulgation of the interim standards, DOE published, on August 20, 1986, a Notice of Proposed Rulemaking (NOPR) (51 FR 29754) in the **Federal Register.** The NOPR announced DOE's intention to promulgate interim mandatory standards for new Federal residential buildings and provided for a ninety day public comment period and three public hearings. In a subsequent Notice in the **Federal Register**, on November 19, 1986, (51 FR 41637), DOE extended the comment period by fifty-nine days. The comment period closed on January 16, 1987.

In response to public comment and with the availability of additional technical information, DOE made revisions to the proposed interim standards and the micro-computer program, and its supporting documentation. Several comments were received concerning the lack of energy conservation credits for thermal mass options within the proposed interim standards. DOE concurs with those who provided the comments and is in the process of preparing modifications to the computer program that will accurately reflect the energy conservation benefits of thermal mass. An alternate compliance procedure and new window glazing energy data are also being developed as modifications to the computer program. It is intended that the proposed modifications will be published in a Notice of Proposed Modification to the Final Interim Rule in the **Federal Register** to allow the public an opportunity to comment.

The interim standards, promulgated today, will remain in effect until DOE promulgates final standards. By law, DOE is required to conduct a demonstration of the interim standards, based on criteria established by the Act, and report its findings to the Congress, prior to the development and promulgation of final standards.



## I. Background

Originally enacted on August 14, 1976 as Title III of the Energy Conservation and Production Act, Pub. L. 94-385, 90 Stat. 1144 *et seq.*, 42 U.S.C. 6831, the Act required the Department of Housing and Urban Development (HUD) to develop, promulgate, implement and enforce compliance with performance standards to improve the energy efficiency of all

new buildings in the nation. On August 4, 1977, the Act was amended by Section 304(a), 42 U.S.C. 7154, of the Department of Energy Organization Act, Pub. L. 95-91, 91 Stat. 565 *et seq.*, which transferred from HUD to DOE the responsibility to develop and promulgate the standards. The amendments to the Act did not change HUD's implementation responsibilities.

In November 1979, DOE published proposed performance standards in the **Federal Register**, 44 FR 68120 (November 28, 1979). The notice was controversial and generated over 1,800 comments totalling 40,000 pages. The comments included technical and other substantive criticisms of the performance standards.

Less than a year after the publication of the proposed standards, the Act was again amended. Section 326, 94 Stat. 1649, of the Housing and Community Development Act of 1980, Pub. L. 96-399 (October 8, 1980) required that DOE promulgate interim standards by August 1, 1981 and extended the promulgation date of the final standards to April 1, 1983. The interim standards were only to apply to new Federal buildings. In addition, the Act required demonstration projects to be conducted in at least two geographical areas.

In August 1981, Congress again amended the Act. Subtitle D of Title 10 of the Omnibus Reconciliation Act of 1981, Pub. L. 97-35, 95 Stat. 621, amended the Act to create the term "voluntary performance standards", eliminated the provision for a possible statutory sanction for noncompliance, added a provision that, except for Federal buildings, "voluntary standards will be developed solely as guidelines to provide technical assistance for the design and construction of energy efficient buildings", and extended the deadline for DOE to furnish reports on the demonstration projects to Congress.

The legislative changes that have taken place since the original 1976 enactment required DOE to make fundamental changes to the compliance aspects of the Standard regulatory approach which Congress had earlier directed the Department to take. DOE retains the responsibility for developing performance standards to achieve the maximum practicable improvements in energy efficiency and use of non-depletable resources for all new buildings. However, these standards now serve a dual purpose. The performance standards serve one purpose for the Federal sector where the standards prescribe mandatory design requirements. For non-Federal buildings, voluntary performance standards serve only as guidelines for the purpose of providing technical assistance for the design and construction of energy efficient buildings. Accordingly, the performance standards serve a second purpose of providing sound technical information and examples of efficient design practices for voluntary use in the private sector.

On August 20, 1986, the Department published in the **Federal Register** (51 FR 29754) proposed interim mandatory energy conservation performance standards for new Federal residential buildings. These proposed standards were the first of three proposed interim standards. The others are voluntary energy conservation performance standards for new commercial and multi- family high rise residential buildings and voluntary energy conservation performance standards for new non-Federal residential buildings. On September 23, 1986, DOE published an addendum to the proposed standards to correct data in the Technical Support Document issued concurrently with the NOPR. On November 19, 1986, a **Federal Register** notice was published announcing an extension of the public comment period by fifty- nine days. Public comments were analyzed and revisions were made culminating in today's rulemaking. On May 8, 1987, the Department published proposed voluntary interim energy conservation performance standards for commercial and multi- family high rise buildings in the **Federal Register** (52 FR 17052).

The Department also intends to publish voluntary interim standards for new non-Federal sector residential housing sometime in the future. DOE is currently working with the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc. (ASHRAE) on a research project that would culminate in recommendations being made to both organizations on new residential building standards.

## II. Summary of the Interim Standards

### *A. Description of the Interim Standards*

As the Act requires, the interim standards for new residential buildings were developed to enable Federal agencies to design residential buildings which are cost-effective to build and operate. Pursuant to the Act they were intended to serve two purposes: (1) To be used as a mandatory standard for all Federal agencies that design and construct residential buildings, and (2) to be able to serve as a voluntary guideline to the nation's builders. In order to meet these criteria, the useability of the interim standards was considered a very high project priority.

The interim standards are expressed in terms of this objective: each Federal residential building should be designed to include the combination of energy conservation measures that represents the practicable optimum life cycle energy cost to the Federal government in a particular location. This is achieved by requiring that Federal officials use local construction, maintenance and replacement costs, local climate data, and local fuel costs as inputs to a micro-computer program that will automatically construct an energy-efficient and cost-effective energy consumption goal for any of nine building unit types.

The most novel aspect of the interim standards, which distinguishes it from other standards, is that location-specific requirements can be generated by the use of software and micro-computer technology. The use of micro-computer technology was chosen partly on the basis of the emergence of the technology over the period of the last few years and partly because of the ease in which energy and cost calculations are made. The use of micro-computers has become common among Federal agencies, and advantages in time savings clearly justify the technology for use with building standards. Use of micro-computers eliminates the need for anyone to perform lengthy calculations or make uninformed choices regarding the optimization of energy conservation measures. Research has shown that in the majority of cases, the optimization of energy conservation measures cannot be derived from professional judgement alone, and the amount of time it takes to perform adequate analysis has been a deterrent to the advancement of energy-conserving residential building design in the U.S. The need to perform analyses that continually trade off energy conservation measures is required to produce cost-effective building designs.

The interim standards mandate the use of a DOE-sponsored micro-computer program called COSTSAFR (*C*onservation *O*ptimization *S*tandard for *S*avings in *F*ederal *R*esidences) that was developed to make the selection of optimal energy conservation measures and, consequently, the design of cost-effective energy-efficient buildings a relatively simple process. One output from the COSTSAFR program is the data to be used in determining compliance with the interim standards. COSTSAFR is designed to provide specific information on the interaction of up to 30 energy conservation measures in nearly any U.S. location. It will enable the Federal government to develop cost-effective residential building standards for a single project, thus reducing the more general nature of

previous standards. Finally, it is designed to be effective for any of several building types including single-family, small multifamily, and manufactured housing.

Before developing a compliance tool, DOE reviewed the design and construction procedures currently used by the military as well as other Federal agencies responsible for residential construction. The military is responsible for in excess of 95% of the Federal government's housing construction. DOE concluded that what was necessary was a simplified tool that could display energy conservation options in terms of dollars saved to the government. In addition, this tool had to be available early in the design and construction process to preserve designer flexibility.

COSTSAFR has been designed so that implementing officials, designers, and builders can easily tell if a proposed combination of measures will result in energy conservation levels that meet or exceed an optimized level for cost-effective energy conservation in a building.

The COSTSAFR program performs life cycle cost optimization for a broad set of energy conservation measures and determines the energy costs for the resulting optimum set of measures. The result is a total point value for the energy conservation measures to be installed in the optimal house. COSTSAFR then prints out a point system for all energy conservation options indicating how various levels of each option perform relative to the optimum option. This point system is the compliance tool provided to bidders who can then select measures as they choose and know whether their combination of energy conservation measures has met or exceeded the optimum levels required by the interim standards.

Procedurally, to comply, a Federal procurement official will have to obtain a copy of the COSTSAFR software, its accompanying User's Manual and have access to a micro-computer system which runs on the MS-DOS disk operating system. COSTSAFR will be made available through the Department of Commerce's National Technical Information Service. The software and the User's Manual will lead the user through the steps of selecting a building prototype, location and fuel type; selecting the set of energy conservation measures that are to be considered; calculating the life cycle cost minimum for the prototypical building; and finally, calculating the points corresponding to alternative energy conservation options and printing them out in a set of compliance forms. The builder using the compliance forms must show that the intended design is equivalent to or more efficient than its corresponding prototypical design with its optimized set of energy conservation measures. The COSTSAFR program will be made available to all Federal agencies procuring residential buildings.

*B. Section-by-Section Analysis of the Interim Standards*

The following paragraphs discuss, section by section, the interim standards: (Please note that the numbering system for the interim standards has been changed from the system used in the proposed interim standards.)

*Section 435.300 Purpose. (formerly Section 435.300)*

This section restates the purpose of the interim standards to be used by Federal agencies in the design and construction of new residential buildings.

*Section 435.301 Scope. (formerly Section 435.31)*

Under the scope of the interim standards, new residential buildings include all new buildings for Federal residential occupancy in the Continental U.S., Alaska and Hawaii, except a multi-family building more than three stories above grade, after the effective date of this rule.

*Section 435.302 Definitions. (formerly Section 435.32)*

This section defines terms that are used throughout this subpart. Definitions of the technical terms used in this subpart or in any of the supporting documentation are standard def initions used by the national standards setting organizations.

*Section 435.303 Requirements for the Design of a Federal Residential Building. (formerly Section 435.33)*

This section identifies the interim standards and the requirements for compliance. The interim standards are expressed in the terms of an energy goal or objective which is unique to each building. The goal for Federal officials and their building designers is to produce a building that contains the maximum practicable improvements in energy efficiency for their intended buildings.

*Section 435.304 The COSTSAFR Program. (formerly Section 435.34)*

The COSTSAFR micro-computer program is the source for developing the total point score that serves as the energy consumption goal for the design of new Federal residential buildings. The basis for the point score is the practicable optimum life cycle cost of the most effective energy conservationmeasures for a given building type and climate location. Once a housing type has been selected and the appropriate fuel price forecasts identified, the responsible Federal official is free to use local fuel costs, local construction, maintenance and operation costs, and to select climate data appropriate for the construction location.

**III. Summary of Public Comment on the August 20, 1986 NOPR and DOE Responses**

The following is a summary of the public comments received by DOE on the *Proposed Interim Energy Conservation Standards for New Federal Residential Buildings* published in the August 20, 1986, **Federal Register**. Comments were received from August 20, 1986, through January 16, 1987. The DOE held three public hearings, one each in San Francisco, California, Chicago, Illinois, and Washington, DC, and a total of 202 written comments and oral testimony were received.

Approximately 42% of the comments came from firms and organizations related to the production and sale of concrete and masonry products; 33% from builders, material supply organizations, government agencies, research organizations, and trade associations; and about 25% from electric power utilities. Their comments were reviewed by DOE officials and are discussed below.

*A. General Comments*

Overall, the public comment received was generally favorable to the use of a computer program as a compliance tool for Federal residential standards. In fact, no comments were received relative to § § 435.300 - 435.304, which detail the requirements of the interim standards. All of the comments received pertained to the COSTSAFR micro-computer program, its User's Manual, and the COSTSAFR Technical Support Documents. Some who commented indicated that COSTSAFR, in its proposed form, appeared to be complicated to use, unclear, inadequately documented, incapable of being verified through some alternate means, and biased against the masonry and concrete industries because no energy conservation credit is given for massive wall construction. In addition, some expressed concern that COSTSAFR was based upon a methodology which they believe

promotes the selection of certain fuels, appliances, or construction techniques while penalizing others.

DOE was asked to consider delaying or re-proposing the interim standards until the issues with COSTSAFR and thermal mass could be resolved.

A small number of commenters argued that the COSTSAFR program also discriminates against small business and contractors which do not have access to micro-computers or the knowledge to run the program. They expressed concern that they would be required to hire a computer professional to obtain data from the program. This they indicated would raise their overheads and jeopardize their ability to compete.

*DOE Response:*

As noted above, the DOE issued an Addendum to the COSTSAFR Technical Support Documents on September 23, 1986, to correct some errors that were the cause of confusion and concern to the public. Also, the User's Manual and point system have been improved to increase clarity and reduce confusion. In addition, DOE has decided to issue a modification to COSTSAFR which will provide for an alternate compliance method as well as integrate thermal mass algorithms and new window data into the COSTSAFR program. DOE believes that the modifications will alleviate and dispel the concerns and confusion voiced by those who commented on these issues.

The use of COSTSAFR should place minimal burdens on small business and contractors since only the Federal agencies need the capability to run the micro-computer software. DOE will conduct a demonstration program designed to identify if and what effects the interim standards have on small business, contractors, and others.

*B. Specific Comments*

1. Time Extension Comments

Approximately 40% of all who commented indicated the need for additional time to prepare for public hearings and/or submit written comments. Many argued that the COSTSAFR computer program and User's Manual lacked sufficient information to permit a complete analysis. Additional information frequently requested included: a description of the optimum building prototype on which the COSTSAFR computer program is based; an explanation of the points assigned to the energy conservation options; examples of compliance printouts; sufficient computer program documentation; and, the sources of information for appliance energy efficiency labels, area cost multipliers and HVAC equipment constants used in COSTSAFR.

Others requesting time extensions indicated their limited resources and expertise in analyzing computer programs and computer programming languages. Many found it difficult and time consuming to obtain and install the 8087 math co-processor in time to prepare comments by the end of the official public comment period. A 90-day extension was the time frame most often requested by those who commented.

*DOE Response:*

DOE issued a time extension to the comment period on November 19, 1986, extending the comment period by fifty-nine days. This extended the comment period from its previous closing date of November 18, 1986, to January 16, 1987. In addition, DOE provided reviewers with additional mathematical documentation of the COSTSAFR computer program and an example of a completed compliance form. The time extension was provided because DOE recognized early in the original comment period that additional time would increase the number of beneficial comments.

2. Objections to Private Sector Use Comments

There were a few comments received which objected to the use of DOE standards for private sector use. Those who commented felt that although public input was solicited, DOE standards are not consensus standards in the manner of standards sanctioned by the American Society of Testing and Measurements (ASTM). ASHRAE is actively pursuing the development of consensus standards for energy conservation in new construction and those who commented preferred that DOE reference the ASHRAE standards.

*DOE Response:*

The Department's rulemaking is pursuant to a Federal law and the Department is obligated to promulgate under the provisions cited earlier in this Notice. Further, it is noted in this document, and others pertaining to the interim standards, that the interim standards were designed for Federal agency use and not for non-Federal use.

3. Thermal Mass Comments

Thermal mass received the largest number of comments. All of those who commented on this issue were opposed to the proposed interim standards because it gave no recognition to the energy conserving properties of massive masonry construction. Those who commented indicated that failure to consider masonry's durability, low maintenance, structural characteristics and fire protection (as opposed to fire resistance) will result in increased expenditure of tax dollars on construction, operation and maintenance of Federal residential buildings.

It was also contended that implementation of the proposed interim standards would produce severe economic impacts upon the masonry industry by placing builders who wish to utilize materials other than light frame construction at a serious disadvantage in competing for military and other Federally-funded housing construction programs.

Many who commented on this issue cited an October 31, 1985, **Federal Register** notice (50 FR 45469) in which DOE announced results of its thermal mass research. They also indicated that this research was being incorporated by ASHRAE and Lawrence Berkeley Laboratory documents. Therefore, they did not accept DOE statements that data were not available to include a treatment of masonry at the time of publication of the NOPR.

Most suggested that promulgation of the interim standards be delayed until DOE had included provisions for thermal mass, or that DOE should defer to private sector standard development activities, such as those being undertaken by ASHRAE.

*DOE Response:*

The interim standards were developed primarily for use by Federal agencies. Thermal mass is not typically selected by Federal agencies to be included in their residential construction projects. For this reason and the lack of acceptable data during initial standards development, thermal mass was not included in the original version of COSTSAFR (Version 1.0). However, since DOE has not yet made available building design standards specifically for use by the non-Federal sector and since the interim standards have the concurrent purpose of serving as a design guideline to private sector builders, DOE has decided to include thermal mass in the COSTSAFR computer program.

After developing the thermal mass algorithms and formulae necessary to properly update the COSTSAFR computer program, DOE will formally issue thermal mass revisions to COSTSAFR through a " Notice of Proposed Modification to Final Interim Rule with Request for Comments" have an opportunity to see exactly how DOE plans to integrate the thermal mass provisions into the COSTSAFR

computer program and provide their comments.

4. COSTSAFR Program Comments

The comments received on the COSTSAFR program were numerous and ranged from comments about its inadequacies as a working piece of computer software to dissatisfaction with its capabilities in setting energy consumption goals. The comments below are grouped into two categories, comments on the use of the computer software and comments on the analyses and assumptions used in the computer program.

(a) Software Use Comments

Some of those who commented were concerned that the COSTSAFR computer program would require a high level of user sophistication and familiarity with personal computer (PC) operations. They felt that software convenience functions typically found in "business software" should be added to COSTSAFR, such as page scrolling, batch installation procedures, a look-up routine for cities, ability to save the points system files on a non-system disk, different version numbers, etc. These comments indicated that the addition of these functions would enhance the overall efficiency and ease of using COSTSAFR. In addition, some believed that the need to run COSTSAFR on a computer equipped with an 8087 math co-processor chip was expensive and not generally necessary for standard computer software.

*DOE Response:*

DOE is well aware that prescribing the use of a computer program in residential building standards is a major change from current practice. DOE's intention in developing the computer compliance tool was to make the interim standards more rigorous, in terms of relating energy conservation options to the required life cycle cost analyses, but at the same time simplify the calculation procedures. In addition, DOE emphasizes that, as a mandatory Federal standard, only Federal agency personnel will be required to use the computer program. It will contain each Agency's own Federal cost guidelines for fuel and materials, specified building types and the location which determine the energy conservation features for a particular project. The product of the computer program, the interim standards compliance form, is all the prospective bidder will need to complete the energy conservation portion of a bid package.

After Federal agency personnel identify the energy consumption goal required in a new project, they will write up contract specifications and issue Requests for Proposals to have these buildings constructed. Bidders will then have an opportunity to compete for the construction work. *Bidders will not have to use COSTSAFR to respond to an RFP.* Individuals who wish to use COSTSAFR for the purpose of developing energy conserving packages for their own purposes should be careful to use actual fuel, labor and material cost data for their area.

In response to the comments on shortcomings of COSTSAFR as a piece of software, DOE authorized many improvements to the computer program. Each has been included in the most recent version (Version 2.0). The revised software now provides a batch installation program, more user friendly directions and keyboard manipulations, the ability to name and save files, and other items which make COSTSAFR easier to use. In addition, DOE will provide a source code for COSTSAFR in a non-compiled format on a separate disk.

(b) Program Analyses and Assumptions Comments

Many who commented expressed approval of the COSTSAFR computer program for its innovation as a compliance tool and for what it was attempting to accomplish, namely, to give designers reliable but time-saving method to determine whether their energy conservation designs are optimal for a given location. However, even the strongest of its proponents requested the DOE to improve the computer program and develop a new User's Manual together with additional guides to the program's structure and algorithms. Those who commented did not totally agree with several assumptions and inputs made by DOE, or with the output of the computer program. They expressed concern over the accuracy of the tradeoffs between energy conservation options. Several stated that could not achieve compliance with designs prepared for their geographic area because some of the energy conservation options specified were not common to construction practice.

Several were concerned that the program did not appear to allow the flexibility to introduce more innovative design strategies such as zoned heating, ground-coupled heat pumps, thermal storage and heat pump water heaters.

*DOE Response:*

DOE believes that many of the comments were based on a misunderstanding of COSTSAFR's intended purpose. Many of the comments may have been due to the fact that COSTSAFR is designed so exclusively for Federal use and operations. The building types, economic criteria, and energy conservation options chosen for COSTSAFR come directly from Federal agencies and may not pertain to non-Federal sector use. The intent of the interim standards and the COSTSAFR program is simply to minimize the life cycle energy costs to the Federal government for the heating, cooling and hot water features in a new residential building while still offering a wide variety of conservation options to a Federal agency's builders.

Based on public comment and DOE's own testing of the COSTSAFR computer program, several minor programming and input errors were corrected. DOE believes that the COSTSAFR program is now valid for its intended purpose. As noted earlier DOE will continue to update COSTSAFR and intends to add an alternate compliance procedure as well as additonal information on thermal mass and windows in the near future.

5. COSTSAFR Output Comments

Comments on the COSTSAFR output refer to the compliance form printout generated by the COSTSAFR computer program. The compliance form contains the required point values for each energy conservation option and allows those preparing proposals to calculate the point values of the designs they propose.

Some who commented reported difficulty in understanding how to use the compliance forms and attributed their problems to inadequacies in the computer program design and the instructions contained in the User's Manual. Some found specific computer program "bugs" and provided useful information to allow DOE to locate the errors.

Several who commented asserted that without examples of the compliance calculation procedures, it was difficult to understand how the compliance procedures worked and therefore they could not provide useful comments. Others found it impossible to achieve compliance with example designs chosen from their own experience. In addition, comments were received questioning whether design flexibility could really be achieved with the proposed compliance method.

Several who commented asked for more information on the optimum selections used to generate the point total and the "constants" listed on the compliance forms. These constants are used in establishing point values for

various options. In addition, some who commented requested information on the equations that are imbedded in the COSTSAFR computer program.

*DOE Response:*

Some of the confusion experienced by those who commented may have been caused through incorrect application of location multipliers by the computer program that were issued with the August 20, 1986, NOPR. The September 23, 1986, addendum to the Technical Cupport Documents clarified and corrected the location multipliers. A completed compliance form sample was included in the addendum and is now included in the revised User's Manual. In addition, computer program "bugs", that were identified and located, were corrected. Unfortunately, some who commented did not provide sufficient information to find the "bugs" they identified. However, DOE made a concerted effort to locate and rectify all programming errors. Other revisions related to COSTSAFR Output comments include modifying the COSTSAFR program to display the optimal set of energy conservation strategies used to set the interim standards, thus improving the compliance forms to make them more usable.

In response to questions of design flexibility, the point system does allow tradeoffs between envelope insulation levels, window options, fuel types and equipment efficiency levels and does include a wide variety of conservation options from which to choose. Also in the proposed amendments to COSTSAFR an alternate compliance procedure, that will allow for more innovative designs, will be proposed. However, the fact remains that options which are less energy-conserving will receive fewer points and choosing them will make it difficult to meet the interim standards. It should be remembered that the legislative requirement for the interim standards is that they reduce non-renewable energy use to the maximum practicable extent. DOE studies indicate that the interim standards can be met with sensible designs that are cost-effective.

Information regarding the mathematics, constants and processes used to establish the point system, can be found in the 4th and 5th Chapters of the Technical Support Document. DOE has reviewed this document and made any necessary changes. It believes that the Technical Support Document adequately reflects COSTSAFR's operation.

6. Fenestration Comments

Several comments were received concerning fenestration. One comment suggested that DOE eliminate the passive solar and sunspace options unless state-of-the-art DOE research was used to establish the options. A few comments were received noting that in the determination of minimum life-cycle costs, DOE requires window attributes to be among the base options while passive solar designs are modifying options. In practice, a distinction between windows and passive solar windows may not be useful as an alternative and DOE should consider expressing this distinction in terms of the extent of external window shading. Other comments questioned the fact that in the standards passive solar points are linear with window area in COSTSAFR, that the relationship between passive solar options and other details of the building design are not accounted for, including whether moveable insulation is used properly.

*DOE Response:*

In the interim standards, a window is considered to contribute to passive solar design if the window area is arranged in an orientation more favorable than having 25% in each cardinal direction. Shading is treated with heat absorbing and heat reflective glazing. Data available during initial development of the interim standards did not permit explicit treatment of shading coefficients. The revision to COSTSAFR to be issued in the near future will include this information along with the addition of Low-E glazings as an option.

Passive solar points are awarded by COSTSAFR in addition to the window type and window area points. While improvements could be made to the passive solar and sunspace data used in the standards, the most compatible information was used during development of the interim standards. Updated information on passive solar design will be included in updates to COSTSAFR. Due to the complexity of the interactions between passive solar and areas of thermal mass, these interactions are not presently accounted for in COSTSAFR. A more extensive treatment of thermal mass will also appear in the revisions to COSTSAFR.

Studies conducted by the Navy that showed moveable insulation was effectively used both day and night support the assumptions in the standards. However, other studies conflict. DOE intends to leave moveable insulation in COSTSAFR as an option, but it will not be optimized along with the other options.

7. Equipment (General) Comments

Approximately 20% of the comments received pertained to equipment requirements. These comments have been divided between this and following sections into categories covering general equipment issues, equipment labels, heating, ventilating and air-conditioning (HVAC), and domestic hot water (DHW) equipment issues.

Some of those who commented requested that DOE explain the mathematical "constants" used in HVAC, DHW and appliance equipment sections of the compliance form. Others indicated that several potential energy-conserving equipment options were missing from COSTSAFR. For example, DOE received several comments on heat pump water heaters which, the comments suggested, are employed extensively by the military.

Others felt COSTSAFR lacks flexibility to consider modern innovative heating systems, cannot handle off peak electric water heating rates, and that it is unfairly biased against electric water heating.

*DOE Response:*

The mathematical "constants" that appear in the equipment section of the compliance form are described in the Technical Support Document. DOE notes that these numbers vary by housing type, fuel price, etc., so they do not have a constant value for all compliance forms.

The criterion for deciding which equipment to include in the COSTSAFR program was whether or not DOE/FTC ratings were available (efficiency and energy guide labels). For the many types of equipment mentioned in the comments, no ratings are available. DOE agrees that the interim standards should not impose barriers to the use of innovative and advanced equipment. Federal agencies using the interim standards can decide to accept efficiency ratings provided by nationally recognized testing organizations. In addition, an alternate compliance procedure that utilizes a systems performance approach is being developed. The alternate compliance approach will allow builders to demonstrate compliance of innovative building designs.

DOE would like to note that it is not intended that the interim standards have an inherent bias for or against particular fuels. However, the Federal Official using the COSTSAFR program can specify or eliminate certain fuels in the compliance forms based on site availability. The intent of the interim standards is to minimize energy cost regardless of fuel type.

Other comments identified above are addressed in the equipment comment categories below.

8. Equipment (Labels) Comments

Several who commented requested either a list or a source of the equipment label information required for domestic hot water heaters and refrigerator/freezers. In addition, some who commented pointed out inaccuracies or useful additions to the COSTSAFR computer program, the User's Manual, and the Technical Support Document. Others pointed out that the DOE Domestic Hot Water information does not include any efficient electric water heaters. They stated that the most efficient hot water heaters listed in the DOE data base turned out to be approximately 48% less efficient than the most efficient electric water heater for sale in utility showrooms.

*DOE Response:*

The sources for information on the various label values were included in the addendum of September 23, 1986. In addition, these sources for equipment efficiencies have been added to the User's Manual. The inaccuracies that were identified have been rectified and several of the suggested language changes have been made. The data base in the computer program includes the most efficient water heaters included in the most recent version of the available source, the Gas Appliance Manufacturers Association (GAMA) Consumer's Directory of Certified Water Heater Efficiency Ratings (July 1987). For electric water heaters, builders can use the label values of more efficient equipment if available.

9. Equipment (HVAC) Comments

Several who commented found it problematic that the COSTSAFR program only permits comparative analysis of heating and cooling systems with ducted distribution such as furnaces, heat pumps and central air conditioners, and does not give credit for zoned heating or cooling. Their suggestion was that DOE add zoned heating/cooling system options to COSTSAFR and enhance the data base to provide accurate cost estimates for such a system.

The inclusion and application of DOE's degradation factors for heat pumps was seen by some as arbitrary and unnecessary. Some observed that all HVAC systems operate at varying efficiencies from the manufacturer's labeled rating because of a number of factors.

Other comments suggested that all equipment (not just heat pumps) should be adjusted to account for variations in operation outside the range of tested ratings. They felt that by not doing this for all equipment, an unfair advantage may result in favor of one equipment type and consequently produce unrealistic data for the compliance forms.

Other comments claimed the relationship between the heating system performance factor (HSPF) and seasonal energy efficiency ratio (SEER) in COSTSAFR was erroneous and that the Air-Conditioning and Refrigeration Institute (ARI) Unitary Heat Pump Directory (ARI 210-81, ARI 210/240-84) should be referenced for heat pump data.

Also, some commenters observed that while more efficient equipment is frequently required by COSTSAFR to achieve compliance, requirements for equipment with a SEER of 15.0 and HSPF of 9.0 are overly optimistic. They indicate that such equipment is not yet available in the marketplace. They suggested a more realistic range of equipment ratings to help eliminate erroneous operating cost estimates.

*DOE Response:*

All energy savings calculations in COSTSAFR have been estimated assuming setback thermostats are employed. COSTSAFR implicitly assumes that zoned systems have benefits equivalent to centrally-controlled systems with setback. Therefore, no extra credit is given to zoned systems. Homes with neither ducted air conditioning nor heating systems can be considered by Federal agencies by adding ducting costs to the first cost for ducted systems. The revised User's Manual provides information on typical ducting costs and how to add them to COSTSAFR.

The degradation factor accounts for climate effects on heat pump performance. The degradation factors used by the proposed COSTSAFR program (Version 1.0) were in error and have been corrected in the current program (Version 2.0). The point system requires the input of the HSPF for heat pumps. This number accounts for all climatic degradations for a single baseline city in the U.S. (Pittsburgh, PA.). The degradation factors in Version 1.0 of the program have been adjusted upward to set the baseline location (Pittsburgh, PA.) factor equal to one. This will result in locations warmer than the baseline location having a factor greater than one, and colder locations will have a factor less than one. There is no degradation factor included for cooling and other heating systems because the climate effects are relatively small.

COSTSAFR must optimize on a single heat pump; it cannot determine the optimal life cycle cost for both heating and cooling and have two different heat pumps. Therefore, HSPFs and SEERs must be related in the optimization analysis. The relationship used in the program is based on a study of about 200 heat pumps and provides a typical correlation between HSPF and SEER values. In the point system, however, the proposer enters actual values for both the HSPF and SEER and can get the appropriate credit for higher ratings. The numbers used are required to be those on the actual equipment proposed in the design.

The ARI unitary heat pump directory is referred to in the updated User's Manual as the source for the heat pump efficiencies.

Version 1.0 of the software contained errors in heat pump degradation factors (discussed above) and first cost. These errors in turn caused some of the results of the analysis of heat pumps to be in error. Though the errors had limited effect on previous analyses, they tended to result in selection of more efficient heat pumps than was actually justified. These errors are eliminated in Version 2.0.

After investigating several equipment availability comments, DOE concluded that heat pumps and air conditioners are available with approximately the same efficiencies as are in the data base. DOE recognizes that equipment with very high efficiencies may be difficult to obtain in some parts of the country but believes that they should be included in COSTSAFR for use where they are available and a proposer wishes to include them in an optimal design solution.

10. Equipment (DHW) Comments

The most prevalent comments regarding DHW were that a penalty was placed on electric domestic water heating service by: not making it possible to take advantage of special electric water heater rates which can substantially improve the life cycle cost of a residential structure; assigning negative points to electric DHW heaters in some cases; eliminating from the purview of the COSTSAFR program heat pump water heaters, zonal electric heating, and heat reclaiming devices for hot water heaters; understating the life of electric DHW service; and addressing hot water heating separately from other heating and cooling considerations thereby failing to give credit for cost savings of electric systems when the costs for plumbing and venting requirements for gas equipment are eliminated. Many who submitted comments on this topic included considerable justification for their position, including reports, papers and

recently published accounts of heat pump water heaters. Moreover, they charged that by eliminating use of a common form of water heating, the COSTSAFR program is in contradiction with the intent of the rulemaking which is to enhance Federal design flexibility.

*DOE Response:*

The COSTSAFR program has always been able to accommodate separate electrical rates for heating and cooling seasons, but Version 2.0 now includes provisions to permit a specific rate for domestic hot water use.

The points assigned in the DHW section of the compliance forms are based on energy savings over the lowest efficiency equipment for the optimal fuel. This fuel is normally gas for water heating. The life cycle costs for even high efficiency electric hot water equipment are often higher than costs for the lowest efficiency gas equipment. Because of this, the electric water heater will often correctly earn negative points.

Many of the uncommon water heater types mentioned by those who commented were not included because of lack of efficiency test data. Federal agencies could include these systems when appropriate data become available. Service life of both electric and gas DHW equipment has been set in the revised program to 15 years.

COSTSAFR does not consider connection costs for any fuel or system type. These costs should affect the overall housing project cost and, therefore, be accounted for in the proposer's bid.

11. R-Values Comments

The few who commented objected to the use of R-values to measure compliance of the building envelope. They stated that the use of R-values may not be sufficiently accurate to predict the thermal performance of wall systems due to the effects of other thermal transmission through framing members and other wall components. They suggested the use of U-values. In addition, those who commented asserted that the minimum allowable R-value (R-11) permitted is inappropriate for masonry walls.

*DOE Response:*

The COSTSAFR computer program does use U-values, which take into account insulation R-values and typical construction practices. The point system provides and uses R-values, however, since they are the values most familiar to designers and the building community. The revisions to COSTSAFR previously discussed will permit lower R-values for masonry walls.

12. Multi-Family Housing Comments

Several commented that the COSTSAFR program should be revised to include multi-family housing and reissued for review. The version circulated wasn't able to calculate for multi-family structures.

*DOE Response:*

COSTSAFR includes two-story townhouses and small apartments. The interim standards are not intended for buildings more than three stories high. For standards covering buildings of more than three stories, designers are referred to the proposed DOE Energy Conservation Standards for New Commercial and Multi- Family High Rise Buildings which were published in the Federal Register for public review.

13. Area Cost Multiplier Comments

Several who commented requested DOE to: (a) Provide lists of where data pertinent to the area cost multipliers could be found; (b) provide a discussion of how the multipliers are used; and, (c) provide a discussion of how they can be amended by the user. The concern was the validity of using a single cost multiplier for each region of the country to adjust the various costs (materials, labor, fuel, etc.) that go into producing the compliance forms.

From others there was the suggestion that a multiplier may not be the best way to update price data for Federal buildings. They indicated the belief that Federal agencies will need a central source of data for updating prices and DOE was asked to consider issuing a new data base every 5 years.

*DOE Response:*

The Area Cost Multiplier is a uniform method of correcting the cost data base values to account for regional variations and is currently used by Federal agencies in making those corrections. This may not be accurate for all costs; however, the program user can change the costs to suit his own individual needs. Each Federal construction agency officials will have to assume the responsibility for keeping price data current. Therefore, area cost multipliers will be the responsibility of the Federal agency. DOE is using the most recent set in establishing COSTSAFR as a compliance tool. When such multipliers are not available, it is suggested that proposers reference those developed by the U.S. Department of Defense. (See User's Manual, Appendix B, for discussion.)

DOE believes that area cost multipliers are an effective way to keep prices current between updates of COSTSAFR. Because they change with time they are not included in the User's Manual. However, the Manual now gives sources for the multipliers as well as label values.

14. Economic Variables Comments

Quite a few of those who commented requested additional information and explanations of the equipment and material costs built into the COSTSAFR program. They asserted that they were unable, on first try, to meet compliance levels using electric space and water heating equipment based on current energy costs in their service territories. Consequently, the validity of the COSTSAFR computer program was questioned. Many who commented on this issue pointed out that the proposed economic variables dictate that natural gas option would most likely be used and the impact of the interim standards would be to increase consumption of this critical resource.

Mentioned specifically were observations that: (a) Omissions of variations in utility rate schedules, such as seasonal pricing, time of day pricing, and block charges, is a mistake and may bias the interim standards toward natural gas as an energy source rather than electricity; (b) fuel price projections based on residential rates for actual fuel prices that are outside the normal residential rate structure are inappropriate; and, (c) cost data for HVAC equipment and appliances was taken from a 1982 DOE Report for which it is uncertain whether revalidation occurred.

Comments from several electric utilities stated that the COSTSAFR program does not address the non-system costs unique to different HVAC equipment types. Such items include flues, provisions for combustion air, sealing and insulating indoor equipment rooms, extra utility connections, line extensions, associated plumbing, and additional wiring capacity. They stated that COSTSAFR needs to address these conditions before it can provide a true economic analysis.

*DOE Response:*

The interim standards are based on life cycle cost analysis; therefore, energy costs are considered along with first cost. Relative fuel prices may make it harder to meet the cost- effective optimum requirements for one fuel if that fuel is more expensive than the optimum fuel. COSTSAFR does not in any way provide preference to one fuel over another, but the cost-based criterion for setting the requirements may make it difficult for a relatively expensive fuel to meet the necessary requirements.

DOE believes that the cost-effectiveness test built into the interim standards will lead to reductions in energy consumption in new Federal housing. Using the market price of fuel to set requirements reflects the value of that fuel at the local and national level and the interim standards make no assumptions about one fuel relative to another.

It will be the responsibility of the Federal agency using COSTSAFR to calculate an accurate estimate of the average seasonal electrical rate if special rates apply, and update, if necessary, with more relevant fuel prices. Federal agencies are required to use DOE's Federal Energy Management Program (FEMP) fuel price projections and these are built into COSTSAFR. Where cost data figures appear questionable for an area, the cost data base, which has been adjusted to 1987 levels, can be modified by the area cost multiplier or the costs can be changed as necessary on an individual basis.

As noted before, in cases where non-ducted systems are proposed, the Federal agency can modify the cost data base in COSTSAFR to include ducting costs for central systems. The updated User's Manual provides helpful information on this procedure. Any other system costs that the Federal agency deemed appropriate to include could be added in the cost data base, but proper changes would have to be made for all system types.

15. User's Manual Comments

Not many comments were received on the User's Manual per se. However, those who commented reported that through trial and error they discovered that the system does not operate on MS-DOS or PC-DOS systems earlier than DOS 3.1.

Others commented that the instructions for using COSTSAFR were not very well detailed, the criteria poorly conceived, important steps were skipped, and the instructions did not specify the types of printers that must be used to operate the program. The suggestions offered by those who commented were for DOE to have people who prepare user-friendly manuals for a living prepare the User's Manual and to definitely include examples showing how COSTSAFR generates compliance forms.

With respect to the contents of the User's Manual, several comments were received suggesting that this was the appropriate place for DOE to include all the various types of input data Federal agencies will need in order to operate the COSTSAFR Program. Two types of input data recommended for inclusion were the area cost multipliers and equipment label efficiencies. This would assure that each Federal agency analysis is based on the same input assumptions. In addition, they felt that DOE should plan to update these data regularly with input from the public.

*DOE Response:*

Many commenters expressed concern that they were unable to run COSTSAFR on their versions of DOS. However, DOE checked into this thoroughly and concluded that COSTSAFR operates on DOS 2.0 or later versions of DOS. The User's Manual was edited and revised because it was clear that many instructions were misunderstood. In response to most of the comments, the Manual was edited to improve clarity. A batch installation program has also been added. Since outputs are ASCII files they should print out on any printer.

## IV. Procedural Requirements

### *A. National Enviromental Policy Act*

DOE prepared and issued on August 20, 1986, concurrently with the proposed interim standards, an Environmental Assessment (EA) of the proposed interim standards under the Implementing Regulations of the Council of Environmental Quality (CEQ) (40 CFR Parts 1500-1800) and the National Environmental Policy Act of 1969 (NEPA), as amended (Pub. L. 91-190, U.S.C. 4221 et. seq.), which requires agencies to conduct environmental assessments when their regulations constitute a significant Federal action. A Finding of No Significant Impact was issued in the **Federal Register** at 50 FR 29773 on August 20, 1986. The Environmental Assessment concluded that no significant impacts will result to the indoor or outdoor environments from implementing the Interim Energy Conservation Mandatory Performance Standards for New Federal Residential Buildings. Based upon the findings in the Environmental Assessment, DOE determined the proposed interim standards do not constitute a major federal action significantly affecting the quality of the human environment within the meaning of NEPA

### *B. Executive Order No. 12291*

Section 3 of Executive Order No. 12291, 46 FR 13193, February 12, 1281, requires that DOE determine whether a proposed rule is a "major rule" as defined by section 1(b) of that Order, and prepare a preliminary regulatory impact analysis for rules which fall within that definition.

DOE prepared an "Economic Analysis," 51 FR 29770, August 20, 1986 wherein DOE reviewed the proposed Final Interim Rule. DOE has determined that the rule will not have an annual effect on the national economy of $100 million or more, nor certain other effects listed in the Order, and that the Final Interim Rule is not a "major rule" within the meaning of the Order.

The rule was submitted to the Director of the Office of Management and Budget for a 10 day review period as required by section 3(c)(3) of Executive Order No. 12291. The Director has concluded his review under that Executive Order.

### *C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 603,604) requires DOE to calculate the effect its rulemaking will have on small businesses in the nation. DOE analyzed the small business impacts the rule would have, including its impacts upon manufacturers of building and construction materials and equipment, architects, builders, construction companies, and utilities.

In accordance with the findings of Chapter 3 of the Economic Analysis, 51 FR 29770, August 20, 1986, DOE certifies that the Interim Energy Conservation Standards for New Federal Residential Buildings will not have significant impact on a substantial number of small entities.

### *D. Paperwork Reduction Act*

No information collection or record keeping requirements are imposed on the public by the Final Interim Rule. Accordingly, authorizations are not required under the Paperwork Reduction Act, 44 U.S.C. 3501, et seq., as amended, or its implementing regulations, 5 CFR Part 132.

## V. List of Subjects in 10 CFR Part 435

Architects, Building Code Officials, Buildings, Energy conservation, Energy Conservation Building Performance Standards, Engineers, Federal buildings and facilities, Housing, Insulation, Voluntary performance standards.

In consideration of the foregoing, the Department of Energy hereby adopts Chapter II, Title 10, Part 435 of the Code of Federal Regulations as set forth below.

Issued in Washington, DC, August 2, 1988.

**Donna R. Fitzpatrick,**

*Assistant Secretary, Conservation and Renewable Energy.*

Chapter II of Title 10, Code of Federal Regulations is amended by adding a new Part 435 to read as set forth below:

## PART 435—ENERGY CONSERVATION VOLUNTARY PERFORMANCE STANDARDS FOR NEW BUILDINGS; MANDATORY FOR FEDERAL BUILDINGS

**Subpart A—Voluntary Performance Standards for New Commercial and Multi-Family High Rise Residential Buildings; Mandatory for Federal Buildings [Reserved]**

**Subpart B—Voluntary Performance Standards for New Non-Federal Residential Buildings [Reserved]**

**Subpart C—Mandatory Performance Standards for New Federal Residential Buildings**

Sec.
435.300 Purpose.
435.301 Scope.
435.302 Definitions.
435.303 Requirements for the design of a Federal residential building.
435.304 The COSTSAFR Program.

Authority: Energy Conservation Standards for New Buildings Act of 1976, as amended, [42 U.S.C. 6831-6870], enacted as Title III of the Energy Conservation and Production Act; Section 545 [42 U.S.C. 8255] of the National Energy Conservation Policy Act, [42 U.S.C. 8201 *et seq.*]; the Department of Energy Organization Act [42 U.S.C. 7101 *et seq.*].

### Subpart A—Voluntary Performance Standards for New Commercial and Multi-Family High Rise Residential Buildings; Mandatory for Federal Buildings [Reserved]

### Subpart B—Voluntary Performance Standards for New Non-Federal Residential Buildings [Reserved]

### Subpart C—Mandatory Performance Standards for New Federal Residential Buildings

#### § 435.300 Purpose.

(a) This subpart establishes voluntary energy conservation performance standards for new residential buildings. The voluntary energy conservation performance standards are designed to achieve the maximum practicable improvements in energy efficiency and increases in the use of non-depletable sources of energy.

(b) Voluntary energy conservation performance standards prescribed under this subpart shall be developed solely as guidelines for the purpose of providing technical assistance for the design of energy conserving buildings, and shall be mandatory only for the design of Federal buildings.

(c) The energy conservation performance standards will direct Federal policies and practices to ensure that cost-effective energy conservation features will be incorporated into the designs of all new residential buildings designed and constructed by and for Federal agencies.

#### § 435.301 Scope.

(a) The energy conservation performance standards for new Federal residential buildings will apply to the design of all new residential buildings except multifamily buildings more than three stories above grade.

(b) The primary types of buildings built by or for the Federal agencies, to which the energy conservation performance standards will apply, are:

(1) Single-story single-family residences;
(2) Split-level single-family residences;
(3) Two-story single-family residences;
(4) End-unit townhouses;
(5) Middle-unit townhouses;
(6) End-units in multifamily buildings (of three stories above grade or less);
(7) Middle-units in multifamily buildings (of three stories above grade or less);
(8) Single-section mobile homes; and
(9) Multi-section mobile homes.

#### § 435.302 Definitions.

(a) "Building" means any new residential structure (1) that includes or will include a heating or cooling system, or both, or a domestic hot water system, and (2) for which a building design is created after the effective date of this rule.

(b) "Building design" means the development of plans and specifications for human living space.

(c) "Conservation Optimization Standard for Savings in Federal Residences" means the computerized calculation procedure that is used to establish an energy consumption goal for the design of Federal residential buildings.

(d) "COSTSAFR" means the Conservation Optimization Standard for Savings in Federal Residences.

(e) "Energy conservation voluntary performance standard" means an energy consumption goal or goals to be met without specification of the method, materials, and processes to be employed in achieving that goal or goals, but including statements of the requirements, criteria and evaluation methods to be used, and any necessary commentary.

(f) "Federal agency" means any department, agency, corporation, or other entity or instrumentality of the executive branch of the Federal Government, including the United States Postal Service, the Federal National Mortgage Association, and the Federal Home Loan Mortgage Corporation.

(g) "Federal residential building" means any residential building to be constructed by or for the use of any Federal agency in the Continental U.S., Alaska, or Hawaii that is not legally subject to state or local building codes or similar requirements.

(h) "Life cycle cost" means the minimum life cycle cost calculated by using the methodology specified in Subpart A of 10 CFR Part 436.

(i) "Point system" means the tables that display the effect of the set of energy conservation options on the design energy consumption and energy costs of a residential building for a particular location, building type and fuel type.

(j) "Practicable optimum life cycle energy cost" means the energy costs of the set of conservation options that has the minimum life cycle cost to the Federal government incurred during a 25 year period and including the costs of construction, maintenance, operation, and replacement.

(k) "Project" means the group of one or more Federal residential buildings to be built at a specific geographic location that are included by a Federal agency in specifications issued or used by a Federal agency for design or construction of the buildings.

(l) "Residential building" means a new building that is designed to be constructed and developed for residential occupancy.

(m) "Set of conservation options" means the combination of envelope design and equipment options that influences the long term energy use in a building designed to maintain a minimum ventilation level of 0.7 air changes per hour, including the heating and cooling equipment, domestic hot water equipment, glazing, insulation, refrigerators and air infiltration control measures.

#### § 435.303 Requirements for the Design of a Federal Residential Building.

(a) The head of each Federal agency responsible for the construction of Federal residential buildings shall establish an energy consumption goal for each building to be designed or constructed by or for the agency.

(b) The energy consumption goal for a Federal residential building shall be a total point score derived by using the micro-computer program and user manual entitled "Conservation Optimization Standard for Savings in Federal Residences (COSTSAFR)," unless the head of the Federal agency shall establish more stringent requirements for that agency.

(c) The head of each Federal agency shall adopt such procedures as may be necessary to ensure that the design of a Federal residential building is not less energy conserving than the energy consumption goal established for the building.

**§ 435.304 The COSTSAFR Program.**

(a) The COSTSAFR Program (Version 2.0) provides a computerized calculation procedure to determine the most effective set of energy conservation measures, selected from among the measures included within the Program that will produce the practicable optimum life cycle cost for a type of residential building in a specific geographic location. The most effective set of energy conservation measures is expressed as a total point score that serves as the energy consumption goal.

(b) The COSTSAFR Program (Version 2.0) also prints out a point system that identifies a wide array of different energy conservation measures indicating how many points various levels of each measure would contribute to reaching the total point score of the energy consumption goal. This enables a Federal agency to use the energy consumption goal and the point system in the design and procurement procedures so that designers and builders can pick and choose among different combinations of energy conservation measures to meet or exceed the total point score required to meet the energy consumption goal.

(c) The COSTSAFR Program (Version 2.0) operates on a micro-computer system that uses the MS DOS operating system and is equipped with an 8087 co-processor.

(d) The COSTSAFR Program (Version 2.0) may be obtained from:
National Technical Information Service; Department of Commerce; Springfield, Virginia 22161; (202) 487-4600

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**DEPARTMENT OF ENERGY**

**Office of Conservation and Renewable Energy**

**10 CFR Part 435**

**[Docket No. CAS-RM-79-112-B]**

## Energy Conservation Mandatory Performance Standards for New Federal Residential Buildings; Proposed Modification of Final Interim Rule

**AGENCY:** Conservation and Renewable Energy Office, DOE.

**ACTION:** Notice of proposed modification to final interim rule with request for comments and notice of public briefing.

**SUMMARY:** In accordance with Title III of the Energy Conservation and Production Act, the U.S. Department of Energy (DOE) is developing energy conservation performance standards for new buildings. The law provides that the standards will be voluntary for new non-Federal buildings, but will be mandatory for new Federal buildings.

In today's **Federal Register**, DOE promulgated final interim energy conservation mandatory performance standards for new Federal residential buildings. The interim standards require a Federal agency to establish an energy consumption goal for the design of a new Federal residential building using the computerized calculation procedure.

Today, the Department is proposing several modifications to the COSTSAFR computer program (Version 2.0), and requesting public comment on these proposals. These modifications include: (1) The addition of a credit for three different massive wall configurations - mass on the inside of the insulation, mass integral with the insulation, and mass on the outside of the insulation; (2) the addition of new energy data to the window glazing options, including low-emissivity (Low-E) glazings; and, (3) the addition of an alternative compliance procedure that allows bidders on Federal residential projects to utilize innovative designs and energy conservation options not presently found in the computer program.

**DATES:** Written comments on the Proposed Modifications to the Final Interim Rule for Mandatory Energy Conservation Performance Standards for New Federal Residential Buildings should be received by the Department by November 23, 1988.

A public briefing will be held in Washington, DC on September 29, 1988, 9:30 a.m., at the U.S. Department of Energy, 1000 Independence Avenue, SW., Room 1E-245. The purpose of the public briefing is to provide a briefing on the proposed modifications to the COSTSAFR computer program to interested parties.

**ADDRESSES:** All written comments (7 copies) and requests for the supporting documentation on the proposed modifications to COSTSAFR are to be submitted to:

U.S. Department of Energy
Office of Conservation and Renewable Energy
Hearings and Dockets
Docket Number CAS-RM-79-112-B
1000 Independence Avenue, SW., Room 6B-025
Washington, DC 20585,
(202) 586-9320

Copies of the written public comments received may be viewed and/or obtained from the DOE Freedom of Information Reading Room, Room 1E-190, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-6020, 9:00 a.m.-4:00 p.m.

**FOR FURTHER INFORMATION CONTACT:**

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Washington, DC 20585
(202) 586-9507

**SUPPLEMENTARY INFORMATION:** Today, the U.S. Department of Energy (DOE) is requesting public comment on proposed modifications to the computer program that is required to be used by the interim energy conservation operformance standards for new Federal residential buildings in the establishment of an energy consumption goal for the design of buildings for a particular Federal residential building project.

The proposed modifications come as a result of further research that was performed by DOE in response to public comment on the proposed interim standards. The interim standards for new Federal residential buildings are required by the Energy Conservation Standards for New Buildings Act of 1976, as amended, (Act) 42 U.S.C. 6831 *et seq.*

In response to its request for public comment on the proposed interim standards, DOE received over two hundred individual comments. Approximately 75% of those commenting suggested that DOE recognize the energy conservation benefit of wall thermal mass in the COSTSAFR computer program. Virtually every person who commented on this issue was opposed to the COSTSAFR program because it gave no recognition to the energy conserving benefits of more massive masonry construction or to the technical difficulty and increased costs of installing R-11 insulation in a masonry wall, especially in moderate to warm climates, where they asserted, it was not needed.

Those who commented stated that failure to consider masonry's durability, low maintenance, structural characteristics and fire protection (as opposed to fire resistance) would result in increased expenditure of tax dollars on construction, operation and maintenance of Federal residential buildings. They indicated that failure to recognize the benefits of thermal mass in COSTSAFR would produce severe negative economic impacts for the masonry industry by placing builders, who wish to utilize other than light frame construction, at a serious disadvantage in competing for military and other Federally-funded housing construction programs.

They indicated that failure to recognize the benefits of thermal mass in COSTSAFR would produce severe negative economic impacts for the masonry industry by placing builders, who wish to utilize other than light frame construction, at a serious disadvantage in competing for military and other Federally-funded housing construction programs.

Those who commented, citing the October 31, 1985, DOE publication of a Notice of Inquiry in the **Federal Register** (50 FR 45469), in which the Department stated that it had completed its research on energy conservation benefits of thermal mass use in residences, and the subsequent use of the research results in proposed American Society of Heating, Refrigerating and AirConditioning Engineers, Inc. (ASHRAE) standards and in a computer program (PEAR) developed by Lawrence Berkeley Laboratory (LBL), did not accept DOE statements that data were not available to include thermal mass options in the proposed interim standards.

Most suggested that the interim standards be delayed until they

appropriately and accurately included provisions for thermal mass options, or that DOE should defer to private sector standard development activities currently being conducted by ASHRAE.

DOE found that thermal mass is not typically selected by Federal agencies to be included in their residential construction projects. For this reason, and the lack of building industry consensus about how to reflect the energy conservation benefits of thermal mass in the design of residential buildings, during the initial development of COSTSAFR, thermal mass was not included in the original version. However, DOE now believes that their is adequate industry consensus on how to fairly reflect the energy conservation benefits of thermal mass in residential construction and has decided to include thermal mass options in the COSTSAFR computer program.

After developing the thermal mass algorithms and formulae necessary to properly update the COSTSAFR computer program, DOE is formally requesting comments on the thermal mass revisions to COSTSAFR.

Updated information on passive solar design and other window glazing options are also included in the proposed changes to COSTSAFR. New energy data would be incorporated into the computer program for all site-built prototype window glass options. This includes clear, heat absorbing, and reflective glazings. Low-E glass would also be added to the program. A new sun-tempered section (formerly passive solar) would be completely modified with new data. The moveable insulation energy data would remain unchanged.

Finally, DOE received several comments that the point system generated by the COSTSAFR computer program was too prescriptive and did not allow for innovative or unusual energy conservation design solutions. Therefore, DOE is proposing an alternate means of compliance. The alternate method would accommodate different energy conservation designs, materials, and construction techniques, and yet remain consistent with the basic framework and economic assumptions of the computer program.

Details of the proposed modifications to the COSTSAFR computer program may be found in Section III of this Notice. DOE requests public comment on each of the modifications. Based on the public comment, DOE will make modifications to the computer program and distribute the new version of the COSTSAFR computer program to Federal agencies and other interested individuals and groups, and also make it available through the Department of Commerce's National Technical Information Service.



## I. Background

Originally enacted on August 14, 1976 as Title III of the Energy Conservation and Production Act, Pub. L. 94-385, 90 Stat. 1144 *et seq.*, 42 U.S.C. 6831, (August 14, 1976), the Act required the Department of Housing and Urban Development (HUD) to develop, promulgate, implement and enforce compliance with performance standards to improve the energy efficiency of all new buildings in the nation. On August 4, 1977, the Act was amended by section 304(a), 42 U.S.C. 7154, of the Department of Energy Organization Act, Pub. L. 95-91, 91 Stat. 565 *et seq.*, which transferred from HUD to DOE the responsibility to develop and promulgate the standards. The amendments to the Act did not change HUD's implementation responsibilities.

In November 1979, DOE published proposed performance standards in the **Federal Register**, 44 FR 68120 (November 28, 1979). The notice was cotroversial and generated over 1,800 comments totalling 40,000 pages. The comments included technical and other substantive criticisms of the performance standards.

Less than a year after the publication of the proposed standards, the Act was again amended. Section 326, 94 Stat. 1649, of the Housing and Community Development Act of 1980, Pub. L. 96-399 (October 8, 1980) required that DOE promulgate interim standards by August 1, 1981 and extended the promulgation date of the final standards to April 1, 1983. The interim standards were only to apply to new Federal buildings. In addition, the Act required demonstration projects to be conducted in at least two geographical areas.

In August 1981, Congress again amended the Act. Subtitle D of Title 10 of the Omnibus Reconciliation Act of 1981, Pub. L. 97-35, 95 Stat. 621, amended the Act to create the term "voluntary performance standards", eliminated the provision for a possible statutory sanction for noncompliance, added a provision that, except for Federal buildings, "voluntary standards will be developed solely as guidelines to provide technical assistance for the design and construction of energy efficient buildings", and extended the deadline for DOE to furnish reports on the demonstration projects to Congress.

The legislative changes that have taken place since the original 1976 enactment required DOE to make fundamental changes to the compliance aspects of the standards. DOE retains the responsibility for developing performance standards to achieve the maximum practicable improvements in energy efficiency and use of non-depletable resources for all new buildings. However, development of these standards must now serve two purposes. The performance standards serve one purpose for the Federal sector where the standards prescribe mandatory design requirements. For non-Federal buildings, these performance standards serve only as guidelines for the purpose of providing technical assistance for the design and construction of energy efficient buildings. Accordingly, these performance standards serve a second purpose of providing sound technical information and examples of efficient design practices for voluntary use in the private sector.

On August 20, 1986, the Department published in the **Federal Register** (51 FR 29754) proposed interim mandatory energy conservation performance standards for new Federal residential buildings. On September 23, 1986, DOE published an addendum to the proposed standards to correct data in the Technical Support Document issued concurrently with the NOPR. On November 19, 1986, a **Federal Register** notice was published announcing an extension of the public comment period by fifty-nine days. In response to public comment and with the availability of additional technical information, DOE made revisions to the proposed interim standards and the micro-computer program, and its supporting documentation. The revised micro-computer program was designated, COSTSAFR Version 2.0.

The interim standards are being published in today's **Federal Register**. The interim standards require Federal agencies to design new Federal residential buildings in accordance with the energy conservation requirements required by § 435.303 of the interim standards. The Federal agencies have until February 21, 1989 to place the interim standards into effect. The interim standards do not regulate non-Federal construction. The interim standards have been developed specifically for Federal agencies that

construct residential buildings. The calculation procedures used to apply the interim standards to Federal residential construction are not intended for use by the non-Federal sector.

The interim standards will remain in effect until DOE promulgates final standards. By law, DOE is required to conduct a demonstration of the interim standards, based on criteria established by the Act, and report its findings to the Congress, prior to the development and promulgation of final standards.

## II. Summary of the Interim Standards

The interim standards were developed to enable Federal agencies to design residential buildings that are cost-effective to build and operate. They are intended to serve two purposes: (1) To be used as a mandatory standard for all Federal agencies that design and construct residential buildings, and (2) to be able to serve as a voluntary guideline to the nation's builders. In order to meet these criteria, the useability of the interim standards was considered a very high project priority.

The interim standards are expressed in terms of this objective: Each Federal residential building should be designed to include the combination of energy conservation measures that represents the practicable optimum life cycle energy cost to the Federal government in a particular location. This is achieved by requiring that Federal officials use local construction, maintenance and replacement costs, local climate data, and local fuel costs as inputs to a micro-computer program that will automatically construct an energy-efficient and cost-effective energy consumption goal for any of nine building unit types.

The most novel aspect of the interim standards, which distinguishes it from other standards, is that location-specific requirements can be generated by the use of software and micro-computer technology. The use of micro-computer technology was chosen partly on the basis of the emergence of the technology over the period of the last few years and partly because of the ease in which energy and cost calculations are made. The use of micro-computers has become common among Federal agencies, and advantages in time savings clearly justify the technology for use with building standards. Use of micro-computers eliminates the need for anyone to perform lengthy calculations or make uninformed choices regarding the optimization of energy conservation measures.

The interim standards mandate the use of a DOE-sponsored micro-computer program called COSTSAFR that was developed to make the selection of a set of optimal energy conservation measures and, consequently, the design of cost-effective energy-efficient buildings a relatively simple process. One output from the COSTSAFR program is the data to be used in determining compliance with the interim standards. COSTSAFR is designed to provide specific information on the interaction of over 30 energy conservation measures in nearly any U.S. location. It enables a Federal agency to develop cost-effective residential building standards for a single project, thus reducing the more general nature of previous standards. Finally, it is designed to be effective for any of several building types including single-family, small multi-family, and manufactured housing.

COSTSAFR has been designed so that implementing officials, designers, and builders can easily tell if a proposed combination of measures will result in energy conservation levels that meet or exceed an optimized level for cost-effective energy conservation in a building.

The COSTSAFR program performs life cycle cost optimization for a broad set of energy conservation measures and determines the energy costs for the resulting optimum set of measures. The result is a total point value for the energy conservation measures to be installed in the optimal house. COSTSAFR then prints out a point system for all energy conservation options indicating how various levels of each option perform relative to the optimum option. This point system is the compliance tool provided to bidders who can then select measures as they choose and know whether their combination of energy conservation measures has met or exceeded the optimum levels required by the interim standards. Those proposing respond by submitting a completed compliance form for each proposed model residence with the rest of the bid package.

Procedurally, to comply, a Federal procurement official will have to obtain a copy of the COSTSAFR software, its accompanying User's Manual and have access to a micro-computer system which runs on the MS-DOS disk operating system. The software and the User's Manual will lead the Federal official through the steps of selecting a building prototype, location and fuel type; selecting the set of energy conservation measures that are to be considered; calculating the life cycle cost minimum for the prototypical building; and finally, calculating the points corresponding to alternative energy conservation options and printing them out in a set of compliance forms. The compliance forms are then made a part of the RFP package. The bidder (proposer), using the compliance forms, must show that the intended design is equivalent to or more efficient than its corresponding prototypical design with its optimized set of energy conservation measures. The COSTSAFR program will be made available to all Federal agencies procuring residential buildings.

## III. Description of the Proposed Modifications to COSTSAFR

### *A. Thermal Mass Walls*

It is proposed that thermal mass be added as an option in COSTSAFR in response to the many public comments on the issue. The approach that would be used relies on the data and techniques developed by Lawrence Berkeley Laboratory (LBL) for the *Affordable Housing through Energy Conservation: A Guide to Designing and Constructing Energy Efficient Homes,* and previously provided for public review and comment. LBL has studied the effect of thermal mass in walls and has included the results in the residential housing data base that was described in a **Federal Register** Notice of Inquiry on October 31, 1985 (50 FR 45469) and may be found in the supporting documentation.

Three different massive walls configurations have been modeled for the COSTSAFR computer program modification: mass on the inside of the insulation, mass integral with the insulation, and mass on the outside of the insulation. A ranch-style prototype was used for the DOE 2.1 computer simulations of thermal mass, with all components except the walls of the house held constant. These components are a 4-inch, carpet-covered slab foundation, R-30 ceiling, and double glazing with an area equivalent to 15% of the floor area.

Heat capacity and steady-state thermal resistance typically can be independent in wall materials. A wall can be constructed to have high levels of heat storage, or thermal resistance, or both. For thermal mass, LBL has considered different heat capacities per square foot of wall area, including those for wood, concrete, and brick. In addition, the thickness of the mass was varied to give a large range of total heat capacities. Only two different R-values were modeled in each of the three massive walls configurations. Table 1 shows the range of mass walls studied.

TABLE 1 MASS WALL CHARACTERISTICS

| Insulation Location | Mass Conductivity (Btu/hr*ft-°F) | Mass Thickness (inches) | Heat Capacity (Btu/ft²-°F) | Wall R-value (hr*ft²*F/Btu) |
|---|---|---|---|---|
| Outside | 0.5 | 4-8 | 3.3-13.3 | 5,20 |
| Inside | 0.5 | 4-8 | 3.3-13.3 | 5,20 |
| Integral | 0.03-0.13 | 4-8 | 3.3-13.3 | 5,10 |

In order to place a limit on the number of simulations needed, LBL separated the 45 base cities included in the data base into 12 zones. In all 45 cities, simulations were run for only three walls: A base wall, the base wall with added mass, and the base wall with added mass and added insulation.

Based on the initial runs, each of the cities were grouped into one of the 12 zones where the energy savings with the extra mass divided by the savings with both extra mass and resistance are comparable. Therefore, the cities grouped into a zone are not necessarily in the same geographic region. Also, it was possible for each of the 45 base cities to be assigned to a different zone for heating and cooling seasons.

Each of the 12 zones were represented by a base city for which 51 DOE 2.1 simulations were run, covering the range of wall properties listed in the table above. From these results, regression coefficients were determined, for each of the three mass locations: outside, integral, and inside, and each of the 12 zones, for both heating and cooling. These regression coefficients are then used in the following equation:

Equation 1.

$$\text{MASS WALL LOAD} = C_1 + C_2 * EXP(C_3 * HC) + C_5 * U_t + C_4 * EXP(C_6 * HC) * U_t$$

Where:

$C_0$....$C_4$ are regression coefficients.

HC is the heat capacity (Btu/ft²*°F).

$U_t$ is the total wall U-value (Btu/hr*ft²*°F).

EXP indicates the exponential function.

A quadratic regression equation based on the existing COSTSAFR wood frame wall construction was used to interpolate the annual heating and cooling load on a wood frame wall for U-values between the ones in the data base. This load is calculated for the wall with the same total U-value as the mass wall. The equation is:

Equation 2.

$$\text{FRAME WALL LOAD} = C_5 * U_t^2 + C_6 * U_t + C_7$$

Where:

$C_5$....$C_7$ are regression coefficients.

The load for the wood frame wall and the load for the mass wall are added together to obtain the total energy load for the mass wall:

Equation 3.

$$\text{TOTAL MASS WALL LOAD} = \text{FRAME WALL LOAD} + \text{MASS WALL LOAD}$$

Data would be added to the COSTSAFR computer program energy data files for all seven site-built prototypes. No mass construction data has been developed or added for manufactured homes (mobile homes). The added data consist of the seventeen regression coefficients for each location and season. These coefficients are read into the program for the appropriate location and equations 1, 2, and 3 are used to determine the energy loads for a range of heat capacities and wall R-values. The energy loads are then converted into points as discussed in Chapter 5 of the Interim Federal Residential Standard Technical Support Document.

A new section would be added to the COSTSAFR point system for the mass wall with a table similar in format to the window section. The bidder (proposer) would choose between the wood frame wall and the thermal mass wall. For the mass wall, the bidder (proposer) would choose values for the following parameters: the heat capacity of the mass, the total wall R-value, and the location of the insulation (outside, integral, or inside). The heat capacity ranges from 4 to 20 (Btu/hr*ft²*°F). The heat capacity is only for the massive material and does not include other materials in the wall.

To assist the bidder (proposer), a section would be added to the User's Manual with tabular data for the heat capacities and R-values of materials commonly used in heavy-weight walls. This information was obtained from the ASHRAE Handbook, 1985 Fundamentals Volume. The bidder (proposer) would use the appropriate numbers from the ASHRAE Handbook tables and a worksheet in the User's Manual to calculate the wall R-value and the heat capacity.

*B. New Window Data*

New energy data would be incorporated into the COSTSAFR program for all site-built prototype window glazing options. This includes clear, heat absorbing, and reflective glazings. Low-E glass would also be added to the program. The sun-tempered (formerly passive solar) section would be completely redone with new data. The moveable insulation energy data would remain unchanged.

The energy data were generated by LBL in the form of regression equations for each of the 45 base locations and for both heating and cooling seasons. The energy load was split into two components: A conductive load and a solar load. For the conductive load, DOE-2.1 simulations were done for all site-built prototypes and locations, with equally distributed windows having a shading coefficient of 1.00 and an area 12% of the total floor area. Window U-values of 1.10, 0.49, and 0.10 were simulated. The thermal integrity of other components of the building were held at levels consistent with the window levels. Parameters such as the thermostat set points and internal gains were identical to the conditions in the simulations for the original residential housing data base (Interim Federal Residential Standard Technical Support Document).

The conductive loads are a function of the window U-value with the window area as a multiplier. The regression equation for the conductive load is:

Equation 1.

$$\text{CONDUCTIVE LOAD} = \text{AREA} * (U_1 * C_1 * 24\text{hrs} + U^2 * C_2 * 576[24\text{hrs}^2])$$

Where:

$C_1$ and $C_2$ are the regression coefficients, U is the U- value, and AREA is the window area.

The solar load was determined by a set of 52 parametric simulations for the ranch prototype in each of the 45 base locations. The shading coefficient was varied from 1.00 to 0.00 and the total window area ranged from 8% to 20% of the total floor area. Window areas in the four cardinal orientations were varied from 1% to 14% of the floor area. A quadratic multi-variant regression equation was developed as a result of the simulations:

Equation 2.

$$\text{SOLAR LOAD} = \text{ZETA} * (1 + C_7 * \text{ZETA})$$

Equation 3.

$$\text{with ZETA} = (C_3 * n + C_4 * e + C_5 * s * C_6 * w) * \text{AREA} * \text{SC}$$

Where: $C_3$.....$C_7$ are regression coefficients

SC = Shading coefficient (depends on layers)

n,e,s,w = fraction of glazing with north, east, south, and west orientation, respectively.

The total window energy load is simply a combination of the conductive load and the solar load:

Equation 4.

WINDOW LOAD = CONDUCTIVE LOAD + SOLAR LOAD

Data were produced by Pacific Northwest Laboratory (PNL) for all the window options from the window regression equations. WINDOW-2, a one dimensional heat transfer computer program developed by LBL, that determines the shading coeeficient and U- value of the glass based on the weather conditions, the number of layers, the thickness of the air space, and the glass properties, was used to generate the U-values and shading coefficients for the various types of glass. Glazing thermal and optical properties were obtained from manufacturer product informa ation and the ASHRAE Handbook of Fundamentals. Weather conditions for the heating season data consisted of 30°F outside temperature, 70°F inside temperature, 10 mph outside air speed, and no solar load (night time conditions). Cooling season weather conditions were taken from the ASHRAE Handbook of Fundamentals.

The COSTSAFR compliance form format would be changed for the sun-tempered (formerly passive solar) section and a new low-E section. The main window section (E) in the compliance forms would be unchanged. This section would contain the points for clear glass with equal areas in the four cardinal directions with both conductive load and solar load incorporated. The heat absorbing and reflective sections would also remain unchanged. The section for low-E glazing would have the same format as the heat absorbing and reflective sections (i.e., modifying the points for clear glass).

The new sun-tempered section would modify the window points for different glazing area percentages in the cardinal directions. The points from this section would be in addition to the points from the clear glass section. Due to the nature of the solar load equations, the point system user would have to use three sets of equations in the sun-tempered section. First, they would enter the desired window areas (as a fraction of the total window area) in the four cardinal directions (see equations below). In the second equation, the preliminary numbers are modified by the shading coefficient and the window area (as a fraction of the floor area). A table with shading coefficients for the different glass types would be provided in the User's Manual. The third set of calculations gives the points for the sun-tempered design. These calculations would be found as part of the COSTSAFR compliance form.

Heating Points

A. Equation 5.

$$\left(C_1 * \frac{}{n} + C_2 * \frac{}{e} + C_3 * \frac{}{s} + C_4 * \frac{}{w}\right) - (C_1+C_2+C_3+C_4) * 0.25 = \frac{}{X}$$

B. Equation 6.

$$\frac{}{X} * \frac{}{SC} * \frac{}{\%AREA} * \text{FLOOR AREA} = \frac{}{Z}$$

C. Equation 7.

$$\frac{}{Z} * \left(C_5 + \frac{}{Z} * C_6\right) = \frac{}{H}$$

Cooling Points

A. Equation 8.

$$\left(C_1 * \frac{}{n} + C_2 * \frac{}{e} + C_3 * \frac{}{s} + C_4 * \frac{}{w}\right) - (C_1+C_2+C_3+C_4) * 0.25 = \frac{}{X}$$

B. Equation 9.

$$\frac{}{X} * \frac{}{SC} * \frac{}{\%AREA} * \text{FLOOR AREA} = \frac{}{Z}$$

C. Equation 10.

$$\frac{}{Z} * \left(C_5 + \frac{}{Z} * C_6\right) = \frac{}{C}$$

*C. Alternate Compliance Procedure.*

The standard method of compliance for the interim standards is with the use of the COSTSAFR computer program and the compliance forms it produces. While this program covers a wide range of energy conservation options (ECOs), it does not have the ability to consider some unusual or innovative designs. Therefore, an alternate means of compliance is offered for such designs. The alternate method must be able to accommodate different designs, materials, and construction techniques, and yet remain consistent with the basic framework and economic assumptions of COSTSAFR.

The COSTSAFR program is based upon energy data calculated by DOE-2.1 simulations for seven general house designs built with specific materials and by specific construction practices. DOE-2.1 is a computerized and verified analysis and research tool developed by DOE and widely used by building design groups. COSTSAFR includes ECOs such as insulation levels, window options, five types of heating equipment, and two types of water heating. If bidders (proposers) on a new Federal housing project choose to propose housing with unique energy conservation design features, not included in COSTSAFR, then the alternate compliance method shall be necessary.

To be consistent with the energy data base used by COSTSAFR, the alternate method uses DOE-2.1 simulations to calculate the yearly space conditioning energy loads for the proposed house. The yearly load is adjusted by equipment efficiency and fuel escalation rates to obtain the life cycle cost (LCC) for energy. To comply with the interim standards, the DOE-2.1 calculated LCC of the proposed design would have to be equal to or less than the "optimal" energy LCC calculated by COSTSAFR for the house type with the closest design. The optimal LCC has the combination of ECOs that produce the lowest total 25 year life cycle cost.

The Federal agency will run the COSTSAFR program and produce the compliance forms that are used to calculate the total life cycle energy cost. Necessary input for the COSTSAFR program includes:

* price escalations and area cost multipliers;
* housing location;
* allowable foundations types;
* the house type closest to the proposed design;
* allowable HVAC equipment; and
* applicable energy prices.

The optimal life cycle energy cost would be determined by an Estimated Unit Energy Cost equation in the compliance form. The optimal space conditioning, domestic hot water heating (DHW), and appliance (refrigerators and freezers) points along with the conditioned floor area would then be entered into the appropriate equation, depending on the number of bedrooms in the design. The Estimated Unit Energy Cost would then be multiplied by 100 to obtain the total discounted LCC for energy in dollars. This number would be provided to the bidder (proposer) as the goal for compliance to the interim standards. The bidder (proposer) would also be provided with the DHW and refrigerator/freezer section of the compliance forms.

The bidder (proposer) would then run the DOE-2.1 simulation program with assumptions equivalent to the assumptions used in COSTSAFR wherever possible. (DOE-2.1, and not other similar computer programs such as BLAST, must be used to insure consistency in calculation procedures.) This includes using the same thermostat set points: 78°F for cooling, 70°F for heating, and a night setback of 60°F for 12 PM to 6 AM. Window shading, venting, and internal gain schedules would have to be consistent with those used by COSTSAFR. DOE would provide an input file that specifies the input parameters that would be used by the bidder (proposer). The most accurate climate data available would have to be used. Either TRY (Test Reference Year) or WYEC (Weather Year for Energy Conservation) climate data would be recommended.

The bidder (proposer) would then divide the DOE-2.1 calculated loads by the efficiencies of the proposed HVAC equipment to determine the absolute energy loads. The bidder (proposer) would use the same efficiency measures found in COSTSAFR unless a Federal agency permits the use of other comparable measures for equipment not rated by existing Federally-approved methods. The load would then be multiplied by the appropriate fuel cost to obtain the first year energy cost.

Next, the first year energy cost would be adjusted to the 25 year life cycle energy cost by multiplying by the Uniform Present Worth (UPW). The product of the first year cost and the UPW gives the life cycle cost (see equation 1). The proper UPW depends on the geographical region and the fuel type, and is provided by COSTSAFR in the input values that are printed at the end of each printout of the point system. The LCC would then be determined for both heating and cooling.

Equation 1.

$$\text{Heating, Cooling Energy LCC} = \frac{\text{Energy Load} * \text{Fuel Cost} * \text{UPW}}{\text{Equipment Efficiency}}$$

The bidder (proposer) would also calculate water heating and refrigerator/freezer energy LCCs by filling out the appropriate section of the COSTSAFR compliance forms. These numbers would then be multi plied by 100 to get dollars, and are added to the heating and cooling LCCs to obtain the total energy LCC (equation 2).

Equation 2.

Energy LCC = Heating LCC + Cooling LCC + (DHW points + Ref/Frz points) * 100

If the DOE-2.1 life cycle energy cost of the proposed design is equal to or less than the optimal energy LCC obtained from the COSTSAFR compliance forms then the design would comply with the interim standards. If not, the proposed design must be modified until the energy cost criterion is met.

The bidder (proposer) would have to provide the Federal agency with the following:

* the DOE-2 Building Design Language (BDL) input file;
* the DOE-2 output;
* the DHW and Refrigerator/Freezer sections of the compliance forms; and
* the proposed design's energy Life Cycle Cost with all calculations.

## IV. Public Comment Procedures

Interested persons are invited to participate in this proceeding by submitting written data, views or arguments with respect to the subjects set forth in this notice. Instructions for submitting written comments and for making statements at the public briefing are set forth below.

Comments should be labeled both on the envelope and on the documents, "Revisions for COSTSAFR Computer Program (Docket No. CAS-RM-79-112-B)" and must be received by the date indicated in the beginning of this notice, in order to insure full consideration. Seven (7) copies are requested to be submitted. All comments received by the date specified at the beginning of this notice and other relevant information will be considered by DOE before final action is taken on the proposed modifications.

All written comments received on the Notice of Proposed Modification to the Final Interim Rule will be available for public inspection at the Freedom of Information Reading Room as provided at the beginning of this notice.

Comments may also be presented at the public briefing after DOE presents its briefing material. Following the DOE briefing, the moderator will ask for comments from the audience. Comments may be spontaneous or prepared prior to the briefing. Should the comments be prepared prior to the briefing, those individuals are asked to provide seven copies of their comments for the briefing. These comments will also be placed on display in the DOE Freedom of Information Office. A court reporter will be in attendance at the public briefing and will record a transcript of the session.

Pursuant to the provisions of 10 CFR 1004.11, any person submitting information or data which the submitting person believes to be confidential and exempt by law from public disclosure, should submit one complete copy of the document, and six copies, if possible, from which the information believed to be confidential has been deleted. DOE will make its own determination with regard to the confidential status of the information or data and treat it according to its determination.

Factors of interest to DOE, when evaluating requests to treat as confidential information that has been submitted include: (1) A description of the item; (2) an indication as to whether and why such items of information have been treated by the submitting party as confidential within the industry; (3) whether the information is generally known or available from other sources; (4) whether the information has

previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) an indication as to when such information might lose its confidential character due to the passage of time; and, (7) whether disclosure of the information would be in the public interest.

**V. Procedural Requirements**

*A. National Environmental Policy Act*

DOE prepared and issued an Environment Assesment (EA), DOE/EA-0300, for the proposed interim standards under the Implementing Regulations of the Council of Environmental Quality for the National Environmental Policy Act of 1969, as amended. The EA addresses the possible incremental environmental affects attributable to the application of the proposed interim standards to the design of Federal residential buildings. A Finding of No Significant Impact (FONSI) was issued on April 17, 1976. DOE has determined that the proposed modification to the interim standards does not affect the assumptions or results of the EA, and that the original FONSI is still valid.

*B. Executive Order No. 12291*

Section 3 of Executive Order No. 12291, 46 FR 13193, February 19, 1981, requires that DOE determine whether a proposed rule is a "major rule," as defined by section 1(b) of that Order, and prepare a preliminary regulatory impact analysis for rules which fall within that definition.

DOE reviewed the Final Interim Rule, completed an "Economic Analysis," 51 FR 29770, August 20, 1986, and concluded that the Final Interim Rule was not a "major rule" under this Executive Order. DOE has determined that today's proposed amendments to the Final Interim Rule do not constitute a "major rule" either, because the amendments will not result in an annual affect on the economy of $100 million or more, or certain other effects listed in the Order. The amendments to the final interim rule will allow alternative credit for three massive wall configurations, new window glass options, and alternative compliance procedures that will allow utilization of innovative designs and energy conservation options not presently found in the computer program.

Given the relatively small number of residential buildings affected by the Final Interim Rule, as well as the optional nature of the proposed modifications, DOE has determined that the modifications will not have sufficient effects such as to constitute a "major rule" within the meaning of Executive Order No. 12291.

The proposed modifications to the Final Interim Rule was submitted to the Director of the Office of Management and Budget for a 10 day review period as required by section 3 (c)(3) of Executive Order No. 12291. The Director has concluded his review under that Executive Order.

*C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 603, 604) requires DOE to consider the effect its rulemaking will have on small business in the nation. DOE has considered today's proposed modifications in light of DOE's analysis of the small business impacts of the Final Interim Rule, (51 FR 29700, August 20, 1986), including its impacts upon manufacturers of building and construction materials and equipment, architects, builders, construction companies. These modifications are minimal, and by creating new options allowing for credit for certain configurations for massive walls, new window glazing materials, and alternative compliance procedures for utilization of innovative designs and energy conservation, will not increase the effects of the Final Interim Rule to such a degree as to activate the provisions of the Regulatory Flexibility Act. Consequently, pursuant to section 605(b) of that Act, DOE certifies that this proposed rulemaking will not have a significant impact on a substantial number of small entities.

*D. Paperwork Reduction Act*

No information collection or record keeping requirements are imposed on the public by these modifications to the Final Interim Rule. Accordingly, authorizations are not required under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, as amended, or its implementing regulations, 5 CFR Part 132.

For the reasons set out in this preamble, 10 CFR Part 435 is proposed to be amended as set forth below.

Issued in Washington, DC, August 2, 1988.

**Donna R. Fitzpatrick,**

*Assistant Secretary, Conservation and Renewable Energy.*

Chapter II of Title 10, Code of Federal Regulations is proposed to be amended by revising Part 435 to read as set forth below:

## PART 435—ENERGY CONSERVATION VOLUNTARY PERFORMANCE STANDARDS FOR NEW BUILDINGS; MANDATORY FOR FEDERAL BUILDINGS

**Subpart A—Voluntary Performance Standards for New Commercial and Multi-Family High Rise Residential Buildings; Mandatory for Federal Buildings [Reserved]**

**Subpart B—Voluntary Performance Standards for New Non-Federal Residential Buildings [Reserved]**

**Subpart C—Mandatory Performance Standards for New Federal Residential Buildings**

Sec.



**Authority:** Energy Conservation Standards for New Buildings Act of 1976, as amended, [42 U.S.C. 6831-6870], enacted as Title III of the Energy Conservation and Production Act; Section 545 [42 U.S.C. 8255] of the National Energy Conservation Policy Act, [42 U.S.C. 8201 *et seq.*]; The Department of Energy Organization Act [42 U.S.C. 7101 *et seq.*].

### Subpart A—Voluntary Performance Standards for New Commercial and Multi-Family High Rise Residential Buildings; Mandatory for Federal Buildings [Reserved]

### Subpart B—Voluntary Performance Standards for New Non-Federal Residential Buildings [Reserved]

### Subpart C—Mandatory Performance Standards for New Federal Residential Buildings

**§ 435.300 Purpose.**

(a) This subpart establishes voluntary energy conservation performance standards for new residential buildings. The voluntary energy conservation performance standards are designed to achieve the maximum practicable improvements in energy efficiency and increases in the use of non-depletable sources of energy.

(b) Voluntary energy conservation performance standards prescribed under this subpart shall be developed solely as guidelines for the purpose of providing technical assistance for the design of energy conserving buildings, and only shall be mandatory for the design of Federal buildings.

(c) The energy conservation performance standards will direct Federal policies and practices to ensure that cost-effective energy conservation

features will be incorporated into the designs of all new residential buildings designed and constructed by and for Federal agencies.

**§ 435.301 Scope.**

(a) The energy conservation performance standards for new Federal residential buildings will apply to the design of all new residential buildings except multifamily buildings more than three stories above grade.

(b) The primary types of buildings built by or for the Federal agencies, to which the energy conservation performance standards will apply, are:

(1) Single-story single-family residences

(2) Split-level single-family residences;

(3) Two-story single-family residences

(4) End-unit townhouses

(5) Middle-unit townhouses;

(6) End-units in multifamily buildings (of three stories above grade or less);

(7) Middle-units in multifamily buildings (of three stories above grade or less);

(8) Single-section mobile homes; and

(9) Multi-section mobile homes.

**§ 435.302 Definitions**

(a) "Building" means any new residential structure (1) that includes or will include a heating or cooling system, or both, or a domestic hot water system, and (2) for which a building design is created after the effective date of this rule.

(b) "Building design" means the development of plans and specifications for human living space.

(c) "Conservation Optimization Standard for Savings in Federal Residences" means the computerized calculation procedure that is used to establish an energy consumption goal for the design of Federal residential buildings.

(d) "COSTSAFR" means the Conservation Optimization Standard for Savings in Federal Residences.

(e) "Energy conseration voluntary performance standard" means an energy consumption goal or goals to be met without specification of the method, materials, and processes to be employed in achieving that goal or goals, but including statements of the requirements, criteria and evaluation methods to be used, and any necessary commentary.

(f) "Federal agency" means any department, agency, corporation, or other entity or instrumentality of the executive brance of the Federal Government, including the United States Postal Service, the Federal National Mortgage Association, and the Federal Home Loan Mortgage Corporation.

(g) "Federal residential building" means any residential building to be constructed by or for the use of any Federal agency in the Continental U.S., Alaska, or Hawaii that is not legally subject to state or local building codes or similar requirements.

(h) "Life cycle cost" means the minimum life cycle cost calculated by using the methodology specified in Subpart A of 10 CFR Part 436.

(i) "Point system" means the tables that display the effect of the set of energy conservation options on the design energy consumption and energy costs of a residential building for a particular location, building type and fuel type.

(j) "Practicable optimum life cycle energy cost" means the energy costs of the set of conservation options that has the minimum life cycle cost of the Federal government incurred during a 25 year period and including the costs of construction, maintenance, operation, and replacement.

(k) "Project" means the group of one or more Federal residential buildings to be built at a specific geographic location that are included by a Federal agency in specifications issued or used by a Federal agency for design or construction of the buildings.

(l) "Residential building" means a new building that is designed to be constructed and developed for residential occupancy.

(m) "Set of conservation options" means the combination of envelope design and equipment options that influences the long term energy use in a building designed to maintain a minimum ventilation level of 0.7 air changes per hour, including the heating and cooling equipment, domestic hot water equipment, glazing, insulation, refrigerators and air infiltration control measures.

**§ 435.303 Requirements for the Design of a Federal Residential Building.**

(a) The head of each Federal agency responsible for the construction of Federal residential buildings shall establish an energy consumption goal for each building to be designed or constructed by or for the agency.

(b) The energy consumption goal for a Federal residential building shall be a total point score derived by using the micro-computer program and user manual entitled "Conservation Optimization Standard for Savings in Federal Residences (COSTSAFR),"unless the head of the Federal agency shall establish more stringent requirements for that agency.

(c) The head of each Federal agency shall adopt such procedures as may be necessary to ensure that the design of a Federal residential building is not less energy conserving than the energy consumption goal established for the building.

**§ 435.304 The COSTSAFR Program.**

(a) The COSTSAFR Program (Version 3.0) provides a computerized calculation procedure to determine the most effective set of energy conservation measures, selected from among the measures included within the Program that will produce the practicable optimum life cycle cost for a type of residential building in a specific geographic location. The most effective set of energy conservation measures is expressed as a total point score that serves as the energy consumption goal.

(b) The COSTSAFR Program (Version 3.0) also prints out a point system that identifies a wide array of different energy conservation measures indicating how many points various levels of each measure would contribute to reaching the total point score of the energy consumption goal. This enables a Federal agency to use the energy consumption goal and the point system in the design and procurement procedures so that designers and builders can pick and choose among different combinations of energy conservation measures to meet or exceed the total point score required to meet the energy consumption goal.

(c) The COSTSAFR Program (Version 3.0) operates on a micro-computer system that uses the MS DOS operating system and is equipped with an 8087 co-processor.

(d) The COSTSAFR Program (Version 3.0) may be obtained from:

National Technical Information Service; Department of Commerce; Springfield, Virginia 22161; (202) 487-4600

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# Part IV

## Department of Defense
## General Services Administration
## National Aeronautics and Space Administration

**48 CFR Parts 25 and 52**

**Federal Acquisition Regulation; English Translation of Contracts; Proposed Rule**

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 25 and 52**

**Federal Acquisition Regulation (FAR); English Translation of Contracts**

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Proposed rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering revisions to FAR Subpart 25.9 to add language prescribing the use of the clause at 52.225–14, Inconsistency Between English Version and Translation of Contracts, when the Government translates a contract into a foreign language.

**DATES:** Comments should be submitted to the FAR Secretariat at the address shown below on or before October 24, 1988 to be considered in the formulation of a final rule.

**ADDRESS:** Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 88–44 in all correspondence related to this issue.

**FOR FURTHER INFORMATION CONTACT:** Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523–4755.

**SUPPLEMENTARY INFORMATION:**

**A. Regulatory Flexibility Act**

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because the translation inconsistency clause is routinely used in overseas contracts when prospective vendors require a translation into a local language. Therefore, an Initial Regulatory Flexibility Analysis has not been prepared. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR Subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite FAR Case 88–610 in correspondence.

**B. Paperwork Reduction Act**

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because the proposed changes do not impose any reporting or recordkeeping requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et seq.

**List of Subjects in 48 CFR Parts 25 and 52**

Government procurement.

Dated: August 16, 1988.

**Harry S. Rosinski,**

*Acting Director, Office of Federal Acquisition and Regulatory Policy.*

Therefore, it is proposed that 48 CFR Parts 25 and 52 be amended as set forth below:

1. The authority citation for Parts 25 and 52 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 25—FOREIGN ACQUISITION

2. Subpart 25.9 is revised to read as follows:

**Subpart 25.9—Additional Foreign Acquisition Clauses**



### Subpart 25.9—Additional Foreign Acquisition Clauses

**25.901 Omission of examination of records clause.**

(a) *Definition.* "Foreign contractor," as used in this subpart, means a contractor or subcontractor organized or existing under the laws of a country other than the United States, its territories, or possessions.

(b) *Policy.* As required by 10 U.S.C. 2313, 41 U.S.C. 254, and 15.106–1(b)(3), the contracting officer shall consider for use in negotiated contracts with foreign contractors, whenever possible, the clause at 52.215–1, Examination of Records by Comptroller General. Omission of the clause should be approved only after the contracting agency, having considered such factors as alternate sources of supply, additional cost, and time of delivery, has made all reasonable efforts to include the clause.

(c) *Conditions for omission.* (1)(a) The contracting officer may omit the clause at 52.215–1, Examination of Records by Comptroller General, from contracts with foreign contractors—

(i) If the agency head determines, with the concurrence of the Comptroller General or a designee, the omission of the clause will serve the public interest;

(ii) If the contractor is a foreign government or agency thereof or is precluded by the laws of the country involved from making its books, documents, papers, or records available for examination, and the agency head determines, after taking into account the price and availability of the property or services from domestic sources, that omission of the clause best serves the public interest.

(2) When a determination under paragraph (c)(1)(ii) of this section is the basis for omission of the clause at 52.215–1, Examination of Records by Comptroller General, the agency head shall forward a written report to the Congress explaining the reasons for the determination.

(d) *Determination and findings.* The determination and findings shall—

(1) Identify the contract and its purpose, and whether it is a contract with a foreign contractor or with a foreign government or agency thereof;

(2) Describe the efforts to include the clause;

(3) State the reasons for the contractor's refusal to include the clause;

(4) Describe the price and availability of the property or services from the United States and other sources; and

(5) Determine that it will serve the interest of the United States to omit the clause.

**25.902 Inconsistency between English version and translation of contract.**

The contracting officer shall insert the clause at 52.255–14, Inconsistency Between English Version and Translation of Contract, in solicitations and contracts whenever translation into another language is anticipated.

## PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 52.255–14 is added to read as follows:

**52.225–14 Inconsistency Between English Version and Translation of Contract.**

As prescribed at 25.902, insert the following clause:

**INCONSISTENCY BETWEEN ENGLISH VERSION AND TRANSLATION OF CONTRACT (AUG 1988)**

In the event of inconsistency between any terms of this contract and any translation thereof into another langauge, the English language meaning shall control.

(End of clause)

[FR Doc. 88–19241 Filed 8–24–88; 8:45 am]

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Federal Register

Thursday
August 25, 1988

Part V

# Department of Defense
# General Services Administration
# National Aeronautics and Space Administration

48 CFR Parts 12 and 52

Federal Acquisition Regulation; Delivery of Excess Quantities; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 12 and 52

**Federal Acquisition Regulation (FAR); Delivery of Excess Quantities**

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Proposed rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering changes to FAR 12.401, 12.403, and the clause at 52.212–10 concerning Delivery of Excess Quantities to increase the delivery of excess quantities threshold from $100 to $250 and to modify the clause title accordingly.

**DATES:** Comments should be submitted to the FAR Secretariat at the address shown below on or before October 24, 1988 to be considered in the formulation of a final rule.

**ADDRESS:** Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4041, Washington, DC 20405. Please cite FAR Case 88–37 in all correspondence related to this issue.

**FOR FURTHER INFORMATION CONTACT:** Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523–4755.

**SUPPLEMENTARY INFORMATION:**

A. Regulatory Flexibility Act

The proposed change to FAR 12.401, 12.403, and the clause at 52.212–10 may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because it would apply to all small businesses that want to contract with the Government under fixed price contracts when delivery of quantities are specified. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared. A copy of the Initial Regulatory Flexibility Analysis will be submitted to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the FAR Secretariat. Comments are invited. Comments from small entities concerning the affected FAR Subpart will also be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite FAR Case 88–610 in correspondence.

B. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes do not impose any recordkeeping or information collection requirements from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et seq.

List of Subject in 48 CFR Parts 12 and 52

Government procurement.

Dated: August 18, 1988.

Harry S. Rosinski,

*Acting Director, Office of Federal Acquisition and Regulatory Policy.*

Therefore, it is proposed that 48 CFR Parts 12 and 52 be amended as set forth below:

1. The authority citation for Parts 12 and 52 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 12—CONTRACT DELIVERY OR PERFORMANCE

**§ 12.401 [Amended]**

2. Section 12.401 is amended by removing in the third sentence of paragraph (c) the words "of $100 or Less", and by removing in paragraphs (c)(1) and (c)(2) the figure "$100" and inserting in both places the figure "$250".

**§ 12.403 [Amended]**

3. Section 12.403 is amended in paragraph (b) by removing the words "of $100 or Less".

## PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 52.212–10 is revised to read as follows:

**§ 52.212-10 Delivery of Excess Quantities.**

As prescribed in 12.403(b), insert the following clause:

DELIVERY OF EXCESS QUANTITIES (AUG. 1988)

The Contractor is responsible for the delivery of each item quantity within allowable variations, if any. If the Contractor delivers and the Government receives quantities of any item in excess of the quantity called for (after considering any allowable variation in quantity), such excess quantities will be treated as being delivered for the convenience of the Contractor. The Government may retain such excess quantities up to $250 in value without compensating the Contractor therefor, and the Contractor waives all right, title, or interests therein. Quantities in excess of $250 will, at the option of the Government, either be returned at the Contractor's expense or retained and paid for by the Government at the contract unit price.

(End of clause)

[FR Doc. 88–19240 Filed 8–24–88; 8:45 am]

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August 25, 1988

Part VI

# Department of Transportation

## Federal Aviation Administration

**14 CFR Parts 25 and 121**

**Improved Flammability Standards for Materials Used in the Interiors of Transport Category Airplane Cabins; Final Rule**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Parts 25 and 121**

**[Docket No. 24594; Amendment Nos. 25-66 and 121-198]**

**RIN: 2120-AB23**

# Improved Flammability Standards for Materials Used in the Interiors of Transport Category Airplane Cabins

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

**ACTION:** Final rule; Findings concerning additional comments.

**SUMMARY:** These amendments upgrade the fire safety standards for cabin interior materials in transport category airplanes by establishing refined fire test procedures and apparatus and a new requirement for smoke emission testing. The refined test procedures and apparatus are the result of additional research and fire testing and are intended to improve the reproducibility of test results. The refinement for smoke emission testing is intended to minimize the possibility that emergency egress will be hampered by smoke obscuration. In addition, the operating rules for air carrier (Part 121) and air taxi (Part 135) operators, which were adopted in the original final rule, are amended to enable additional compliance time to be granted for the few interior components for which timely compliance cannot be achieved.

The FAA findings concerning the requested additional comments on the final flammability criteria are also presented.

**EFFECTIVE DATE:** September 26, 1988.

**FOR FURTHER INFORMATION CONTACT:** Gary Killion, Manager, Regulations Branch (ANM-114), Transport Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 17900 Pacific Highway South C-68966, Seattle, Washington 98168; telephone (206) 431-2114.

**SUPPLEMENTARY INFORMATION:**

## Background

Notice of Proposed Rulemaking (NPRM) No. 85-10, which was published in the **Federal Register** on April 16, 1985 (50 FR 15038), proposed to upgrade the flammability safety standards for materials used in the interiors of transport category airplane cabins.

As discussed in the notice, the FAA established a committee in June of 1978 to examine the factors affecting the ability of the aircraft cabin occupant to survive in the post-crash environment and the range of solutions available. The Committee was composed of fire safety experts from the FAA, National Aeronautics and Space Administration, the aerospace industry, and the general public. Included in the recommendations of this committee, which was known as the Special Aviation Fire and Explosion Reduction (SAFER) Advisory Committee, were further research and development in regard to cabin materials and prompt evaluation and implementation of a method using radiant heat for testing cabin materials. The FAA concurred and initiated the necessary research and development. The resulting research and development program, which was managed and conducted primarily at the FAA Technical Center in Atlantic City, New Jersey, was designed to study aircraft fire characteristics, develop practical test methods, and investigate the feasibility of the various new standards being considered at that time.

Among the tests conducted at the Technical Center were full-scale fire tests using the fuselage of a military C-133 configured to represent a wide-body jet transport. The test conditions simulated representative post-crash external fuel-fed fires. Numerous laboratory tests were also conducted to correlate possible material qualification test methods with the full-scale tests. As a result of these tests, the Ohio State University (OSU) rate-of-heat-release apparatus, as standardized by the American Society of Testing and Materials (ASTM), ASTM-E-906, was determined to be the most suitable for material qualifications. The OSU rate-of-heat-release apparatus utilizes radiant heat, which the SAFER Advisory Committee recommended because it is most representative of the post-crash fire environment. The ability of the test method to adequately discriminate acceptable from unacceptable materials was verified using several generic materials. The generic materials covered a range of flammability characteristics and each was tested and ranked in the full-scale fire test facility. Sample materials were then tested and ranked using the OSU apparatus. The ranking of materials from the OSU tests was identical to that obtained in the full scale fire facility. Thus, the OSU apparatus demonstrated that it would properly rank the relative performance of interior materials in typical post-crash fires. The acceptance criteria proposed in Notice 85-10 were chosen in order to produce a significant retardation of the flashover event which controls occupant survivability, as experienced in the full-scale testing.

As proposed in Notice 85-10, all large interior surface materials installed above the floor in compartments occupied by the crew or passengers would have to comply with the new flammability standards. This would include sidewalls, ceilings, bins and partitions, galley structures, and any coverings on these surfaces. Smaller items, such as windows, window shades, or curtains, would not be included. Floor coverings, floor structure, seats, and service items would not be included for the reasons discussed in Notice 85-10.

As proposed, Part 25 would have required the use of cabin interior materials meeting the new flammability standards for all transport category airplanes for which application for type certification is made after the effective date of the amendment. As originally proposed, Part 121 would have required the use of such materials in all large airplanes newly manufactured 2 years or more after the effective date of the amendment and operated under the provisions of Part 121 or 135, regardless of the basis for type certification. (Section 135.169(a) incorporates the provisions of § 121.312 by reference insofar as operations with large airplanes are concerned.) In addition, all other large airplanes type certificated after January 1, 1958, and operated under the provisions of Part 121 or 135 would have had to be modified to use such materials the first time the cabin interior is replaced after a date 2 years from the effective date of the amendment.

The public comment period for Notice 85-10 originally closed on July 15, 1985; however, as announced in Notice 85-10A (50 FR 30447; July 26, 1985), it was reopened until September 9, 1985. Subsequent to the development of Notice 85-10, an industry trade association and the FAA Technical Center completed two series of round-robin tests to assess the reproductibility of test results using the OSU rate-of-heat-release apparatus among various laboratories. In the round-robin testing, the same group of materials was tested by each laboratory. This assessment was necessary because preliminary testing by the industry to evaluate the impact of the proposed rule yielded results significantly different from those obtained using the FAA OSU apparatus. During the retesting, samples of actual in-service panels and several materials representative of in-service interior panels were tested by the FAA, OSU, and two large airplane manufacturers. The first series of tests completed subsequent to issuance of Notice 85-10

indicated that the FAA apparatus had an incorrect heat flux calibration, and there were several significant areas where the other test apparatus differed from that of the FAA. The non-FAA test apparatus were modified to more closely match those of the FAA. After the second series of round-robin tests, much closer results were achieved among the laboratories.

Based on the round-robin tests, the Technical Center recommended certain adjustments in test procedures and acceptance criteria. In particular, the recommendations included: (1) Adjustment of the specimen exposure heat flux from 5 watts per square centimeter ($W/cm^2$) to 3.5 $W/cm^2$; (2) elimination of the oxygen depletion method of measuring heat release, leaving only the thermopile method; (3) adjustment of the acceptance criteria for total heat release over the first 2 minutes of sample exposure from 40 to 65 kilowatt-minutes per square meter; and (4) inclusion of a requirement for a peak heat release rate of 65 kilowatts per square meter. The FAA outlined these recommended adjustments in Notice 85–10A and requested public comments thereon.

Following the close of the reopened comment period, all comments were carefully considered; and Amendments 25–61 and 121–189 (51 FR 26208; July 21, 1986) were adopted accordingly. For reasons discussed in the preamble to these amendments, the adopted standards differ from those originally proposed in a number of respects:

1. The adjustments in test procedures and acceptance criteria recommended by the FAA Technical Center and proposed in Notice 85–10A were adopted in lieu of those originally proposed in Notice 85–10.

2. Airplanes with maximum seating capacities of 19 passengers or less are not required to meet the new standards.

3. As proposed, airplanes newly manufactured 2 years or more after the effective date and certain other airplanes in which the cabin interior is replaced 2 years or more after the effective date would have had to meet the new standards. As adopted, airplanes newly manufactured on or after August 20, 1988, must meet interim standards, and those newly manufactured on or after August 20, 1990, must meet the definitive standards. Similarly, certain airplanes in which the cabin interior is replaced on or after August 20, 1988, or August 20, 1990, must meet the interim or definitive standards, respectively.

4. Other nonsubstantive editorial changes were made for clarity.

Commenters responding to Notice 85–10 contended that the progress of this rulemaking initiative was, in general, outpacing developments in materials technology. Nevertheless, the FAA did not consider the comments received by that time sufficient to warrant abandoning the rulemaking or delaying it further, considering the increases in fire-safety that would be achieved. Amendments 25–61 and 121–189 were adopted accordingly; however, the FAA did request further comments on both the test procedure and the appropriateness of the performance criteria. The closing date for the further comments was January 21, 1987. The FAA stated that a document discussing all comments received, presenting FAA responses, and proposing any necessary further revisions to the new standards of Amendments 25–61 and 121–189, would be published in the **Federal Register.**

Following completion of the final rule but prior to its publication in the **Federal Register,** the Aerospace Industries Association of America (AIA) and Air Transport Association of America (ATA) jointly petitioned for further rulemaking that would substitute different test procedures and acceptance criteria. This petition was published in the **Federal Register** on July 21, 1986 (51 FR 26166) along with a request for public comments thereon.

As also discussed in the preamble to Amendments 25–61 and 121–189, some commenters expressed concerns regarding repeatability of test results using the FAA OSU test apparatus and procedures. The commenters noted that, in addition to the initial type certification testing, succeeding material lots would have to be tested from a production standpoint to ensure that their heat release characteristics are not degraded from those of material lot originally tested for type certification. Variations in test results would, therefore, necessitate the use of materials that nominally exceed the new standards of Amendments 25–61 and 121–189 to ensure that the results of individual tests are satisfactory. Such variations in test results could also create a situation in which a given material is found acceptable in the testing conducted by one manufacturer while the material is found unacceptable by another manufacturer. As a result of these concerns, the FAA conducted a third series of round-robin tests to determine whether certain additional refinements in the apparatus and procedures would improve the repeatability of test results. These tests were conducted at the FAA Technical Center, the facilities of two airplane manufacturers, and OSU, using common test specimens. Based on the results of these tests, the FAA Technical Center recommended certain further adjustments in the test apparatus and procedures.

Subsequent to the original closing date for comments but prior to their consideration, the Aviation Staff of the U.S. House of Representatives Committee on Public Works and Transportation requested the FAA to participate in a meeting held on February 6, 1987, concerning the interior materials rulemaking. The purpose of this meeting, which was also attended by representatives of the AIA, ATA, General Aviation Manufacturers Association (GAMA), Association of Flight Attendants (AFA), National Bureau of Standards (NBS) and Office of Management and Budget (OMB), was to enable the committee staff to hear an exchange of views concerning this rulemaking between the FAA and industry representatives. Minutes of this meeting, as prepared separately by the FAA, the AIA, and the ATA, have been added to the docket.

In response to requests from the AIA, ATA, and Suppliers of Advanced Composite Materials Association (SACMA), the comment period was reopened to April 21, 1987 (52 FR 5422; February 20, 1987). In conjunction with reopening the comment period, the FAA also outlined the further adjustments in the test apparatus and procedures recommended by the FAA Technical Center and requested public comments thereon.

**Discussion of Comments**

Comments were received from a diversity of interested parties ranging from organizations representing various domestic and foreign aircraft manufacturers and operators, to aviation trade unions. Commenters also included government organizations, foreign airworthiness authorities, and producers of candidate interior materials. Due to their interrelationship, comments received in response to the AIA/ATA joint petition for rulemaking have been considered along with those received in response to the request for comments contained in the preamble to Amendments 25–61 and 121–189. Virtually all commenters supported the intent of these amendments to increase airplane fire safety. Many of the commenters are in full support of the standards established by these amendments, while others express concerns regarding the viability of the test method, availability of suitable materials, and cost of compliance.

Three commenters are critical of the full-scale testing that was the basis for the new standards. In that regard, one noted that the testing did not include consideration of external wind effects. While the full-scale testing was conducted in zero wind conditions, the effects of wind were considered. The full-scale testing was preceded by a series of tests in which the effects of wind were evaluated. From those tests, it was concluded that a zero wind condition is the most critical insofar as the contribution of interior materials to the fire is concerned.

Two commenters note that the panels used in the full-scale testing were "generic" and differed somewhat from actual panels used in specific airplane models. Due to these differences, the commenters allege that the results of the full-scale testing are invalid. One of the two commenters recommends that the full-scale fire test should be repeated with industry support using interior panels "acceptable for aircraft interiors." Prior to conducting the full-scale testing, the FAA attempted to purchase representative panels used in actual airplanes. Because the aircraft manufacturers were unable or unwilling to supply such panels, it was necessary to obtain "generic" panels constructed specifically for the testing. While these panels did differ in detail from panels used in actual airplanes, they were constructed of five basic types of facing materials used in the construction of panels of actual airplanes, and the decorative film and the honeycomb core used in the construction of such panels. Following completion of the full-scale testing, specimens of these "generic" panels were used in laboratory tests to obtain a correlation of laboratory test data with the data from the full-scale testing. Because the "generic" panels were used primarily to correlate full-scale and laboratory test data, their use did not, in any way, invalidate the results of the full-scale test. Rerunning the full-scale test would, therefore, provide no benefit insofar as this rulemaking is concerned; and it would unduly delay the safety benefits that will result from the new standards.

One commenter points to a full-scale test conducted in the Federal Republic of Germany as evidence that the FAA correlation of full-scale and laboratory testing has not been proven. The commenter asserts that the latest state-of-the-art materials were used in this test which was conducted in June of 1986 by the Ministry of Transport. The final report of this test is not available to the FAA as of this writing; however, the FAA has been advised informally that the test was conducted using a portion of the fuselage of a wide body transport category airplane currently produced in Europe with interior furnishings that are typically used in that airplane model. Contrary to the commenter's assertion, the FAA has been advised that the interior materials involved had very high heat release values. The fact that an early flashover occurred when materials with high heat release values were used supports the FAA correlation of full-scale and laboratory testing rather than discredits it.

A number of commenters express their belief that the OSU rate-of-heat-release apparatus and procedures are not viable means to establish the acceptability of materials used in the interiors of airplanes. In this regard, they note variations in test results that were obtained when specimens of the same materials were tested in different facilities. As noted above, a round-robin test series was conducted shortly after the issuance of Notice 85–10. During that test series, it was found that the heat release readings obtained at the FAA Technical Center were consistently lower than those obtained with the same materials at each of the other three facilities. Since that time, refinements in the test apparatus and procedures have been developed and verified in two subsequent round-robin test series. These refinements, which are adopted herein, have reduced the variations in test results considerably, and the FAA Technical Center facility no longer consistently produces the lowest test results. The reproducibility has been reduced to ±7.68 percent standard deviation for total heat release and to ±7.82 percent for peak heat release. The repeatability of test results at a given facility has also been improved. The average of the repeatability at the five facilities is ±5.23 percent. It must be noted that the test procedures specify that the total heat release readings for each of three or more samples must be averaged and the peak heat release for each of the samples must also be averaged. Averaging the readings of three or more samples mitigates the remaining differences due to test repeatability considerably. One commenter asserts that it is absolutely essential that all test chambers give the same results at all times. This, of course, is a desirable goal, but its achievement is impossible, as it is with any testing. Considering the inherent variability in fire testing, these reproducibility and repeatability values are considered to be remarkable. They are, in fact, much better than those that would be obtained with Bunsen burners which have been FAA standards for fire testing for years.

One commenter states that the FAA did not determine whether other laboratory test devices could be developed to reliably predict the full-scale fire performance of cabin interior materials, and another recommends that the FAA should do so at this time. Contrary to the commenter's statement, the FAA has considered other devices. The FAA sponsored a study by the NBS in which the relative performance of the OSU apparatus, the NBS cone calorimeter, and other possible devices were compared. While the NBS reported ("The Role of Aircraft Panel Materials in Cabin Fires and Their Properties"; DOT/FAA/CT–84/30 dated June 1985) only fair agreement for energy release data, the materials tested were ranked in the same order by the two devices. An independent comparison of the OSU apparatus, the NBS cone calorimeter, and a Swedish device was conducted in Sweden and reported in the *Journal of Fire and Materials* Vol. 9, No. 4, 1985. According to the report, there was a good correlation of test results among the three devices. There is, therefore, no basis on which to believe that the NBS cone calorimeter or any other device is superior to the OSU rate-of-heat-release apparatus. Unlike that with the OSU apparatus, there has been very little experience in testing airplane interior materials with the other devices; and considerable development would be required to reach the current performance level of the OSU apparatus. The substitution of another device, such as the NBS cone calorimeter, as the required test method would result in an unwarranted delay in the introduction of improved materials in service. In addition, the NBS cone calorimeter is understood to be considerably more expensive than the OSU apparatus, and none are currently in service or available to U.S. airplane manufacturers. Nevertheless, an applicant would have the option of developing and utilizing an alternate test method, such as the cone calorimeter, under the equivalent level of safety provisions of § 21.21(b)(1).

Some commenters assert that the OSU rate-of-heat-release apparatus and the definitive acceptance criteria of 65 kilowatt-minutes per square meter and 65 kilowatts per square meter do not separate materials they characterize as "desirable" from those that are "undesirable." In this regard, they cite test results in which certain specimens of "undesirable" materials are shown to have heat release characteristics that

are better than those of certain specimens of "desirable" materials. Contrary to this assertion, the OSU apparatus and the acceptance criteria do discriminate all but borderline materials. Actually, there is no definition of "desirable" and "undesirable" in this context. These criteria are standards; and, as such, are the minimum values considered acceptable in light of the full-scale testing. It must be recognized that there are frequently variations in examples of a basic generic material and corresponding ranges in performance. These may be due to production tolerances or may be the result of intentional tailoring of the material composition and processing for specific applications. There may also be variations in the finished products due to the type and thickness of decorative finishes applied. Due to these variations, materials cannot be considered "desirable" or "undesirable" on a generic basis. Individual component specimens could exceed the 65 kilowatt-minutes per square meter and 65 kilowatts per square meter standards as long as the average of the heat release values for the tested specimens of that component is equal to or below the 65/65 standard. The FAA has worked with the manufacturing industry to develop improved quality control measures to minimize variations between specimens of components tested in the OSU test chamber. In the case of borderline materials, it must be recognized that some samples will pass and some will fail due to these variations.

Several commenters question the statement in the preamble to Amendments 25–61 and 121–189 that, "compliance with this rule is possible within the current state-of-the-art in cabin materials." In this regard, they assert that the new definitive standards of 65 kilowatt-minutes per square meter and 65 kilowatts per square meter are beyond the capability of the best state-of-the-art materials used in current production and that new materials and processing technology must be developed before industry can comply with the rule. One commenter further states that virtually every interior part in current production must be changed. The reference to "current state-of-the-art" was not intended to mean that the components currently produced for the interiors of transport category airplanes would all meet the new standards. If that were the case, the new standards would provide no improvement in safety. Instead, the statement referred to materials which are currently in production by material suppliers and from which such components can be fabricated by the airplane manufacturers. Clarification of this point has been made to the industry on numerous occasions. The commenter further states that new technology, at present unidentified and undefined, is required for some areas of the interior in order to comply with the new standards. Another commenter states that none of the new candidate materials are viable because they have characteristics that are unacceptable for production airplanes. The commenter then lists six such materials or processes and provides reasons why, in the commenter's opinion, none of the six can be used to meet the new standards. Typically, the reasons cited include high forming temperatures and the need for new, sophisticated tooling.

In contrast to these negative comments, other commenters cite various new materials and processes which meet the definitive standards and are available. Although new or modified manufacturing processes are required in some instances, the materials are currently being produced and are available for use in the manufacture of the interior components. That components made from these materials will meet the definitive standards is evidenced by testing conducted at the FAA Technical Center and other test facilities. It must be noted that, in most instances, these new materials are the products of established, credible companies. It appears that some of the negative comments were based on earlier variants of these materials, as the disadvantages cited for some of the materials are not currently true.

Some of the major interior components currently in service also meet the new standards. One major manufacturer, for example, has been producing transport category airplanes for a number of years with interior sidewall panels constructed of aluminum with a laminated decorative finish. This construction easily meets the new flammability standards. It is alleged by one commenter that such panels are less resistant to penetration of an external fire into the cabin and therefore present a greater hazard than certain other materials that do not meet the new standards. It appears, from testing previously conducted by the FAA, that flame penetration through windows or possibly through the cabin air return grills would occur much earlier than penetration through the fuselage external surface, any insulating material, and the aluminum interior panels. In any event, flashover from such a fire would occur much later than it would occur from a fire that enters the cabin through a fuselage rupture, giving occupants more time to egress safely.

The phenolic resin fiberglass construction extensively used by another major airplane manufacturer marginally meets the new standards. This construction appears to be too marginal as currently used to be a viable means of compliance, considering production tolerances, test variations, etc. Nevertheless, it easily meets the new standards with the application of a recently developed, currently produced laminate.

In light of this and other information available to the FAA, the contention that no materials will be available in time to meet the definitive standards is not credible. Nevertheless, it is recognized that no single material or construction is feasible for use in every component that must meet the new standards, due to various functional and aesthetic considerations. While the FAA does not agree that the concerns stated by the commenters are, or are likely to become, widespread, additional time may be needed in order to develop new materials and production methods for a few unique components. For example, carpeting is generally used on the lower cabin sidewall panels, for protection from abrasion. To date, no carpeting, or other material suitable for such protection, has been shown to meet the new standards. (Carpeting used as a floor covering does not have to meet the new standard for the reason discussed in Notice 85–10.) Additional time will be needed to develop carpeting that meets the new standards or a suitable substitute material. Many materials that meet the new standards and can be used in the fabrication of typical interior components cannot be used in the fabrication of certain other components due to unique shape or functional considerations. There are promising new materials that can be used for these unique components; however, additional time will be needed to develop new fabrication processes for those materials. Rather than addressing these concerns by issuing an extension of the compliance time for materials in general, the FAA is providing for an evaluation, on an individual basis, of those relatively few components which may not meet the new standards. If, as a result of that evaluation, a determination is made that special circumstances exist that make compliance impractical, and that there would be no significant adverse effect on the overall flammability of the cabin, relief may be granted with respect to those few components. Section

121.312(a) is amended to enable the Manager of the Aircraft Certification Division, FAA Northwest Mountain Region, to grant such relief in the form of a deviation from the requirements of that paragraph. A request for a deviation from the requirements of § 121.312(a) must be based on a thorough and accurate analysis of each component used in the airplane cabin, the steps that are being taken to achieve substantial compliance, and, for the few components for which timely compliance cannot be achieved, credible reasons for such noncompliance. Such deviation may be granted to operate airplanes manufactured within 1 year after the applicable date specified in § 121.312(a) or those in which the interior is replaced within 1 year after that date.

Following completion of Amendments 25–61 and 121–189, but prior to their publication in the **Federal Register**, the ATA and AIA jointly petitioned for further rulemaking in which the standards contained in Amendments 25–61 and 121–189 would be replaced by alternate test criteria and standards which they proposed. The ATA and AIA, which represents the major U.S. airlines and the major U.S. manufacturers of transport category airplanes, respectively, were supported in their petition by certain European airplane manufacturers and the International Air Transport Association (IATA). As noted above, comments received in response to this petition were considered along with those received in response to the request contained in the preamble to Amendments 25–61 and 121–189. In essence, the petitioners' proposal involves the following:

1. The adopted definitive standards of 65 kilowatts per square meter for peak heat release and 65 kilowatt-minutes per square meter for 2 minutes would be relaxed to 100 Kilowatts per square meter and 100 kilowatt-minutes per square meter, respectively. These proposed final standards would be the same as the interim standards currently required by Amendment 121–189. The OSU test apparatus and procedures would be retained.

2. The time by which affected components would have to meet the proposed standards would be delayed from August 20, 1988, until a date 3 years after the new rulemaking became effective.

3. A smoke release test using the NBS Smoke Chamber (ASTM F814–83) would be required. Although not currently required by regulation, the petitioner states that the NBS smoke chamber is already in use by domestic and European airplane manufacturers as part of their materials acceptance procedures.

4. A two-tier certification procedure would be used. In lieu of testing representative completed parts, only the basic material systems from which parts would be fabricated later would be subjected to the OSU radiant heat release test and the smoke test. Completed parts would be subjected only to the flammability test requirement that was in effect prior to the adoption of Amendments 25–61 and 121–189.

In support of their proposal, the petitioners assert that adoption of these changes would enhance public safety by the use of proven fire test methods to eliminate the use of undesirable cabin materials and would permit the orderly incorporation of improved materials in production airplanes with a minimum of disruption to public service. The petitioners' proposal is based on the premise that the standards of Amendments 25–61 and 121–189 preclude the use of certain "desirable" materials because their peak and 2-minute heat release values exceed 65 kilowatts per square meter and 65 kilowatt-minutes per square meter, respectively. Raising these standards to 100 kilowatts per square meter and 100 kilowatt-minutes per square meter would allow these materials to pass insofar as testing with the OSU apparatus is concerned. In order to preclude the use of "undesirable" materials that have heat release values less than 100 kilowatts per square meter and 100 kilowatt-minutes per square meter, a smoke test would also be required. According to the petitioners, "undesirable" materials in this heat release range have excessive Smoke release characteristics.

A number of commenters support the petitioners' proposal by citing their beliefs that the OSU apparatus and test procedures do not discriminate "desirable" materials from those that are "undesirable" and that there will be no materials or processes available in sufficient time to comply with the new standards.

Other commenters disagree. Some cite various available materials and processes which are already or will be available to meet the new standards. Some question the validity of the smoke test in assessing the flammability characteristics of interior materials.

The petitioners propose a delay in implementing the new standards until a date 3 years after the date on which their proposed rulemaking would become effective. Considering the time required for the normal rulemaking process, this would mean that the petitioners' proposed standards would not be implemented for at least 4 years. None of the commenters, including the petitioners, have presented convincing arguments to date as to why even the much more stringent adopted definitive standards cannot be met by August 20, 1990. As most of the affected components in currently manufactured transport category airplanes already meet the petitioner's standards, there is virtually no evident need for the proposed delay if the petitioners' proposed standards were adopted.

As noted by the National Transportation Safety Board (NTSB) in their comments to the docket, there has been no scientific correlation made between the rate of heat release and smoke production. The NTSB comment is consistent with testimony of NBS and FAA Technical Center fire safety experts in the meeting with the Staff of the House of Representatives Committee on Public Works and Transportation on February 6, 1987.

As shown in the full-scale test and other testing, the critical factor in survivability is the time afforded for egress before flashover occurs. The release of large quantities of heated gases, which eventually result in flashover, is not relative to the amount of smoke released. The correlation of the amount of heat released by materials to the time of flashover and, in turn, to the time in which survival is possible is based on scientific testing and analyses conducted by the FAA and others. In contrast, the fact that certain materials, which are classed as "desirable" by the petitioners and the supportive commenters, exhibit low smoke release characteristics is a fortuitous coincidence, and any conclusions derived from that coincidence are not based on scientific evidence. In this regard, the FAA understands that the interior materials involved in the early flashover experienced in the German full-scale test met the manufacturer's smoke emission criteria.

The NTSB also concurs with the FAA belief that insufficient flammability data are available to determine whether there is a correlation between the flammability of individual components of an assembled system and the flammability of the system. The FAA is, in fact, unaware of any data developed to show such a correlation. The petitioner's proposal to use a two-tier certification procedure is, therefore, considered inadequate.

One commenter recommends that the Fire Research Center of the NBS should

review the technical basis of the new flammability standards as adopted (i.e., the correlation of large-scale and laboratory testing, the test procedure and the acceptance criteria) and the petitioners' proposal. The NBS has already reviewed the new standards. There was, in fact, extensive cooperation between the FAA Technical Center and the NBS throughout the development of these standards. In regard to the petitioners' proposal, a fire safety expert of the NBS testified, in the meeting with the Staff of the House of Representatives Committee on Public Works and Transportation, that there was no scientific correlation of smoke release and flammability of materials.

Because there is no known correlation between smoke release and flammability, the petitioners' proposal would merely relax the standards adopted with Amendments 25–61 and 121–189. There are few interior materials used in current production of transport category airplanes that do not have heat release characteristics that are better than the standards proposed by the petitioner. There would, therefore, be virtually no improvement in cabin fire safety if the petitioners' proposal were adopted in lieu of the recently adopted standards of Amendments 25–61 and 121–189.

Some commenters do, however, believe that standards for smoke emission should be established in addition to the recently adopted flammability standards. Although smoke testing has not been shown to be of any value as a substitute for appropriate flammability standards, they believe that it should be conducted to minimize any direct hazards due to smoke, such as obscuration of escape routes, etc. Smoke testing was proposed by the ATA and AIA in their joint petition for rulemaking and offered for public comment. In light of the comments received and because it would place no additional burden on the manufacturers, § 25.853(a) and Appendix F are amended to require smoke testing in order to preclude the indiscriminate use of materials which produce excessive smoke, since suitable alternative materials are available. A corresponding amendment is also made to § 121.312(a) to require smoke testing coincident with the definitive rate of heat release standards.

The final disposition of the petitioners' request is the subject of a separate document and, except as noted above, no further action concerning their proposals is taken insofar as this rulemaking is concerned.

Two commenters believe that the flammability standards should be extended to window shades, and one of the two believes that they should also be applicable to curtains. Small parts, such as window shades, are not required to meet the new standards because their overall contribution to the flammability of the cabin interior is small. It is also noted that window shades are normally retracted behind the sidewall panels and not exposed to flames during the time period in which survival is still possible. The OSU rate-of-heat-release apparatus and procedures are not adaptable for testing fabrics. Requiring curtains to meet heat release standards would require the development of new test method which would be beyond the scope of this rulemaking.

One commenter believes that tapestries installed on bulkheads for aesthetics should be excluded from meeting the new standards. The commenter asserts that they constitute less than 1 percent of the interior linings's exposed surface; they are local and isolated so that they cannot contribute to the progression of a flame in a longitudinal direction; and their contrast in design, color and texture adds an important element to the otherwise stark interior lining. The FAA does not concur that such tapestries should be excluded. The addition of the tapestry as an integral part of the bulkhead may compromise the ability of the bulkhead to meet the new standards and add to the overall flammability of the interior. The comment that such tapestries cannot contribute to the progression of a flame in a longitudinal direction does not appear to be relevant, as a bulkhead containing a tapestry may be near a rupture in the fuselage sidewall. If there were such a rupture, the bulkhead could be in the direct path of an external fire as it enters the cabin. Although such tapestries do improve the appearance of the interior, the safety improvements that will result from the new rule far outweigh any aesthetic considerations.

One commenter notes that § 25.853(a-1) states: ". . . The outer surfaces of galleys. . ." and inquires whether this means the outer decorative finish will be tested and structural panels will not be tested. Structural items, to the extent they form the outer surfaces of galleys, large cabinets, stowage bins, etc., must be tested with the decorative laminate installed. Internal structure that is protected from exposure to flames during the time period when survival is possible (i.e., until flashover occurs) is not required to meet the new standards.

One commenter believes that passage stowage bins may be opened and left open by passengers in panic situations after a controlled crash. The commenter, therefore, believes that the construction materials used on the inside of stowage bins should also meet the new standards. While it is possible that some bins may be left open, they will generally remain closed on instruction of the crewmembers to leave personal belongings behind and evacuate the airplane immediately. For the few that might be left open, much of the interior surface would be isolated from the fire by the bin contents. It is, therefore, not considered necessary to require the inner surfaces of passenger stowage bins to meet the new standards. Generally, the inner surfaces of such bins are constructed of the same material as the outer surfaces, less the decorative laminate. In that case, the materials would be shown to meet the new standards when tested as an outer surface.

One commenter inquired as to whether the test is to be conducted with a simulated specimen made with the same materials and processes used for the production article or with the individual surface components. Another commenter recommends that the final specification of test panel thickness be delayed until more experience has been gained in interior panel construction with the new materials. Section 25.853(a-1) specifies the components which must meet the requirements of Part IV of Appendix F. It is not necessary to test the production articles, per se; however, the test specimen must have a thickness representative of the production article, rather than an arbitrarily specified thickness, in order to ensure that the production article does, indeed, meet these standards.

One commenter believes the figures are deficient and must be revised in order to better reflect the test apparatus. The commenter does not note any specific areas; however, the FAA will monitor compliance with the new standards and propose changes to the figures in the future if shown desirable as further experience is gained. In the same vein, another commenter believes an advisory circular (AC) should be prepared to provide guidance in showing compliance with the new standards. The FAA concurs that the preparation of an AC could be beneficial; however, the FAA does not consider it to be essential or necessary for compliance with the rule. It will, therefore, be delayed in order to benefit from the initial experience in showing compliance with the new standards.

Two commenters request further clarification of the phrase "substantially complete replacement" that appears in

§ 121.312(a) (5) and (6). For reasons discussed in the preambles to Notice 85–10 and to Amendments 25–61 and 121–189, these subparagraphs generally apply only when all of the components subject to § 25.853(a–1), i.e., interior ceiling and wall panels (other than lighting lenses), partitions, and the outer surfaces of galleys, large cabinets, and certain stowage compartments, are replaced. The qualifying term "substantially complete" is used, however, to ensure that persons cannot circumvent the intent of the rule by replacing all but a small, insignificant portion of the components. Generally, there would be a complete replacement of the interior if all but a few units of the affected components are replaced. For example, compliance with the new standards would be required if all of the components subject to § 25.853(a–1), except a few sidewall panels, were replaced, or if all but a few storage bins were replaced. It is not possible to precisely define "few units," because the number will vary with the total number of units in the airplane and the relative size of the units. It is recognized that a person could avoid using materials that meet the new standards by replacing a portion, e.g., 50 percent, at one time, and the remainder at a later date. It does not, however, appear that this will become a widespread practice. Nevertheless, if materials that do not meet the new standards do remain in service in a significant number of air carrier airplanes because they are not replaced as anticipated, and a substantial increase in overall safety can be realized, the FAA will, as noted in the preamble to Notice 85–10, consider a mandatory retrofit program in a subsequent rulemaking action.

Two commenters suggest editorial changes for clarity. One believes that a new § 25.853(a–2) should be added to state that, "smaller items, such as windows, window shades, or curtains, as well as floor coverings, floor structure, seats, and service items, are not included and do not have to meet the requirements in (a–1). All of such materials have to meet the flammability requirements prescribed in paragraph (a) of this part." As discussed in the preamble to Notice 85–10, these would be correct statements. It does not appear, however, that clarity would be enhanced by their addition. These items are clearly not required to comply with the new standards due to their absence in § 25.853(a–1). The other commenter suggests that the word "component" should be deleted from § 121.312 (5) and (6). As the reason for this deletion, the commenter repeats a statement in the preamble to Notice 85–10 that replacement of individual components on a piece-meal basis will not significantly increase the level of safety and might result in incompatibility of parts. This, of course, does reflect the intent of the rule; however, the current wording does not imply that individual components would have to meet the new standards, and the phrase "components subject to § 25.853(a–1)" is necessary to exclude the components not subject to § 25.853(a–1). For example, whether the seats or flooring is replaced is not relevant to a determination that there is a "substantially complete replacement" of the components that must meet these flammability standards.

One commenter requests clarification of whether galley inserts such as oven racks, standard units, meal trolleys, waste trolleys, etc., must meet the new standards. Generally, such items do not have to meet the new standards because they are not exposed when they are stowed. There are, however, interior arrangements in which major surfaces of such items are exposed even when they are stowed. If the exposed surfaces of such units, individually or collectively, comprise a surface area that is significant from a flammability standpoint, the exposed surfaces must comply with the new flammability standards.

The statement in the preamble to Amendments 25–61 and 121–189 that "components removed from one airplane, refurbished and installed in another airplane on a rotational basis would have to meet the new flammability requirements" is characterized by one commenter as a new requirement that was added in the final rule without being proposed in Notice 85–10. The commenter appears to be confusing the word "replacement" with the qualified term "essentially complete replacement." As discussed in the preamble, interior components that are removed, refurbished, and reinstalled in the same airplane would not be "replaced." Because they would not be replaced, § 121.312(a)(6) does not require these components to meet the new standards, regardless of whether they constitute all, or essentially all, of the cabin interior components subject to § 25.853(a–1). If, on the other hand, the refurbished components installed in the airplane are not those removed earlier from that airplane, the components removed from the airplane have, by definition, been "replaced." The fact that certain components have been "replaced" does not, in itself, mean that the newly installed components have to meet the new standards. As discussed above, whether the components that "replace" the removed components have to meet the new standards depends on whether there is an "essentially complete replacement" of the cabin interior components.

The same commenter states that the FAA failed to comply with the requirements of § 604(a) (2) and (3) of the Administrative Procedures Act (APA) by not discussing significant comments and alternatives provided by parties affected by the Notice. The commenter lists a number of comments which, according to the commenter, were not discussed. Actually, the listed comments were discussed in varying depths. That the FAA did not accept the commenter's position does not mean that the comments were not considered. The commenter must recognize that when comments are in conflict with other comments or with other information available to the FAA, the FAA must accept the position deemed to have the most credence. The commenter is particularly disturbed that the alternative standards proposed in the joint ATA/AIA petition for further rulemaking were not evaluated and addressed in the preamble to Amendments 25–61 and 121–189. Although the petitioners had informally indicated their intent to petition for further rulemaking earlier, neither the petition nor any supporting data were received prior to December 24, 1985, when the rulemaking was completed and forwarded from the FAA for executive review. Delaying the rulemaking until the petition was received would have resulted in an unwarranted delay in the implementation of the new safety standards. Nevertheless, the FAA did provide for further consideration of the matter by requesting the additional comments addressed in this document.

One commenter believes that requiring compliance with interim standards within 2 years and with the definitive standards within 4 years will result in greater costs than requiring compliance with the definitive standards within 2 years, as originally proposed. As the basis for this belief, the commenter states that interior materials meeting the interim standards will not be acceptable to airlines taking delivery both before and after the interim period because of costly complex spares and maintenance problems.

Compliance with the interim standards is not expected to present a significant burden in itself, because, as noted above, there are few interior

materials used in current production of transport category airplanes that do not have heat release characteristics that are better than the interim standards. As discussed in the preamble to Amendments 25–61 and 121–189, the interim standards were established primarily to prevent any degradation in the present level of safety due to increased use of materials found to be especially flammable. While some airlines may choose to voluntarily use components that meet the definitive standards in airplanes produced during the interim period, it does not appear that their choice would be due to spares and maintenance considerations. Typically, the interior components that must meet these standards do not fail unexpectedly in service. Rather, they deteriorate on a slow, predictable basis due to wear and tear. Even when deteriorated, such components are frequently refurbished and reused. Consequently, there is no need to maintain an extensive supply of spares for such components; and having two interior configurations would not significantly increase the number of spares needed. It appears that a more likely reason for voluntarily using components that meet the definitive standards during the interim period would be the safety benefits that will result from their use. In any event, costs due to voluntary compliance are not attributable to this rulemaking.

The only comments received concerning the further adjustments in the test apparatus and procedures recommended by the FAA Technical Center are outlined in the notice of reporting of the comment period are favorable. These adjustments are, therefore, adopted as proposed.

Since the time Amendment 25–61 was adopted, questions have been raised concerning the applicability of the type certification standards contained in that amendment to cabin windows and clear vision panels in cabin partitions, galleys (including galley carts and other rotatable galley equipment), and isolated compartments. The FAA will address these issues in separate rulemaking or advisory action.

Other nonsubstantive editorial changes have also been made for clarity. In particular, § 121.312(a) (1), (2), (5), and (6) have been changed to clarify that only compliance with § 25.853(a–1) is required, not § 25.853 in its entirety. Minor nonsubstantive changes have also been made in the test procedures to more closely reflect the manner in which the tests are actually conducted.

**Regulatory Evaluation**

*I. Evaluation of Cost and Benefits*

Two commenters reiterate their earlier contentions that the actual cost impact will be greater than the value estimated in the original regulatory evaluation for these amendments. The FAA considers these comments worthy of further discussion. A revised regulatory evaluation reflecting the issues raised by these comments has been placed in the docket, and the revisions are summarized below.

The contentions of the commenters are based, to a large extent, on the premise that no suitable candidate materials will be available in time to comply with the new standards. The FAA is aware of some materials that meet the new standards and are currently in use in the cabins of transport category airplanes. Other materials are available for such use. As discussed above, § 121.312(a) is amended to provide relief for the few unique components for which timely compliance cannot be achieved. The rule has, therefore, been revised to accommodate their concerns to the limited extent to which the FAA concurs with those comments.

It is difficult for either the FAA or the manufacturing industry to estimate the compliance costs of the new flammability standards with great precision. The development of the new or modified manufacturing processes found necessary or desirable for the fabrication of compliant interior components involves experimentation with unfamiliar applications of relatively new materials. Estimates by manufacturers can, therefore, be expected to be extremely conservative because of this uncertainty. While the FAA does not consider the cost of compliance to be nearly as great as the manufacturers' estimates, the FAA does acknowledge that the adoption of these new flammability standards will be more costly than originally estimated. Due to this same uncertainty, it is difficult to predict the exact extent of the difference between the amount originally estimated and the actual cost. Nevertheless, the FAA still considers that the new standards are in the best overall interest of the public. It is difficult to separate the incremental costs of the rule from the cost of the ongoing research and development efforts of materials suppliers, interior manufacturers, and airplane manufacturers. Indeed, in its regulatory evaluation, the FAA anticipated that approximately 48 percent of the U.S. airplane fleet would have met the new standards voluntarily by the year 2000; therefore, no benefits were attributed to the rule for those airplanes. This voluntary action would have a similar mitigating effect on the costs of the rule. This mitigating effect was not fully recognized by the commenters. The rulemaking action of the FAA will expedite the movement toward improved flammability characteristics for airplane interiors that industry has been pursuing in recent years.

Furthermore, the FAA only estimated potential benefits that could be realized by U.S. air carriers. United States manufacturers, however, included production costs for future airplane deliveries to foreign airlines in their cost estimates. Consequently, these estimates were excessive, even after allowance is made for airplanes that will be delivered by foreign manufacturers to U.S. air carriers.

Additionally, the FAA estimate of benefits attributable to the rule was extremely conservative. The benefits were estimated using a value of only $650 thousand per statistical fatality avoided. The Department of Transportation currently advocates a *minimum* value of one million dollars per statistical fatality avoided. The FAA originally estimated that an average of only about nine lives could potentially be saved per year if all large transport category airplanes operated by U.S. air carriers were equipped with interiors that have improved flammability characteristics as a result of both voluntary and FAA mandated actions. This estimate, however, was excessively low because of a misinterpretation of the data used in its derivation. The estimate should have been that, on average, from nine to sixteen lives could potentially be saved per year from both voluntary and FAA mandated actions, growing as traffic activity, and consequently passenger exposure, increases over time. The FAA estimated that the rulemaking itself would contribute to the realization of these potential safety improvements at a very slow pace, with the cumulative share attributable to the rulemaking increasing in annual increments of three percent from zero through 1988 to only 36 percent by the year 2000, resulting in a total of about 30 potential fatalities avoided. Thus, any appreciable benefit from the FAA action would not be realized until very late in the analysis period. Furthermore, the most substantial benefits would not be realized until well in the future, far beyond the 15 year analysis period used in the FAA regulatory evaluation. Nevertheless, this is a long term problem requiring a long term solution; and, to

achieve the safety objective, immediate action is necessary.

One final point must be made with respect to the evaluation of benefits. Although estimated benefits have been based upon average annual values in the evaluation to reflect the fact that an accident could occur at any time during the analysis period, the benefits of the rule will, in all likelihood, be realized in a more random, erratic manner, and in much larger increments. Thus, this rule could prevent numerous casualties in an accident occurring relatively soon after its implementation, or in an accident that does not occur until twenty to thirty years later. This rulemaking is intended to prevent the worst case scenario.

Some trade association commenters estimated that the cost of the rule to its members would be approximately $400 million through 1999, or about $300 million when discounted to the present. The FAA has reviewed those estimates and has concluded that they are somewhat high. The FAA considers that the cost to U.S. firms attributable to regulatory action would not exceed about $250 million through 1999, or about $175 million when discounted to the present. The cost per fatality avoided (discounted present value), based upon saving 30 lives during the analysis period, would be approximately $5.8 million. Although this cost per fatality avoided may seem somewhat high, it must be remembered that this rulemaking action represents only the beginning of a long term solution, and that many of the benefits of the improved flammability standards will not be realized until long after the analysis period. Further, to put the costs of this rule into a more practical perspective, the cost per U.S. enplanement would only be on the order of ten cents when annualized into the future using a capital recovery factor, and divided by the number of enplanements forecast for U.S. air carriers in future years. (The cost per enplanement would be even lower if future worldwide enplanements were considered.) Ten cents per enplanement is far below any meaningful threshold of perception by the typical airline passenger—the ultimate bearer of the cost of this rulemaking.

The present amendments involved minor refinements in the test procedures and apparatus required to demonstrate compliance with the standards adopted in the 1986 final rule for materials used in the cabins of certain transport category airplanes, an additional requirement for smoke testing, and a provision that would allow deviations to be granted under special circumstances for those few components for which timely compliance cannot be achieved.

The refinements in the test apparatus and procedures are intended only to improve the repeatability of test results from one test run to another and from one laboratory to another. These refinements do not involve any changes in the heat release standards adopted in Amendment Nos. 25–61 and 121–189, and therefore will not affect those materials found to be acceptable under the new standards. The cost of these refinements is only a few hundred dollars per test apparatus.

The new requirement for smoke testing is not expected to be very costly because most airplane manufacturers and the larger firms that manufacture aircraft interiors already conduct such testing routinely as part of their procurement procedures. Some additional expense will be incurred, however, as a result of conducting these tests to meet a formal FAA certification requirement rather than for less formal purposes. Further, there are approximately a half dozen smaller firms that fabricate cabin interior retrofit kits and most of these firms will find it necessary to obtain a smoke test chamber. This equipment can be acquired for about $30,000 per unit. However, because those materials meeting the recently adopted heat release standards also meet the new smoke standards, the smoke test will not affect those materials found to be acceptable under the new heat release standards. Therefore, no costs will be incurred as a result of the need to change materials to meet the smoke test requirements.

Finally, the deviation authority is intended to provide relief to operators only *after* the FAA has determined that special circumstances exist. Because this provision is transitional and will involve relatively few components, any impacts that may result are expected to be minimal.

## II. Regulatory Flexibility Act Determination

A Final Regulatory Flexibility Determination was made in compliance with the Regulatory Flexibility Act. The original conclusion that the amendment would not result in a significant economic impact on a substantial number of small entities is not altered by the revised cost estimates or by the present amendment. The airframe manufacturers affected by the amendments in Part 25 are not small entities. Small entities that conduct operations under Part 121 are defined by FAA Order 2100.14A, *Regulatory Flexibility Criteria and Guidance*, as operators that own nine or fewer aircraft. Most small entity operators typically use airplanes at the smaller end of the airplane size range found in Part 121 operations, and therefore would use the least expensive new interiors and interior replacement kits. Consequently, any incremental costs resulting from the amendments to Part 121 are not expected to be burdensome, especially for existing airplanes because the interiors of these airplanes are replaced very infrequently, and the amended rule only requires that the new standards be met at the first substantially complete replacement of the cabin interior. Finally, the only small entities that could potentially be affected by the present amendments are the small manufacturers of interior retrofit kits that might find it necessary to obtain smoke test chambers. Order 2100.14A establishes the criteria for a "a substantial number of small entities" as "a number which is not less than eleven and which is more than one-third of the small entities subject to a proposed or existing rule." Because there are only about a half dozen smaller firms that fabricate retrofit kits (and some of these may even be too large to be considered small entities under Order 2100,14A), there are less than the eleven firms necessary to meet the "substantial number" criteria. Therefore, the FAA has determined that both the previous and the present amendments will not result in a significant economic impact on a substantial number of small entities.

## III. International Trade Assessment

This amendment will have no impact on trade opportunities for both U.S. firms doing business overseas and foreign firms doing business in the U.S., as there are no significant benefits or costs. Also, airplanes newly manufactured for the U.S. market will have to comply with the rules, regardless of whether they are made by a U.S. or a foreign manufacturer.

## Federalism Implications

The regulations adopted herein do 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. Thus, in accordance with Executive Order 12612, it is determined that such a regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

### Conclusion

For the reasons discussed earlier in the preamble, the FAA has determined that this regulation is not considered to be major under Executive Order 12291. The FAA has determined that this action is significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). In addition, the FAA certifies that this rule does not have a significant economic effect on a substantial number of small entities under the criteria of the Regulatory Flexibility Act, since none would be affected. A regulatory evaluation of this action, including a Regulatory Flexibility Determination and a Trade Impact Assessment, has been prepared for this regulation and has been placed in the docket. A copy of this evaluation may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

### List of Subjects

*14 CFR Part 25*

Air transportation, Aircraft, Aviation safety, Safety.

*14 CFR Part 121*

Aviation safety, Safety, Air carriers, Air transportation, Aircraft, Airplanes, Flammable materials, Transportation, Common carriers.

### Adoption of the Amendment

Accordingly, Parts 25 and 121 of the Federal Aviation Regulations (FAR), 14 CFR Parts 25 and 121 are amended as follows:

## PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

1. The authority citation for Part 25 continues to read as follows:

**Authority:** 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

2. By amending § 25.853 by revising paragraph (a-1) to read as follows:

**§ 25.853 Compartment interiors.**

* * * * *

(a-1) For airplanes with passenger capacity of 20 or more, interior ceiling and wall panels other than lighting lenses), partitions, and the outer surfaces of galleys, large cabinets, and stowage compartments (other than underseat stowage compartments and compartments for stowing small items, such as magazine and maps) must also meet the test requirements of Parts IV and V of Appendix F of this Part, or other approved equivalent method, in addition to the flammable requirements prescribed in paragraph (a) of this Section.

* * * * *

3. By amending Appendix F by removing paragraph (e)(6) of Part IV and marking it "reserved;" removing Figures 2 through 5 of Part IV; redesignating Figures 6A, 6B, 7, and 8 of Part IV as Figures 2A, 2B, 3, and 4, respectively; revising Figures 1, 2A, 2B, 3 and 4 of Part IV; and revising paragraphs (b)(2), (3), (6), (7), (8) and (8)(i), (c)(1), (d)(1), (e)(7), and (f)(2) of Part IV and adding a new Part V to read as follows:

**Appendix F**

* * * * *

*Part IV.—Test Method to Determine the Heat Release Rate From Cabin Materials Exposed to Radiant Heat.*

* * * * *

(b) * * *

(2) *Thermopile.* The temperature difference between the air entering the environmental chamber and that leaving is monitored by a thermopile having five hot and five cold, 24-gauge Chromel-Alumel junctions. The hot junctions are spaced across the top of the exhaust stack, 10 mm below the top of the chimney. One thermocouple is located in the geometric center, with the other four located 30 mm from the center along the diagonal toward each of the corners. The cold junctions are located in the pan below the lower air distribution plate (see paragraph (b)(4)). Thermopile hot junctions must be cleared of soot deposits as needed to maintain the calibrated sensitivity.

(3) *Radiation Source.* A radiant heat source for generating a flux up to 100 kW/m², using four silicon carbide elements, Type LL, 20 inches (50.8 cm) long by ⅝ inch (1.54 cm) O.D., nominal resistance 1.4 ohms, is shown in Figures 2A and 2B. The silicon carbide elements are mounted in the stainless steel panel box by inserting them through 15.9-mm holes in 0.8 mm thick ceramic fiber board. Location of the holes in the pads and stainless steel cover plates are shown in Figure 2B. The diamond shaped mask of 24-gauge stainless steel is added to provide uniform heat flux over the area occupied by the 150- by 150-mm vertical sample.

* * * * *

(6) *Specimen Holders.* The 150-mm x 150-mm specimen is tested in a vertical orientation. The holder (Figure 3) is provided with a specimen holder frame, which touches the specimen (which is wrapped with aluminum foil as required by paragraph (d)(3) of this Part) along only the 6-mm perimeter, and a "V" shaped spring to hold the assembly together. A detachable 12-mm × 12-mm × 150-mm drip pan and two .020-inch stainless steel wires (as shown in Figure 3) should be used for testing of materials prone to melting and dripping. The positioning of the spring and frame may be changed to accommodate different specimen thicknesses by inserting the retaining rod in different holes on the specimen holder.

Since the radiation shield described in ASTM E-906 is not used, a guide pin is added to the injection mechanism. This fits into a slotted metal plate on the injection mechanism outside of the holding chamber and can be used to provide accurate positioning of the specimen face after injection. The front surface of the specimen shall be 100 mm from the closed radiation doors after injection.

The specimen holder clips onto the mounted bracket (Figure 3). The mounting bracket is attached to the injection rod by three screws which pass through a wide area washer welded onto a ½-inch nut. The end of the injection rod is threated to screw into the nut and a .020 inch thick wide area washer is held between two ½-inch nuts which are adjusted to tightly cover the hole in the radiation doors through which the injection rod or calibration calorimeter pass.

(7) *Calorimeter.* A total-flux type calorimeter must be mounted in the center of a ½-inch Kaowool "M" board inserted in the sample holder to measure the total heat flux. The calorimeter must have a view angle of 180 degrees and be calibrated for incident flux. The calorimeter calibration must be acceptable to the Administrator.

(8) *Pilot-Flame Positions.* Pilot ignition of the specimen must be accomplished by simultaneously exposing the specimen to a lower pilot burner and an upper pilot burner, as described in paragraph (b)(8)(i) and (b)(8)(ii), respectively. The pilot burners must remain lighted for the entire 5-minute duration of the test.

(i) *Lower Pilot Burner.* The pilot-flame tubing must be 6.3 mm O.D., 0.8 mm wall, stainless steel tubing. A mixture of 120 cm³/min. of methane and 850 cm³/min. of air must be fed to the lower pilot flame burner. The normal position of the end of the pilot burner tubing is 10 mm from and perpendicular to the exposed vertical surface of the specimen. The centerline at the outlet of the burner tubing must interest the vertical centerline of the sample at a point 5 mm above the lower exposed edge of the specimen.

* * * * *

(c) * * *

(1) *Heat Release Rate.* A burner as shown in Figure 4 must be placed over the end of the lower pilot flame tubing using a gas tight connection. The flow of gas to the pilot flame must be at least 99 percent methane and must be accurately metered. Prior to usage, the wet test meter is properly leveled and filled with distilled water to the tip of the internal pointer while no gas is flowing. Ambient temperature and pressure of the water are based on the internal wet test meter temperature. A baseline flow rate of approximately 1 liter/min is set and increased to higher preset flows of 4, 6, 8, 6, and 4 liters/min. The rate is determined by using a stopwatch to time a complete revolution of the wet test meter for both the baseline and higher flow, with the flow returned to baseline before changing to the next higher flow. The thermopile baseline voltage is measured. The gas flow to the burner must be increased to the higher preset flow and allowed to burn for 2.0 minutes, and the thermopile voltage must be measured.

The sequence is repeated until all five values have been determined. The average of the five values must be used as the calibration factor. The procedure must be repeated if the percent relative standard deviation is greater than 5 percent. Calculations are shown in paragraph (f).

* * * * *

(d) *Sample Preparation.*

(1) The standard size for vertically mounted specimens is 150 × 150 mm with thicknesses up to 45 mm.

* * * * *

(e) *Procedure.*

* * * * *

(6) [Reserved]

(7) Injection of the specimen and closure of the inner door marks time zero. A record of the thermopile output with at least one data point per second must be made during the time the specimen is in the environmental chamber.

* * * * *

(f) * * *

(1) * * *

(2) Heat release rates may be calculated from the reading of the thermopile output voltage at any instant of time as

$$HRR = \frac{V_m \times K_h}{.02323m^2}$$

HRR = Heat release Rate $kw/m^2$
$V_m$ = measured thermopile voltage (mv)
$K_h$ = Calibration Factor (Kw/mv)

* * * * *

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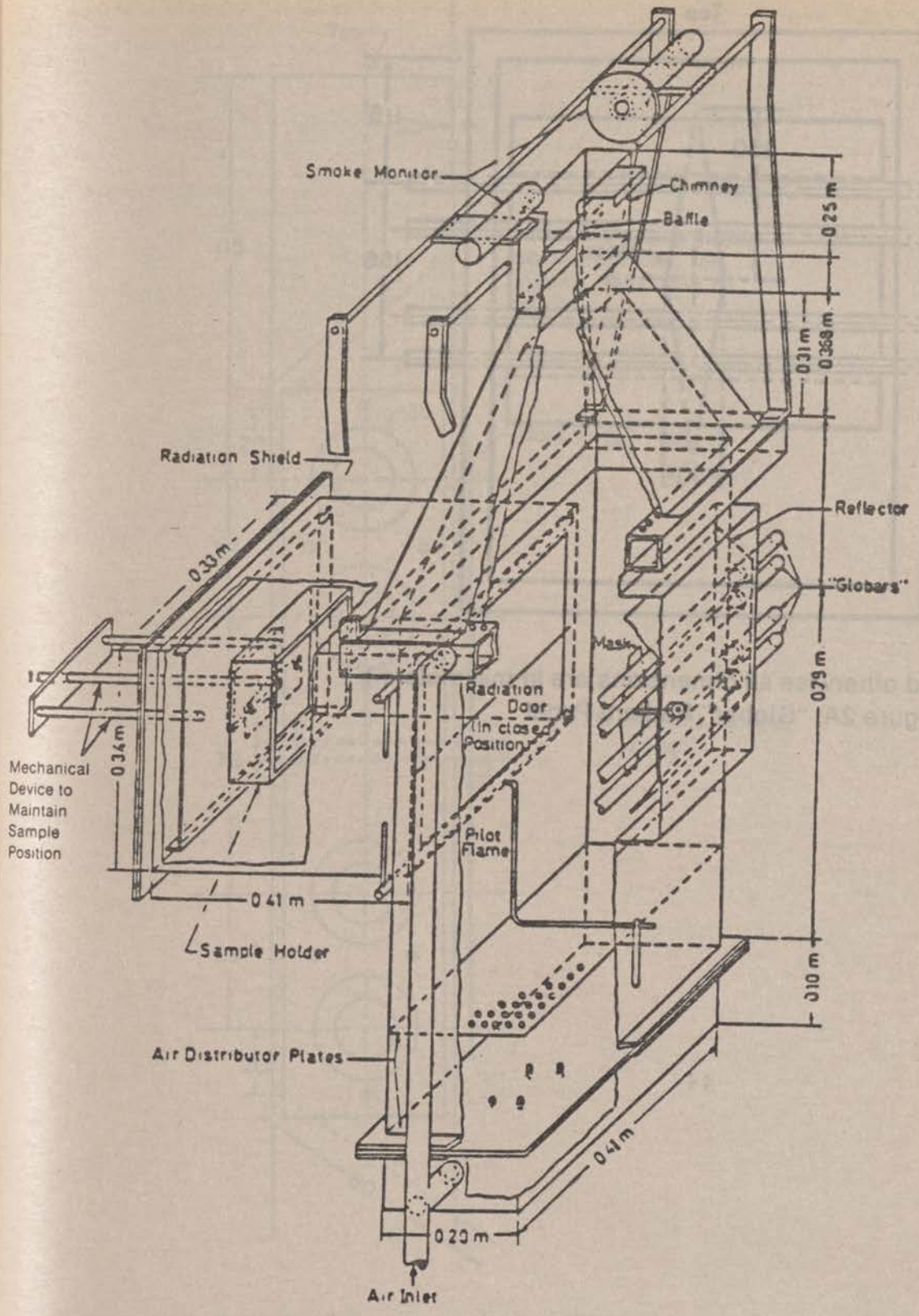
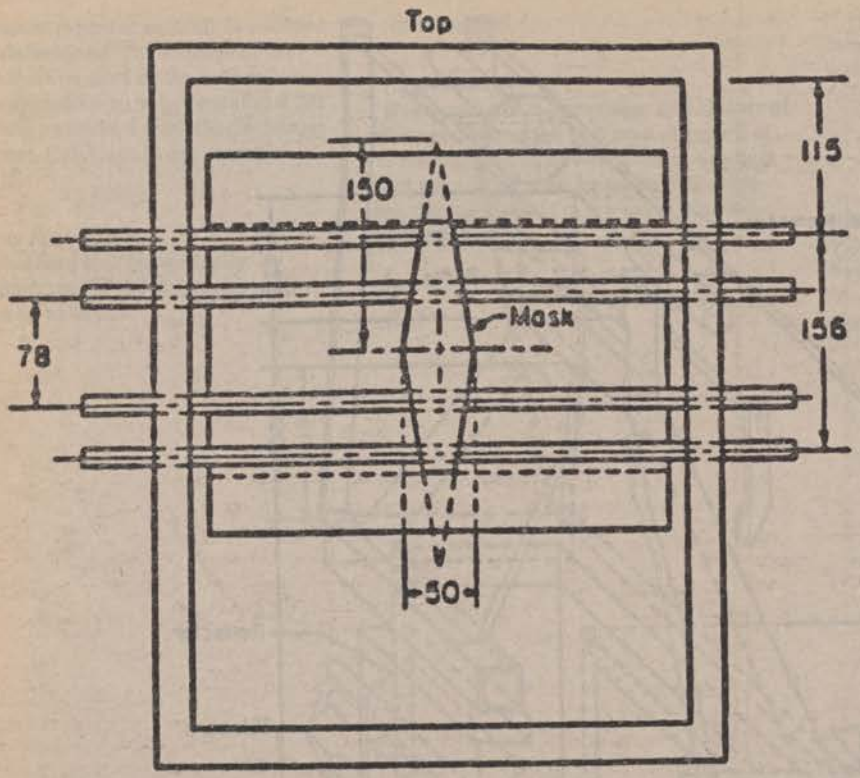
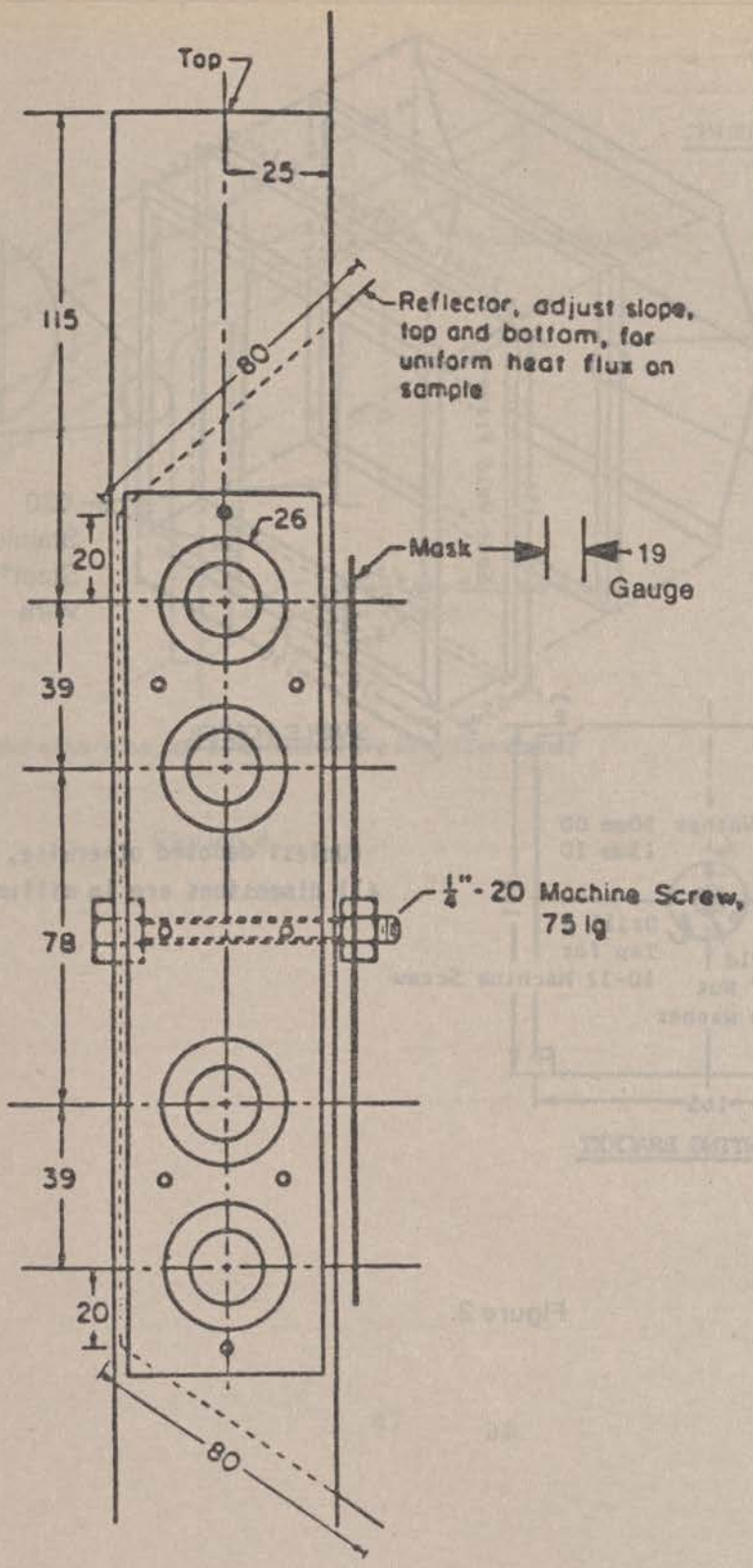



Figure 1. Release Rate Apparatus




(Unless denoted otherwise all dimensions are in millimeters.)

Figure 2A. "Globar" Radiant Panel




(Unless denoted otherwise all dimensions are in millimeters.)

Figure 2B. "Globar" Radiant Panel

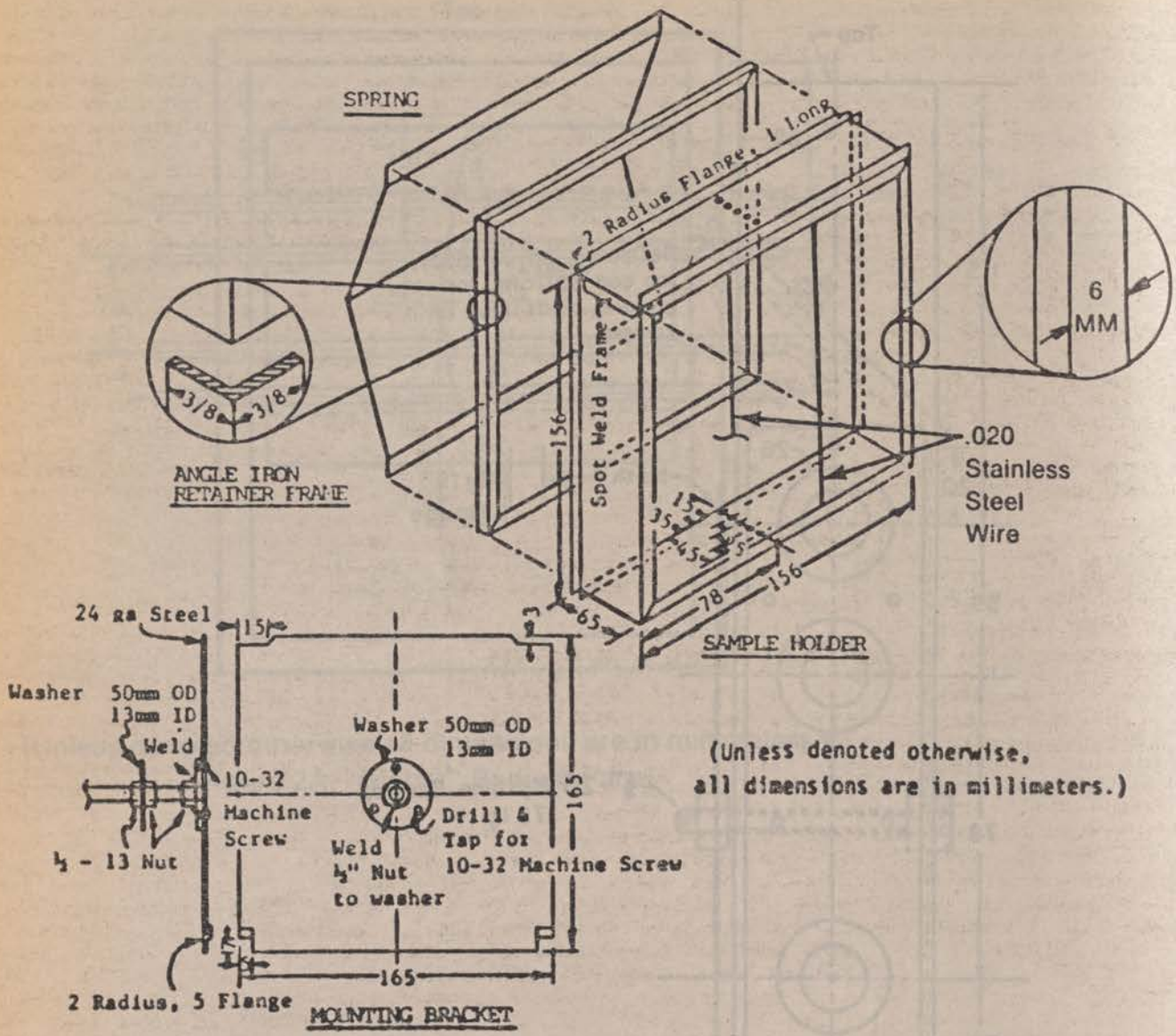
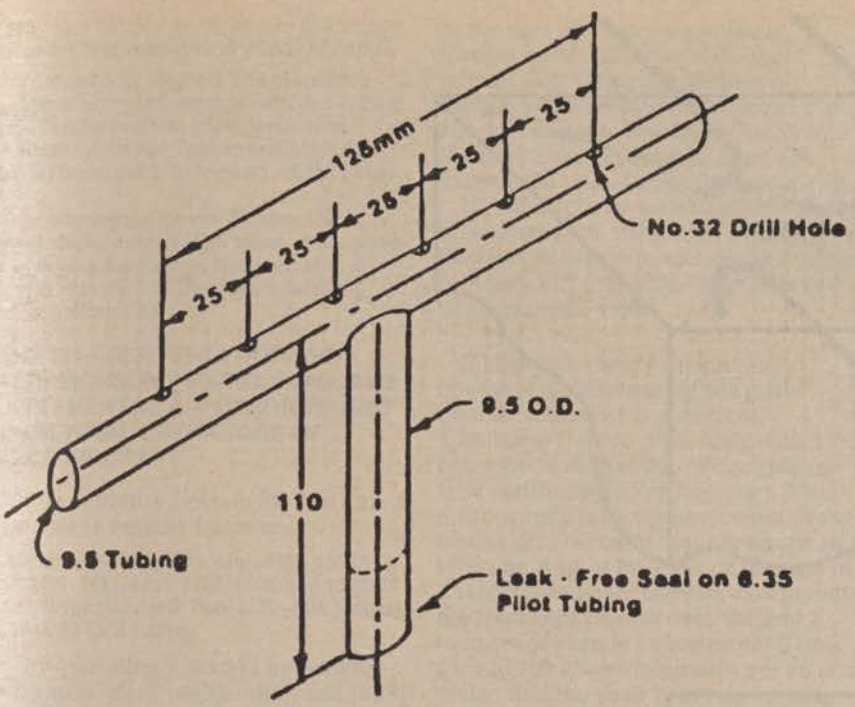

SPRING
2 Radius Flanges, 1 Long
6 MM
3/8
3/8
ANGLE IRON RETAINER FRAME
156
Spot Weld Frame
.020 Stainless Steel Wire
15
35
45
5
78
156
3
65
SAMPLE HOLDER
24 ga Steel
15
Washer 50mm OD 13mm ID
Weld
10-32 Machine Screw
½ - 13 Nut
Washer 50mm OD 13mm ID
Drill & Tap for 10-32 Machine Screw
Weld ½" Nut to washer
165
165
2 Radius, 5 Flange
MOUNTING BRACKET
(Unless denoted otherwise, all dimensions are in millimeters.)

Figure 3.




(Unless denoted otherwise, all dimensions are in millimeters.)

Figure 4.

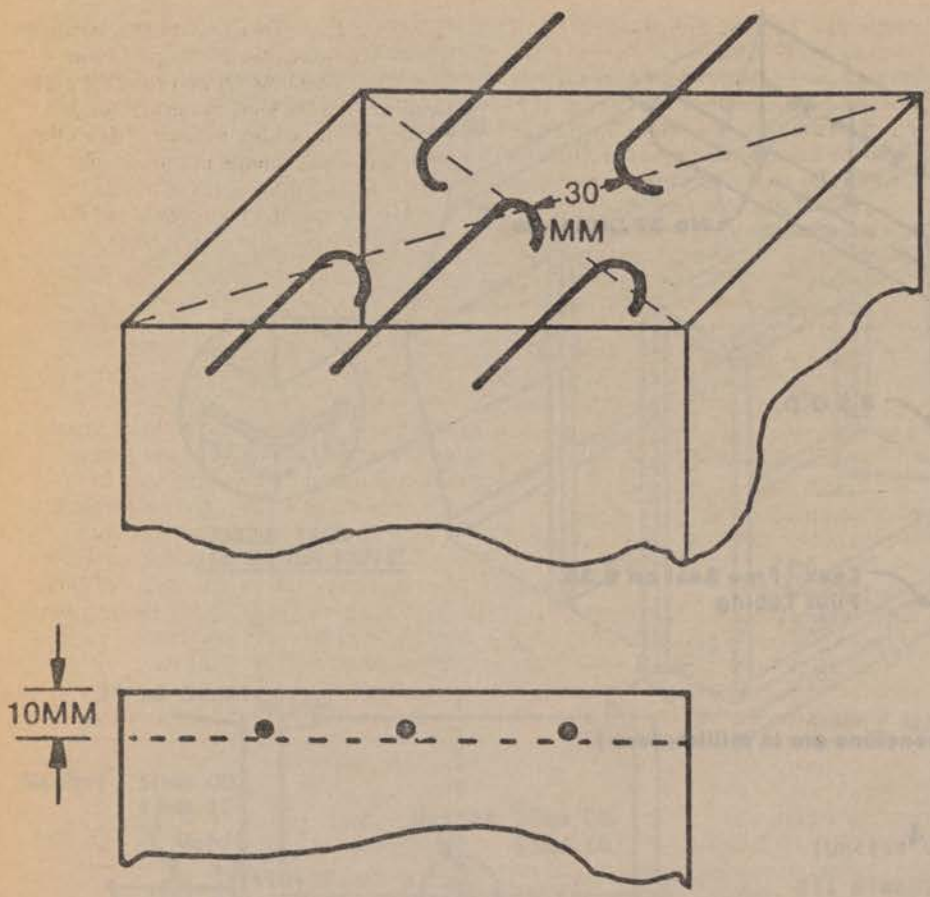



Figure 5. Thermocouple Position

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*Part V. Test Method to Determine the Smoke Emission Characteristics of Cabin Materials*

(a) *Summary of Method.* The specimens must be constructed, conditioned, and tested in the flaming mode in accordance with American Society of Testing and Materials (ASTM) Standard Test Method ASTM F814–83.

(b) *Acceptance Criteria.* The specific optical smoke density ($D_s$), which is obtained by averaging the reading obtained after 4 minutes with each of the three specimens, shall not exceed 200.

## PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

4. The authority citation for Part 121 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421–1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983) 49 CFR 1.47(a).

5. By amending § 121.312 by revising paragraphs (a)(1), (a)(2), (a)(5), and (a)(6) to read as follows and by adding a new paragraph (a)(7):

**§ 121.312 Materials for compartment interiors.**

(a) * * *

(1) All airplanes manufactured on or after August 20, 1988, but prior to August 20, 1990, must comply with the heat release rate testing provisions of § 25.853(a–1) in effect on August 20, 1986 or the date of a later amendment thereto, except that the total heat release over the first 2 minutes of sample exposure must not exceed 100 kilowatt minutes per square meter and the peak heat release rate must not exceed 100 kilowatts per square meter.

(2) All airplanes manufactured on or after August 20, 1990, must comply with the heat release rate and smoke testing provisions of § 25.853(a–1) in effect on September 26, 1988.

* * * * *

(5) Upon the first substantially complete replacement of the cabin interior components subject to § 25.853(a–1) on or after August 20, 1988, but prior to August 20, 1990, airplanes type certificated after January 1, 1958, must comply with the heat release rate testing provisions of that paragraph in effect on August 20, 1986, or the date of a later amendment thereto, except that the total heat release over the first 2 minutes of sample exposure shall not exceed 100 kilowatt-minutes per square meter, and the peak heat release rate shall not exceed 100 kilowatts per square meter.

(6) Upon the first substantially complete replacement of the cabin interior components identified in § 25.853(a–1) on or after August 20, 1990, airplanes type certificated after January 1, 1958, must comply with the heat release rate and smoke testing provisions of that paragraph in effect on September 26, 1988.

(7) Contrary provisions of this section notwithstanding, the Manager of the Transport Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, may authorize deviation from the requirements of paragraph (a)(1), (a)(2), (a)(5), or (a)(6) of this section for specific components of the cabin interior which do not meet applicable flammability and smoke emission requirements, if the determination is made that special circumstances exist that make compliance impractical. Such grants of deviation will be limited to those airplanes manufactured within 1 year after the applicable date specified in this section and those airplanes in which the interior is replaced within 1 year of that date. A request for such grant of deviation must include a thorough and accurate analysis of each component subject to § 25.853(a–1), the steps being taken to achieve compliance, and, for the few components for which timely compliance will not be achieved, credible reasons for such noncompliance.

* * * * *

Issued in Washington, DC, on August 19, 1988.

**T. Allan McArtor,**

*Administrator.*

[FR Doc. 88–19283 Filed 8–23–88; 9:58 am]

BILLING CODE 4910–13–M

federal register

Thursday
August 25, 1988

Part VII

# Environmental Protection Agency

**Proposed Effluent Guidelines; Notice**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-3386-8]

### Proposed Effluent Guidelines

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of proposed plans to implement Section 304(m) of the Water Quality Act.

**SUMMARY:** This notice announces the Agency's proposed plans for reviewing existing effluent guidelines and promulgating new effluent guidelines to implement section 304(m) of the Clean Water Act, as amended by the 1987 Water Quality Act (Pub. L. 100–4). EPA is requesting comment on all aspects of its proposed plans and the criteria used to select existing guidelines for review and revision and to select new industrial categories for the promulgation of effluent guidelines.

**DATE:** Comments must be received on or before October 24, 1988.

**ADDRESS:** Comments should be addressed to Ms. Marion Thompson, Industrial Technology Division (WH–552), U.S. Environmental Protection Agency, 401 M St. SW., Washington DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Mr. Thomas O'Farrell, Industrial Technology Division (WH–552), U.S. Environmental Protection Agency, 401 M St. SW., Washington, DC 20460, telephone 202–382–7137.

**SUPPLEMENTARY INFORMATION:**

#### I. Legal Authority

This notice is published under the authority of section 304(m) of the Clean Water Act, 33 U.S.C. 1251 *et. seq.*, (as amended most recently by the Water Quality Act of 1987, Pub. L. 100–4). The 1987 Water Quality Act ("WQA") added new requirements to section 304 of the Clean Water Act.

#### II. Background

*A. Statutory Requirements and the Effluent Guidelines Program*

The Clean Water Act (CWA) controls the discharge of pollutants into the nation's surface waters. Specifically, section 301(a) prohibits the discharge of any pollutant by any person except in compliance with sections 301, 302, 306, 307, 318, 402, and 404 of the Act.

Wastewaters from industrial sources are discharged into the nation's surface waters in two principal ways: Directly into surface waters of the United States by direct dischargers, or indirectly through publicly owned treatment works (POTWs) by indirect dischargers. Industrial wastewaters from indirect dischargers mixed with domestic and commercial wastewaters in municipal collection systems are treated at municipal treatment systems (POTWs) and discharged to surface waters.

Industrial and municipal wastewaters have been found to contain pollutants which harm receiving waters, aquatic life, and human health. The Federal Water Pollution Control Act (FWPCA) of 1972 established a program to restore and maintain the integrity of the nation's waters. To implement the Act, Congress directed EPA to issue effluent guidelines, pretreatment standards, and new source performance standards for industrial dischargers. These regulations were to be based principally on the degree of effluent reduction attainable through the application of treatment technologies. In 1977, the amendments to the FWPCA, known as the Clean Water Act Amendments, stressed additional control of 65 toxic compounds or classes of compounds (from which EPA later developed a list of 126 priority pollutants). To further strengthen the toxic control program, section 304(e), added by the 1977 amendments, authorizes the Administrator to establish management practices to control toxic and hazardous pollutants in plant site runoff, spillage or leaks, sludge or waste disposal, and drainage from raw material storage.

The CWA calls for achieving technologically based effluent limitations for industrial direct dischargers in two stages. First, section 301(b)(1)(A) directed the achievement of effluent limitations requiring application of the best practicable control technology currently available (BPT). Effluent limitations based on BPT are generally to represent the average of the best treatment technology performance in an industrial category. Second, for the toxic pollutants listed in section 307(a) and for nonconventional pollutants, section 301(b)(2) (A), (C), (D) and (F) directed the achievement of effluent limitations requiring application of the "best available technology economically achievable" (BAT). Effluent limitations based on BAT are to represent at a minimum the best treatment technology performance in the industrial category that is technologically and economically achievable. For conventional pollutants listed under section 304(a)(4), section 301(b)(2)(E) directed effluent limitations based on the performance of best conventional pollutant control technology (BCT).

To ensure that such limitations remain current with the state of the industry and with available treatment technologies, section 304(b) require EPA to revise effluent limitations and guidelines at least annually if appropriate. In addition, section 301(d) also required the Agency to review and revise, if appropriate, any effluent limitation required by section 301(b)(2), pursuant to procedures established under that section. Section 306 provided for technology-based standards for new sources (known as new source performance standards, or NSPS). These standards must be based on the best demonstrated control technology, processes, operating methods, or other alternatives.

Section 402 of the CWA provided for the issuance of permits to direct dischargers under the National Pollutant Discharge Elimination System (NPDES). These permits, which are required by section 301, are issued either by EPA or by a State agency approved to administer the NPDES program. Individual NPDES permits must incorporate applicable technology-based limitations contained in guidelines and standards for the industrial category in question. Where EPA has not promulgated applicable technology-based effluent limitations and guidelines for an industry, section 402(a)(1)(B) provided that the permit must incorporate such conditions as the Administrator determines are necessary to carry out the provisions of the Act. In other words, the permit writer uses best professional judgment (BPJ) to establish limitations for the dischargers.

Indirect dischargers are regulated by the general pretreatment regulations (40 CFR Part 403) and pretreatment standards for new and existing sources (PSNS and PSES) covering specific industrial categories. These standards under sections 307 (b) and (c) apply to the discharge of pollutants from industrial sources which interfere with or pass through POTWs. Pretreatment standards are enforced by POTWs or by State or Federal authorities. The standards covering specific industries are generally analogous to the limitations imposed on direct dischargers.

*B. New Requirements: Section 304(m)*

On February 4, 1987, the Water Quality Act of 1987 became effective. The WQA strengthens the CWA through changes designed to improve water quality. One of these changes, the addition of section 304(m), requires EPA to publish the Agency's plans to review and revise existing effluent guidelines and promulgate new guidelines for dischargers of toxic and nonconventional pollutants.

Specifically, section 304(m)(1) requires the Agency to publish in the **Federal Register** a plan to review and revise existing effluent guidelines and to identify and promulgate guidelines for categories discharging toxic and nonconventional pollutants for which guidelines have not been previously published. The plan must establish a schedule for the annual review and revision of promulgated effluent guidelines; must identify industrial categories discharging toxic or nonconventional pollutants that are not covered by promulgated guidelines under sections 304(b)(2) and 306; and must establish a schedule for promulgating guidelines for the industrial categories so identified. In the case of industrial categories for which guidelines have not been promulgated that are listed in the first published plan, EPA must establish a schedule which calls for promulgation of effluent guidelines within four years after enactment of the WQA. For categories listed in later plans, the schedule must call for promulgation of guidelines within three years after publication of the plan in question.

Section 304(m)(2) also requires EPA to provide for public review and comment on the plan before final publication.

## III. Purpose

The purpose of today's Notice is to describe EPA's plans to implement Section 304(m). The notice will: (1) Identify industries for which new or revised guidelines and standards are currently being developed; (2) describe the procedures followed by the Agency in selecting and evaluating additional candidates for new or revised guidelines and standards; (3) explain the criteria the Agency will consider when deciding whether to initiate rulemakings for these industries; and (4) solicit public comment on all aspects of today's notice.

Appendix A of this Notice lists existing industrial categories or subcategories that EPA is reviewing as potential candidates for revised guidelines. This review is required by section 304(m)(1)(A). EPA will, as needed, revise this list. Section 304(m) requires EPA to publish schedules for the annual review and revision of existing guidelines. If and when EPA decides to initiate rulemakings for any of these industries, it will identify the industries in a subsequent **Federal Register** notice pursuant to section 304(m).

Appendix B is a list of industrial categories and subcategories discharging toxic and nonconventional pollutants for which BAT guidelines and NSPS have not been promulgated. These categories are under review as potential candidates for BAT guidelines and NSPS. Most were selected for section 304(m)(1)(B) review because of Domestic Sewage Study findings (see Section V). If the Agency decides that rulemaking is appropriate for these industrial categories, it will, pursuant to section 304(m), publish schedules for these guidelines that call for promulgation not later than three years after final identification of the industries in the **Federal Register.**

Although section 304(m) mandates the publication of schedules both for reviewing and revising existing guidelines and for promulgating new guidelines and standards, only in the case of new guidelines and standards does the schedule include a date for promulgation (three years after publication of the **Federal Register** notice identifying the industrial category in question). EPA interprets section 304(m) to mean that these "new" industries are categories or subcategories for which BAT guidelines and NSPS have *not* previously been promulgated (even though BPT guidelines may have been promulgated). New industries are subject to the above-mentioned three-year promulgation schedule. An "existing" industry under section 304(m) is a category or subcategory for which BAT guidelines *have* been promulgated. Existing industries are not subject to a schedule for promulgation.

Part IV of this Notice describes industries and subcategories currently being revised. Parts V and VI of this Notice describe EPA procedures for selecting and evaluating both existing industries (for review and revision) and new industries (for consideration for rulemaking) and the criteria for deciding whether to initiate rulemaking. To the extent necessary, these procedures and criteria will be modified to reflect specific Congressional or judicial directives.

EPA is including in this notice plans for new or revised pretreatment standards for indirect dischargers, as well as new or revised new source performance standards. The Agency recognizes that section 304(m) does not require EPA to review and revise such standards or to promulgate such standards except for new source performance standards for industries not heretofore covered by them. Nevertheless, EPA has in the past generally proposed these standards for an industrial category when guidelines for direct dischargers in that category were proposed. The Agency will continue to do this in the future, whenever appropriate. Therefore, plans presented in this notice cover new source performance and pretreatment standards as well as effluent limitations and guidelines for direct dischargers.

## IV. Development of New or Revised Guidelines; Industries Already Identified

For six industrial categories, EPA has activities underway that are anticipated to result in the promulgation of new or revised effluent guidelines and standards. One involves a promulgated rulemaking for which EPA has initiated a new rulemaking for the entire industrial category in response to a court ordered remand. One of these is an industry subcategory for which the Agency does not currently have BAT guidelines and new source performance standards. In three other cases, legal challenges to promulgated regulations led to negotiated agreements to settle litigation by initiating rulemaking. Negotiated agreements usually follow discussions with litigants who may demostrate by various means (including the submission of technical data) the need for adjustments to some parts of a promulgated guideline. For the sixth activity the Agency has decided to proceed with revisions to an existing guideline.

### *A. Pesticide Manufacturers, Packagers, and Formulators (40 CFR Part 455)*

EPA is preparing a proposed regulation establishing guidelines and standards for the pesticide chemical point source category. Following legal challenge, the Agency determined that there were errors in the data base used to derive the numerical limitations in the pesticide regulation published on October 4, 1985 (50 FR 40672). EPA therefore filed a motion with the U.S. Court of Appeals for the Eleventh Circuit requesting a remand of the regulation to the Agency for reconsideration of the rule. On July 25, 1986, the Court granted EPA's motion. The currently valid effluent guidelines for the pesticide industry set BPT limitations only. Section 301(f) of the WQA required BAT guidelines to be promulgated for this industry by December 31, 1986.

In addition to promulgating defensible regulations to replace those remanded by the Court of Appeals, it is anticipated that the guidelines and standards published for this industry will include limitations for other pollutants not identified by the remanded regulation. The Agency's preliminary analysis shows significant changes in the industry requiring a major data collection effort. EPA expects to

promulgate a final rule in this industrial category in 1991.

*B. Offshore Oil and Gas Extraction (40 CFR Part 435)*

EPA promulgated effluent limitations and guidelines (40 FR 42543, September 15, 1975) and proposed additional guidelines and standards (40 FR 42572, September 15, 1975) for the offshore segment of the oil and gas extraction point source category. In a Settlement Agreement entered in an action brought in 1979 by the Natural Resources Defense Council (NRDC) and joined by the American Petroleum Institute (API) *NRDC v. Costle,* C.A. No. 79–3442, D.D.C.), the Agency agreed to develop final NSPS to control discharges from offshore oil and gas facilities. These activities generate wastes that include produced water, deck drainage, drilling muds, fluids and cuttings, produced sand, and sanitary and domestic wastes.

Subsequent to the Settlement Agreement, EPA withdrew the NSPS and BAT regulations, which had been promulgated in 1975; and collected and examined data that became available since the earlier proposal. The Agency has since evaluated current and projected offshore drilling and production activities, drilling fluid characteristics, old and new alternative treatment technologies, environmental impacts, and economic costs of pollution control. EPA has also used analytical protocols to confirm the presence of and further quantify concentrations of toxic pollutants in produced water discharges at 30 production facilities in the Gulf of Mexico. Priority pollutant sampling efforts were also conducted at sites in Alaska and California.

On August 25, 1985, EPA reproposed NSPS and BAT effluent limitations. In the same notice, the Agency also proposed best conventional technology (BCT) effluent limitations and certain amendments to BPT effluent limitations (50 FR 34592). EPA has met periodically with representatives of NRDC and API to inform them of the Agency's progress in fulfilling the terms of the Settlement Agreement. The Agency plans to publish, in the next few weeks, a **Federal Register** notice of availability for review of the additional data collected. EPA also plans to repropose BCT effluent limitations in late 1988. The final BAT and BCT effluent limitations and NSPS for drilling wastestreams are expected to be promulgated in 1990, at which time the proposed amendments to the BPT effluent limitations will also be addressed.

*C. Nonferrous Metals Forming (40 CFR Part 471)*

On August 23, 1985, EPA promulgated effluent guidelines and standards for the nonferrous metals forming category (50 FR 34242). In response to several challenges to the rule, on November 5, 1986, the Agency entered into a settlement agreement in which it agreed to propose amendments to BPT and BAT effluent limitations guidelines, NSPS, PSES, and PSNS in the nickel-cobalt forming and zirconium-hafnium forming subcategories (*Inco Alloys International, Inc. v. EPA, General Electric Co. v. EPA,* U.S. Court of Appeals for the Sixth Circuit, Consolidated Nos. 86–3091 and 86–3092). The Agency plans to propose the amendments in 1988.

*D. Nonferrous Metals Manufacturing (Phase II-40 CFR Part 421)*

On September 20, 1985, EPA promulgated final effluent limitations guidelines and standards for portions of this industrial category (50 FR 38726). The regulation was challenged by several regulated parties. On May 19, 1987, EPA entered into another settlement agreement in which it agreed to propose to amend BPT and BAT limits, NSPS, PSES, and PSNS in the primary beryllium subcategory (*Brush Wellman, Inc. v. EPA,* U.S. Court of Appeal for the Third Circuit, No. 86–3072). On May 20, 1987, the Agency entered into a settlement agreement in which it agreed to propose to amend BPT and BAT limits, NSPS, PSES, and PSNS for the secondary precious metals subcategory (*Englehard Co. v. EPA, Johnson Matthey, Inc. v. EPA,* United States Court of Appeals for the Third Circuit, Consolidated Nos. 85–3694 and 85–3726). In addition, on June 8, 1987, EPA entered into a settlement agreement in which the Agency agreed to propose new effluent limitations and guidelines and standards for the secondary molybdenum and vanadium subcategory (*Gulf Chemical and Metallurgical Company v. EPA,* U.S. Court of Appeals for the Third Circuit, No. 86–3039).

Finally, on June 9, 1987, the Agency entered into a settlement agreement in which the Agency agreed to propose to suspend certain BAT effluent limitations, NSPS, and PSNS in the metallurgical acid plant subcategory and to propose to suspend certain BPT and BAT effluent limitations, NSPS, and PSNS in the primary molybdenum and rhenium subcategory. The Agency also agreed to propose amendments to BPT and BAT effluent limitations, NSPS, PSES, and PSNS in the secondary tungsten and cobalt subcategories (*Amax, Inc. v. EPA, GTE Products Corp. v. EPA,* U.S. Court of Appeals for the Third Circuit, Consolidated Nos. 85–3560 and 85–3625). EPA plans to propose all of the above amendments in 1988.

*E. Aluminum Forming (40 CFR Part 467)*

On October 24, 1983 (48 FR 49126) and March 27, 1984 (49 FR 11629), EPA promulgated final effluent limitations guidelines and standards for the aluminum forming category. Under a Settlement Agreement (*Aluminum Association, Inc. et. al. v. EPA, Aluminum Extruders Council, et. al. v. EPA,* U.S. Court of Appeals for the Sixth Circuit, Consolidated Nos. 84–3090 and 84–3091), EPA has agreed to propose to amend portions of the aluminum forming regulation or to add preamble language relating to: (1) Nonscope waters; (2) discharge allowance for hot water seal; (3) the BAT and PSES pollutant discharge allowances for the cleaning or etching rinse in the extrusion and forging subcategories (Subparts C and D, respectively); (4) the discharge allowance for the alternative monitoring parameter of oil and grease for PSES; (5) the BPT and NSPS requirement for pH in the direct chill casting contact cooling water ancillary operation; and (6) the addition of a definition for hot water seal to the general definitions of 40 CFR Part 467. These amendments were proposed on March 19, 1986 (51 FR 9618) and the Agency expects to promulgate final amendments in 1988.

*F. Pulp, Paper, and Paperboard Manufacturing (40 CFR Parts 430 and 431)*

EPA promulgated effluent limitations guidelines and standards for the pulp, paper, and paperboard point source category on November 18, 1982 (47 FR 52006). Since that time, results received from the *National Dioxin Study* indicate that dioxin was present in fish samples collected downstream from pulp and paper mills. EPA then conducted a dioxin study at five pulp and paper mills (U.S. EPA/Paper Industry Cooperative Dioxin Screening Study or "Five Mill Study"), and dioxin was detected in most of the wastewater sludges, treated effluents, and bleached pulps from all five pulp and paper mills.

A second EPA/Paper Industry Cooperative Study, signed on April 25, 1988, will obtain additional information on dioxin discharges from approximately 105 mills that use chlorine or chlorine derivatives to bleach chemical wood pulp. In addition, the Agency has initiated sampling for additional pollutants of concern. Data

gathered in these efforts will be used to revise the BAT effluent limitations, new source performance standards, and pretreatment standards for the pulp, paper, and paperboard industry.

## V. Selecting and Evaluating Potential Candidates for New or Revised Guidelines and Standards

As discussed above, section 304(m) requires the Agency to publish plans and schedules for reviewing and revising existing guidelines and for promulgating new guidelines and standards for industrial categories that discharge toxic and nonconventional pollutants and that are not covered by existing BAT effluent guidelines or NSPS. However, neither the WQA nor the CWA specifies how priorities for review and revision of the guidelines should be established or how new industries should be selected for regulation. The Agency has developed, therefore, a general strategy for selecting and evaluating industries that are potential candidates for new or revised effluent limitations guidelines and standards. Following is a discussion of that strategy.

### *A. Selection of Candidates for Evaluation*

#### 1. Reviewing Technical Studies and Reports

Technical studies and reports on various industries or on significant pollution problems are a valuable source of information in determining which effluent limitations guidelines or standards may need to be revised. Data collected from States, EPA researchers, permittees, etc., identify industries that have discharges that cause adverse impacts on the water quality. The types of information include data from: 1) Compliance monitoring activities by State and Federal regulatory agencies to assess compliance with permits; 2) toxicity reduction evaluations, which combine toxicity testing (biomonitoring data obtained from biosurveys or bioassays), chemical tests, and treatment analysis to determine either the actual causative toxicants or the treatment methods that will reduce effluent toxicity; 3) data on stream loadings and dilution, stream models, discharge data, bioaccumulation studies, fish kill reports, and citizen complaints, 4) data from other streams of similar size and watershed characteristics with the same aquatic ecological conditions, and 5) information submitted under the Superfund Amendments and Reauthorization Act of 1986 (SARA), Title III, Community Right to Know.

Moreover, water quality data collected from studies performed under the CWA section 304(1) and from biomonitoring studies may identify specific types of point sources that need new or revised technology-based effluent regulations under section 304(m). Section 304(1) specifically requires EPA to: (1) Identify and list waters impaired by sources of toxic pollution as specified by the CWA; (2) identify facilities and amounts of pollutants causing impairment; and (3) develop Individual Control Strategies for these facilities. Part of the Agency's strategy for implementing this Section is to focus immediate attention on controls where there are impacts due entirely or substantially to point source discharges of section 307(a) pollutants as well as to identify other high priority water quality impairment problems caused by other pollutants of concern.

Examples of technical studies or reports include: the *National Dioxin Study (National Dioxin Study, Tier 3, 5, 6, and 7,* U.S. EPA, Office of Water Regulations and Standards EPA 400/4–87/003, February 1987); the Report to Congress on Hazardous Constituents in Oil and Gas Facilities (*Report to Congress on the Management of Wastes from Oil and Gas Exploration, Development, and Production,* U.S. EPA, Office of Solid Waste, RCRA Docket No. F88–OGRA–FFFFF, December 1987); and the Domestic Sewage Study (*Report to Congress on the Discharge of Hazardous Wastes to Publicly Owned Treatment Works,* U.S. EPA, Office of Water Regulations and Standards, EPA 530–SW–86–004, February 1986). Of these, the Domestic Sewage Study addresses the largest number of dischargers and industrial categories.

The Domestic Sewage Study (DSS) was prepared by EPA pursuant to the mandate of section 3018(a) of RCRA. This provision requires the Agency to evaluate the impact of RCRA hazardous wastes discharged to POTWs. As a follow-up to the DSS, section 3018(b) of RCRA directs the Administrator to revise existing regulations and to promulgate such additional regulations as are necessary to ensure that hazardous wastes discharged to POTWs are adequately controlled to protect human health and the environment.

In the DSS (submitted to Congress in February, 1986) EPA examined the nature and sources of hazardous wastes discharged to POTWs; measured the effectiveness of EPA's programs in dealing with such discharges; and recommended ways to improve the programs to achieve better control of hazardous wastes entering POTWs. One of the specific recommendations of the Study was that EPA evaluate several industrial categories to determine whether new or revised categorical pretreatment standards should be promulgated to achieve such improved control.

Although the Domestic Sewage Study was intended to deal primarily with indirect dischargers, the findings of the DSS are useful in evaluating direct dischargers because direct and indirect dischargers do not differ significantly in the amounts or kinds of pollutants in the wastewater. Similarly, although the DSS focused on hazardous constituents under RCRA, these constituents include all toxic and many nonconventional pollutants under the CWA.

#### 2. Consultation with EPA Regions, States, and POTWs

A second important source of information is the experience of people who implement the Agency's water pollution control programs. Under the CWA, EPA Regions and State permitting authorities are responsible for translating effluent limitations guidelines into limits in NPDES permits issued to individual dischargers. States and Regions are also responsible for enforcing these limits; POTWs are generally responsible for implementing the categorical pretreatment standards. They are therefore likely to have the most intimate working knowledge of the existing guidelines and standards, and of discharges that warrant new or better control because of environmental incidents or new process and control technologies.

EPA Headquarters routinely meets with EPA Regional Offices, States, and POTWs in several contexts. These include informal discussions, technical workshops, development of program guidance, and development of technical assistance and field support for permit writers. These meetings provide information to assist in the selection of particular industries as potential candidates for new or revised guidelines and standards because of identified problems.

#### 3. Reviewing Legal Challenges to Promulgated Effluent Limitations Guidelines and Standards

As mentioned above, some effluent limitations guidelines and standards are reviewed or revised in response to legal challenges and litigation. Discussions with litigants may reveal additional data or other reasons not yet considered to propose changes in existing guidelines and standards.

4. Reviewing Variance Requests and Petitions

Requests by industrial dischargers for variances under the CWA may disclose technical information indicating that the effluent limitations guideline needs to be reviewed. Similarly, citizen petitions concerning particular industries and pollutants may uncover data leading to a similar conclusion.

5. Reviewing Public Comments

Comments from the public in response to this notice may provide the Agency with additional information on any of the issues presented in the notice. The Agency will consider these comments in further activities pursuant to section 304(m) review.

*B. Evaluation of Selected Candidates*

1. Review of Available Information

After an industry has been selected for evaluation by methods described above, EPA will review all available technical information relating to the need and opportunity for reduction of water pollution from that industry. In the case of "existing" industries (i.e., those for which BAT effluent limitations guidelines and NSPS have been promulgated), this review will determine whether any significant changes have occurred in an industry since the collection of data supporting the existing regulation. The Agency will look again at previous sampling and analysis data and all other relevant information used to support rulemakings for the industry. EPA will then compare that information to any new data. New data may come from permit applications, technical surveys, published literature on technical or engineering aspects of pollution control within an industry, and from contacts with permitting authorities and industry representatives. EPA will consider the extent of the human health and environmental problems remaining after application of current regulations. The most important aspects of an industry that could lead to selection for possible revision of guidelines would be changes in manufacturing processes, changes in or reevaluation of achievable pollutant reduction by treatment technologies, gaps in regulated parameters, and the evaluation of the toxicity of the industrial effluents.

In the case of "new" industries (i.e., industries for which BAT effluent limitations and NSPS have not been promulgated), the Agency will conduct a review of similar factors, including changes in the industry that may have occurred since promulgation of BPT or BCT effluent guidelines for the industry. If no guidelines have been promulgated for an industry, the Agency will rely more heavily on the contents of permit applications, published literature, and information gained from permitting authorities and industry. In particular, the Domestic Sewage Study is a good source of information on discharges of RCRA hazardous waste constituents (which are toxic or nonconventional pollutants). EPA will review all information on the industry, or similar industries, including available process change and control technology that could reduce pollutants in effluents, and the extent of the environmental problems caused by the industry's discharges to receiving waters. EPA will also attempt to determine if there are any State or local controls on these industries and evaluate these controls for effectiveness.

2. Collection of New Data

When an industry has been evaluated for new or revised guidelines as provided above, EPA will assemble a preliminary data base on the industry through questionnaires, telephone calls, and plant visits, plus other publicly available information. This data base will help the Agency to characterize influent and effluent flows and characteristics, manufacturing processes, and treatment processes. In most cases, the Agency will conduct sampling on the influent, effluent, and sludge from a small number of plants in the industry. In the case of existing industries, the results of such sampling will help determine whether previous sampling data were incomplete or are outdated. In the case of both existing and new industries, the sampling helps characterize the wastewater and sludges. In addition, new analytical methods can be used to measure pollutants which could not be measured by previous protocols.

3. Decision Document

The Agency will next prepare a decision document that contains a summary of the information collected for an industry. The document will be available to the public and will include a profile of each industry, its wastewater and sludge characteristics, treatability data for treatment technologies, treatment technologies that can be used to control discharges of toxic and nonconventional pollutants, estimated control costs, and a summary of possible environmental impact reductions that might be obtained through rulemaking. To the extent possible with available information, the decision document will make estimates useful for applying the decision criteria in Part VI.

**VI. Initiation of Rulemakings for New or Revised Guidelines and Standards: Decision Criteria**

After completing the decision document, EPA will decide whether to initiate rulemaking procedures to revise or propose a guideline or standard. In making this decision, EPA will consider the following criteria:

- Legislative deadlines or court orders.
- Number and location of dischargers.
- Volume of wastewater per facility.
- Types of pollutants discharged and their significance to human health and the aquatic environment.
- Amounts of pollutants discharged to air and water and captured in sludge.
- Treatability of pollutants discharged (especially the quantity of toxics likely to be removed).
- Effects of discharges on water quality (especially demonstrated water quality impacts such as those identified under 304(1)).
- Costs and economic impacts of controls, including but not limited to cost-effectiveness analysis.
- Impact on the NPDES program.
- Impact on air emissions.
- Impact on the pretreatment program (including local limits, POTW operations, and sludge management).
- Impact on industrial sludge.
- Other factors that may arise during analysis of the industry.

When EPA decides to initiate a rulemaking to propose new or revised effluent guidelines and standards, it will propose a plan in the next biennial **Federal Register** notice required to be published under section 304(m) or in an earlier notice. This plan will identify the industry in question, announce EPA's decision to initiate rulemaking for the industry, and establish a promulgation schedule. The plan will also indicate the availability of the decision document. After comments are received on the proposed plan, EPA will publish a final notice. In the case of industrial categories (or subcategories) that discharge toxic or nonconventional pollutants for which BAT effluent guidelines and NSPS have not been promulgated, schedules will call for promulgation of new effluent guidelines and NSPS no later than three years after publication of that final notice.

**VII. Solicitation of Comments**

EPA welcomes comment on all aspects of today's notice, including EPA's proposed plans, its selection and evaluation procedures and the criteria

used to decide whether to begin rulemaking. Comments should identify the regulatory docket number and should be submitted to the address specified above. All comments submitted on or before the closing date will be considered by the Agency before publishing a final plan. Comments will be available for inspection in the EPA Public Information and Reference Unit, Room 2904, 401 M St. SW., Washington, DC 20460.

Dated: August 17, 1988.

**Lee M. Thomas,**

*Administrator.*

**Appendix A**

Following is a list of industrial categories or subcategories for which BAT effluent limitations and guidelines and NSPS have already been promulgated that are currently under review, pursuant to section 304(m)(1)(A), and which are potential candidates for revised effluent limitations and guidelines, or in the case of the recently promulgated organic chemicals plastics and synthetic fibers (OCPSF) regulation, where the Agency is in the process of making a determination on the further regulation of the reserved priority pollutants, as well as nonconventional pollutants (52 FR 42544). Section 304(m) requires EPA to publish schedules for the annual review and revision of existing effluent guidelines, but does not mandate completion of review and revisions within a specified time. If and when EPA decides to initiate rulemakings for any of these industries, it will identify the industries in a subsequent **Federal Register** notice pursuant to section 304(m).

1. Copper Forming (40 CFR Part 468).
2. Timber Products Processing (40 CFR Part 429).
3. Textile Manufacturing (40 CFR Part 410).
4. Pharmaceutical Manufacturing (40 CFR Part 439).
5. Organic Chemicals Plastics and Synthetic Fibers (40 CFR 414, 416), (reserved priority pollutants and nonconventional pollutants).

**Appendix B**

Following is a list of industrial categories or subcategories discharging toxic and nonconventional pollutants for which BAT effluent guidelines and NSPS have not been promulgated. These categories are under review, pursuant to section 304(m)(1)(B), as potential candidates for BAT effluent guidelines and NSPS. Most were selected for review because of Domestic Sewage Study findings. If the Agency decides that rulemaking is appropriate for these industrial categories, it will, pursuant to section 304(m), publish schedules for these guidelines that call for promulgation not later than three years after final identification of the industries in the **Federal Register** (see parts III and VI of today's notice).

1. Hazardous Waste Treaters.
2. Solvent Recyclers.
3. Machinery Manufacturing and Rebuilding.
4. Transportation.
5. Paint Manufacture and Formulation (40 CFR Part 446).
6. Industrial Laundries.
7. Hospitals (40 CFR Part 460).
8. Waste Oil Refiners.
9. Drum Reconditioners.
10. Oil and Gas (Onshore and Coastal subcategories—40 CFR Part 435).

[FR Doc. 88-19167 Filed 8-24-88; 8:45 am]

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federal register

Thursday
August 25, 1988

Part VIII

# Department of Health and Human Services

**Food and Drug Administration**

**21 CFR Part 348**

**External Analgesic Drug Products for Over-the-Counter Human Use; Tentative Final Monograph; Notice of Proposed Rulemaking**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR PART 348**

**[Docket No. 78N-0301]**

## External Analgesic Drug Products for Over-the-Counter Human Use; Tentative Final Monograph

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Food and Drug Administration (FDA) is issuing a notice of proposed rulemaking in the form of an amended tentative final monograph that modifies the indications for which over-the-counter (OTC) hydrocortisone-containing external analgesic drug products are generally recognized as safe and effective and not misbranded, by including additional warnings and directions for products labeled for "external anal itching." FDA is issuing this notice of proposed rulemaking after considering the report and recommendations of the Advisory Review Panel on OTC Hemorrhoidal Drug Products and public comments on the advance notice of proposed rulemaking for OTC anorectal drug products that was based on those recommendations. The agency's proposal concerning OTC anorectal drug products was published in the **Federal Register** of August 15, 1988; (53 FR 30756). These proposals are part of the ongoing review of OTC drug products conducted by FDA.

**DATES:** Written comments, objections, or requests for oral hearing on the proposed regulation before the Commissioner of Food and Drugs by October 24, 1988. New data by August 25, 1989. Comments on the new data by October 25, 1989. These dates are consistent with the time periods specified in the agency's revised procedural regulations for reviewing and classifying OTC drugs (21 CFR 330.10). Written comments on the agency's economic impact determination by December 21, 1988.

**ADDRESS:** Written comments, objections, new data, or requests for oral hearing to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** William E. Gilbertson, Center for Drug Evaluation and Research (HFD-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of December 4, 1979 (44 FR 69768), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking to establish a monograph for OTC external analgesic drug products, together with the recommendations of the Advisory Review Panel on OTC Topical Analgesic, Antirheumatic, Otic, Burn, and Sunburn Prevention and Treatment Drug Products (Topical Analgesic Panel), which was the advisory review panel responsible for evaluating data on the active ingredients in these drug classes. Interested persons were invited to submit comments by March 6, 1980. Reply comments in response to comments filed in the initial comment period could be submitted by April 3, 1980.

The agency's proposed regulation, in the form of a tentative final monograph, for OTC external analgesic drug products was published in the **Federal Register** of February 8, 1983 (48 FR 5852).

In the **Federal Register** of May 27, 1980 (45 FR 35576), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking to establish a monograph for OTC anorectal drug products, together with the recommendations of the Advisory Review Panel on OTC Hemorrhoidal Drug Products (Hemorrhoidal Panel), which was the advisory review panel responsible for evaluating data on the active ingredients in that drug class. Interested persons were invited to submit comments by August 25, 1980. Reply comments in response to comments filed in the initial comment period could be submitted by September 24, 1980.

In accordance with § 330.10(a)(10), the data and information considered by the Panels were put on public display in the Dockets Management Branch (HFA-305), Food and Drug Administration (address above), after deletion of a small amount of trade secret information.

In response to the advance notice of proposed rulemaking on OTC anorectal drug products, one comment pointed out that the Panel did not consider the status of hydrocortisone for use in OTC anorectal drug products and requested that this use be clarified because another Panel's recommended labeling for OTC external analgesic drug products containing hydrocortisone included a claim "for itchy genital and anal areas." (See comment 25 in the Notice of Proposed Rulemaking for OTC Anorectal Drug Products published in the **Federal Register** of August 15, 1988; (53 FR 30756 at 30766) and the Notice of Proposed Rulemaking for OTC External Analgesic Drug Products (48 FR 5852).)

In this tentative final monograph (proposed rule) that amends Part 348 (as proposed in the **Federal Register** of February 8, 1983; 48 FR 5852), FDA states for the first time its position that the labeling of OTC hydrocortisone-containing external analgesic drug products for "external anal itching" should be consistent with the general warnings and directions for all OTC anorectal drug products. Accordingly, the agency is amending the tentative final monograph for OTC external analgesic drug products to include for hydrocortisone-containing products the warnings and directions proposed in § 346.50(c)(2), (3), and (4), and (d)(1) of the tentative final monograph for OTC anorectal drug products, published in the **Federal Register** of August 15, 1988; (53 FR 30756 at 30783 and 30784).

The agency has examined the economic consequences of this proposed rulemaking in conjunction with other rules resulting from the OTC drug review. In a notice published in the **Federal Register** of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive order 12291. The agency therefore concludes that no one of these rules, including this proposed rule for OTC external analgesic drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. 96-354. That assessment included a discretionary Regulatory Flexibility Analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC external analgesic drug products is not expected to pose such an impact on small businesses. Therefore, the agency certifies that this proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities.

The agency invites public comment regarding any substanital or significant economic impact that this rulemaking would have on OTC external analgesic drug products. Types of impact may include, but are not limited to, costs associated with product testing, relabeling repackaging, or reformulating.

Comments regarding the impact of this rulemaking on OTC external analgesic drug products should be accompanied by appropriate documentation. Because the agency has not previously invited specific comment on the economic impact of the OTC drug review on OTC external analgesic drug products, a period of 120 days from the date of publication of this proposed rulemaking in the **Federal Register** will be provided for comments on this subject to be developed and submitted. The agency will evaluate any comments and supporting data that are received and will reassess the economic impact of this rulemaking in the preamble to the final rule.

The agency has determined that under 21 CFR 25.24(c)(6) 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.

Interested persons may, on or before October 24, 1988, submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments, objections, or requests for oral hearing before the Commissioner on the proposed regulation. A request for an oral hearing must specify points to be covered and time requested. Written comments on the agency's economic impact determination may be submitted on or before December 21, 1988. Three copies of all comments, objections, and requests are to be submitted, except that individuals may submit one copy. Comments, objections, and requests are to be identified with the docket number found in brakcets in the heading of this document and may be accompanied by a supporting memorandum or brief. Comments, objections, and requests may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. Any scheduled oral hearing will be announced in the **Federal Register**.

Interested persons, on or before August 25, 1989, may also submit in writing new data demonstrating the safety and effectiveness of those conditions not classified in Category I. Written comments on the new data may be submitted on or before October 25, 1989. These dates are consistent with the time periods specified in the agency's final rule revising the procedural regulations for reviewing and classifying OTC drugs, published in the **Federal Register** of September 29, 1981 (46 FR 47730). Three copies of all data and comments on the data are to be submitted, except that individuals may submit one copy, and all data and comments are to be identified with the docket number found in brackets in the heading of this document. Data and comments should be addressed to the Dockets Management Branch (HFA–305) (address above). Received data and comments may also be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

In establishing a final monograph, the agency will ordinarily consider only data submitted prior to the closing of the administrative record on October 25, 1989. Data submitted after the closing of the administrative record will be reviewed by the agency only after a final monograph is published in the **Federal Register**, unless the Commissioner finds good cause has been shown that warrants earlier consideration.

**List of Subjects in 21 CFR Part 348**

External analgesic drug products, Labeling, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Administrative Procedure Act it is proposed that Subchapter D of Chapter I of Title 21 of the Code of Federal Regulations be amended in Part 348 as follows:

## PART 348—EXTERNAL ANALGESIC DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for 21 CFR Part 348 is revised to read as follows:

**Authority:** Secs. 201(p), 502, 505, 701, 52 Stat. 1041–1042 as amended, 1050–1053 as amended, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321(p), 352, 355, 371); 5 U.S.C. 553; 21 CFR 5.10 and 5.11.

2. In Subpart C, § 348.50 (c)(9) and (d)(3) are added to read as follows:

**§ 348.50 Labeling of external analgesic drug products.**

* * * * *

(c) * * *

(9) *For products containing hydrocortisone preparations identified in § 348.10(d) (1) and (2) that are labeled with the indication "* * * for external anal itching."* In addition to the warnings in paragraph (c)(1) of this section, the labeling of the product also contains the warnings proposed in § 246.50(c) (2), (3), and (4) of this chapter. (See the **Federal Register** of August 15, 1988; 53 FR 30756.)

(d) * * *

(3) *For products containing hydrocortisone preparations identified in § 348.10(d) (1) and (2).* In addition to the applicable directions in paragraph (d)(1) of this section, the labeling of the product also contains the directions proposed in § 346.50(d)(1) of this chapter. (See the **Federal Register** of August 15, 1988; 53 FR 30756.)

Dated: April 28, 1988.

**Frank E. Young,**

*Commissioner of Food and Drugs.*

[FR Doc. 88–19333 Filed 8–24–88; 8:45 am]

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