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WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

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

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
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: October 19; at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.

RESERVATIONS: 202–523–5240.

NEW YORK, NY

WHEN: October 24; at 1:00 p.m.
WHERE: Room 305A, 26 Federal Plaza, New York, NY.

RESERVATIONS: Call Arlene Shapiro or Stephen Colon at the New York Federal Information Center. 212–264–4810.

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Presidential Documents

Title 3—

The President

Proclamation 6029 of September 27, 1989

Religious Freedom Week, 1989

By the President of the United States of America

A Proclamation

Our Nation's commitment to the principle of religious liberty has not only been enshrined in law but also faithfully upheld by generations of Americans. The first men and women to settle in America came to this country in search of the opportunity to worship God freely. Since then, this country has been a haven for millions of people seeking refuge from religious persecution. Indeed, in our pluralistic society, where the adherents of different religions must live together along with others who profess no religion at all, toleration has been a practical necessity as well as a moral imperative. This week, we acknowledge the importance of religious freedom and tolerance to each American and to our entire Nation.

The most celebrated guarantee of religious liberty in U.S. law is contained in the First Amendment to the Constitution, which states that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." Yet even before the First Amendment was written, the Constitution provided that "no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States." The leaders who shaped our system of government were men of great faith and foresight—and they recognized the various dangers government could pose to individual liberty and the free exercise of religious beliefs.

Before the Constitution was drafted, the State of Virginia provided, in a statute drafted by Thomas Jefferson, "that all men shall be free to profess, and by argument to maintain their opinion in matters of religion, and that the same shall in no wise diminish, enlarge or affect their civil capacities." Jefferson considered his authorship of this statute so important that he chose to have it noted in his epitaph.

Throughout the history of the United States, the free exercise of religion has contributed not only to the welfare of individual believers but also to the strength of our Nation. The American people's faith in God—unencumbered by legal restrictions and untainted by government interference—has been a powerful force for maintaining high standards of morality and justice in our society. Because bigotry and indifference pose an ever-present danger to religious liberty everywhere, toleration must be for us not just a matter of legal decree binding the government, but a matter of moral conviction enjoining each of us to respect the rights and beliefs of others.

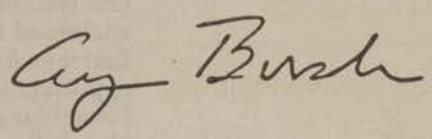
Tragically, in many nations—especially those that suffer under the dark shadow of totalitarian rule—the rights of believers are systematically denied. And in too many countries around the world, animosities and hatreds often lead to civil unrest or violence. Thus, we Americans should be thankful for the religious freedom we so enjoy and also remain fully committed to defending this fundamental human right any time, any place, it is threatened or denied.

Nearly 200 years ago, in his now famous reply to the Hebrew Congregation of Newport, President Washington declared that the Government of the United States "gives to bigotry no sanction, to persecution no assistance." This week, let us rededicate ourselves—as individuals and as a Nation—to that noble vision.

In recognition of the importance of religious freedom and the spirit of tolerance, the Congress, by Senate Joint Resolution 146, has designated the week beginning September 24, 1989, as "Religious Freedom Week."

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week beginning September 24, 1989, as Religious Freedom Week. I call upon the people of the United States to observe this week with appropriate ceremonies and activities, and I urge them to reaffirm their devotion to the principles of religious freedom.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-seventh day of September, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.



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Rules and Regulations

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DEPARTMENT OF AGRICULTURE

7 CFR Part 51

Agricultural Marketing Service

[Docket No. FV-88-210]

Christmas Trees; Grade Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the voluntary United States Standards for Grades of Christmas Trees. The National Christmas Tree Association, a trade association representing a cross section of growers, shippers, and other industry members who market Christmas trees in the United States, had requested that the U.S. standards be revised to reflect current cultural and marketing practices. The Agricultural Marketing Service (AMS), in cooperation with industry, has the responsibility to develop and improve standards of quality, condition, quantity, grade, and packaging in order to encourage uniformity and consistency in commercial practices.

EFFECTIVE DATE: October 30, 1989.

FOR FURTHER INFORMATION CONTACT: Paul W. Manol, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-5410.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been designated as "nonmajor" under criteria contained therein.

Pursuant to the requirements set forth in the Regulatory Flexibility Act, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities. This revision of the U.S. standards for Christmas trees will not impose any substantial direct economic cost, recordkeeping, or personal workload changes on small entities, and will not alter the market share or competitive position of these entities relative to large businesses. This action revises the U.S. Standards for Grades of Christmas Trees which brings the standards into conformity with current marketing practices. In addition, under the Agricultural Marketing Act of 1946, the application of these standards is voluntary.

The United States Standards for Grades of Christmas Trees were last revised on April 1, 1973. These standards are applicable to sheared or unsheared coniferous trees which are normally marketed as Christmas Trees. Most of these trees are of the following categories: Douglas fir, Balsam fir, Black spruce, Eastern Red cedar, White spruce, Scotch pine, Norway spruce, Red pine, Eastern White pine, Red spruce, Fraser fir, and Virginia pine.

The Agricultural Marketing Service received a petition from the National Christmas Tree Association to amend the U.S. Standards for Grades of Christmas Trees. The Association contends that due to high levels of production in recent years and the fact that more trees are being "nursery bred," changes are necessary in the current standard. The Association believed that the industry required a more uniform and simplified standard by which to market and grade Christmas trees. In addition, they were of the view that certain revisions would ultimately provide the consumer with a higher quality product and bring the standards up to date with current marketing practices.

The National Christmas Tree Association requested that the U.S. Standards be revised to reflect current cultural and marketing practices. In addition, the standards were reviewed for need, currentness, clarity, and effectiveness as part of a periodic review.

A proposal to revise the U.S. Standards for Grades of Christmas Trees [CFR 51.3085-51.3106] was published in the **Federal Register** on March 9, 1989 [54 FR 10014-10018], and invited interested persons to submit written comments.

The following changes were proposed to the standards:

—The general provisions regarding the majority of species marketed would be revised to reflect current marketing trends. Several species would be deleted while others would be added.

—The current standards allow a 10 percent tolerance for offsize, 20 percent tolerance for off-length handles, and 10 percent tolerance for defects, provided, that for the U.S. Premium and U.S. No. 1 grades, not more than 5 percent shall be allowed for trees failing to meet requirements of the next lower grade. As proposed, tolerances would be restricted to a total of 10 percent for defects, provided that included in this tolerance, not more than the following percentages shall be allowed: not more than 5 percent for off-size, 10 percent for off-length handles, and 10 percent for defects failing to meet the remaining requirements of the grade. These proposed changes would reduce the amount of defects permitted thereby increasing the quality of Christmas trees available to the consumer.

—The use of the terms "U.S. Choice" and "U.S. Standard" as companion grades to U.S. No. 1 and U.S. No. 2 respectively, would be deleted so as to eliminate any confusion in the grade certification process.

—The cleanness requirement for the U.S. No. 1 grade would be changed from "clean" to "fairly clean," thereby differentiating the amounts of allowable vines or other foreign material between the U.S. Premium grade, which is required to be clean, and the U.S. No. 1 grade.

—Current standards require the U.S. Premium grade to have not less than medium density. As proposed, U.S. Premium grade Christmas trees would require not less than heavy density. This proposed change would provide that U.S. Premium graded trees have a fuller foliated appearance.

—The handle length requirement in the current standards, unless otherwise specified, is not less than 6 inches or more than 1¾ inches of each foot of tree length. This applies to both cut trees and those graded "on the stump." The proposed handle length, unless otherwise specified, would be not less than 6 inches or more than

1½ inches for each foot of tree length for all grades. Additionally, handle length requirements would be waived for trees graded "on the stump." It was the contention of the National Christmas Tree Association that lowering the specification from 1¾ inches per foot of tree length to 1½ inches provides the consumer with a trunk that is more proportional to tree height. Additionally, trees graded "on the stump," i.e. in the field prior to cutting, would have no handle length requirements because inspection personnel would have no way of knowing where on the trunk the tree would ultimately be cut.

—Currently, the U.S. No. 2 grade requires a candlestick, normal, or flaring taper. As proposed, only a "normal taper" would be required of U.S. No. 2 Chirstmas trees. This proposed change would provide that trees graded U.S. No. 2 have a shape that would be generally more desirable to consumers.

—The "face" requirements as pertaining to allowable defects would be revised in all grades to permit minor and/or noticeable defects not addressed in the current standards. This would provide a means of determing how defects affect the appearance of the tree in relation to the face requirements for each grade. For example, the current standards require trees graded U.S. Premium to have four complete faces free from any defects. In essence, a perfect tree. The proposed requirements for U.S. Premium trees would allow one minor defect to affect three faces and one additional minor defect to affect the remaining face.

It was the National Christmas Tree Association's contention that the proposed changes more closely reflected how Christmas trees actually grow and appear.

—In the current standards, size is stated in foot or half-foot increments and, unless otherwise specified, color codes may be used to designate respective sizes. As proposed, size would be stated in foot increments only and, unless otherwise specified, new color codes would be used to designate respective sizes. Additionally, in any size range, a minimum of ⅓ of the trees in a lot would be required to be in the top half of that size range. Christmas trees are generally marketed in one foot increments. Therefore, this proposed change would eliminate any confusion in sizing trees per current size tolerances and would provide a standard for measurement determination.

—Definitions for "fresh," "clean," "height," "healthy," and "butt trimmed" would be reworded to better reflect current cultural and marketing conditions and new definitions would be established for "medium" and "light density" that would reflect the change whereby a tree's density would be based on individual species.

—A definition for "heavy density" would be established. This conforming change is necessary because of the proposed change establishing "heavy density" as the minimum requirement for the U.S. Premium grade.

—The current standards list only noticeable and materially detracting classifications of defects. As proposed, three new classes of defects would be established and defined: minor, noticeable, and culls. This proposed change would simplify the determination of defects by listing them in chart form in descending order, minor to cull.

—The grade standards format itself would be revised and updated to incorporate all of the above mentioned changes, and provide convenient use to the industry.

—Finally, the authority citation which is stated at the beginning of this subpart would be deleted. This would bring this subpart into conformity with the remainder of part 51 as to the use of statutory authority citations.

The 60-day comment period ended May 8, 1989, and a total of 35 comments were received concerning the proposal.

Fourteen comments were completely in favor of the proposal. The comments were from growers, a retailer, a State Department of Agriculture official, and from Federal-State Inspection Service Supervisors. These comments agreed that due to expensive changes in the growing, harvesting, and marketing of Christmas trees, it was necessary to upgrade the standards as proposed.

Three comments received were opposed to the U.S. Standards in general or to any change in the current standard. Two of the comments were of the view that there should be no U.S. Standards at all and that the marketplace should police itself. The Agricultural Marketing Act of 1946 authorizes the Department to develop and improve standards to encourage uniformity and consistency in commercial practices. In accordance with that Act, the United States Standards for Grades of Christmas Trees were first promulgated in July, 1957. The standards were developed at the request of industry to provide a common trading language between buyers and sellers. Furthermore, the 1946 Act authorizes the inspection of agricultural products including Christmas trees so that such agricultural products may be marketed to the best advantage, that trading may be facilitated and that consumers may be able to obtain the quality product they desire. Under the 1946 Act, the use of the standards is voluntary. Accordingly, these comments are denied. The other comment questioned the validity of the species listed in the standard and their corresponding Latin names. While two of these species' Latin names were misspelled in the proposed rule, the Latin names were found to be the correct terms when used in correlation with the common English version of the species. The misspelled names are corrected in this final rule.

Eighteen comments received were generally in favor of the proposed revisions, but some suggested minor changes. These comments were from growers, Federal-State Inspection Service Supervisors, and a retailer. Eight comments were received from members of the California Christmas tree industry questioning the disparity between Red Firs and Noble Firs in the U.S. Premium grade. It was their contention that these two species are basically similar in appearance and therefore should have the same requirement for the percentage of main stem covered. Based on these comments and all other available information, it was decided that these two species are basically similar and that the density requirements should be the same. Therefore, this change has been made in the final rule. The requirements for Red Firs will be the same as for Noble Firs. That is, 60 to 100% of the main stem covered in the U.S. Premium grade (Heavy density) and, correspondingly, 50 to 60% in the U.S. No. 1 grade (Medium density). Of the remaining favorable comments, some suggested non-substantive changes for clarity which have been incorporated in this final rule. Accordingly, the use of the term "complete face" has been changed throughout the standards to "face" to eliminate redundant and unnecessary language.

The Agricultural Marketing Service (AMS), in cooperation with industry, has the responsibility to develop and improve standards of quality, condition, grade, and packaging in order to encourage uniformity and consistency in commercial practices. The Agency has determined this final rule will enhance the marketing of Christmas trees. The provisions of this final rule are the same as those in the proposed rule except for the minor non-substantive changes

made for clarity. In addition, the authority citation for part 51 is corrected from the proposal to reflect the present citation that appears in the Code of Federal Regulations.

List of Subjects in 7 CFR Part 51

Fresh fruits, vegetables, and other products (Inspection, certification, and standards).

For reasons set forth in the preamble, 7 CFR part 51 is amended as follows:

PART 51—FRESH FRUITS, VEGETABLES, AND OTHER PRODUCTS (INSPECTION, CERTIFICATION, AND STANDARDS)

1. The authority citation for 7 CFR part 51 continues to read as follows:

Authority: Secs. 203, 205, 60 Stat. 1087, as amended, 1090 as amended; 7 U.S.C. 1622, 1624, unless otherwise noted.

2. In part 51, Subpart—United States Standards for Grades of Christmas Trees and the table of contents thereof are revised to read as follows:

* * * * *

Subpart—United States Standards for Grades of Christmas Trees

General

§ 51.3085 General.

The standards contained in this subpart are applicable to sheared or unsheared trees of the coniferous species which are normally marketed as Christmas trees. The majority of the Christmas trees marketed are of the following species:

Douglas Fir (Pseudotsuga Menziesii); Balsam Fir (Abies Balsamea); Red Fir (Abies Magnifica); White Fir (Abies Concolor); Fraser Fir (Abies Fraseri); Grand Fir (Abies Grandis); Noble Fir (Abies Procera); White Spruce (Picea Glauca); Blue Spruce (Picea Pungens); Eastern Red Cedar (Juniperus Virginiana); Red Pine (Pinus Resinosa); White Pine (Pinus Strobus); Virginia Pine (Pinus Virginiana); Scotch Pine (Pinus Sylvestris).

Grades

§ 51.3086 U.S. Premium.

"U.S. Premium" consists of trees which meet the following requirements:

(a) Characteristics typical of the species;

(b) Butt trimmed; except for trees graded "on the stump";

(c) Normal taper;

(d) Fresh;

(e) Clean;

(f) Healthy;

(g) Well shaped;

(h) Not less than heavy density;

(i) Handle length, unless otherwise specified, shall be not less than 6 inches, or more than 1½ inches for each foot of tree height. For trees graded "on the stump", handle length will not be a requirement of the grade;

(j) Three faces with not more than 1 minor defect. Remaining face may not have more than 1 minor defect;

(k) For size see § 51.3090;

(l) For tolerances see § 51.3091.

§ 51.3087 U.S. No. 1.

"U.S. No. 1" consists of trees which meet the following requirements:

(a) Characteristics typical of the species;

(b) Butt trimmed; except for trees graded "on the stump";

(c) Normal taper;

(d) Fresh;

(e) Fairly clean;

(f) Healthy;

(g) Well shaped;

(h) Not less than medium density;

(i) Handle length, unless otherwise specified, shall be not less than 6 inches, or more than 1½ inches for each foot of tree length. For trees graded "on the stump", handle length will not be a requirement of the grade;

(j) Three faces with not more than 2 minor defect. Remaining face may not have more than 1 noticeable defect;

(k) For size see § 51.3090;

(l) For tolerances see § 51.3091.

§ 51.3088 U.S. No. 2.

"U.S. No. 2" consists of trees which meet the following requirements:

(a) Characteristics typical of the species;

(b) Butt trimmed; except for trees graded "on the stump";

(c) Normal taper;

(d) Fresh;

(e) Fairly clean;

(f) Healthy;

(g) Well shaped;

(h) Not less than light density;

(i) Handle length, unless otherwise specified, shall be not less than 6 inches, or more than 1½ inches for each foot of tree length. For trees graded "on the stump", handle length will not be a requirement of the grade;

(j) Two adjacent faces with not more than 3 minor defect. Remaining faces may not have more than 2 noticeable defects;

(k) For size see § 51.3090;

(l) For tolerances see § 51.3091.

Culls

§ 51.3089 Culls.

"Culls" consist of individual trees which fail to meet the requirements of the U.S. No. 2 grade. (See § 51.3105 Table II).

Size

§ 51.3090 Size.

(a) Height of trees shall be stated in foot increments and unless otherwise specified, the following color codes will be used to designate the respective sizes:

Color	Tree height, (feet)
Lime	3 feet or less.
Orange	Over 3 to 4.
Blue	Over 4 to 5.
Red	Over 5 to 6.
Yellow	Over 6 to 7.
Green	Over 7 to 8.
White	Over 8 to 9.
Pink	Over 9 feet.

(b) In determining which designations apply, the measurement for the height is the distance from the base of the handle to the top of the main leader, excluding that portion of the leader that extends more than 4 inches above the apex of the cone of the taper applicable to the tree.

(c) In any size range, a minimum of ⅓ of the trees in a lot shall be in the top half of that size range.

Tolerances

§ 51.3091 Tolerances.

In order to allow for variations incident to proper sizing, grading and

handling in each of the foregoing grades the following tolerances, by count, shall apply when a lot of Christmas trees is required to meet a specific grade.

(a) For total defects, 10 percent for Christmas trees in any lot which fail to meet the requirements for the grade: Provided that included in this amount not more than the following percentages shall be allowed for defects listed:

(1) Off-size. Five percent for trees which fail to meet the height specified.

(2) Off-length handle. Ten percent for trees which fail to meet the requirement for handle length, but which meet all other requirements for the specified grade.

(3) Defects. Ten percent for trees which fail to meet the remaining requirements of the grade.

Definitions

§ 51.3092 Fresh.

"Fresh" means the needles are green, pliable, and firmly attached; with not more than slight shedding.

§ 51.3093 Clean.

"Clean" means the tree is reasonably free from foreign material.

§ 51.3094 Healthy.

"Healthy" means the needles have a fresh, natural appearance characteristic of the species.

§ 51.3095 Well shaped.

"Well shaped" means that the tree is not flat on one side and the branches of the tree, whether sheared or unsheared, are of sufficient number and length to form a conical outline tapering from the lowest whorl of branches to the top.

§ 51.3096 Butt trimmed.

"Butt trimmed" means that all barren branches shall have been removed, and the trunk has been smoothly cut at approximately right angles to the trunk.

§ 51.3097 Density.

"Density" means the amount of foliage on the tree. Factors contributing to degree of density are: The number and size of branches within the whorl, distance between the whorls, number and arrangements of the branchlets on each branch, the extent of internodal branching, needle arrangement, and needle length. Species differ in their habit of growth and some species do not have internodal branches. Density is judged on the basis of species characteristics.

(a) "Heavy density" means the whorls or branches are relatively close together, the spaces between are filled with needles and twigs so that the following species have said percentage of foliage so the main stem is not visible and the needle content and length are adequate to cover the branches:

Name	Percentage of main stem covered
Red Cedar	90 to 100.
Balsam Fir	80 to 100.
Douglas Fir	90 to 100.
Fraser Fir	70 to 100.
Red Fir	60 to 100.
White Fir	70 to 100.
Grand Fir	80 to 100.
Noble Fir	60 to 100.
Red Pine	70 to 100.
Scotch Pine	90 to 100.
Virginia Pine	90 to 100.
White Pine	90 to 100.
Spruce (all)	80 to 100.

(b) "Medium density" means the whorls or branches are reasonably close together, the spaces between are filled with twigs and needles so that the following species have said percentage of foliage so the main stem is not visible and the needle content and length are adequate to cover the branches:

Name	Percentage of main stem covered
Red Cedar	70 to 90.
Balsam Fir	60 to 80.
Douglas Fir	70 to 90.
Fraser Fir	50 to 70.
Red Fir	50 to 60.
White Fir	50 to 70.
Grand Fir	60 to 80.
Noble Fir	50 to 60.
Red Pine	60 to 70.
Scotch Pine	70 to 90.
Virginia Pine	70 to 90.
White Pine	70 to 90.
Spruce (all)	60 to 80.

(c) "Light density" means the whorls or branches are reasonably spaced, the spaces between are only partially filled so that the following species have said percentage of foliage so the main stem is not visible and the needle content and length are adequate to cover the branches:

Name	Percentage of main stem covered
Red Cedar	50 to 70.
Balsam Fir	40 to 60.
Douglas Fir	50 to 70.
Fraser Fir	40 to 50.
Red Fir	40 to 50.
White Fir	40 to 50.
Grand Fir	40 to 60.
Noble Fir	40 to 50.
Red Pine	40 to 60.
Scotch Pine	50 to 70.
Virginia Pine	50 to 70.
White Pine	50 to 70.
Spruce (all)	40 to 60.

§ 51.3098 Normal taper.

"Normal taper" means the relationship of the width of the tree at its lowest branches to the height of the tree, less the handle, judged from its best side. All trees shall form a cone, the base of which is from 40 to 100 percent of its height.

§ 51.3099 Face.

"Face" means the visible area of a tree as viewed from a distance of 8 to 10 feet from the tree. A tree shall be considered as having four faces, each consisting of one-quarter of the surface area of the tree.

§ 51.3100 Fairly clean.

"Fairly clean" means that the tree is moderately free from foreign material.

§ 51.3101 Handle.

"Handle" means that the portion of the trunk between the butt or base of the tree and the lowest complete whorl of foliated branches.

§ 51.3102 Height.

"Height" means the distance from the base of the handle to the top of the main leader, excluding that portion of the leader that extends more than 4 inches above the apex of the cone of the taper applicable to the tree.

§ 51.3103 Minor defects.

"Minor defects" are slight imperfections in the development of the tree or defects resulting from handling, which materially affect the appearance of the tree. While many minor defects may be visible from more than 1 face, a given defect shall be scored only once. (See § 51.3105 Table I).

§ 51.3104 Noticeable defects.

"Noticeable defects" are imperfections in the development of the tree or defects resulting from handling, which seriously affect the appearance of the tree. While many noticeable defects may be visible from more than 1 face; a given defect shall be scored only once. (See § 51.3105 Table I).

§ 51.3105 Classification of Defects

TABLE I

Factor	Minor defects	Noticeable defects
1. Density	Slight uneven density	Moderately uneven density.

TABLE I—Continued

Factor	Minor defects	Noticeable defects
2. Curvature of main stem.	Slight, visible crook in the main stem (4 inches or less from vertical).	Main stem visibly curved more than 4 but less than 6 inches from vertical.
3. Insect or disease damage.	Slight insect or disease damage.	Moderate insect or disease damage.
4. Broken branches.	1 broken whorl branch near the main stem.	Broken leader or more than 1 broken whorl branch adjacent main stem.
5. Physical damage.	Slight physical damage.	Moderate physical damage.
6. Foreign material and/or vines.	Slight amount of foreign material or vines.	Moderate amount of foreign material or vines.
7. Multiple leader stems.	Multiple leaders	Crows nest.
8. Extra long branches.	Branch over 10 inches longer than other branches on corresponding whorl.	N/A.
9. Abnormal curling of needles.	Slightly abnormal curling of needles.	Moderately abnormal curling of needles.
10. Weak lower branches.	Free from	Weak lower branches affecting up to ¾ of branches on bottom whorl.
11. Handle not proportionate to height.	Free from	Handle not proportionate to height of tree.
12. Incomplete whorl of branches.	Less than ¼ of branches are missing in a given whorl.	¼ but less than ½ of branches are missing in a given whorl.
13. Holes or gaps in tree.	Free from	Hole in the tree or space considerably out of proportion with the uniform branch characteristics of the balance of the tree.
14. Gooseneck.	Free from	Free from.
15. Loss of needles.	Slight loss of needles.	Moderate loss of needles.

TABLE II

Factor	Culls
1. Density	Severely uneven density.
2. Curvature of mainstem	Main stem curved more than 6 inches.
3. Insect or disease damage.	Severe insect or disease damage or abnormal curling of needles.
4. Broken branches	Main stem broken below top whorl or more than three branches broken near trunk.
5. Physical damage	Severe physical damage.
6. Foreign material and/or vines.	Heavy amounts of foreign material or vines.
7. Multiple stems	Multiple main stems (not leaders).
8. Extra long branches	N/A.
A9. Abnormal curling of needles.	Severely abnormal curling of needles.
10. Weak lower branches.	Weak lower branches affecting more than ¾ of branches on bottom whorl.
11. Handle not proportional to height.	N/A.
12. Incomplete whorl of branches.	More than ½ of branches missing in a given whorl or when missing branches create a shelf.
13. Holes or gaps in tree	Shelf or a decided gap or space between whorls of branches noticeable on 2 or more faces.
14. Gooseneck	Any gooseneck.
15. Abnormal loss of needles.	Severe loss of needles.

Metric Conversion Table

§ 51.3106 Metric conversion table.

Feet	Centimeters (cm)
1	30.48
2	60.96
3	91.44
4	121.92
5	152.40
6	182.88
7	213.36
8	243.84
9	274.32
10	304.80

Dated: September 26, 1989.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 89-23043 Filed 9-28-89; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 910

[FV-89-094-FR]

Expenses and Assessment Rate for Lemons Grown in California and Arizona

AGENCY: Agricultural Marketing Service.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate for the 1989–90 fiscal year under Marketing Order No. 910 for lemons produced in California and Arizona. This action is needed for the Lemon Administrative Committee (Committee), the agency responsible for the local administration of the order, to incur operating expenses during the 1989–90 fiscal year and to collect funds during that year to pay those expenses. This facilitates program operations. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATES: August 1, 1989 through July 31, 1990.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriquez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, Room 2524–S, Washington, DC 20090–6456; telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: This final rule is issued under marketing agreement and Order No. 910 [7 CFR part 910], both as amended, regulating the handling of lemons grown in California and Arizona. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

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

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

There are approximately 85 handlers of lemons grown in California and Arizona who are subject to regulation under the lemon marketing order, and approximately 2,500 producers of lemons in the production area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having average gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of lemon producers and handlers may be classified as small entities.

The lemon marketing order requires that the assessment rate for a particular fiscal year shall apply to all assessable loans handled from the beginning of such year. An annual budget of expenses is prepared by the Committee and submitted to the U.S. Department of Agriculture for approval. The Committee consists of handlers, producers, and a non-industry member. They are familiar with the Committee's needs and with the costs of goods, services, and personnel in their local areas and are thus in a position to formulate an appropriate budget. The budget is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Committee is derived by dividing anticipated expenses by expected shipments of lemons. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the Committee's expected expenses. The recommended budget and rate of assessment are usually acted upon by the Committee shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, the budget and assessment rate approval must be expedited so that the Committee will have funds to pay its expenses.

The Committee met on July 18, 1989, and unanimously recommended 1989–90 marketing order expenditures of $775,000 and an assessment rate of $0.045 per carton of lemons. In comparison, 1988–89 marketing year budgeted expenditures were $734,000 and the assessment rate was $0.045 per carton. Assessment income for 1989–90 is estimated to total $742,500 based on anticipated fresh domestic shipments of 16,5000,000 cartons of lemons. Other sources of income, including interest expected to be received, are estimated at $22,500. The remaining $10,000, a projected deficit that might be realized during the 1989–90 fiscal year, will be derived from the Committee's reserve. Given these projections, the Committee's reserve would be about $375,000 at the end of the 1989–90 fiscal year. This would be well within the marketing order's limitation that such funds not exceed the expenses of one-half of a fiscal year's operations. Additional reserve funds may be used to meet any deficit in assessment income.

While this final action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

This section adds a new § 910.227 and is based on Committee recommendations and other available information. A proposed rule was published in the **Federal Register** on August 18, 1989 [54 FR 34183]. Comments on the proposed rule were invited from interested persons until August 28, 1989. No comments were received.

After consideration of the information and recommendations submitted by the Committee and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

This action should be expedited because the Committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis. In addition, handlers are aware of this action, which was recommended by the Committee at a public meeting. Therefore, it is also found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** [5 U.S.C. 553].

List of Subjects in 7 CFR Part 910

Arizona, California, Lemons, Marketing agreements and orders.

For the reasons set forth in the preamble, 7 CFR part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR part 910 continues to read as follows:

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

2. New § 910.227 is added to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 910.227 Expenses and assessment rate.

Expenses of $775,000 by the Lemon Administrative Committee are authorized, and an assessment rate of $0.045 per carton of assessable lemons is established for the 1989–90 fiscal year ending July 31, 1990. Unexpended funds from the 1989–90 fiscal year may be carried over as a reserve.

Dated: September 26, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–23019 Filed 9–28–89; 8:45 am]

BILLING CODE 3410–02–M

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. 89–163]

Tuberculosis in Cattle and Bison; State Designation

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that amended the regulations governing the interstate movement of cattle and bison because of tuberculosis by raising the designation of Mississippi from a modified accredited State to an accredited-free State.

EFFECTIVE DATE: October 30, 1989.

FOR FURTHER INFORMATION CONTACT: Dr. Ralph L. Hosker, Senior Staff Veterinarian, Cattle Diseases and Surveillance Staff, VS, APHIS, USDA, Room 729, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–5533.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule published in the **Federal Register** and effective June 30, 1989 (54 FR 27627–27629, Docket Number 89–109), we amended the tuberculosis regulations contained in 9 CFR part 77 by removing Mississippi from the list of modified accredited States and adding it to the list of accredited-free States.

Comments on the interim rule were required to be received on or before August 29, 1989. We did not receive any comments. The facts in the interim rule still provide a basis for the rule.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect 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.

Cattle and bison moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the status of Mississippi may affect the marketability of cattle and bison from the State, since some prospective cattle and bison buyers prefer to buy cattle and bison from accredited-free States. This may result in some beneficial economic impact on some small entities. However, based on our experience in similar designations of other States, the impact should not be significant.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Part 77

Animal diseases, Bison, Cattle, Transportation, Tuberculosis.

PART 77—TUBERCULOSIS

Accordingly, we are adopting as a final rule, without change, the interim rule amending 9 CFR 77.1 that was published at 54 FR 27627–27629 on June 30, 1989.

Authority: 21 U.S.C. 111, 114, 114a, 115–117, 120, 121, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 26th day of September 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89–23045 Filed 9–28–89; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[No. 89–148]

12 CFR Part 502

Assessments and Fees

Date: September 8, 1989.

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Interim final rule.

SUMMARY: To cover the costs of examinations of institutions under its jurisdiction and otherwise to fund its expenses of operation on an interim basis until a permanent funding mechanism can be established, the Director of the Office of Thrift Supervision ("Director" and "Office," respectively) hereby adopts a regulation pursuant to the Home Owners' Loan Act of 1933, as amended, establishing the Director's authority to assess certain fees upon savings associations and affiliated entities. Because of the exigent circumstance of the Office being newly created and requiring funds to operate, the regulation is adopted effective on publication in the **Federal Register**.

EFFECTIVE DATE: September 29, 1989.

FOR FURTHER INFORMATION CONTACT: Jerome L. Edelstein, Deputy Director, Regulations and Legislation Division, (202) 906–7057, or Christopher T. Curtis, Attorney, (202) 906–6077, Office of Thrift Supervision, Department of the Treasury, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: Section 9 of the Home Owners' Loan Act of 1933 ("HOLA"), as amended by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), authorizes the Director to fund the Office's general expenses by imposing fees on savings associations and related entities. Paragraphs (a) and (b) of section 9 authorize the Director to impose examination fees, in proportion to assets or resources, on savings associations and their affiliates. These provisions are comparable to the statutory authority under which the Office of the Comptroller of the Currency ("OCC") assesses fees to cover the expenses of its operations. (See 12 U.S.C. 482.) Section 9(k) states that the Director may assess an additional fee to cover direct and indirect expenses of the Office on institutions for which the Director is the "appropriate Federal banking agency" under section 3 of the Federal Deposit Insurance Act. Section 9(*l*) authorizes the Director to establish a working-capital fund, which would be funded by charging any or all of the foregoing fees at rates in excess of actual expenses. In addition, section 9(g) authorizes the Director to impose additional, specific fees to recover the costs of examinations of the fiduciary activities of savings associations that exercise fiduciary powers and of examinations of any savings association or affiliate in excess of two per year. Under section 9(j), the Director may, in his discretion, assess fees to cover the costs of processing applications and other submissions to the Office.

The Director hereby adopts this temporary emergency regulation to implement his authority to collect fees to fund the Office's operations pending establishment of a permanent funding mechanism. This regulation provides for general assessments on savings associations under paragraph (a) of section 9, proportional to assessed institutions' assets, and enables the Director to establish a working-capital fund as authorized by the statute. In addition, the regulation provides authority for the Director to assess, on an interim basis, other fees authorized by the statute: examination fees to be assessed on affiliated entities, fees pursuant to section 9(k), fees to cover the costs of fiduciary examinations, and fees to cover the Office's costs of processing applications and other submissions.

Under this regulation, the Director will calculate the assessment on savings associations under section 9(a) as a simple percentage of assets and will apply the same percentage of assets to each institution assessed. (A different percentage may determine assessments on affiliates, reflecting the separate statutory treatment of assessments on affiliates.) This approach implements the statutory directive that the assessment be "in proportion to the [association's] assets or resources." However, the Director believes that other approaches would also be consistent with that statutory directive. For example, it would be within the Director's statutory mandate to base the assessment on a sliding scale of

assets—*e.g.*, a particular percentage of assets up to 100 million dollars, and a different percentage of assets over 100 million dollars. The OCC follows such an approach under a similar statutory scheme. The Director is not tied to the approach embodied in the present interim regulation, and may adopt a different approach in the future as he deems appropriate.

In drafting this regulation, the Director has looked as appropriate to regulations that had been promulgated by the Federal Home Loan Bank Board ("Bank Board"), the Federal Savings and Loan Insurance Corporation and the OCC. For example, the regulation's provision in paragraph (f) for collection of certain examination fees is drawn from an equivalent regulation of the Federal Savings and Loan Insurance Corporation, 12 CFR 563.17–1(a) (1988).

The Director is also adopting a collection process used by the Bank Board and the Federal Savings and Loan Insurance Corporation to collect insurance assessments and examination fees. (See Bank Board Resolution No. 86–777 of July 31, 1986.) Member institutions of Federal Home Loan Banks ("Banks") that are subject to fees and assessments under this regulation will be required to establish demand deposit accounts at their Banks and to authorize the Banks to allow the Director to collect amounts due the Office from the institutions by direct debit of those accounts. The Federal Housing Finance Board has adopted a regulation requiring the Banks to participate in this payment mechanism, thereby satisfying the Banks' obligation under section 9(f) of the HOLA to collect fees and assessments for the Director upon request (54 FR 36760, Sept. 5, 1989).

Institutions not members of a Federal Home Loan Bank shall pay their fees and assessments to the Office upon receipt of notice (except for any processing fees that the Director may impose under section 9(j) of the statute, which shall accompany submissions to the Office). The Director may also use this payment mechanism in other circumstances in which it may be appropriate. Following the example of the OCC, see 12 CFR 8.7, the Director will charge interest on overdue assessment and fees.

The interim assessments that this regulation authorizes are necessary because the Office does not have access to funds that were in the accounts of the Federal Home Loan Bank Board on the date of enactment of the FIRREA; the statute assigns those funds to the Federal Housing Financing Board. Nor does the Office have access to monies in the FSLIC Resolution Fund. The statute assigns that Fund to the Federal Deposit Insurance Corporation. The Bank Board may borrow from the Fund, but only to assist it in winding up its affairs or to pay for its employees or property used in performing functions for this Office. This Office must therefore raise funds directly from the institutions that it regulates to compensate employees transferred to it and to pay other costs that it incurs. The interim assessments are contemplated to be levied only on savings associations, because only they are covered by the data base and payment system established by the Bank Board which the Office, in the interest of expedition, will use to collect the assessment. Because savings associations are the core group in the Office's regulatory mandate, and because the Office's interim expenses will not be great, funding those expenses by an assessment on savings associations is equitable. The Director does, however, reserve the authority in the regulation to assess the other entities of an interim basis should that prove to be necessary and feasible.

Administrative Procedure Act

The Director is adopting this regulation as a final rule effective on publication in the **Federal Register**, without the usual notice and comment period or delayed effective date provided for in the Administrative Procedure Act, 5 U.S.C. 553. Those requirements may be waived for "good cause." 5 U.S.C. 553(b)(3)(B), 553(d)(3). The Director finds that good cause exists because of the urgent necessity of establishing a mechanism to meet the Office's immediate funding needs following its establishment by enactment of the FIRREA. Similarly, providing notice and comment procedures and a delayed effective date would be contrary to the public interest because the Office could not immediately discharge its statutory responsibilities. The Director is continuing to consider the subject of this regulation and will publish for comment a proposed regulation establishing a permanent funding mechanism incorporating the various fees and assessments that HOLA, as amended by FIRREA, authorizes.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this regulation, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Executive Order 12291

The aggregate effect of this rule, intended to raise funds for the Office for a period of only a few months, is expected to be small. In terms of Executive Order 12291, the rule is not likely to "result in: (1) An annual effect on the economy of $100 million or more; (2) A major increase in costs or prices for consumers, individual industries, or geographic regions; or (3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets." The rule is therefore not a "major rule" within the meaning of the Executive Order, and does not require a Regulatory Impact Statement.

List of Subjects in 12 CFR Part 502

Assessments, Federal home loan banks.

Accordingly, the Director hereby adopts part 502, subchapter A, chapter V, title 12 Code of Federal Regulations, as set forth below.

Part 502 is added to subchapter A to read as follows:

SUBCHAPTER A—GENERAL

PART 502—ASSESSMENTS

Authority: Sec. 9, as added by sec. 301, 103 stat. 316 (12 U.S.C. 1467).

§ 502.1 Interim assessments and fees.

(a) *Interim assessments and fees.* To fund the Office's operations until a permanent assessment mechanism is in place, the Director shall issue an initial assessment or assessments upon savings associations, calculated on the basis established in paragraphs (b) and (c) of this section and payable by the means prescribed in paragraph (h) of this section, except that the Director may in special cases direct that payment be made by the means prescribed in paragraph (i) of this section. The Director may also issue initial assessments under paragraphs (d) through (g) of this section.

(b) *Interim examination fees for savings associations.* Each savings association shall pay to the Office an assessment fee or fees. The amount of the assessment shall be calculated as a percentage of each assessed savings association's assets as shown on its Thrift Financial Report for the most recent month. The percentage of assets shall be the same for each savings

association. The percentage to be applied shall be announced by the Director and shall (except as adjusted by paragraph (c) of this section) be determined by him based on his estimate of necessary revenues.

(c) *Working-capital fund.* The Director may establish a working-capital fund pursuant to section 9(*l*) of the Home Owners' Loan Act of 1933, as amended. The working-capital fund shall be funded by collections by the Director of fees under paragraph (b) of this section at a level in excess of expenses actually incurred by the Office during the interim period. If the Director collects an interim assessment or assessments under paragraphs (d) and (e) of this section, he may likewise set those assessments at a level to contribute to the working-capital fund authorized by this paragraph (c). The Director shall refund to the payors funds collected in excess of those that he deems necessary to maintain the working-capital fund and to pay the Office's expenses.

(d) *Examination fees for affiliates.* Each affiliate of a savings association, in the discretion of the Director, shall pay to the Office an assessment fee or fees. The amount of the assessment shall be calculated as a percentage of each assessed affiliate's assets as shown in the most recent statement on file with the Office or, if there is no such statement, the results of the most recent examination. The percentage of assets shall be the same for each assessed affiliate except as the Director may otherwise direct. The percentage to be applied shall be announced by the Director and shall (except as adjusted by paragraph (c) of this section) be determined by him based on his estimate of necessary revenues.

(e) *Further fees for examinations and supervisory activities.* The Director may assess upon institutions for which the Director is the appropriate Federal banking agency, within the meaning of section 3 of the Federal Deposit Insurance Act, additional interim fees that may be necessary to fund the direct and indirect expenses of the Office. Such fees shall be imposed in proportion of the assets or resources of the institutions.

(f) *Fees for fiduciary examinations.* The Director may assess interim fees adequate to cover the cost of examinations of fiduciary activities of savings associations that exercise fiduciary powers. The fees shall be assessed upon the institution examined, and may include office analysis, overhead, per diem, travel expense, and other costs, direct or indirect, attributable to the examination.

(g) *Processing fees.* The Director may establish an interim schedule of fees for processing applications, filings, notices, requests for approval, and other such submissions. Such fees shall be set at an amount necessary to recover the Office's projected costs of processing such submissions. Submissions for which a processing fee is required shall not be processed if the fee is not tendered with the submission, except in the discretion of the Director or his designees.

(h) *Collection of fees and assessments by debit of accounts at Federal Home Loan Banks.* Each institution that is:

(1) Subject to fees and assessments under paragraphs (a) through (f) of this section, and

(2) A member of a Federal Home Loan Bank, shall establish at its Federal Home Loan Bank a demand deposit account for the purpose of paying such fees and assessments.

Each such member institution, using a form approved by the Director, shall authorize its Federal Home Loan Bank to debit such account directly to effectuate payment of assessments and fees to the Office, and shall maintain funds in such account in sufficient amount to pay its obligations to the Office. The Director shall mail a payment notice to each such institution at least five days prior to the date that any such account is to be debited to pay the member institution's obligations to the Office, which notice shall specify the date on which the debit is to occur.

(i) *Direct billing of institutions.* As an alternative to the payment mechanism described in paragraph (j) of this section, the Director may collect assessments by sending notice and demand for direct payment thereof to an assessed institution. In such case, the institution shall pay the fee or assessment identified in such notice not later than the date specified in such notice. This payment procedure shall be used to collect fees and assessments from assessed institutions that are not members of a Federal Home Loan Bank.

(j) *Interest.* For all institutions, overdue fees and assessments shall bear interest. Such interest shall be calculated at a rate (to be redetermined quarterly) equal to 150 percent of the average of the bond-equivalent rates of 13-week Treasury bills auctioned during the preceding calendar quarter.

M. Danny Wall,

Director, Office of Thrift Supervision.

[FR Doc. 89-21874 Filed 9-28-89; 8:45 am]

BILLING CODE 6720-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 122

RIN 3245-AB98

Business Loans for 8(a) Program Participants; Correction

AGENCY: Small Business Administration.

ACTION: Final rule; correction.

SUMMARY: The Small Business Administration (SBA) is correcting a typographical error and is adding a phrase change for clarification to the Business Loans for 8[A) Program Participants which appeared in the **Federal Register** on September 5, 1989 (54 FR 36760).

FOR FURTHER INFORMATION CONTACT: Charles R. Hertzberg, Acting Associate Administrator for Finance and Investment, Small Business Administration, 1441 L St. NW., Washington, DC 20416, telephone [202) 653-6574.

SUPPLEMENTARY INFORMATION: On September 5, 1989 SBA published in the **Federal Register** a final rule to implement 1988 legislation (54 FR 36760). A typographical error was discovered as was the need for a phrase change for clarification.

PART 122—[AMENDED]

The following corrections are made to part 122 of title 13, Code of Federal Regulations, Business Loans for 8(a) Program Participants, published in the **Federal Register** on September 5, 1989 (54 FR 36760):

§ 122.59-2 [Amended]

1. On page 36762 in column one under § 122.59-2 Conditions, paragraph (a)(1), six lines down the phrase "participation of guaranty loan must" should read "participation or guaranty loan must".

§ 122.59-3 [Amended]

2. Also, on page 36762 in column two under § 122.59-3 Conditions applicable to deferred participation assistance (guaranteed), paragraph (a), nine lines down the phrase "amount does not exceed $155,000 and no" should read "amount not more than $155,000 and no".

Dated: September 21, 1989.

Susan Engeleiter,

Administrator.

[FR Doc. 89-22983 Filed 9-28-89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89-ASW-24]

Establishment of Control Zone; Fort Worth Alliance Airport, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will establish a part-time control zone at Fort Worth Alliance Airport, TX. This amendment is necessary because Alliance Airport meets the criteria for the establishment of a control zone by the fact that there is to be part-time federal airport traffic control tower (ATCT) at the Alliance Airport and there will be a federally certificated weather observer who will be able to take hourly and special weather observations at the Alliance Airport during the times the control zone is in effect. The intended effect of this amendment is to provide adequate controlled airspace for acircraft executing the standard instrument approach procedures (SIAP) that will serve the Alliance Airport. The establishment of a control zone will allow the Alliance Airport to be used as an alternate airport under instrument flight rules (IFR) weather conditions. The control zone will not include the Hicks Airfield or Northwest Regional Airport.

EFFECTIVE DATE: 0901 u.t.c. November 16, 1989.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530, telephone (817) 624-5561.

SUPPLEMENTARY INFORMATION:

History

On July 5, 1989, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a new control zone to be located at Fort Worth Alliance Airport, TX (54 FR 30761).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in this notice. Section 17.171 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E, dated January 3, 1989.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations will establish a control zone at Fort Worth Alliance Airport, TX. This amendment is necessary because Alliance Airport meets the criteria for the establishment of a control zone by the fact that there is to be part-time federal ATCT at the Alliance Airport and there will be a federally certificated weather observer who will be ble to take hourly and special weather observations at the Alliance Airport during the times the control zone is in effect. The intended effect of this amendment is to provide adequate controlled airspace for aircraft executing the SIAP's that will serve the Alliance Airport. The establishment of a control zone will allow the Alliance Airport to be used as an alternate airport under instrument flight rules (IFR) weather conditions. The ATCT is scheduled to be commissioned on December 14, 1989. The charting of this control zone will be on November 16, 1989; however, the effective date of this part-time control zone will depend entirely upon the installation and certification of the ATCT. Being a part-time control zone, it will be published in the notice to airmen as not in effect until the ATCT has been commissioned. The control zone will not include the Hicks Airfield or Northwest Regional Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation Safety, Control zones.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES CONTROLLED AIRSPACE, AND REPORTING POINTS

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

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§71.171 [Amended]

2. Section 71.171 is amended as follows:

Fort Worth Alliance Airport, TX [New]

Within a 6-mile radius of the Alliance Airport (latitude 32°59'11"N., longitude 97°19'02"W.). This control zone is effective during the specific dates and times established in advance by a notice to airmen. The effective dates and times will thereafter be continually published in the Airport/Facility Directory.

Issued in Fort Worth, TX, on September 18, 1989.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 89-22992 Filed 9-28-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 89-ANM-3]

Alteration of VOR Federal Airway V-68; CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action alters the description of VOR Federal Airway V-68 from Montrose, CO, to Dove Creek, CO, due to the installation of the Cones very high frequency omnidirectional radio range (VOR). This action reduces controller workload by providing pilots with a better navigational aid.

EFFECTIVE DATE: 0901 u.t.c., November 16, 1989.

FOR FURTHER INFORMATION CONTACT: Betty Harrison, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9255.

SUPPLEMENTARY INFORMATION:

History

On May 2, 1989, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter the description of VOR Federal Airway V-

68 from Montrose, CO, to Dove Creek, CO, due to the installation of the Cones VOR (54 FR 18667). This action will reduce controller workload by providing pilots with a better navigational aid. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.123 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The Rule

This amendment to part 71 of the Federal Aviation Regulations alters the description of VOR Federal Airway V–68 from Montrose, CO, to Dove Creek, CO, due to the installation of the Cones VOR. This action reduces controller workload by providing pilots with a better navigational aid. In addition, the new Cones VOR will be an integral part of a new approach procedure for Telluride, CO, Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR federal airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

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

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V–68 [Amended]

By removing the words "INT Montrose 200° and Dove Creek, CO, 069° radials; Dove Creek;" and substituting the words "Cones, CO; Dove Creek, CO;"

Issued in Washington, DC, on September 14, 1989.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89–22994 Filed 9–28–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 89–AWP–11]

Alteration of VOR Federal Airway V–165; California

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The Clovis, CA, very high frequency omnidirectional radio range and tactical air navigational aid (VORTAC) has been relocated approximately ½ mile southwest of its current location to coordinates lat. 36°53'01"N., long. 119°48'52"W. This action amends the description of VOR Federal Airway V–165 concurrent with the relocation of the Clovis VORTAC.

EFFECTIVE DATE: 0910 u.t.c., November 16, 1989.

FOR FURTHER INFORMATION CONTACT: Betty Harrison, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC. 20591; telephone: (202) 267–9255.

The Rule

This amendment to part 71 of the Federal Aviation Regulations amends the description of VOR Federal Airway V–165 due to the relocation of the Clovis, CA, VORTAC. The airway is being realigned concurrent with the relocation of that navigational aid. This description does not involve a significant change in controlled airspace and is a minor technical amendment in which the public would not be particularly interested in commenting. Therefore, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Section 71.123 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR federal airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

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

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

2. Section 71.123 is amended as follows:

V–165 [Amended]

By removing the words "INT Porterville 339° and Clovis, CA, 140° radials;" and substituting the words "INT Porterville 339° and Clovis, CA, 139° radials;"

Issued in Washington, DC, on September 19, 1989.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89–22995 Filed 9–28–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 89–ASO–32]

Designation of Transition Area; Booneville, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment designates the Booneville, MS, transition area to accommodate instrument flight rules (IFR) aeronautical operations at the Booneville-Baldwyn Airport. This action lowers the base of controlled airspace from 1,200 feet to 700 feet above the surface in the vicinity of the airport. A standard instrument approach procedure (SIAP) has been developed to serve the airport and the additional controlled airspace is required for protection of IFR aircraft executing the approach procedure. Concurrent with publication of the SIAP, the operating status of the airport will change from visual flight rules (VFR) to IFR.

EFFECTIVE DATE: 0901 U.T.C., May 3, 1990.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763–7646.

SUPPLEMENTARY INFORMATION:

History

On August 8, 1989, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to designate the Booneville, MS, transition area (54 FR 32452). The additional controlled airspace was necessary for protection of IFR aircraft executing a new SIAP to the Booneville-Baldwyn Airport. Concurrent with publication of the SIAP, the operating status of the airport will change from VFR to IFR. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6E dated January 3, 1989.

The Rule

This amendment to part 71 of the Federal Aviation Regulations designates the Booneville, MS, transition area. The base of controlled airspace is lowered from 1,200 feet to 700 feet above the surface in the vicinity of the Booneville-Baldwyn Airport. Concurrent with publication of the planned SIAP, the operating status of the airport will change from VFR to IFR.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation Safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

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

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Public Law 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Booneville, MS [New]

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Booneville-Baldwyn Airport (latitude 34°35'32"N, longitude 88°38'50"W).

Issued in East Point, Georgia, on September 15, 1989.

Don Cass,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 89–22993 Filed 9–28–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 89–AWA–14]

Alteration of VOR Federal Airway V–40; Michigan

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the description of Federal Airway V–40 located in the state of Michigan. The alignment, which is at the request of Transport Canada, coincides with changes in the Canadian airspace structure. This action improves traffic flow during transborder operations.

EFFECTIVE DATE: 0901 U.T.C., November 16, 1989.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

History

On July 24, 1989, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter the description of VOR Federal Airway V–40 located in the state of Michigan (54 FR 30760). This alteration is at the request of Transport Canada to support airway changes in the Canadian airspace structure. This action also is in conjunction with the Detroit Metropolitan Airport project. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.123 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The Rule

This amendment to part 71 of the Federal Aviation Regulations alters the description of Federal Airway V–40 located in the state of Michigan. The alignment, which is at the request of Transport Canada, will coincide with changes in the Canadian airspace structure. This action improves traffic flow during transborder operations.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

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

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V–40 [Amended]

By removing the words "From DRYER, OH;" and substituting the words "From INT DRYER, OH, 321° and Salem, MI, 130° radials; INT DRYER 000° and Akron, OH, 308° radials; DRYER;"

Issued in Washington, DC, on September 15, 1989.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89–22997 Filed 9–29–89; 8:45 am]

BILLING CODE 4310–13–M

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14 CFR Part 75

[Airspace Docket No. 88–AEA–6]

Alteration of Jet Route; New York

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the description of Jet Route J–42 in the vicinity of New York, NY. The LaGuardia, NY, very high frequency omnidirectional radio range and distance measuring equipment (VOR/DME) has been relocated from Rikers Island, NY, to the LaGuardia Airport. This action is necessary as a result of that relocation.

EFFECTIVE DATE: 0901 U.T.C., November 16, 1989.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

History

On August 17, 1988, the FAA proposed to amend part 75 of the Federal Aviation Regulations (14 CFR part 75) to alter the description of J–42 in the vicinity of New York, NY (53 FR 31019). The LaGuardia VOR/DME has been relocated from Rikers Island, NY, to the LaGuardia Airport. Therefore, the only action required is to redescribe J–42. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 75.100 of part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The Rule

This amendment to part 75 of the Federal Aviation Regulations alters the description of J–42 in the vicinity of New York, NY. The LaGuardia, NY, VOR/DME has been relocated from the current site on Rikers Island, NY, to the LaGuardia Airport. The only action required due to this relocation is the amendment to the description of J–42. This action makes that change.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 75 of the Federal Aviation Regulations (14 CFR part 75) is amended, as follows:

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. Section 75.100 is amended as follows:

J–42 [Amended]

By removing the words "LaGuardia, NY; INT LaGuardia 043° and Hartford, CT, 236° radials;" and substituting the words "LaGuardia, NY; INT LaGuardia 042° and Hartford, CT, 236° radials;"

Issued in Washington, DC, on September 19, 1989.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89–22998 Filed 9–28–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 97

[Docket No. 26016; Amdt. No. 1409]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

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

For Examination—

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

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

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

For Purchase—

Individual SIAP copies may be obtained from:

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

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

By Subscription—

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

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

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 522(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

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

This amendment to part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

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

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard Instrument, Incorporation by reference. Issued in Washington, DC on September 15, 1989.

Robert L. Goodrich,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97 [AMENDED]

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983; and 14 CFR 11.49(b)(2)).

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

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

. . . Effective December 14, 1989

Rochester, IN—Fulton County, NDB RWY 29, Amdt. 9

. . . Effective November 16, 1989

Savannah, GA—Savannah International, VOR RWY 27, Amdt. 15
Savannah, GA—Savannah International, NDB RWY 9, Amdt. 20
Savannah, GA—Savannah International, ILS RWY 9, Amdt. 25
Savannah, GA—Savannah International, ILS RWY 36, Amdt. 4
Savannah, GA—Savannah International, RADAR-1, Amdt. 8
Savannah, GA—Savannah International, RNAV RWY 18, Amdt. 8
Chicago/Waukegan, IL—Waukegan Regional, NDB RWY 23, Amdt. 1
Chicago/Waukegan, IL—Waukegan Regional, ILS RWY 23, Amdt. 1
Chicago/Waukegan, IL—Waukegan Regional, RNAV RWY 5, Amdt. 1
Alexandria, IN—Alexandria, VOR RWY 27, Amdt. 8
Griffith, IN—Griffith, VOR RWY 8, Amdt. 5
Muncie, IN—Delaware County-Johnson Field, NDB RWY 32, Amdt. 11
Muncie, IN—Delaware County-Johnson Field, ILS RWY 32, Amdt. 8
Plymouth, IN—Plymouth Muni, VOR RWY 10, Amdt. 10
Plymouth, IN—Plymouth Muni, VOR RWY 28, Amdt. 9
LeMars, IA—LeMars Muni, VOR/DME RWY 36, Orig.
LeMars, IA—LeMars Muni, NDB RWY 18, Amdt. 8
London, KY—London-Corbin Arpt-Magee Fld, VOR RWY 5, Amdt. 11
London, KY—London-Corbin Arpt-Magee Fld, VOR/DME RWY 23, Amdt. 4
London, KY—London-Corbin Arpt-Magee Fld, RNAV RWY 5, Amdt. 2
Hyannis, MA—Barnstable Muni-Boardman/Polando Field, VOR RWY 6, Amdt. 5
Adrian, MI—Lenawee County, NDB RWY 5, Amdt. 7

Alpena, MI—Phelps Collins, VOR RWY 01, Amdt. 14
Alpena, MI—Phelps Collins, VOR RWY 19, Amdt. 14
Alpena, MI—Phelps Collins, NDB RWY 01, Amdt. 6
Alpena, MI—Phelps Collins, ILS RWY 1, Amdt. 8
Ann Arbor, MI—Ann Arbor Muni, VOR RWY 6, Amdt. 13
Ann Arbor, MI—Ann Arbor Muni, VOR RWY 24, Amdt. 13
Ann Arbor, MI—Ann Arbor Muni, RNAV RWY 24, Amdt. 6
Detroit MI—Detroit Metropolitan Wayne County, NDB RWY 3C, Amdt. 10
Detroit MI—Detroit Metropolitan Wayne County, NDB RWY 3L, Amdt. 9
Detroit MI—Detroit Metropolitan Wayne County, ILS RWY 21L, Amdt. 7
Detroit MI—Detroit Metropolitan Wayne County, RADAR-1, Amdt. 20
Detroit MI—Detroit Metropolitan Wayne County, RNAV RWY 21R, Amdt. 2
Detroit MI—Willow Run, NDB RWY 5R, Amdt. 9
Detroit MI—Willow Run, ILS RWY 5R, Amdt. 12
Detroit MI—Willow Run, ILS RWY 23L, Amdt. 5
Detroit MI—Willow Run, RADAR-1, Amdt. 7
Flint, MI—Bishop International, VOR RWY 9, Amdt. 23
Flint, MI—Bishop International, VOR RWY 18, Amdt. 17
Flint, MI—Bishop International, VOR RWY 27, Amdt. 19
Flint, MI—Bishop International, VOR RWY 36, Amdt. 14
Flint, MI—Bishop International, NDB RWY 9, Amdt. 24
Flint, MI—Bishop International, ILS RWY 9, Amdt. 20
Flint, MI—Bishop International, ILS RWY 27, Amdt. 3
Flint, MI—Bishop International, RADAR-1, Amdt. 7
Hibbing, MN—Chisholm-Hibbing, LOC BC RWY 13, Amdt. 10
St Cloud, MN—St Cloud Muni, VOR RWY 31, Amdt. 8
St Cloud, MN—St Cloud Muni, VOR/DME RWY 13, Amdt. 5
Madison, MS—Bruce Campbell Field, VOR-A, Amdt. 8
Madison, MS—Bruce Campbell Field, VOR/DME-B, Amdt. 3
Madison, MS—Bruce Campbell Field, NDB RWY 17, Amdt. 2
Meridian, MS—Key Field, VOR-A, Amdt. 15
Meridian, MS—Key Field, NDB RWY 1, Amdt. 19
Meridian, MS—Key Field, ILS RWY 1, Amdt. 23
Olive Branch, MS—Olive Branch, NDB RWY 36, Amdt. 4
Tupelo, MS—Tupelo Municipal-C D Lemons, NDB RWY 36, Amdt. 4
Tupelo, MS—Tupelo Municipal-C D Lemons, ILS RWY 36, Amdt. 7
Burwell, NE—Cram Field, NDB RWY 15, Amdt. 3
Fairbury, NE—Fairbury Muni, NDB RWY 17, Amdt. 2
Fairbury, NE—Fairbury Muni, NDB-A, Amdt. 2
Ord, NE—Evelyn Sharp Field, NDB RWY 13, Amdt. 2
Bryan, OH—Williams County, NDB-A, Amdt. 5
Defiance, OH—Defiance Meml, NDB RWY 12, Amdt. 9
Marysville, OH—Union County, NDB RWY 27, Amdt. 2
Port Clinton, OH—Carl R Keller Field, VOR/DME-A, Amdt. 5
Port Clinton, OH—Carl R Keller Field, NDB RWY 26, Amdt. 8
Sandusky, OH—Griffing Sandusky, VOR RWY 27, Amdt. 6
Sandusky, OH—Griffing Sandusky, VOR/DME RWY 27, Amdt. 1
Toledo, OH—Toledo Express, NDB RWY 7, Amdt. 22
Toledo, OH—Toledo Express, ILS RWY 7, Amdt. 23
Toledo, OH—Toledo Express, ILS RWY 25, Amdt. 4
Toledo, OH—Toledo Express, RADAR-1, Amdt. 16
Toledo, OH—Toledo Express, RNAV RWY 16, Amdt. 4
Austin, TX—Robert Mueller Muni, VOR/DME or TACAN RWY 13R, Amdt. 8
Austin, TX—Robert Mueller Muni, VOR/DME or TACAN RWY 17, Amdt. 7
Austin, TX—Robert Mueller Muni, NDB RWY 31L, Amdt. 32
Austin, TX—Robert Mueller Muni, ILS RWY 13R, Amdt. 8
Austin, TX—Robert Mueller Muni, ILS RWY 31L, Amdt. 31
Weslaco, TX—Mid Valley, RNAV RWY 13, Orig.
Leesburg, VA—Leesburg Muni/Godfrey Field, NDB RWY 35, Amdt. 1, CANCELLED
Madison, WI—Dane County Regional-Truax Field, VOR or TACAN RWY 18, Amdt. 19
Milwaukee, WI—General Mitchell Field, NDB RWY 1L/R, Amdt. 3
Milwaukee, WI—General Mitchell Field, ILS RWY 1L, Amdt. 6
Phillips, WI—Price County, NDB RWY 24, Amdt. 1

. . . *Effective October 19, 1989*

Morrilton, AR—Morrilton Muni, NDB RWY 27, Orig.
Washington, DC—Dulles Intl, RNAV RWY 1R, Amdt. 6, CANCELLED
Washington, DC—Dulles Intl, RNAV RWY 12, Amdt. 8, CANCELLED
Washington, DC—Dulles Intl, RNAV RWY 19R, Amdt. 7, CANCELLED
Vero Beach, FL—Vero Beach Muni, NDB RWY 11R, Orig.
South Bend, IN—Michiana Regional, VOR RWY 18, Amdt. 6
Michigan City, IN—Michigan City, VOR-A, Amdt. 2
South Bend, IN—Michiana Regional, NDB RWY 27, Amdt. 27
South Bend, IN—Michiana Regional, ILS RWY 9, Amdt. 5
South Bend, IN—Michiana Regional, ILS RWY 27, Amdt. 33
South Bend, IN—Michiana Regional, RADAR-1, Amdt. 8
Detroit, MI—Detroit City, NDB RWY 15, Amdt. 22
Detroit, MI—Detroit City, ILS RWY 15, Amdt. 9
Conroe, TX—Montgomery County, NDB RWY 14, Amdt. 4, CANCELLED

. . . *Effective August 31, 1989*

Jefferson City, MO—Jefferson City Meml, LOC BC RWY 12, Amdt. 5

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 47

[DoD Directive 1000.20]

Active Duty Service Determination for Civilian or Contractual Groups

AGENCY: Office of the Secretary, DOD.

ACTION: Final rule.

SUMMARY: 32 CFR part 47 was last published on August 26, 1983 (48 FR 38816). Formerly titled "Demonstrations of Active Military Service and Discharge: Civilian or Contractual Personnel," it implemented Public Law 95-202 and established DoD policy and procedures to determine whether the civilian employment or contractual services of a civilian or contractual group shall be considered active military service for the purpose of laws administered by the Veterans Administration. A proposed revision of this regulation was published in the January 30, 1989, **Federal Register** allowing for public comment through March 1, 1989. That revision clarified the factors used by the DoD Civilian/Military Service Board and the Secretary of the Air Force (DoD executive agent for this program) in making administrative determinations of active duty service for the purpose of VA benefits under Public Law 95-202. Changes and clarifications stem from a Federal Court determination that the Department of Defense had failed to clarify factors and criteria in their implementing directive concerning Public Law 95-202.

EFFECTIVE DATE: September 11, 1989.

FOR FURTHER INFORMATION CONTACT: Lt Col K. Deutsch, Office of the Assistant Secretary of Defense (Force Management and Personnel), the Pentagon, Washington, DC 20301-4000, telephone (202) 697-7197.

SUPPLEMENTARY INFORMATION: We received comments from seven individuals. Most commentors were representing a private organization or a federal agency involved in some way with maritime matters. In several cases commentors offered substantially

identical suggestions for changes. Some of these suggestions have been adopted, and some have not, as noted below. In addition to these substantive changes, some style and format changes have been introduced in order to comply more strictly with DoD 5025.1–M, chapter 2, and in response to changes recommended during the course of DoD staff coordination.

Discussion of Major Comments

Purpose

One commentor asked if an eligibility window existed for groups considered under Public Law 95–202. That is, would the law apply to future groups and could someone "intending to commemorate the service of group members long dead, say Spanish American War period, make a group application?" The law, as written, does not exclude consideration of future groups. However, since Public Law 95–202 provides recognition for the purposes of Veterans Administration benefits, recognition for "commemorative" purposes would not fall within the purview of the law because such benefits could not accrue to any living person as a result of group recognition. In order to clarify this point, this section is amended by changing the sentence ending "* * * 'active duty' "to end as follows: "* * * active military service for the purposes of Department of Veterans Affairs (VA) benefits." Additionally, paragraph D.1, *Eligibility for Consideration,* under the "POLICY" section is amended to add: "(d) Consist of living persons to whom VA benefits can accrue."

Definitions (Now Formatted as Enclosure 1 to the Directive)

One commentor suggested that the language "* * * which was then considered civilian employment with the Armed Forces or the result of a contract with the U.S. Government" introduces limitations not suggested by statute. The commentor felt that the statute allowed for civilian employment or contractual service of any sort if it otherwise meets delineated criteria. However, we disagree and feel the statute intends that the service in question must have been performed as stated in the directive. For this reason, we did not accept the recommended change.

Another commentor suggested that since this revision is due to litigation that surrounded the recognition of an oceangoing merchant marine group, we should cite that merchant marine group as a model against which future applications may be considered "similarly situated." However, the statute already uses the Women's Airforces Service Pilots (WASPs) as this model group and we feel the addition of a second model in this directive would serve no purpose. For this reason we did not accept this recommendation.

Responsibilities

One commentor objected to the use of the language "* * * service for the purpose of Veterans Administration benefits * * *" as used in this paragraph. The commenter contends that this language does not equate to the language of the law which reads "* * * active duty for the purposes of all laws administered by the Veterans Administration * * *." However, the language in this paragraph is deemed necessary to preclude members recognized under the provisions of Public Law 95–202 from receiving Civil Service, military, and other benefits that were not envisioned by Congress when they passed this section of the law. The General Counsel of the Office of Personnel Management has reaffirmed that those recognized under Public Law 95–202 are not entitled to Civil Service benefits. The language chosen for this paragraph is clearer to the lay person who may not be familiar with what laws the Veterans Administration actually administers. Finally, Counsel has confirmed that this wording means the same as that in the law. For these reasons, we did not accept this recommended change.

Policy

One commenter felt the entire "Policy" section should be reorganized to differentiate between groups that served in combat areas and groups that did not. Groups which served in combat areas would be tested against "the rather precise criteria of international law and in the same manner that they would be viewed by the enemy." Remaining groups would be tested against "criteria more attuned to garrison duty or recruit training." Such a "dichotomous approach" would eliminate a requirement for considering factors for both types of groups which are significant to only one or the other, the commentor offered. Another commentor made a similar suggestion by proposing a subsection instructing the C/MSRB to take cognizance of the effect, if any, that international law in effect at the time of the group's service could have had on the group. While we don't feel a total restructuring of the policy section is necessary, we did concur with this latter suggestion and, as a result, amend paragraph D.2 to add: "c. *Status of the Group in International Law.* In addition to other factors, consideration will be given to whether members of the group were regarded and treated as civilians, or assimilated to the armed forces, as reflected in treaties, customary international law, judicial decisions and U.S. diplomatic practice."

Another commentor felt that the limitation of "under control of U.S. Armed Forces" should be deleted because the statute does not state that the employer must have been the U.S. Federal Government. However, we feel the statute intends that the service in question must have been as the result of civilian employment or contractual capacity with the U.S. Federal Government and performed under the control of the U.S. Armed Forces. For this reason we did not accept this recommended change.

Policy: Paragraph D.2.a.(1)(a)

All commentors felt that the wording of this paragraph might unfairly eliminate groups which might otherwise be appropriate candidates for recognition. The commentors' objections here are due to a matter of semantics. When drafted, the words "created or organized" we intended to include groups who existed prior to the period of service in question but were reorganized due to a wartime need. Therefore, we accept one commentor's suggestion to change this paragraph to read: "(a) The group was created or organized by U.S. government authorities to fill a wartime need or, if a group was not created specifically for a wartime need, but existed before that time, then its wartime mission was of a nature to substantially alter the organization's prewar character."

Policy: Paragraph D.2.a(2)

A typographical error is contained in the last sentence of this paragraph in the words "* * *, and the staffing requirements shall include the length of employment and pay grades of the members of this group." This should have read "* * *, and the staffing requirements to include the length of employment and pay grades of the members of the group."

Possibly due to this typographical error, two commentors felt that this paragraph, as worded, was intended to disqualify a civilian group which received a pay raise or bonus as a result of service during a period of armed conflict. However, that is not the case. When printed without error, the paragraph means that if a military command authority affected the pay scale of civilian employees during a period of armed conflict, then such action would tend to favor the group's

chances of recognition since military control over the group is illustrated.

Additionally, another commentor pointed out that competent authorities other than the military command might affect length of employment and pay grade requirements. As a result, in addition to correcting the typographical error described above, we will amend this paragraph to begin: "The concept of military control is reinforced if the military command authority determines such things as the structure * * *"

Policy Paragraph D.2.a.(3)

Two commentors felt that examples of military integration contained in this section were either inconclusive or irrelevant. If judged alone, we might agree. However, integration into the military organization is only one criterion and would not be judged without context. That is, whether or not a group could satisfy the criteria of integration via the published examples would not automatically qualify the group for, nor disqualify the group from, recognition on the whole. For these reasons, we did not accept a recommendation to alter this section.

Policy Paragraph D.2.a.(5)

Two commentors felt that a distinction should be made between "persons serving with" and those "accompanying" an Armed Force in the field. The commentors' rationale was that historically only those "serving with" an Armed Force were, in practice, subject to military justice and other forms of military control. We concur and amend the third sentence of this section to begin as follows: "Those who were serving with the U.S. Armed Forces may have been treated * * *"

Another commentor felt that criteria in the statute which were omitted in the draft directive should be reinstated. Two of the criteria ("received military training" and "acquired military capability") were omitted because they had not been historically useful when considering group applications. A third criteria ("performance critical to the success of the military mission") was omitted because we felt that, applied literally, it could unfairly limit recognition to those groups which participated in successful operations. We felt that the character of the participation should be judged rather than the success of the mission. Nevertheless, we did not intend to prevent the submission of evidence relevant to these criteria if that evidence supports the group's overall application. For these reasons Section D.2 is amended to add "a.(7) Receipt of Military Training and/or Achievement of *Military Capability*. If a group employed skills or resources that were enhanced as the result of military training, or equipment designed or issued for that purpose, this acts toward recognition." We will not, however, reinstate the criteria of "performance critical to the success of a military mission" because it is unfairly restrictive for applicant groups.

Policy Paragraph D.2.b(1)

Two commentors suggested that this section does not offer "explicit guidance" to the extent needed by the board. One commentor offered that a definition of "defensive" should be incorporated into the directive. The commentor offered examples to illustrate that whether or not a weapon is "defensive" or "offensive" is determined by the context in which the weapon is used. Since we agree with the commentor that individual circumstances will probably determine whether weapons are considered offensive or defensive, we feel that such determinations are better left to the Civilian/Military Service Review Board and the Secretary of the Air Force when considering the particular circumstances of a particular group. For this reason, we did not accept the recommendation to create an all-encompassing definition of "defensive." However, on the basis of comments from international law experts we are changing this paragraph to begin *"Submission to the U.S. Armed Forces for protection.* A group that seeks protection and assistance from the U.S. Armed Forces and submits * * *."

Policy Paragraph D.2.a.(6)

As one commentor pointed out, the language is this section contains an error. The last two sentences of this section should have been deleted. Nevertheless, the commentor's suggestions are incorporated as a more comprehensive standard. Therefore, this paragraph is changed to read: "(6) *Prohibition against Members of the Group Joining the Armed Forces.* Some organizations may have been formed to serve in a military capacity to overcome the operation of existing laws or Treaty or because of a governmentally established policy to retain individuals in the group as part of a civilian force. These factors act in favor of recognition."

Policy Paragraph D.2.b.(3)

All commentors interpreted this paragraph to mean that the C/MSRB and the Secretary of the Air Force cannot consider precedent when evaluating a group for recognition. However, that was never the intent. This paragraph is intended to explain that civilian groups which have already been compensated by the Federal government for the service in question are ineligible to apply under Public Law 95–202. To clarify this point, this paragraph is amended to read: "Recognition of a group's service by agencies of state or local government * * *." Subsequently, Section D.1 is amended to add: "e. Not have already received benefits from the Federal government for the service in question."

Policy Paragraph D.1.b

Two commentors felt that the wording "civilian employment with the Armed Forces, or the result of a contract with the U.S. Government to provide direct support to the Armed Forces," incomplete as it might omit civilian groups who were brought under direct employment with the Armed Forces under other circumstances. We accepted one commentor's recommended language and amended the paragraph to read as follows: "b. Have rendered service to the United States in what was then considered civilian employment with the U.S. Armed Forces, either through formal civil service hiring, or less formal hiring if the engagement was created under the exigencies of war; or as the result of a contract with the United States Government to provide direct support to the U.S. Armed Forces."

DoD C/MSRB and Advisory Panel (Now enclosure 4 to the directive) Paragraph B.3.b:

One commentor felt this paragraph allowed the Board to ignore any and all relevant precedent. As a matter of clarification, the beginning of this paragraph is amended to read: "Prior group determinations made under the provisions of Public Law 95–202 do not bind * * *"

List of Subjects in 32 CFR Part 47

Military personnel.

Accordingly, 32 CFR part 47 is revised to read as follows:

PART 47—ACTIVE DUTY SERVICE FOR CIVILIAN OR CONTRACTUAL GROUPS

Sec.

Appendix A to Part 47—Instructions for Submitting Group Applications Under Public Law 95–202.

Appendix B to Part 47—The DoD Civilian/ Military Service Review Board and the Advisory Panel

Authority: 38 U.S.C. 106 note.

§ 47.1 Purpose.

This document:

(a) Revises 32 CFR part 47 and implements Public Law 95–202.

(b) Directs the Secretary of the Air Force to determine if an established group of civilian employees or contract workers provided service to the U.S. Armed Forces in a manner considered active military service for Department of Veterans Affairs (VA) benefits.

(c) Establishes the DoD Civilian/ Military Service Review Board and the Advisory Panel.

(d) Establishes policy, assigns responsibilities, prescribes application procedures for groups and individuals, and clarifies the factors used to determine active duty (AD) service.

§ 47.2 Applicability and scope.

This part:

(a) Applies to the Office of the Secretary of Defense (OSD), the Military Departments, and by agreement with the Department of Transportation (DoT), the U.S. Coast Guard.

(b) Applies to any group application considered under Public Law 95–202 after September 11, 1989 and to any individual who applies for discharge documents as a member of a group recognized by the Secretary of the Air Force.

§ 47.3 Definitions.

Armed conflict. A prolonged period of sustained combat involving members of the U.S. Armed Forces against a foreign belligerent. The term connotes more than a military engagement of limited duration or for limited objectives, and involves a significant use of military and civilian forces.

(a) Examples of armed conflict are World Wars I and II, and the Korean and Vietnam Conflicts.

(b) Examples of military actions that are not armed conflicts are as follows:

(1) The incursion into Lebanon in 1958, and the peacekeeping force there in 1983 and 1984.

(2) The incursions into the Dominican Republic in 1965 and into Libya in 1986.

(3) The intervention into Grenada in 1983.

Civilian or contractual group. An organization similarly situated to the Women's Air Forces Service Pilots (a group of Federal civilian employees attached to the U.S. Army Air Force in World War II). Those organization members rendered service to the U.S. Armed Forces during a period of armed conflict in a capacity that was then considered civilian employment with the Armed Forces, or the result of a contract with the U.S. Government, to provide direct support to the Armed Forces.

Recognized group. A group whose service the Secretary of the Air Force administratively has determined to have been "active duty for the purposes of all laws administered by the Department of Veterans Affairs"; i.e., VA benefits under 38 U.S.C. 101.

Similarly situated. A civilian or contractual group is similarly situated to the Women's Air Forces Service Pilots when it existed as an identifiable group at the time the service was being rendered to the U.S. Armed Forces during a period of armed conflict. Persons who individually provided support through civilian employment or contract, but who were not members of an identifiable group at the time the services were rendered, are not "similarly situated" to the Women's Air Forces Service Pilots of World War II.

§ 47.4 Policy

(a) *Eligibility for consideration.* To be eligible to apply for consideration under Public Law 95–202 and this part, a group must:

(1) Have been similarly situated to the Women's Air Forces Service Pilots of World War II.

(2) Have rendered service to the United States in what was considered civilian employment with the U.S. Armed Forces either through formal Civil Service hiring or less formal hiring if the engagement was created under the exigencies of war, or as the result of a contract with the U.S. Government to provide direct support to the U.S. Armed Forces.

(3) Have rendered that service during a period of armed conflict.

(4) Consist of living persons to whom VA benefits can accrue.

(5) Not have already received benefits from the Federal Government for the service in question.

(b) A determination of AD service that is considered to be equivalent to active military service is made on the extent to which the group was under the control of the U.S. Armed Forces in support of a military operation or mission during an armed conflict. The extent of control exerted over the group must be similar to that exerted over military personnel and shall be determined by, but not necessarily limited to, the following:

(1) *Incidents favoring equivalency*—(i) *Uniqueness of service.* Civilian service (civilian employment or contractual service) is a vital element of the war-fighting capability of the Armed Forces. Civilian service during a period of armed conflict is not necessarily equivalent to active military service, even when performed in a combat zone. Service must be beyond that generally performed by civilian employees and must be occasioned by unique circumstances. For civilian service to be recognized under this part, the following factors must be present:

(A) The group was created or organized by U.S. Government authorities to fill a wartime need or, if a group was not created specifically for a wartime need, but existed before that time, then its wartime mission was of a nature to substantially alter the organization's prewar character.

(B) If the application is based on service in a combat zone, the mission of the group in a combat zone must have been substantially different from the mission of similar groups not in a combat zone.

(ii) *Organizational authority over the group.* The concept of military control is reinforced if the military command authority determines such things as the structure of the civilian organization, the location of the group, the mission and activities of the group, and the staffing requirements to include the length of employment and pay grades of the members of the group.

(iii) *Integration into the military organization.* Integrated civilian groups are subject to the regulations, standards, and control of the military command authority.

(A) Examples include the following:

(*1*) Exchanging military courtesies.

(*2*) Wearing military clothing, insignia, and devices.

(*3*) Assimilating the group into the military organizational structure.

(*4*) Emoluments associated with military personnel; i.e., the use of commissaries and exchanges, and membership in military clubs.

(B) A group fully integrated into the military would give the impression that the members of the group were military, except that they were paid and accounted for as civilians.

(C) Integration into the military may lead to an expectation by members of the group that the service of the group imminently would be recognized as active military service. Such integration acts in favor of recognition.

(iv) *Subjection to military discipline.* During past armed conflicts, U.S. military commanders sometimes restricted the rights or liberties of civilian members as if they were military members.

(A) Examples include the following:

(*1*) Placing members under a curfew.

(*2*) Requiring members to work extended hours or unusual shifts.

(*3*) Changing duty assignments and responsibilities.

(*4*) Restricting proximity travel to and from the military installation.

(*5*) Imposing dress and grooming standards.

(B) Consequences for noncompliance might include a loss of some privilege, dismissal from the group, or trial under military law. Such military discipline acts in favor of recognition.

(v) *Subjection to military justice.* Military members are subject to the military criminal justice system. During times of war, "persons serving with or accompanying an Armed Force in the field" are subject to the military criminal justice code. Those who were serving with the U.S. Armed Forces may have been treated as if they were military and subjected to court-martial jurisdiction to maintain discipline. Such treatment is a factor in favor of recognition.

(vi) *Prohibition against members of the group joining the armed forces.* Some organizations may have been formed to serve in a military capacity to overcome the operation of existing laws or treaty or because of a governmentally established policy to retain individuals in the group as part of a civilian force. These factors act in favor of recognition.

(vii) *Receipt of military training and/or achievement of military capability.* If a group employed skills or resources that were enhanced as the result of military training or equipment designed or issued for that purpose, this acts toward recognition.

(2) *Incidents not favoring equivalency*—(i) *Submission to the U.S. Armed Forces for protection.* A group that seeks protection and assistance from the U.S. Armed Forces and submits to military control for its own well-being is not deemed to have provided service to the Armed Forces equivalent to AD military service, even though the group may have been as follows:

(A) Armed by the U.S. military for defensive purposes.

(B) Routed by the U.S. military to avoid the enemy.

(C) Instructed by the U.S. military for the defense of the group when attacked by, or in danger of attack by, the enemy.

(D) Otherwise submitted themselves to the U.S. military for sustenance and protection.

(ii) *Permitted to resign.* The ability of members to resign at will and without penalty acts against military control. Penalty may be direct and severe, such as confinement, or indirect and moderate, such as difficult and costly transportation from an overseas location.

(iii) *Prior recognition of group service.* Recognition of a group's service by agencies of State or local government does not provide support in favor of recognition under this part.

(3) *Status of group in international law.* In addition to other factors, consideration will be given to whether members of the group were regarded and treated as civilians, or assimilated to the Armed Forces as reflected in treaties, customary international law, judicial decisions, and U.S. diplomatic practice.

(c) *Reconsideration.* Applications by groups previously denied a favorable determination by the Secretary of the Air Force shall be reconsidered under this part if the group submits evidence that is new, relevant, and substantive. Any request that the DoD Civilian/Military Service Review Board established hereunder (see § 47.5(b)) determines does not provide new, relevant, and substantive evidence shall be returned to the applicant with the reasons for nonacceptance.

(d) *Counsel Representation.* Neither the Department of Defense nor Department of Transportation shall provide representation by counsel or defray the cost of such representation with respect to any matter covered by this part.

§ 47.5 Responsibilities.

(a) The Assistant Secretary of Defense (Force Management and Personnel) (ASD(FM&P)) shall:

(1) Appoint a primary and an alternate member in the grade of O–6 or GM–15 or higher to the DoD Civilian/Military Service Review Board.

(2) Exercise oversight over the Military Departments and the U.S. Coast Guard for compliance with this Directive and in the issuance of discharge documents and casualty reports to members of recognized groups.

(b) The Secretary of the Air Force, as the designated Executive Agent of the Secretary of Defense for the administration of Public Law 95–202 shall:

(2) Establish the DoD Civilian/Military Service Review Board and the Advisory Panel.

(2) Appoint as board president a member or employee of the Air Force in grade O–6 or GM–15 or higher.

(3) Request the Secretary of Transportation to appoint an additional voting member from the U.S. Coast Guard when the board is considering the application of a group claiming active Coast Guard service.

(4) Provide a recorder and an assistant to maintain the records of the board and administer the functions of this part.

(5) Provide nonvoting legal advisors and historians.

(6) Publish notices of group applications and other Public Law 95–202 announcements in the **Federal Register.**

(7) Consider the rationale and recommendations of the DoD Civilian/Military Service Review Board.

(8) Determine whether the service rendered by a civilian or contractual group shall be considered AD service to the U.S. Armed Forces for all laws administered by the VA. The decision of the Secretary of the Air Force is final. There is no appeal.

(9) Notify the following persons in writing when a group determination is made (if the Secretary of the Air Force disagrees with the rationale or recommendations of the board, the Secretary of the Air Force shall provide the decision and reasons for it in writing to these persons):

(i) The applicant(s) for the group.

(ii) The Secretary of the Department of Veterans Affairs.

(iii) The Secretary of the Army.

(iv) The Secretary of the Navy.

(v) The ASD (FM&P).

(vi) The Secretary of Transportation (when a group claims active Coast Guard service).

(c) The Secretary of the Army, Secretary of the Navy, Secretary of the Air Force, and Commandant of the Coast Guard shall:

(1) Appoint to the board a primary and an alternate member in the grades of O–6 or GM–15 or higher from their respective Military Services.

(2) Process applications for discharge documents from individuals claiming membership in a recognized group in accordance with applicable laws, Directives, the Secretary of the Air Force rationale and instrument effecting a group determination, and any other instructions of the board.

(3) Determine whether the applicant was a member of a recognized group after considering the individual's evidence of membership and verifying the service against available Government records.

(4) Issue a DD Form 214, "Certificate of Release or Discharge from Active Duty," and a DD Form 256, "Honorable Discharge Certificate," or a DD Form 257, "General Discharge Certificate," as appropriate, consistent with DoD

Instruction 1336.1 [1] and DoD Directive 1332.14 [2] and the implementing documents of the appropriate statutes of the Military Department concerned or the DoT and the instructions of the DoD Civilian/Military Service Review Board.

(5) Issue a DD Form 1300, "Report of Casualty," in accordance with DoD Instruction 1300.9 [3] if a verified member was killed during the period of AD service.

(6) Ensure that each DD Form 214, "Certificate of Release or Discharge from Active Duty," and each DD Form 1300, "Report of Casualty," have the following statement entered in the "Remarks" section:

This document, issued under Public Law 95–202 (38 U.S.C. 106 Note), administratively establishes active duty service for the purposes of Department of Veterans Affairs benefits.

(7) Determine the equivalent military pay grade, when required by the Department of Veterans Affairs. For VA benefits, a pay grade is needed only in cases when an individual was killed or received service-connected injuries or disease during the recognized period of AD service. A DD Form 1300 shall be issued with the equivalent pay grade annotated for a member who died during the recognized period of service. A DD Form 214 shall not include pay grade, unless the Department of Veterans Affairs requests that a grade determination be given. Determinations of equivalent grade shall be based on the following criteria in order of importance:

(i) Officially recognized organizational grade or equivalent rank.

(ii) The corresponding rank for civilian pay grade.

(iii) If neither of the criteria in paragraphs (c)(7) (i) and (ii) of this section, and applies, only one of three grades may be issued; i.e., O–1, E–4, or E–1. Selection depends on the nature of the job performed, the level of supervision exercised, and the military privileges to which the individual was entitled.

(8) Adjudicate applicant challenges to the period of AD service, characterization of service, or other administrative aspects of the discharge documents issued.

§ 47.6 Procedures.

(a) *Submitting group applications.* Applications on behalf of a civilian or contractual group shall be submitted to the Secretary of the Air Force using the instructions in appendix A to this part.

(b) *Processing group applications.* (1) When received, the recorder shall review the application for sufficiency and either return it for more information or accept it for consideration and announce acceptance in the **Federal Register.**

(2) The recorder shall send the application to the appropriate advisory panel for historical review and analysis.

(3) When received, the recorder shall send the advisory panel's report to the applicant for comment. The applicant's comments shall be referred to the advisory panel if significant disagreement requires resolution. Additional comments from the historians also shall be referred to the applicant for comment.

(4) The DoD Civilian/Military Service Board shall consider the group application, as established, in paragraph (a) and paragraphs (b) (1) through (3) of this section.

(5) After the Secretary of the Air Force makes a decision, the recorder shall notify the applicant of the decision and announce it in the **"Federal Register."**

(c) *Submitting individual applications.* When a group is recognized, individual members may apply to the appropriate Military Department or to the Coast Guard for discharge documents. Submit applications on DD Form 2168, "Application for Discharge of Member or Survivor of Member of Group Certified to Have Performed Active Duty with the Armed Forces of the United States." An application on behalf of a deceased or incompetent member submitted by the next of kin must be accompanied by proof of death or incompetence.

Appendix A to Part 47—Instructions for Submitting Group Applications Under Public Law 95–202

A. In Submitting a Group Application: **1.** Define the group to include the time period that your group provided service to the U.S. Armed Forces.

2. Show the relationship that the group had with the U.S. Armed Forces, the manner in which members of the group were employed, and the services the members of the group provided to the Armed Forces.

3. Address each of the factors in § 47.4.

4. Substantiate and document the application. (The burden of proof rests with the applicant.)

B. Send Completed Group Applications To: Secretary of the Air Force (SAF/MRC), DoD Civilian/Military Service Review Board, Washington, DC 20330–1000.

Appendix B to Part 47—The DoD Civilian/Military Service Review Board and the Advisory Panel

A. Organization and Management

1. The board shall consist of a president selected from the Department of the Air Force and one representative each from the OSD, the Department of the Army, the Department of the Navy, the Department of the Air Force, and the U.S. Coast Guard (when the group claims active Coast Guard service). Each member shall have one vote except that the president shall vote only to break a tie. The board's decision is determined by majority vote. The president and two voting members shall constitute a quorum.

2. The advisory panel shall act as a nonvoting adjunct to the board. It shall consist of historians selected by the Secretaries of the Military Departments and, if required, by the Secretary of Transportation. The respective Military Departments and the DOT shall ensure that the advisory panel is provided with administrative and legal support.

B. Functions

1. The board shall meet in executive session at the call of the president, and shall limit its reviews to the following:

a. Written submissions by an applicant on behalf of a civilian or contractual group. Presentations to the board are not allowed.

b. Written report(s) prepared by the advisory panel.

c. Any other relevant written information available.

d. Factors established in this part for determining AD service.

2. The board shall return to the applicant any application that does not meet the eligibility criteria established in § 47.4(a). The board only needs to state the reasons why the group is ineligible for consideration under this part.

3. If the board determines that an application is eligible for consideration under § 47.4(a), the board shall provide, to the Secretary of the Air Force, a recommendation on the AD service determination for the group and the rationale for that recommendation that shall include, but not be limited to, a discussion of the factors listed in § 47.4.

a. No factors shall be established that require automatic recognition. Neither the board nor the Secretary of the Air Force shall be bound by any method in reaching a decision.

b. Prior group determinations made under Public Law 95–202 do not bind the board or the Secretary of the Air Force. The board and the Secretary of the Air Force fully and impartially shall consider each group on its own merit in relation to the factors listed in section D. of this Directive.

Dated: September 25, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89–23060 Filed 9–28–89; 8:45 am]

BILLING CODE 3819–01–M

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, Attn: 1053, 5801 Tabor Avenue, Philadelphia, PA 19120.

[2] See footnote 1 to § 47.5(c)(4).

[3] See footnote 1 to § 47.5(c)(4).

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD11-89-15]

Special Local Regulations; Navy Fleetweek Parade of Ships and Blue Angels Demonstration; San Francisco Bay, CA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Permanent special local regulations are adopted for the annual U.S. Navy and the City of San Francisco "Fleetweek" event on San Francisco Bay. "Fleetweek" takes place annually in early October, and it features a parade of ships sailing into the Bay and low level air shows performed by the Navy's Blue Angels and other aircraft along the San Francisco waterfront. These regulations restrict vessel traffic in the regulated areas during the Fleetweek event to ensure the safety of participants and spectators. Annual notice of the specific dates and times of these regulations will be published in the Local Notice to Mariners and in the **Federal Register.**

EFFECTIVE DATE: September 29, 1989. Compliance with these regulations will be required on different dates and times. The Eleventh Coast Guard District Commander will publish notices in the Local Notice to Mariners and in the **Federal Register** announcing the date and times when these regulations are in effect.

FOR FURTHER INFORMATION CONTACT: Lieutenant G.E. Dunn, Coast Guard Group San Francisco, California. Telephone (415) 339-3445.

SUPPLEMENTARY INFORMATION: On August 9, 1989, the Coast Guard published a notice of proposed rule making in the **Federal Register** for these regulations (54 FR 32659). Interested persons were requested to submit comments and no comments were received. An editorial change was made for regulated area "Bravo" to show it would be in effect for other performing aircraft in addition to the Blue Angels. Additionally, the northwast coordinate for regulated area "Bravo" was modified to provide a more uniform area.

Drafting Information: The drafters of these regulations are Lieutenant G.E. Dunn, project officer, Coast Guard Group San Francisco, and Lieutenant Commander J. J. Jaskot, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Comments and Final Rule

No comments were received in response to the notice of proposed rule making. Copies of the proposed regulations were provided to interested individuals who attended a meeting with U.S. Navy and Coast Guard representatives on August 28, 1989, to discuss other planning issues related to Fleetweek 1989.

These regulations replace the Coast Guard Captain of the Port's annual issuance each October of regulations creating safety zones for the U.S. Navy/City of San Francisco "Fleetweek" event. The Fleetweek activities are highlighted by the Navy Parade of Ships and the Navy Blue Angels Aerial Show.

Regulated area "Alpha" will ensure unobstructed waters for safe navigation for the Parade of Navy Ships proceeding inbound via the Eastbound San Francisco Bay Traffic Lane. At specific times to be annually announced in Local Notice to Mariners and in the **Federal Register**, the naval vessels will sail in a column under the Golden Gate Bridge. The vessels will be spaced approximately 500 yards apart and will proceed at about 10 knots. The ship parade will sail along the San Francisco waterfront in the Eastbound San Francisco Bay Traffic Lane to a location near the San Francisco-Oakland Bay Bridge where the ships will disperse to their respective moorings. Except for persons or vessels authorized by the Coast Guard Patrol Commander, in regulated area "Alpha" no person or vessel may enter or remain within 500 yards ahead of the lead naval parade vessel, within 200 yards astern of the last parade vessel, and within 200 yards on either side of all parade vessels.

An aerial demonstration by the U.S. Navy Blue Angels and other aircraft will begin after the ship parade clears the San Francisco-Oakland Bay Bridge. In preparation for this demonstration, the Blue Angels will conduct a familiarization flight, with specific times to be annually announced, on the Thursday preceding the Saturday Parade of Ships, and a practice flight at approximately 12:00 Noon on the Friday preceding the Saturday Parade of Ships. On that Thursday, Friday, and Saturday, regulated area "Bravo" will cover the Blue Angels' flight line from Fort Point to Blossom Rock. The extremely low altitude passes require vessels to keep clear for the safety of the aircraft, vessels, and persons onboard. An aerial demonstration may be scheduled on Sunday if weather prevents the Saturday performance. The regulated area for the performance by the Blue Angels and other aircraft will restrict vessel access to some marinas and commercial docks. The short duration and minimal size of the regulated area will minimize any inconvenience.

Persons and vessels shall not enter or remain within the stated distances from the naval parade vessels in regulated area "Alpha", or enter or remain within regulated area "Bravo", unless authorized by the Coast Guard Patrol Commander. Fleetweek activities have traditionally attracted a sizable fleet of vessels, and large vessel operators needing to transit near Fleetweek activities are encouraged to make such transits well before or after the regulated areas are in effect.

Because of the nature of these regulations, and the fact that the regulations need to be in place for the October 1989 Fleetweek event, the Coast Guard has determined that good cause exists to make this rule effective in less than 30 days following publication in the **Federal Register.**

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under Department of Transportation regulatory policies and procedures (44 CFR 11034; February 26, 1979). The economic impact of this proposal has been found to be so minimal that a full regulatory evaluation is unnecessary. The short length of time and minimal size of the regulated areas will have minimal economic impact. Advance notice of the maritime event will also minimize the impact to maritime commerce. In prior years, Fleetweek activities have not created significant economic impact.

Since the 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.

Federalism Assessment

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

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Final Regulations: In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

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

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Section 100.1105 is added to read as follows:

§ 100.1105 San Francisco Bay Navy Fleetweek Parade of Ships and Blue Angels Demonstration.

(a) *Effective Periods.* This section is effective during the U.S. Navy/City of San Francisco Fleetweek Parade of Navy Ships and Navy Blue Angels and other airshow activities held annually in early October, from Thursday through Saturday (with a possible Sunday Blue Angels Flight Demonstration if weather prevents a Saturday performance). Annual notice of the specific effective dates and times of these regulations will be published by the Coast Guard in the Local Notice to Mariners and in the **Federal Register**. To be placed on the Local Notice to Mariners mailing list contact: Commander (oan), Eleventh Coast Guard District, 400 Oceangate Boulevard, Long Beach, CA 90822–5399.

(b) *Regulated Areas:* The following areas are designated "regulated areas" during the Navy Parade of Ships and Blue Angels' Flight activities.

(1) *Regulated Area "Alpha" for Navy Parade of Ships.* The waters of San Francisco Bay bounded by a line connecting the following points:

Latitude	*Longitude*
37°48'40" N	122°28'38" W
37°49'10" N	122°28'41" W
37°49'31" N	122°25'18" W
37°49'06" N	122°24'08" W
37°47'53" N	122°22'42" W
37°46'00" N	122°22'00" W
37°46'00" N	122°23'07" W

and thence along the shore to the point of beginning.

(2) *Regulated Area "Bravo" for U.S. Navy Blue Angels Activities.* The waters of San Francisco Bay bounded by a line connecting the following points:

Latitude	*Longitude*
37°48'53" N	122°24'08" W
37°49'32" N	122°24'16" W
37°49'01" N	122°27'53" W
37°48'21" N	122°27'44" W

and thence to the point of beginning.

Datum: NAD 83

(c) *Regulations:* All persons and/or vessels not authorized as participants or official patrol vessels are considered spectators. The "official patrol" consists of any Coast Guard, public, state or local law enforcement vessels assigned and/or approved by Commander, Coast Guard Group San Francisco to patrol the Fleetweek event.

(1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, in regulated area "Alpha" no person or vessel may enter or remain within 500 yards ahead of the lead Navy parade vessel, within 200 yards astern of the last parade vessel, and within 200 yards on either side of all parade vessels. No person or vessel shall anchor, block, loiter in, or impede the through transit of ship parade participants or official patrol vessels in regulated area "Alpha."

(2) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain within regulated area "Bravo."

(3) When hailed and/or signaled by an official patrol vessel, a person or vessel shall come to an immediate stop. Persons or vessels shall comply with all directions given.

(4) The Patrol Commander shall be designated by the Commander, Coast Guard Group San Francisco, California. The Coast Guard Patrol Commander is empowered to forbid and control the movement of all vessels in the regulated areas.

Dated: September 19, 1989.

J. W. Kime,

Rear Admiral, U.S. Coast Guard Commander, Eleventh Coast Guard District.

[FR Doc. 89–22974 Filed 9–28–89; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 100

[CGD11–89–16]

Special Local Regulations; Navy Fleetweek Parade of Ships and Blue Angels Demonstration; San Francisco Bay, CA

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation of 33 CFR 100.1105.

SUMMARY: This notice implements 33 CFR 100.1105 for the Navy Fleetweek Parade of Ships and Blue Angels Demonstration, San Francisco Bay, California. This Fleetweek event features a parade of ships sailing into the Bay and low level air shows performed by the Navy's Blue Angels and other aircraft along the San Francisco waterfront. The regulations in 33 CFR 100.1105 are needed to restrict vessel traffic in the regulated areas during Fleetweek 1989 to ensure the safety of participants and spectators.

EFFECTIVE DATE: The regulations in 33 CFR 100.1105 become effective on Friday, October 6, 1989, and Saturday, October 7, 1989, as follows:

Regulated area "Alpha" for the Navy Parade of Ships becomes effective at 10:30 a.m. PDT, October 7, 1989, and terminates at 12:30 p.m. PDT, October 7, 1989.

Regulated area "Bravo" for the Blue Angels practice flight becomes effective at 12:30 p.m. PDT, October 6, 1989, and terminates at 3:00 p.m. PDT, October 6, 1989, unless sooner terminated by Commander, Coast Guard Group San Francisco. Regulated Area "Bravo" for the Blue Angels and other airshow activities becomes effective again at 12:00 noon PDT, October 7, 1989, and terminates at 3:00 p.m. PDT, October 7, 1989. (In the case of postponement of the airshow due to inclement weather, regulated area "Bravo" becomes effective at 12:00 noon PDT, October 8, 1989, and terminates at 3:00 p.m. PDT, October 8, 1989.)

FOR FURTHER INFORMATION CONTACT: Lieutenant G. E. Dunn, Operations Officer, Coast Guard Group San Francisco, California. Telephone (415) 339–3445.

Drafting Information: The drafters of this notice are Lieutenant G. E. Dunn, project officer, Coast Guard Group San Francisco, and Lieutenant Commander J. J. Jaskot, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Notice: The U.S. Navy/City of San Francisco "Fleetweek" Navy Parade of Ships and the Navy Blue Angels Aerial Show will be held on Saturday, October 7, 1989. Regulated area "Alpha" will ensure unobstructed waters for safe navigation for the Parade of Navy Ships proceeding inbound via the Eastbound San Francisco Bay Traffic Lane. Following the ship parade, regulated area "Bravo" for the aerial demonstration by the U.S. Navy Blue Angels and other aircraft will ensure the safety of the aircraft, vessels, and persons onboard. In preparation for this demonstration, the Blue Angels will conduct a practice flight at approximately 1:00 p.m. on Friday, October 6, 1989. An aerial demonstration may be scheduled on Sunday, October 8, 1989, if weather prevents the Saturday performance. The regulated area for the performance by the Blue Angels and other aircraft will restrict vessel access to some marinas and commercial docks. The short duration and minimal size of the regulated area will minimize any inconvenience.

Persons and vessels shall not enter or remain within the stated distances from the naval parade vessels in regulated area "Alpha", or enter or remain within regulated area "Bravo", unless authorized by the Coast Guard Patrol Commander. Fleetweek activities have traditionally attracted a sizable fleet of vessels, and large vessel operators needing to transit near Fleetweek activities are encouraged to make such

transits well before or after the regulated areas are in effect.

Dated: September 19, 1989.

J. W. Kime,

Rear Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 89-22973 Filed 9-28-89; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 151

[CGD 88-100a]

RIN 2115-AC35

Noxious Liquid Substances Lists

AGENCY: Coast Guard, DOT.

ACTION: Interim final rule and request for comments.

SUMMARY: The Coast Guard is amending its Noxious Liquid Substances (NLSs) regulations to include substances recently authorized for carriage by the Coast Guard or added to the International Maritime Organization's (IMO) Chemical Codes and is making minor editorial changes and corrections. This action updates the current lists of oil-like and non-oil-like NLSs allowed for carriage.

DATES: This rule is effective September 29, 1989. Comments must be received on or before October 30, 1989.

ADDRESSES: Comments on the material added or changed since publication of the notice of proposed rulemaking may be mailed to Executive Secretary, Marine Safety Council, (G-LRA-2/3600) (CGD 88-100a), U.S. Coast Guard, Washington, DC 20593-0001. Comments received may be inspected or copied at the Office of the Marine Safety Council, U.S. Coast Guard, Room 3600, 2100 Second Street SW., Washington, DC 20593-0001 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis G. Payne, Hazardous Materials Branch, (202) 267-1577.

SUPPLEMENTARY INFORMATION: On December 5, 1988, a notice of proposed rulemaking, entitled "Noxious Liquid Substances Lists" was published in the **Federal Register** (53 FR 49016). The Coast Guard received no comments on the proposed rulemaking. A public hearing was not requested and one was not held.

This interim final rule is being made effective in less than 30 days after publication in the **Federal Register** in order to coincide with the publication of a related rulemaking appearing elsewhere in this edition of the **Federal Register** (Coast Guard Docket CGD 88-100). This rulemaking concerns substances previously authorized for carriage by the Coast Guard or added by the International Maritime Organization to its Chemical Codes. Therefore, the Coast Guard for good cause finds that this interim final rule should be made effective in less than 30 days.

The Coast Guard has added or changed certain entries since publication of the notice of proposed rulemaking (NPRM). These additions and changes are identified in the "Discussion of Comments and Changes to the NPRM" section of this preamble and are changes made to incorporate the new Pollution Categories (Pol. Cat.'s) established by the International Maritime Organization (IMO) after publication of the NPRM. These Pol. Cat.'s are not newly devised by the Coast Guard but presently are being applied internationally by the tank vessel industry.

In order to provide full opportunity for public comment on the additions and changes made since the NPRM, the Coast Guard is soliciting comments on these additions and changes. The deadline for receipt of comments is October 30, 1989.

Persons submitting comments should include their name and address, reference the docket number (CGD 88-100a) and the specific section of the rule to which each comment applies, and give the reasons for each comment. If acknowledgment of receipt of comments is desired, a stamped, self-addressed postcard or envelope should be enclosed.

All comments received before the expiration of the comment period will be considered before final action is taken on this rule. No public hearing is planned, but one may be held at a time and place to be set in a later notice in the **Federal Register** if requested in writing and it is determined that the opportunity to make oral presentation will aid the rulemaking process.

Drafting Information

The principal persons involved in drafting this document are Mr. Curtis G. Payne, Project Manager, and Mr. Stephen H. Barber, Project Counsel, Office of Chief Counsel.

Background

The Coast Guard is revising its lists of Category D Noxious Liquid Substances (NLSs) and Category C and D Oil-like NLSs by including in these lists new entries added to table 30.25-1 of 46 CFR part 30 and table 2 of 46 CFR part 153 by a separate rulemaking appearing elsewhere in this edition of the **Federal Register** (Coast Guard Docket CGD 88-100a).

After the NPRM was published on December 5, 1988, the Marine Environment Protection Committee (MEPC) of the International Maritime Organization (IMO), at its 27th session in March of 1989, and with the IMO's Marine Safety Committee (MSC), in April 1989, established the final carriage requirements and Pollution Categories (Pol. Cat.'s) for chemical commodities permitted to be carried internationally in bulk by tank vessel. These final Pol. Cat.'s and carriage requirements were published in the various MEPC 27 documents in March 1989 and in MSC documents in April 1989. These documents are supplemented by MEPC/Circular 214 (dated 9 May 1989), which contains a list of provisional classifications for newly evaluated commodities. Together, these documents take into account all prior proposed additions, corrections, and changes by the various IMO bodies, through and including the recommendations of the 18th session of the Subcommittee on Bulk Chemicals.

This interim final rule reflects IMO's final and provisional determinations, with the exception of upgrades to entries currently in the IMO Chemical Codes ("upgrades" include increased carriage requirements or revised, higher Pol. Cat.'s, or both) and the category of commodities called "Lube Oil Additive" (LOA). The upgrades and LOA's will be incorporated into the Coast Guard's regulations by future rulemaking projects.

The interim final rule brings the Coast Guard's regulations into alignment with the international IMO Chemical Codes.

A number of entries which the notice of proposed rulemaking (NPRM) would have added to the list in § 151.47 have had their Pollution Category (Pol. Cat.) changed by IMO, generally upgraded, to a higher Category. The interim final rule reflects these changes. Because the list in § 151.47 identifies Pol. Cat. D commodities only, those entries whose Pol. Cat. has been changed from D have not been included in the interim final rule.

Discussion of Comments and Changes to the NPRM

1. *Section 151.47.* Several commodities are deleted from the list as shown in the notice of proposed rulemaking. They are:

Butene oligomer	Now a Pol. Cat. B.
Calcium alkyl salicylate	Now a Pol. Cat. C.
Diethylene glycol phenyl ether.	Pol. Cat. has been recinded.

Ethyl cyclohexane	Now a Pol. Cat. C.
Ethylene glycol butyl ether acetate.	Now a Pol. Cat. C.
Nonane	Now a Pol. Cat. C.
Octane	Now a Pol. Cat. C.
Pentane (iso-)	Now a Pol. Cat. C.
iso-Propylcylohexane	Now a Pol. Cat. C.

There are two additions to the list. They are "Alkyl(C9–C17) benzenes" and "Dodecenylsuccinic acid, dipotassium salt solution".

2. *Section 151.49.* The lists of oil-like commodities reflects the final IMO list in MEPC/Circular 214.

E.O. 12291 and DOT Regulatory Policies and Procedures

These regulations are considered to be non-major under Executive Order 12291 and nonsignificant under the Department of Transportation (DOT) regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this interim final rule has been found to be so minimal that further evaluation is unnecessary. This rulemaking is administrative in nature and merely updates chemical lists by adding substances recently authorized by the Coast Guard or added to the IMO Chemical Codes and by making non-substantive corrections.

Regulatory Flexibility Act

Because the impact of this interim final rule is expected to be minimal, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this interim final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rulemaking contains no information collection or recordkeeping requirements.

Federalism Implications

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

Environmental Assessment

The Coast Guard has considered the environmental impact of the regulations and concluded that, under section 2.B.2. of Commandant Instruction M16475.1B, the regulations are categorically excluded from further environmental documentation. This rulemaking is an administrative update of lists of chemicals already approved under Coast Guard regulations or international law. A Categorical Exclusion Determination Statement has been prepared and is included in the regulatory docket.

RIN Number

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 33 CFR Part 151

Oil pollution, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, 33 CFR part 151 is amended as follows:

PART 151—OIL AND NOXIOUS LIQUID SUBSTANCE REGULATIONS

1. The authority citation for part 151 is revised to read as follows:

Authority: 33 U.S.C. 1321(j)(1)(C), 1902(c), and 1903(b); E.O. 11735; 49 CFR 1.46.

2. In § 151.47, by revising the section heading and the list to read as follows:

§ 151.47 Category D NLSs other than oil-like Category D NLSs that may be carried under this part.

* * * * *

Acetophenone
Acrylonitrile-Styrene copolymer dispersion in Polyether polyol
Alkyl(C9 - C17) benzenes
Ammonium nitrate solution (45% or less)
Ammonium nitrate, Urea solution (2% or less NH_3)
Ammonium phosphate, Urea solution
Ammonium sulfate solution (20% or less)
Amyl alcohol (iso-, n-, sec-, primary)
Brake fluid base mixtures
Butyl acetate (sec-)
Butylene glycol
iso-Butyl formate
n-Butyl formate
Butyrolactone (gamma)
Calcium hydroxide slurry
Caprolactam solutions
Choline chloride solutions
Decahydronaphthalene
Decane
Decylbenzene (n-)
Diacetone alcohol
Dialkyl(C10 - C14) benzenes
Dialkyl(C7 - C13) phthalates
Diethylene glycol butyl ether acetate
Diethylene glycol dibutyl ether
Diethylene glycol ethyl ether acetate
Diethylene glycol methyl ether acetate
Diethylene glycol phthalate
Di-(2-ethylhexyl)adipate
Di-(2-ethylhexyl)phthalate
1,4-Dihydro-9,10-dihydroxy anthracene, disodium salt solution
Diisobutyl ketone
Diisodecyl phthalate
Diisononyl adipate
Diisononyl phthalate
Diisopropyl naphthalene
2,2-Dimethylpropane-1,3-diol
Dinonyl phthalate
Dipropylene glycol dibenzoate
Dipropylene glycol methyl ether
Ditridecyl phthalate
Diundecyl phthalate
Dodecenylsuccinic acid, dipotassium salt solution
2-Ethoxyethanol
Ethoxy triglycol *(crude)*
Ethyl acetate
Ethyl acetoacetate
Ethyl butanol
Ethylenediamine tetraacetic acid, tetrasodium salt solution
Ethylene glycol
Ethylene glycol acetate
Ethylene glycol dibutyl ether
Ethylene glycol ethyl ether
Ethylene glycol isopropyl ether
Ethylene glycol methyl butyl ether
Ethylene glycol methyl ether
Ethylene glycol methyl ether acetate
Ethylene glycol phenyl ether
Ethylene glycol phenyl ether, Diethylene glycol phenyl ether mixture
2-Ethylhexanoic acid
Ethyl propionate
Ferric hydroxyethylethylene diamine triacetic acid, trisodium salt solution
Fish solubles
Formamide
Glyoxal solution (40% or less)
Heptanoic acid
Hexamethylenediamine adipate
Hexamethylenetetramine solutions
Hexanoic acid
1-Hexanol
N-(Hydroxyethyl)ethylenediamine triacetic acid, trisodium salt solution
Isophorone
Lactic acid
3-Methoxybutyl acetate
Methyl acetoacetate
Methyl butenol
Methyl butyl ketone
Methyl butynol
Methyl isobutyl ketone
Methyl tert-butyl ether
Naphthalene sulfonic acid-formaldehyde copolymer, sodium salt solution
Nonanoic acid (all isomers)
Nonanoic, Tridecanoic acid mixture
Nonyl methacrylate
Noxious Liquid Substance, (17) n.o.s.
Octadecenoamide solution
Octanoic acid
Octyl acetate
Oil, edible:
Babassu
Beechnut
Castor
Cocoa butter
Coconut
Cod liver
Corn
Cottonseed
Fish
Groundnut
Hazelnut

Nutmeg butter
Olive
Palm
Palm kernel
Peanut
Poppy
Raisin seed
Rapeseed
Rice bran
Safflower
Salad
Sesame
Soya bean
Sunflower
Tucum
Vegetable
Walnut
Oil, misc:
Animal, n.o.s.
Coconut oil, esterified
Coconut oil, fatty acid methyl ester
Lanolin
Linseed
Neatsfoot
Oiticica
Palm oil, fatty acid methyl ester
Palm oil, methyl ester
Perilla
Pilchard
Sperm
Tung
Whale
Oleic acid
Palm stearin
Pentaethylenehexamine
Pentanoic acid
Polyalkylene glycols, Polyalkylene glycol monoalkyl ethers mixtures
Polyethylene glycol monoalkyl ether
Polypropylene glycols
Potassium oleate
Propyl acetate (n-)
Propylene glycol monoalkyl ether
Propylene glycol ethyl ether
Propylene glycol methyl ether
Sodium acetate solution
Sodium benzoate solution
Sodium carbonate solutions
Sodium silicate solution
Tallow
Tallow fatty acid
Tetrasodium salt of Ethylenediaminetetraacetic acid solution
Triethylene glycol ethyl ether
Triethylene glycol methyl ether
Triethyl phosphate
Trimethylol propane polyethoxylate
Tripropylene glycol methyl ether
Trisodium salt of N-(Hydroxyethyl)-ethylenediamine triacetic acid solution
Urea, Ammonium mono- and di-hydrogen phosphate, Potassium chloride solution
Urea, Ammonium nitrate solution (2% or less NH_3)
Urea, Ammonium phosphate solution
Waxes:
Candelilla
Carnauba

3. In § 151.49, by revising paragraphs (a) and (b) to read as follows:

§ 151.49 Category C and D Oil-like NLSs allowed for carriage.

* * * * *

(a) The following Category C oil-like NLSs may be carried:

Cylclohexane
p-Cymene
Diethyl benzene
Dipentene
Ethyl benzene
Ethylcyclohexane
Heptene (all isomers)
Hexene (all isomers)
2-Methyl-1-pentene
Nonane (all isomers)
Octane (all isomers)
Pentane (all isomers)
Pentene (all isomers
1-Phenyl-1-xylylethane
Propylene dimer
Tetrahydronaphthalene
Toulene
Xylenes

(b) The following Category D oil-like NLSs may be carried:

Alkyl(C9–C17) benzenes
Diisopropyl naphthalene
Dodecane (all isomers)

Dated: September 22, 1989.

M. J. Schiro,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89–23192 Filed 9–28–89; 8:45 am]
BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[GA–13 (FRL–3652–4)]

Approval and Promulgation of Implementation Plans; Georgia Stack Height Review

AGENCY: EPA.

ACTION: Direct final rule.

SUMMARY: On June 15, 1989, EPA approved a declaration by Georgia that recent revisions to EPA's stack height regulations did not necessitate source specific revisions to the State Implementation Plan (SIP) (54 FR 25451, June 15, 1989). This declaration excluded fifteen sources as they were impacted by one or more of three remanded issues (NRDC vs. Thomas, 838 F.2d 1224 A (D.C. Dir. 1988)). This notice removes Georgia Power's Plant Mitchell, Albany, Georgia from the list of fifteen sources.

DATE: This section will be effective November 28, 1989 unless notice is received on or before October 30, 1989 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Copies of the Document relevant to this action are available for public inspection at the following locations:

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

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460

FOR FURTHER INFORMATION CONTACT: R. Douglas Neeley, EPA Region IV, Air Programs Branch at above listed address and telephone numbers 404–347–2864 or FTS 257–2864.

SUPPLEMENTARY INFORMATION: The June 15, 1989, FRN (54 FR 25451) listed Plant Mitchell as one of fifteen sources that received credit under one of the provisions remanded to EPA in NRDC v. Thomas, 838 F.2d 1224 (D.C. Dir. 1988) regarding EPA's stacks height regulations (50 FR 27892, July 8, 1985).

Plant Mitchell appeared to be affected by the remand since the old stacks were replaced by a single taller stack (within-formula stack height increase) prior to October 11, 1983 (40 CFR 51.100 (kk)(2)). EPA had modeled the facility in 1974 based on stacks in existence prior to December 31, 1970. Therefore, even if the remand results in revised rules, there would be no need to reevaluate Plant Mitchell under Section 123 of the Clean Air Act as the EPA analysis demonstrated attainment of the National Ambient Air Quality Standards based on the pre 1970 configuration.

Final Action

EPA is removing Plant Mitchell from the list of fifteen Georgia sources that no action was taken due to the stack height remand provisions.

The public is advised that this action will be effective 60 days from today. However, if notice is received within 30 days that someone wishes to make adverse or critical comments, this action will be withdrawn and two subsequent notices will be published prior to the effective date. One notice will withdraw final action and another will begin a new rulemaking announcing a proposed action and establishing a comment period.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

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

Under 5 U.S.C. Section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

Under section 308(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 November 28, 1989. 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, Intergovernmental relations, Particulate matter, and Sulfur oxides.

Dated: September 18, 1989.

Lee A. DeHihns III,

Acting Regional Administrator.

40 CFR Part 52 is amended as follows:

PART 52—[AMENDED]

Subpart L—Georgia

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

Authority: 42 U.S.C. 7401–7642.

2. § 52.578 is revised to read as follows:

§ 52.578 Control Strategy: Sulfur oxides and particulate matter.

In a letter dated March 26, 1987, the Georgia Department of Natural Resources certified that no emission limits in the State's plan are based on dispersion techniques not permitted by EPA's stack height rules. This certification does not apply to Georgia Power plants; Hammond (Coosa), McDonough (Smyrna), Arkwright (Macon), Branch (Milledgeville), Wansley (Roopville), Scherer (Juliette), and Yates (Newnan), Savannah Electric Plants McIntosh (Rincon) and Port Wentworth (Port Wentworth); Inland (Rome); Buckeye Cellulose (Oglethorpe); Georgia Kraft (Macon), Union Camp (Savannah); and Stone Container (Savannah).

[FR Doc. 89–23008 Filed 9–28–89; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 62

[FL–031; (FRL–3652–5)]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants in Florida; Total Reduced Sulfur (TRS) From Kraft Pulp Mills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA approved Florida's 111(d) plan for the control of total reduced sulfur (TRS) emission from Kraft Pulp Mills on August 10, 1988 (53 FR 30051). Final compliance for most TRS sources was due on May 12, 1989. Florida is extending the compliance date for St. Joe Forest Products Company, Port St. Joe, Florida to September 14, 1989. EPA concurs with Florida that the extension is justified and is hereby approving the extended compliance schedule as a SIP revision.

DATE: This action will be effective November 28, 1989 unless notice is received on or before October 30, 1989 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Copies of the Document relevant to this action are available for public inspection at the following locations:

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland St. NE., Atlanta, Georgia 30365

Florida Bureau of Air Quality Management, Twin Towers Office Bldg., 2600 Blair Stone Road, Tallahassee, Florida 32301

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460

FOR FURTHER INFORMATION CONTACT: R. Douglas Neeley, EPA Region IV, Air Programs Branch at above listed address and telephone numbers 404–347–2864 or FTS 257–2864.

SUPPLEMENTARY INFORMATION: In accordance with section 111 of the Clean Air Act, Standards of Performance for New Stationary Sources, EPA has promulgated standards of performance for criteria pollutants (those for which National Ambient Air Quality Standards have been published) and noncriteria pollutants. The standards apply to "new" sources (i.e., new, modified, or reconstructed sources) which commenced construction after the date on which EPA proposed standards for that particular source category.

A source in existence prior to the date on which EPA proposed new source performance standards for that particular source category is defined as an "existing source." Paragraph (d) of section 111 of the Clean Air Act requires states to develop plans for the control of emissions of the same non-criteria, or designated, pollutants from such "existing" sources. The requirements for such plans are set forth in subpart B of 40 CFR part 60. (November 17, 1975; 40 FR 53346). Since total reduced sulfur (TRS) is a designated pollutant, regulated under section 111(d) of the CAA, states are required to develop section 111(d) plans for the control of TRS emissions from existing kraft pulp mills contained in the state.

The Florida Department of Environmental Regulation (FDER) submitted its section 111(d) plan for control of TRS emissions from kraft pulp mills and tall oil plants on May 24, 1985. This submittal contained certification that adoption of the plan had been preceded by adequate notice and public hearing.

The plan as submitted contained all the elements needed for an approvable section 111(d) plan pursuant to 40 CFR part 60, subpart N (Adoption and Submittal of State Plans for Designated Facilities), and the guideline document. This plan submittal included: regulations establishing emission standards for all affected sources along with the adoption of necessary definitions; regulations establishing the procedures for the development of individual source compliance schedules to include increments of progress; regulations establishing test methods and procedures for determining compliance with the emission standards; an emission inventory of all designated facilities; regulations establishing procedures for monitoring the status of compliance with emission standards through record-keeping, periodic inspections, and testing; and documentation that the State had legal authority to carry out the plan.

EPA approved the plan on August 10, 1988 (53 FR 30051). As part of that plan, final compliance for digester systems, multiple effect evaporation systems, condensate stripper systems, smelt dissolving tank vents, tall oil plants and combustion devices subject to FDER's Rule 17–2.600(4)(c), FAC was due May 12, 1989. One of the affected sources was St. Joe Forest Products Company, Port St. Joe, Florida, hereinafter referred to as St. Joe. On February 10, 1989, St. Joe petitioned the FDER to issue a variance extending the final compliance date for its black liquor evaporation

system, a batch digester system and a continuous digester system to September 14, 1989. The extension was requested due to delivery delays of major equipment needed to achieve final compliance. FDER held a public hearing on May 9, 1989 concerning the variance request and subsequently issued the variance on June 12, 1989. FDER then submitted the variance as a SIP revision to EPA on July 14, 1989.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. This action will be effective 60 days from the date of this **Federal Register** unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective November 28, 1989.

Final Action

EPA is approving the variance as a SIP revision which extends the final compliance data for the three emission sources at St. Joe from May 12, 1989 to September 14, 1989.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of appeals for the appropriate circuit by November 28, 1989. This action may not be challenged later in proceedings to enforce its requirements (See 307(b)(2).).

Under 5 U.S.C. section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (See 46 FR 8709.)

List of Subjects in 40 CFR Part 62

Air pollution control, Intergovernmental relations, Paper and products industry, Reporting and recordkeeping requirements.

Dated: September 18, 1989.

Lee A. DeHihns, III

Acting Regional Administrator.

Part 62 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 62—[Amended]

Subpart N—Florida

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 62.2350 is amended by adding paragraph (b)(3) to read as follows:

§ 62.2350 Identification of plan.

* * * * *

(b) * * *

(3) The final compliance date to achieve the TRS emission limits for the black liquor evaporation system, the batch digester system and the continuous digester system for St. Joe Paper Company in Port St. Joe is September 14, 1989.

* * * * *

[FR Doc. 89–23009 Filed 9–28–89; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 81

[FL–011; FRL–3652–6]

Designation of Areas for Air Quality Planning Purposes; Florida; Redesignation of Sulfur Dioxide Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is today granting the request by Florida dated August 12, 1983, that Pinellas County be redesignated from nonattainment to attainment for sulfur dioxide. The redesignation of this county is based on implementation of an EPA-approved control strategy, ambient monitoring data, and modeling (block average method) which predicts attainment.

DATES: This action will become effective on October 30, 1989.

ADDRESSES: Written comments on this action should be addressed to Douglas Neeley at the EPA Regional Office listed below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations:

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

Public Information Reference Unit, EPA Library, 401 M Street SW., Washington, DC 20408.

Florida Department of Environmental Regulation, Bureau of Air Quality Management, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32301.

FOR FURTHER INFORMATION CONTACT: Douglas Neeley of the EPA Region IV Air Programs Branch at the address given above, telephone (404) 347–2864 or FTS 257–2864.

SUPPLEMENTARY INFORMATION: On March 3, 1978 (43 FR 8962), EPA designated Pinellas County, Florida as nonattainment for the primary and secondary National Ambient Air Quality Standards (NAAQS) for sulfur dioxide (SO_2). This designation was based on ambient air quality monitoring data which revealed that Pinellas County had experienced sulfur dioxide violations.

Based on this nonattainment designation, the State was required to develop a state implementation plan (SIP) (required by part D of title I of the Clean Air Act, entitled "Plan Requirements for Nonattainment Areas"), which would contain a control strategy to bring the area back into attainment. The State submitted a SIP to satisfy the Part D requirements on April 24, 1979.

From an emission inventory of the area, it was determined that there were only three significant emission points: Stauffer Chemical Company's nodulizing kiln and boiler, and Florida Power Corporation's Anclote Steam-Electric Generating Plant. The State reviewed these sources, and determined that the monitored violations were a direct result of emissions from the Stauffer Chemical nodulizing kiln. The stack gases were emitted at or near ambient temperatures, with a high moisture content and a low exit velocity causing local downwash problems.

Subsequent block average modeling with downwash analysis showed that if the nodulizing kiln's stack height were raised to 49 meters from 26.1 meters and the stack diameter were decreased to 1.22 meters from 6.7 meters, emissions from all sources under the worst meteorological conditions would not

cause a violation of either the primary or secondary SO_2 NAAQS.

The control strategy submitted to EPA called for a variance with a specified compliance schedule for Stauffer Chemical in order that the kiln stack could be rebuilt and modified to increase the height and decrease the diameter in order to eliminate the local downwash problems.

EPA conditionally approved the Florida Part D Plan on March 18, 1980 (45 FR 17140). Following the State's submittal of a part D plan revision on May 28, 1980, which included a special operating permit for Stauffer which would satisfy the requirements specified in the 1980 conditional approval, the part D plan was fully approved by EPA on December 16, 1981 (46 FR 61268).

The redesigned kiln stack went into service on May 26, 1979 (tested in compliance on June 21, 1979). There have been no exceedances of either the primary or secondary SO_2 standard since that time. The plant operated at 70–100% capacity from June 1979 to November 1981, except for a temporary shut-down from May to August 1981. The plant has been shut down since November 20, 1981. Any attempt to reopen the plant would require a new permit and a demonstration that the NAAQS would not be jeopardized.

On August 12, 1983, FDER submitted a redesignation request for Pinellas County for SO_2. EPA proposed to redesignate the area to attainment on November 28, 1984 (49 FR 46767) based on implementation of an EPA-approved control strategy, ambient monitoring data (26 months of monitoring during normal plant operations), and modeling (block average method). No comments were received in response to the notice.

However, at that time, EPA determined that running average modeling should be used rather than block average modeling. Consequently, FDER was asked to run the modeling using running averages rather than block. FDER attempted to do the analysis, but experienced problems with the computer software. However, in December 1985, before FDER had actually run any new modeling, EPA decided that block average modeling was appropriate. This was confirmed in the decision of *NRDC* v. *Thomas*, 845 F.2d 1088 (DC Circuit 1988), as the DC Circuit determined that a State is free to submit a SIP revision using either block or running average. Also during this time, EPA promulgated its revised stack height regulations (July 8, 1985).

The FDER determined that one of the sources included in the original modeling (Anclote Power Plant) was modeled using an actual stack height rather than the Good Engineering Practice (GEP) stack height. The State remodeled using block averages and the correct stack height, and again demonstrated attainment for SO_2. This new modeling was submitted on December 3, 1986. EPA is including this new information in this notice without previous proposal because EPA views it as a noncontroversial amendment and anticipates no adverse comments.

Evidence reviewed by EPA indicates that the sources in Pinellas County to which the SIP SO_2 regulations apply are in compliance with the legally enforceable emission limits.

For a more detailed discussion, please refer to the Technical Support Document which is available for inspection at the EPA Region IV office.

Final Action: Based on an implemented EPA-approved control strategy, 26 months of ambient monitoring data during normal plant operations with no exceedances, and modeling which predicts no problems with the NAAQS for SO_2, EPA today redesignates Pinellas County from nonattainment to attainment for the primary and secondary SO_2 standards.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the officer of Management and Budget exempted Table 2 and 3 SIP revisions (54 FR 222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

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

Under 5 U.S.C. section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (See 46 FR 8709).

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 November 28, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: September 18, 1989.

Lee A. DeHihns, III,

Acting Regional Administrator.

Part 81 of chapter I, title 40 of the Code of Federal Regulations, is amended as follows:

Subpart C—Section 107 Attainment Status Designation

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 81.310 is amended by revising the Florida—SO_2 table to read as follows:

§ 81.310 Florida

* * * * *

FLORIDA—SO_2

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
Duval County			[1] X	
The SW Corner of Pasco County			[1] X	
Hillsborough County			[1] X	
Escambia County			[1] X	
Rest of State				[1] X

[1] EPA designation only.

[FR Doc. 89-23010 Filed 9-28-89; 8:45 am]

BILING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Parts 59 and 60

RIN 3067-AB32

National Flood Insurance Program; Elevation Requirements for Manufactured Homes in Existing Mobile Home Parks or Subdivisions

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Modification of suspension of rule.

SUMMARY: This notice modifies a notice published in the **Federal Register** on July 6, 1988 (53 FR 25332). That notice modifies a notice published in the **Federal Register** on June 30, 1987 (52 FR 24370) which suspended certain revisions to National Flood Insurance Program (NFIP) regulations (§ 60.3(c)(6)) which became effective on October 1, 1986 (51 FR 30290, Aug. 25, 1986), and restored prior provisions of the regulations through March 31, 1988 (in §§ 59.1 and 60.3(c)(12). The suspended provisions required the elevation of manufactured homes placed or substantially improved in existing mobile home parks and subdivisions in special flood hazard areas. The amendments and suspension have been extended on several occasions to allow FEMA sufficient time to complete an analysis of the issue and any necessary rulemaking. This notice further extends the amendment and suspension of the revisions through October 31, 1989 to allow a final rule published elsewhere in this issue to become effective.

EFFECTIVE DATE: Section 60.3(c)(6) published on August 25, 1986 (51 FR 30290), is further suspended until October 31, 1989. The amendments to §§ 59.1 and 60.3(c)(12) published June 30, 1987 (52 FR 24370), are effective until October 31, 1989.

FOR FURTHER INFORMATION CONTACT: Michael F. Robinson, Federal Emergency Management Agency (FEMA), Federal Insurance Administration, 500 C Street SW., Washington, DC 20472; telephone number (202) 646-2717.

SUPPLEMENTARY INFORMATION: On June 30, 1987, the Federal Emergency Management Agency (FEMA) published a notice in the **Federal Register** (52 FR 24370) which suspended until March 31, 1988, a portion of a revision to National Flood Insurance Program (NFIP) criteria which became effective on October 1, 1986. The suspension was subsequently extended through September 30, 1989. The portion of the revisions that was suspended required the elevation of manufactured homes placed or substantially improved in existing mobile home parks and subdivisions (those established prior to the adoption of a community's floodplain management regulations).

FEMA is hereby modifying the July 6, 1988 **Federal Register** notice to extend the suspension of the provision through October 31, 1989 rather than the September 30, 1989. FEMA has published a final rule elsewhere in this issue which proposes to replace the suspended revisions. The extension allows sufficient time for the final rule to become effective upon expiration of the suspension.

Modification of Suspension of Rule

In the "Modification of Suspension of Rule" (FR document 88-15093) beginning on page 25332 in the **Federal Register** of Wednesday, July 6, 1988, make the following modification:

1. On page 25332 in the third column under Modification change "July 31, 1989" to read "October 31, 1989". Therefore the effective date of the rule published on page 24370, June 30, 1987, is extended until October 31, 1989.

Dated: September 21, 1989.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 89-22895 Filed 9-28-89; 8:45 am]

BILLING CODE 6718-21-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 30, 150, 151, and 153

[CGD 88-100]

RIN 2115-AC35

Bulk Hazardous Materials

AGENCY: Coast Guard, DOT.

ACTION: Interim final rule and request for comments.

SUMMARY: The Coast Guard is amending its regulations on carriage of bulk hazardous materials by adding cargoes recently authorized for carriage by the Coast Guard or added to the International Maritime Organization's Chemical Codes and by making minor technical and editorial changes and corrections. This action updates the bulk hazardous materials tables and informs persons shipping a bulk hazardous material of that material's compatibility and special handling requirements.

DATES: This rule is effective September 29, 1989. Comments must be received on or before October 30, 1989.

ADDRESSES: Comments on the material added or changed since publication of the notice of proposed rulemaking may be mailed to Executive Secretary, Marine Safety Council, (G-LRA-2/3600) (CGD 88-100), U.S. Coast Guard, Washington, DC 20593-0001. Comments received may be inspected or copied at the Office of the Marine Safety Council, U.S. Coast Guard, Room 3600, 2100 Second Street SW., Washington, DC 20593-0001 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis G. Payne, Hazardous Materials Branch, (202) 267-1577.

SUPPLEMENTARY INFORMATION: On December 5, 1988, a notice of proposed rulemaking (NPRM), entitled "Bulk Hazardous Materials" was published in the **Federal Register** (53 FR 49018). The Coast Guard received three letters commenting on the proposed rulemaking. A public hearing was not requested and one was not held.

This interim final rule is being made effective in less than 30 days after publication in the **Federal Register** in order to ensure its inclusion in the October 1, 1989 edition of title 46, Code of Federal Regulations (CFR). This rulemaking concerns substances previously authorized for carriage by the Coast Guard or added by the International Maritime Organization to its Chemical Codes. Therefore, the Coast Guard for good cause finds that this interim final rule should be made effective in less than 30 days.

The Coast Guard has added or changed certain entries since publication of the notice of proposed rulemaking (NPRM). These additions and changes are identified in the "Discussion of Comments and Changes to the NPRM" section of this preamble and are summarized as follows:

(1) Changes made as a result of public comments received to the NPRM.

(2) Changes made to incorporate the new carriage requirements and Pollution Categories (Pol. Cat.'s) established by the International Maritime Organization (IMO) after publication of NPRM. These requirements and Pol. Cat.'s are not newly devised by the Coast Guard but presently are being applied internationally by the tank vessel industry.

(3) A change in the Special Requirements for ammonium hydroxide as a result of a tank barge casualty

occuring since publication of the NPRM. See paragraph 6 in the "Discussion of Comments and Changes to the NPRM" section of this preamble.

In order to provide full opportunity for public comment on the additions and changes made since the NPRM, the Coast Guard is soliciting comments on these additions and changes. The deadline for receipt of comments is October 30, 1989.

Persons submitting comments should include their name and address, reference the docket number (CGD 88–100) and the specific section of the rule to which each comment applies, and give the reasons for each comment. If acknowledgment of receipt of comments is desired, a stamped, self-addressed postcard or envelope should be enclosed.

All comments received before the expiration of the comment period will be considered before final action is taken on this rule. No public hearing is planned, but one may be held at a time and place to be set in a later notice in the **Federal Register** if requested in writing and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The principal persons involved in drafting this document are Mr. Curtis G. Payne, Project Manager, and Mr. Stephen H. Barber, Project Counsel, Office of Chief Counsel.

Related Rulemaking

Elsewhere in this edition of the **Federal Register**, the Coast Guard is publishing amendments to its noxious liquid substances lists in 33 CFR 151.47 and 151.49 (Coast Guard docket CGD 88–100a). Where appropriate, changes made in the present rulemaking are also made in §§ 151.47 and 151.49.

Background

This rulemaking updates the Coast Guard's hazardous materials tables in 46 CFR Parts 30, 150, 151, and 153 to include new chemicals and requirements authorized by Coast Guard regulations or international law.

After the NPRM was published on December 5, 1988, the Marine Environment Protection Committee (MEPC) of the International Maritime Organization (IMO), at its 27th session in March of 1989 concurrently with the IMO's Marine Safety Committee (MSC) in April of 1989, established the interim final carriage requirements and Pollution Categories (Pol. Cat.) for chemical commodities permitted to be carried internationally in bulk by tank vessel. These requirements and Pol. Cat's will be incorporated as an amendment to the IMO Chemical Codes (the IBC Code and the BCH Code) in approximately two years. These final Pol. Cat's and carriage requirements were published in the various MEPC 27 documents in March 1989 and in MSC documents in April 1989. These documents are supplemented by MEPC/Circular 214 (dated 9 May 1989), which contains a list of provisional classifications for newly evaluated commodities. Together, these documents take into account all prior proposed additions, corrections, and changes by the various IMO bodies, through and including the recommendations of the 18th session of the Subcommittee on Bulk Chemicals.

This interim final rule reflects IMO's final and provisional determinations, with the exception of upgrades to entries currently in the IMO Chemical Codes ("upgrades" include increased carriage requirements or revised, higher Pol. Cat.'s, or both) and the category of commodities called "Lube Oil Additive" (LOA). The upgrades and LOA's will be incorporated into the Coast Guard's regulations by future rulemaking projects.

During the March 1989 session of the MEPC, two entries in Chapters 17/VI of the IMO Chemical Codes were deleted and one entry moved to Chapters 18/VII; "anthracene oil (coal tar fraction)" was cross referenced to the entry "coal tar", "dodecylbenzene" was moved to Chapters 18/VII because its Pol. Cat. was downgraded to "III", and the entry "fatty alcohols (C12–C22)" was deleted entirely. MEPC/Circular 214 has deleted "palm oil, fatty acid" and included carriage requirements for "tridecylbenzene". These actions are reflected in table 30.25–1 and table 1 of part 153 of this interim final rule.

A number of changes to carriage requirements for a few existing commodity entries were included in the NPRM. A number of additional changes are made in the interim final rule to take into account the final changes to carriage requirements and Pol. Cat.'s implemented by the MEPC and MSC Committees of the IMO.

The interim final rule brings the Coast Guard's regulations into alignment with the international IMO Chemical Codes.

In addition to the above, the Coast Guard is including a new column entitled "Hazards" in table 1 of part 153 which was not in the NPRM. The Hazards column is added to assist industry in determining why a commodity is listed in the Table and what its associated hazards are. The commodities listed because of their safety hazards show an "S", those listed for pollution hazards, a "P", and those listed for both safety and pollution, an "S/P". This new column is informational in nature and has no regulatory impact. It reflects a similar column in IMO's Chemical Codes.

For the benefit of interested parties, the Coast Guard is taking this opportunity to announce that the IMO has published, in MEPC/Circular 214 (9 May 1989), a method to determine the Pol. Cat. and ship type (ST) for previously unclassified cargoes consisting of a mixture of previously classified, pollutant only components. Part 2A.3 of regulation 3(4), annex II to MARPOL 73/78, (Unified Interpretations for Categorization of Substances), states: "In cases where it is necessary to provisionally assess pollutant only mixtures, which contain substances for which the Organization [IMO] has assigned a pollution category or a provisional pollution category and for which the Organization has assigned a ship type or provisional ship type requirement, the following procedure may be applied * * *", followed by a description of relevant information. Part 2A.3 goes on to describe the procedures in annex 1, "Guidelines for the Provisional Assessment of Liquid Substances Offered to be Carried in Bulk" (termed the "mixtures calculation method"), supplemented by annex 4, "Provisional Assessment of Hydrocarbon Families for the Purpose of Mixture Calculations." Copies of the MEPC/Circular 214 are available from IMO by writing to: IMO Secretariat, Publications Section, 4 Albert Embankment, London SE1 7SR, United Kingdom, telex 23588, or from Commandant (G–MTH–1), U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593–0001.

Discussion of Comments and Changes to the NPRM

1. The Coast Guard received three letters commenting on the NPRM. One had several comments concerning various vegetable oils listed in table 30.25–1 and table 1 of part 153. The letter noted that the term, "palm kernel", not "palm nut", is the term used by industry and in international practice. The Coast Guard agrees and is changing the name "palm nut" to "palm kernel" thoughout these rules.

The letter noted that the terms, "coconut oil, methyl ester" and "coconut oil, esterified", are used as synonyms for the proposed entry "coconut oil, fatty acid methyl ester" and that the term, "palm oil, methyl ester", is used as a synonym for the proposed entry "palm oil, fatty acid methyl ester". The Coast

Guard agrees and is adding cross references, as appropriate, to its cargo list in table 30.25–1.

The proposed new entry, "sunflower oil", was identified by the letter as a synonym for "sunflower seed oil", the current entry in the tables. Therefore, the interim final rule (table 30.25–1) cross references "sunflower oil" to "sunflower seed oil".

As a result of these comments, the Coast Guard will recommend these modifications to the IMO's Subcommittee on Bulk Chemicals.

2. A number of vegetable oil fatty acids were proposed for addition to Compatibility group 4 (Organic Acids) in tables 1 and 2 of part 150 based upon their chemical structure. One comment pointed out that, while chemically this is correct, the higher molecular weight fatty acids do not react as typical organic acids (as, for example, with caustics), but rather as esters.

The Coast Guard agrees and is reassigning "fatty acids (saturated, C13 and above)", "lauric acid", "oleic acid", "palm kernel oil, fatty acid", and "stearic acid" to group 34 (Esters) in tables 1 and 2 of part 150.

3. One comment asked why a few entries in the tables list synonyms for the commodity such as "octanol" and "octyl alcohol".

In most instances, the listing of synonyms in Coast Guard regulations comes about as a result of the usage by IMO of a name different from that traditionally used by the Coast Guard. Both names are listed in Coast Guard regulations to facilitate transportation of these commodities under either name. These entries are cross referenced to direct users to the preferred cargo name.

4. One comment concerned a proposed change in the "Fire protection system" column's listed fire fighting media for the entry, "motor fuel anti-knock compounds (containing lead alkyls)", in table 1 of part 153. Type B foam system was deleted and type A added in its place. The comment contends that B should be deleted.

The Coast Guard agrees that type B is a proper fire fighting medium and it has been added in the interim final rule. However, the IMO has proposed a number of changes to the fire fighting media for a lengthy list of commodities. The Coast Guard incorporated these changes in the NPRM and the interim final rule.

5. One comment noted that the wording of the Special Requirements in proposed §§ 151.50–73(b)(4) and 153.933(b)(4) would require protective clothing while using closed gauging. As closed gauging does not present the dangers of chemical splashing or other potential contact with a cargo, the comment recommended that this requirement not be imposed upon closed gauging operations.

These sections have been revised in the interim final rule to indicate that protective clothing is not required during gauging operations by closed system.

6. In table 151.05, for the commodity "ammonium hydroxide (28% or less NH_3)", the Coast Guard is adding a reference in the Special Requirements column to § 151.56–1 (a), (b), (f), and (g). This section prohibits the use of "aluminum or aluminum alloys", "copper or copper alloys", "zinc, galvanized steel, or alloys having more than 10 percent zinc by weight", "silver or silver alloys", and "mercury" in components that contact the cargo or its vapor. This new Special Requirement is being added for "ammonium hydroxide (28% or less NH_3) ", as a direct result of a casualty occurring since the NPRM was drafted which involved this cargo on a tank barge in dedicated ammonium hydroxide service. As a result of this casualty, the Commandant has directed that all barges certificated for the carriage of this commodity be surveyed. Those found to have these materials in piping, pumps, cargo handling, venting, and other systems that come in contact with the cargo will have their carriage authority for this commodity withdrawn until the components in contact are replaced. While adding this special requirement in the interim final rule is substantive in nature, it is required for safe carriage of this commodity.

The Coast Guard is further investigating materials of construction with respect to nickel alloys for this commodity and may add additional restrictions in a future rulemaking. Interested parties having information or comments concerning compatible and incompatible materials of construction are invited to send that information to Commandant (G–MTH–1), U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593–0001.

7. On March 16, 1989, IMO revised its Pollution Category (Pol. Cat.) list, MEPC 27/WP.6/Add.2. As a result, a number of entries have been upgraded to a higher Pol. Cat. and several have had their Pol. Cat. rescinded. The following entries listed in Coast Guard regulations have had a change in Pol. Cat.:

	NPRM	MEPC 27	Final rule
Acetophenone	D	rescinded	@D
Butene oligomer	D	B	B
Calcium alkyl salicylate.	D	C	C
Decaldehyde (iso-)	C	rescinded	@C
Decaldehyde (n-)	B	rescinded	@B
Diethylene glycol phenyl ether.	[D]	rescinded	@D
Dodecenylsuccinic acid, dipotassium salt solution.	[III]	D	D
Dodecylbenzene	C	III	III
Ethyl cyclohexane	D	C	C
Ethylene glycol butyl ether acetate.	D	C	C
iso-Propylcyclohexane.	D	C	C
Sodium dichromate solution.	B	C	C

The Coast Guard is adopting the new Pol. Cat.'s and amending its tables as appropriate. The above entries listed in Table 30.25–1 which have been upgraded from Pol. Cat. D are upgraded in the interim final rule and added to table 1 of part 153 with the appropriate minimum carriage requirements. "Dodecylbenzene", as listed in proposed table 1 of part 153, is removed from that table and added to table 30.25–1 because of the downgrading of its Pol. Cat. from C to III (i.e. appendix III of Annex II to MARPOL 73/78).

Commodities shown above which had their Pol. Cat. rescinded by IMO will continue to be listed with the former Pol. Cat. in Coast Guard regulations but will be identified by the symbol "@" located in front of the category designation. This symbol indicates that, though carriage will continue to be permitted in U.S. waters, the referenced cargoes may not be transported in foreign waters by U.S. vessels without permission of that country's administration. Upon request by a shipper, manufacturer, broker, or other interested party, the Coast Guard will seek a Tripartite Agreement with the appropriate foreign authorities, as required by regulation 3(4) of MARPOL 73/78, to permit foreign transport of these cargoes.

8. A correction to the ZIP Code shown in 46 CFR 30.10–35 was proposed in the NPRM. This has been accomplished by a separate rulemaking and, thus, is no longer needed.

9. In table 30.25–1, a new commodity, "heptyl acetate", is added. The two entries "heptane (iso-)" and "heptane (n-)" are combined into one entry, "heptane (all isomers)". In the entry, "Naphtha: Solvent", the cross reference to "Coal tar naphtha solvent" is deleted and the Pol. Cat. "B" is changed to "I". The two entries, "coconut oil, esterified" and "coconut oil, methyl ester" are cross referenced to "coconut oil, fatty acid methyl ester". The entry, "palm oil, fatty acid", is deleted as noted in the "Background" section of this preamble.

The entry, "palm oil, methyl ester", is cross referenced to "palm oil, fatty acid methyl ester". The entry, "sunflower oil", is cross referenced to "sunflower seed oil". The Pol. Cat. of several entries are changed as noted in paragraph 7 of this section of the preamble.

0. In tables 1 and 2 of part 150, the entries, "fatty acids (saturated, C13 and above)", "lauric acid", "oleic acid", "palm kernel oil, fatty acid", and "stearic acid" are changed to group 34 from group 4 as noted in paragraph 2 of this section of the preamble. The entry, "palm oil, fatty acid", is deleted as noted in the "Background" section of this preamble. The Group Number and Related CHRIS Code for "tridecane", are corrected to read group "31" (paraffins) and "PFN", respectively. Cross references for the IMO cargo names "diethyl ether" and "rosin" are added. Since publication of the NPRM, the Coast Guard has added a number of new Codes for existing entries. These new Codes are included in the interim final rule and adjustments made as needed to existing Code listings.

11. In table 151.05, Special Requirement reference to § 151.56–1 (a), (b), (c), (f), and (g) for "ammonium hydroxide (28% or less NH_3)" is added as noted in paragraph 6 of this section of the preamble. The Special Requirement reference to § 151.50–5 for "aniline", inadvertently omitted from table 151.05 in the NPRM, is added. A Special Requirement reference to § 151.50–73 (protective clothing) for "butadiene" and "butadiene, butylene mixtures" is added. A cross reference for the IMO cargo name "cresylic acid, sodium salt solution" is added. In the "Tank internal inspect. period-years" column for "ferric chloride solutions", the inadvertently omitted designation "G" is added. In the "Electrical hazard class-group" column for "iso-Propanolamine", the designation "NA" is corrected by replacing it with the designation "I–D". In the "Cargo segregation Tank" column for "Sodium hypochlorite solution (15% or less)", the entry "Iii" is replaced with "li" and, in the "Fire protection required" column, the entry "Yes" is replaced with "No" because this entry is a nonflammable water solution.

12. In table 1 of part 153, the "Cargo containment system" column entry for "Alcohol (C6–C17) (secondary) poly(3–6)ethoxylates" is corrected to read "II" instead of "III", as in the NPRM. The "Cargo containment system" column entry for "Alcohol (C6–C17) (secondary) poly(7–12)ethoxylates" is corrected to read "III" instead of "II", as in the NPRM. A cross reference to the IMO cargo name is added to "ammonia aqueous (28% or less)". "Anthracene oil (Coal tar fraction)" is now shown with a cross reference to "Coal tar", as noted in the "Background" section of this preamble. "Butene oligomer" and "calcium alkyl salicylate" are added to table 1 because their associated Pol. Cat.'s were upgraded by IMO, as noted in the "Background" section of this preamble. In "Cyclohexanone, Cyclohexanol mixture", the Special Requirement reference to § 153.238(d) is replaced with § 135.236(a) and (b). Following "Dinitortoluene (molten)", footnote number "19" is added which prohibits carriage of this cargo in deck tanks, as per IMO. A Special Requirement referencing § 153.488 is added to "Dodecanol". "Dodecylbenzene" is deleted from Table 1 because its Pol. Cat. was downgraded by IMO, as noted in the "Background" section of this preamble. For "Dodecyl diphenyl ether disulfonate solution", a Special Requirement reference to § 153.488 is added. "Ethylcyclohexane" and "Ethylene glycol butyl ether acetate" are added to Table 1 because of an upgrade of their Pol. Cat.'s, as noted in the "Background" section of this preamble. "Fatty alcohols (C12–C22)" is deleted from Table 1, as noted in the "Background" section of this preamble. A cross reference to the IMO cargo name is added to "Glycidyl ester of C10 Trialkyl acetic acid". For "2-Hydroxy-4-(methylthio)butanoic acid", the Special Requirement reference to § 153.903 is added and the Special Requirement reference to § 153.908(b) is deleted. The proposed entry, "Methyl naphthalene" is deleted pending further action by IMO. The vent height for "3–Methylpyridine" is changed from 4m to B/3. Under "Noxious liquid", the Special Requirements for "6", "8", "12" and "14" are modified slightly to list them correctly. The commodity "alpha-Olefins (C6–C18) mixtures" is added to table 1. The two "palm nut" entires are listed as "palm kernel", as noted in paragraph 1 of this section of the preamble, and a Special Requirement reference to § 153.440 is added to each. A Special Requirements reference to §§ 153.488 and 153.908(a) is added to "Phenol (or solutions with 5% or more Phenol)". A Special Requirement reference to § 153.440 is added to "Pine oil". A Special Requirement reference to § 153.440 is added to "Polyalkyl(C18–C22) acrylate in Xylene". Under "iso-Propanolamine", a Special Requirement reference to § 153.903 is added, the Special Requirement reference to § 153.908(a) is changed to § 153.908(b), and, in the "Electrical hazard class and group" column, the designation "NA" is corrected to read "I–D[15]". The Pol. Cat. for "Sodium dichromate solution (70% or less)" is corrected to read "C" instead of "B". A Special Requirement reference to § 153.908(a) is added to "Tall oil soap (disproportionated) solution". A Special Requirement reference to § 153.440 added to "Tetradecylbenzene". Special Requirement references §§ 153.525 and 153.1020 are added to "1, 1,2–Trichloroethane". Carriage requirements are added to "Tridecylbenzene". A Special Requirement reference to § 153.440 is added to "Undecanoic acid". A new footnote "19" is added at the end of table 1.

13. In table 2 of part 153, "Drilling brine (containing Calcium or Sodium salts)" is changed to "Drilling brine (containing Calcium, Potassium, or Sodium salts)". "Sewage sludge" and "Sludge" are changed to "Sewage sludge, treated" and "Sludge, treated", respectively. The proposed entry, "Urea formaldehyde resin solution", is deleted pending further evaluation by the Coast Guard as to its potential health hazards.

E.O. 12291 and DOT Regulatory Policies and Procedures

This interim final rule is considered to be non-major under Executive Order 12291 and nonsignificant under the Department of Transportation (DOT) regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this interim final rule has been found to be so minimal that further evaluation is unnecessary.

This rulemaking is administrative in nature and merely updates chemical tables by adding cargoes recently authorized by the Coast Guard or added to the IMO Chemical Codes and by making other non-substantive editorial changes and corrections.

Regulatory Flexibility Act

Because the impact of this interim final rule is expected to be minimal, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This interim final rule contains no information collection or recordkeeping requirements.

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the

preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of the interim final rule and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, the interim final rule is categorically excluded from further environmental documentation. This rulemaking is an administrative update of tables listing chemicals already approved under Coast Guard regulation or international law. A Categorical Exclusion Determination Statement has been prepared and is included in the regulatory docket.

RIN Number

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects

46 CFR Part 30

Administration practice and procedure, Barges, Foreign relations, Hazardous materials transportation, Penalties, Tank vessels.

46 CFR Part 150

Hazardous materials transportation, Marine safety.

46 CFR Part 151

Barges, Flammable materials, Hazardous materials transportation, Marine safety, Tank vessels.

46 CFR Part 153

Barges, Hazardous materials transportation, Marine safety, Tank vessels.

For the reasons set out in the preamble, 46 CFR parts 30, 150, 151, and 153 are amended as follows:

PART 30—GENERAL PROVISIONS

1. The authority citation for part 30 is revised to read as follows:

Authority: 46 U.S.C. 3507, 3703, 49 U.S.C. 1804; 49 CFR 1.46.

2. In § 30.25–1, by revising table 30.25–1 to read as follows:

§ 30.25–1 Cargoes carried in vessels certificated under the rules of this subchapter.

* * * * *

TABLE 30.25–1—LIST OF FLAMMABLE AND COMBUSTIBLE BULK LIQUID CARGOES

Cargoes	Pollution Category
Acetone	III
Acetophenone	@D
Acetyl tributyl citrate	#
Acrylonitrile-Styrene copolymer dispersion in Polyether polyol	[D]
Alcohols (C13 and above)	III
Alcoholic beverages, n.o.s.	III
Alcohol(C6 - C17)(secondary) poly(3-6)ethoxylates	A
Alcohol(C6 - C17)(secondary) poly(7-12)ethoxylates	B
Alcohol(C12 - C15) poly(1-3)ethoxylates	A
Alcohol(C12 - C15) poly(3-11)ethoxylates	A
Alkenylsuccinic acid	#
Alkenylsuccinic anhydride	#
Alkyl(C9 - C17) benzenes	D
Alkylbenzenesulfonic acid (4% or less)	#
Alkyl phthalates (n-) *see individual phthalates*	#
Alkyl succinate formaldehyde hydroxyamino condensate (3.2% or less)	#
Aminoethyldiethanolamine, Aminoethylethanolamine solution	III
Amyl acetate (iso-, n-)	C
Amyl alcohol (iso-, n-, sec-, primary)	D
Amyl alcohol (tert-)	III
Amylene *see* Pentene (all isomers)	C
Amyl methyl ketone *see* Methyl amyl ketone	C
Amyl tallate	#
Asphalt	I
Asphalt blending stocks:	
Roofers flux	I
Straight run residue	I
Behenyl alcohol	III
Benzene tricarboxylic acid trioctyl ester	III
Benzyl alcohol	C
Bicyclic terpenel polyamine amide salt	#
Brake fluid base mixtures (*containing Poly(2-8)alkylene(C2 - C3) glycols, Polyalkylene(C2 - C10) glycol monoalkyl(C2 - C3) ethers, and their borate esters*)	D
Butane	LFG
Butene see Butylene	
Butene oligomer	B
Butyl acetate (iso-, n-)	C
Butyl acetate (sec-)	D
Butyl alcohol (iso-, n-, sec-, tert-)	III
Butyl benzyl phthalate	A
Butylene	LFG
Butylene glycol	D
1,3-Butylene glycol *see* Butylene glycol	D
Butylene polyglycol *see* Butylene glycol	@D
iso-Butyl formate	D
n-Butyl formate	@D
Butyl heptyl ketone	[C]
Butyl methyl ketone *see* Methyl butyl ketone	D
Butyl stearate	III
Butyl toluene	@A
Butyrolactone (gamma)	D
Calcium alkylphenate	#
Calcium alkyl salicylate	C
Calcium amino nonyl phenolate	#
Calcium carboxylate	#
Caprolactam solutions	D
Carbon black base	#
Cetyl alcohol (*Hexadecanol*), *see* Alcohols (C13 and above)	@III
Cetyl-Stearyl alcohol	III
Cleaning spirit (unleaded)	#
Coal tar	A
Cumene	B
Cycloaliphatic resins	#
Cyclohexane	C
Cyclohexanol	C
1,3-Cyclopentadiene dimer (molten)	B
Cyclopentadiene polymers *see* 1,3-Cyclopentadiene dimer (molten)	@B
Cymene (para-)	C
Decahydronaphthalene	D
Decaldehyde (iso-)	@C
Decaldehyde (n-)	@B
Decane	D
Decene	B
Decyl alcohol (all isomers)	B
Decylbenzene (n-)	D
Detergent alkylate	#
Diacetone alcohol	D
Dialkyl(C10 - C14) benzenes	[D]
Dialkyl(C7 - C13) phthalates	D
Dibutyl carbinol	#
Dibutyl phthalate (ortho-)	A
Dicyclopentadiene *see* 1,3-Cyclopentadiene dimer (molten)	B
Diethylbenzene	C
Diethylene glycol	III
Diethylene glycol butyl ether	III
Diethylene glycol butyl ether acetate	D
Diethylene glycol dibutyl ether	D
Diethylene glycol diethyl ether	III
Diethylene glycol ethyl ether	III
Diethylene glycol ethyl ether acetate	D
Diethylene glycol methyl ether	C
Diethylene glycol methyl ether acetate	D
Diethylene glycol phenyl ether	#
Diethylene glycol phthalate	[D]
Di-(2-ethylhexyl)adipate	D
Di-(2-ethylhexyl)phthalate	D
Diethyl phthalate	C
Diglycidyl ether of Bisphenol A	B
Diheptyl phthalate	III
Dihexyl phthalate	III
Diisobutylcarbinol	@C
Diisobutylene	B
Diisobutyl ketone	D
Diisobutyl phthalate	B
Diisodecyl phthalate	D
Diisononyl adipate	D
Diisononyl phthalate	D
Diisooctyl phthalate	III
Diisopropylbenzene	A
Diisopropyl naphthalene	D
Dimethyl adipate	B
Dimethylbenzene *see* Xylenes	C
Dimethyl glutarate	C
Dimethyl phthalate	C
Dimethyl polysiloxane	[III]
2,2-Dimethylpropane-1,3-diol	D
Dimethyl succinate	C
Dinonyl phthalate	D
Di(octylphenyl)amine	#
Dioctyl phthalate	III
Dipentene	C
Diphenyl	A
Diphenyl, Diphenyl ether mixture	A
Diphenyl ether	A
Diphenyl ether, Biphenyl phenyl ether mixtures	A
Dipropylene glycol	III
Dipropylene glycol dibenzoate	[D]
Dipropylene glycol methyl ether	D
Distillates:	
Flashed feed stocks	I

TABLE 30.25-1—LIST OF FLAMMABLE AND COMBUSTIBLE BULK LIQUID CARGOES—Continued

Cargoes	Pollution Category
Straight run	I
Ditridecyl phthalate	D
Diundecyl phthalate	D
Dodecane (all isomers)	III
Dodecanol	B
Dodecene (all isomers)	B
Dodecylbenzene	III
Dodecyl phenol	A
Drilling mud (low toxicity) (*if flammable or combustible*)	[III]
Epoxylated linear alcohols, C11-C15	#
Ethane	LFG
2-Ethoxyethanol	D
2-Ethoxyethyl acetate	C
Ethoxylated alcohols, C11-C15 *see the Alcohol polyethoxylates*	A/B
Ethoxy triglycol (*crude*)	D
Ethyl acetate	D
Ethyl acetoacetate	D
Ethyl alcohol	III
Ethyl amyl ketone	C
Ethylbenzene	C
Ethyl butanol	@D
Ethyl butyrate	C
Ethyl cyclohexane	C
Ethylene	LFG
Ethylene carbonate	III
Ethylene glycol	D
Ethylene glycol acetate	D
Ethylene glycol butyl ether	III
Ethylene glycol butyl ether acetate	C
Ethylene glycol tert-butyl ether	III
Ethylene glycol diacetate	C
Ethylene glycol dibutyl ether	[D]
Ethylene glycol ethyl ether, *see* 2-Ethoxyethanol	D
Ethylene glycol ethyl ether acetate, *see* 2-Ethoxyethyl acetate	C
Ethylene glycol isopropyl ether	D
Ethylene glycol methyl butyl ether	D
Ethylene glycol methyl ether	D
Ethylene glycol methyl ether acetate	D
Ethylene glycol phenyl ether	D
Ethylene glycol phenyl ether, Diethylene glycol phenyl ether mixture	D
Ethylene-Propylene copolymer (*in liquid mixtures*)	[III]
Ethyl-3-ethoxypropionate	[C]
2-Ethylhexaldehyde *see* Octyl aldehydes	@B
2-Ethylhexanoic acid	D
2-Ethylhexanol *see* Octanol (all isomers)	@C
Ethylhexoic acid *see* 2-Ethylhexanoic acid	D
Ethyl hexyl phthalate	C
Ethyl hexyl tallate	#
Ethyl propionate	D
Ethyl toluene	B
Fatty acid (saturated, C13 and above)	III
Fatty acid amides	#
Formamide	D
Furfuryl alcohol	C
Gas oil, cracked	I
Gasoline blending stocks:	
Alkylates	I
Reformates	I
Gasolines:	
Automotive (*containing not over 4.23 grams lead per gallon*)	I
Aviation (*containing not over 4.86 grams lead per gallon*)	I
Casinghead (*natural*)	I
Polymer	I
Straight run	I
Glycerine	III

TABLE 30.25-1—LIST OF FLAMMABLE AND COMBUSTIBLE BULK LIQUID CARGOES—Continued

Cargoes	Pollution Category
Glycerol *see* Glycerine	III
Glycerol polyalkoxylate	III
Glyceryl triacetate	III
Glycidyl ester of tertiary carboxylic acid *see* Glycidyl ester of tridecyl acetic acid	@B
Glycidyl ester of tridecyl acetic acid	B
Glycidyl ester of versatic acid *see* Glycidyl ester of tridecyl acetic acid	@B
Glycol diacetate *see* Ethylene glycol diacetate	C
Glycols, Resins, & Solvents mixture	#
Glycol triacetate, *see* Glyceryl triacetate	III
Glyoxal solution (40% or less)	D
Grease	#
Heptadecane	@III
Heptane (all isomers)	C
Heptanoic acid	D
Heptanol (all isomers)	C
Heptene (all isomers)	C
Heptyl acetate	B
Herbicide (C15 -H22 -NO2 -Cl) *see* Metolachlor	@B
Hexaethylene glycol	@III
Hexamethylene glycol	III
Hexamethylenetetramine solutions	D
Hexane (all isomers)	C
Hexanoic acid	D
Hexanol	D
Hexene (all isomers)	C
Hexyl acetate	B
Hexylene glycol	III
Hog grease, *see* Lard	@III
2-Hydroxy-4-(methylthio)butanoic acid	[C]
Hydroxy terminated polybutadiene *see* Polybutadiene, hydroxyl terminated	
Isophorone	D
Jet fuels:	
JP-1 (*kerosene*)	I
JP-3	I
JP-4	I
JP-5 (*kerosene, heavy*)	I
JP-8	@I
Kerosene	I
Lactic acid	D
Lard	III
Latex, liquid synthetic *including:*	III
Styrene-butadiene rubber	III
Carboxylated styrene-butadiene copolymer	III
Magnesium nonyl phenol sulfide	#
Magnesium sulfonate	#
Maleic anhydride copolymer	#
2-Mercaptobenzothiazol (*in liquid mixtures*)	#
Methane	LFG
3-Methoxy-1-butanol	III
3-Methoxybutyl acetate	D
1-Methoxy-2-propyl acetate	#
Methoxy triglycol *see* Triethylene glycol methyl ether	@D
Methyl acetate	III
Methyl acetoacetate	D
Methyl alcohol	III
Methyl amyl acetate	C
Methyl amyl alcohol	C
Methyl amyl ketone	C
Methyl butanol *see the* Amyl alcohols	D
Methyl butenol	D
Methyl butyl ketone	D
Methyl butynol	D
Methyl butyrate	C
Methyl ethyl ketone	III

TABLE 30.25-1—LIST OF FLAMMABLE AND COMBUSTIBLE BULK LIQUID CARGOES—Continued

Cargoes	Pollution Category
Methyl formal (*dimethyl formal*)	#
Methyl heptyl ketone	B
Methyl isobutyl carbinol *see* Methyl amyl alcohol	C
Methyl isobutyl ketone	D
3-Methyl-3-methoxybutanol	III
3-Methyl-3-methoxybutyl acetate	III
Methyl naphthalene	A
Methyl pentene	C
N-Methyl-2-pyrrolidone	B
Methyl tert-butyl ether	D
Metolachlor	@B
Mineral spirits	I
Myrcene	[B]
Naphtha:	
Aromatic (*having less than 10% Benzene*)	@I
Cracking fraction	@I
Heavy	@I
Paraffinic	@I
Petroleum	I
Solvent	@I
Stoddard Solvent	@I
Varnish makers' and painters' (75%)	@I
Naphthalene sulfonic acid-formaldehyde copolymer, sodium salt solution	D
Naphthenic acid	A
Nonane (all isomers)	C
Nonanoic acid (all isomers)	D
Nonanoic, Tridecanoic acid mixture	@D
Nonene	B
Nonyl alcohol (all isomers)	[C]
Nonyl methacrylate	D
Nonyl phenol	A
Nonyl phenol poly(4-12)ethoxylates	B
Nonyl phenol sulfide (90% or less)	#
Noxious liquid, n.o.s. (17) ("trade name," contains "principal components"), Category D (*if flammable or combustible*)	D
Non-noxious liquid, n.o.s. (18) ("trade name," contains "principal components"), Appendix III (*if flammable or combustible*)	III
Octadecene, *see the Olefin or alpha-Olefin entries*	@III
Octadecenoamide solution (*Oleamide*)	[D]
Octane (all isomers)	C
Octanoic acid (all isomers)	D
Octanol (all isomers)	C
Octene (all isomers)	B
Octyl acetate	D
Octyl alcohol (iso-, n-) *see* Octanol (all isomers)	C
Octyl aldehydes	B
Octyl decyl adipate	III
Octyl epoxytallate	#
Octyl phthalate *see* Di-(2-ethylhexyl)phthalate	@D
Oil, edible:	
Babassu	D
Beechnut	D
Castor	D
Cocoa butter	D
Coconut	D
Cod liver	D
Corn	D
Cottonseed	D
Fish, *n.o.s.*	D
Grapeseed	#
Groundnut	D
Hazelnut	D
Lard	@III

TABLE 30.25-1—LIST OF FLAMMABLE AND COMBUSTIBLE BULK LIQUID CARGOES—Continued

Cargoes	Pollution Category
Maize *see* Corn oil	D
Mustard seed	#
Nutmeg butter	D
Olive	D
Palm	D
Palm kernel	D
Peanut	D
Poppy	D
Raisin seed	D
Rapeseed	D
Rice bran	D
Safflower	D
Salad	D
Sesame	D
Soya bean	D
Sunflower *see* Sunflower seed	D
Sunflower seed	D
Tucum	D
Vegetable, *n.o.s.*	D
Walnut	D
Oil, fuel:	
No. 1 (*kerosene*)	I
No. 1-D	I
No. 2	I
No. 2-D	I
No. 4	I
No. 5	I
No. 6	I
Oil, misc:	
Absorption	@I
Aliphatic	@I
Animal, *n.o.s.*	D
Aromatic	I
Aviation F2300	@I
Clarified	I
Coal	#
Coconut oil, esterified, *see* Coconut oil, fatty acid methyl ester	#
Coconut oil, fatty acid	[C]
Coconut oil, fatty acid methyl ester	D
Coconut oil, methyl ester, *see* Coconut oil, fatty acid methyl ester	#
Cottonseed, fatty acid, *see* Cottonseed oil, fatty acid	C
Croton	#
Crude	I
Diesel	I
Gas, low pour	@I
Gas, low sulfur	@I
Heartcut distillate	I
Lanolin	D
Linseed	D
Lubricating	I
Mineral	I
Mineral seal	@I
Motor	I
Neatsfoot	D
Oiticica	D
Palm oil, fatty acid methyl ester	D
Palm oil, methyl ester, *see* Palm oil, fatty acid methyl ester	#
Penetrating	I
Perilla	D
Pilchard	D
Pine	[B]
Range	@I
Residual	I
Resin	#
Resinous petroleum	@I
Road	I
Rosin	A
Seal	I
Soapstock	#
Soya bean (epoxidized)	#

TABLE 30.25-1—LIST OF FLAMMABLE AND COMBUSTIBLE BULK LIQUID CARGOES—Continued

Cargoes	Pollution Category
Sperm	D
Spindle	I
Spray	#
Tall	B
Tall, fatty acid	C
Tanner's	#
Transformer	I
Tung	D
Turbine	I
Whale	D
White (mineral)	@I
Wood	#
alpha-Olefins (C13 - C18)	III
Olefins (C13 and above, all isomers)	III
Oleic acid	D
Oleyl alcohol (*Octadecenol*), *see* Alcohols (C13 and above)	@III
Organic amine 70 *see* Aminoethyldiethanolamine, Aminoethyl- ethanolamine solution	III
Palm stearin	D
n-Paraffins (C10 - C20)	III
Pentadecanol, *see* Alcohols (C13 and above)	@III
Pentaethylene glycol, *see* Polyethylene glycols	III
Pentaethylenehexamine	D
Pentane (all isomers)	C
Pentanoic acid	D
Pentene (all isomers)	C
Petrolatum	III
1-Phenyl-1-xylyl ethane	C
Phosphosulfurized bicyclic terpene	#
Phthalate plasticizers *see individual phthalates*	#
Pinene	B
Polyalkenyl succinic anhydride amine	#
Polyalkylene glycols, Polyalkylene glycol monoalkyl ethers mixtures	@D
Polyalkylene oxide polyol	[C]
Polyamine, amide mixture	#
Polybutadiene, hydroxyl terminated	[III]
Polybutene	III
Polydimethylsiloxane	#
Polyethylene glycol	III
Polyethylene glycol dimethyl ether	III
Polyglycerol	[III]
Polyisobutylene, *see* Polybutene	[III]
Polymerized esters	#
Poly(20)oxyethylene sorbitan monooleate	[B]
Polypropylene	[III]
Polypropylene glycol	D
Polypropylene glycol methyl ether	III
Polysiloxane	III
Polystyrene dialkyl maleate	#
Potassium oleate	[D]
Propane	LFG
n-Propoxypropanol	#
Propyl acetate (iso-)	III
Propyl acetate (n-)	D
Propyl alcohol (iso-)	III
Propyl alcohol (n-)	III
Propylbenzene (iso-) *see* Cumene	B
Propylbenzene (n-)	C
iso-Propylcyclohexane	C
Propylene	LFG
Propylene-butylene copolymer	III
Propylene dimer	C
Propylene glycol	III
Propylene glycol monoalkyl ether	D
Propylene glycol ethyl ether	D
Propylene glycol methyl ether	D
Propylene polymer (*in liquid mixtures*)	#
Propylene tetramer	B
Propylene trimer	B

TABLE 30.25-1—LIST OF FLAMMABLE AND COMBUSTIBLE BULK LIQUID CARGOES—Continued

Cargoes	Pollution Category
Pseudocumene *see Trimethylbenzenes*	B
Rum, *see* Alcoholic beverages, n.o.s.	@III
Sodium acetate, Glycol, Water solutions	#
Sodium acetate solution	[D]
Sodium benzoate solution	[D]
Sodium sulfonate	#
Stearic acid	@III
Stearyl alcohol (*Octadecanol*)	III
Sulfolane	III
Tallow	D
Tallow alcohol, *see* Alcohols (C13 and above)	@III
Tallow fatty acid	D
Tallow *alkyl* nitrile	#
Tetradecanol	III
Tetradecene, *see the Olefin or alpha-Olefin entries*	III
Tetradecylbenzene	[C]
Tetraethylene glycol	III
Tetrahydronaphthalene	C
Tetrapropylbenzene *see* Alkyl(C9-C17) benzenes	@D
Toluene	C
Triarylphosphate	A
Tributyl phosphate	B
Tricresyl phosphate (less than 1% of the ortho isomer)	A
Tridecane	III
Tridecanoic acid	III
Tridecanol, *see* Alcohols (C13 and above)	III
Tridecene	III
Tridecylbenzene	[C]
Triethylbenzene	A
Triethylene glycol	III
Triethylene glycol butyl ether	III
Triethylene glycol butyl ether mixture	#
Triethylene glycol di-(2-ethylbutyrate)	[C]
Triethylene glycol ether mixture	#
Triethylene glycol ethyl ether	D
Triethylene glycol methyl ether	D
Triethyl phosphate	D
Triisooctyl trimellitate	#
Triisopropanolamine	III
Trimethylbenzenes (all isomers)	B
Trimethylol propane polyethoxylate	D
2,2,4-Trimethylpentanediol-1,3-diisobutyrate	#
2,2,4-Trimethyl-3-pentanol-1-isobutyrate	#
Tripropylene *see* Propylene trimer	@B
Tripropylene glycol	III
Tripropylene glycol methyl ether	D
Trixylenyl phosphate	A
Turpentine	B
Turpentine substitute (White spirit) *see* White spirit (low (15-20%) aromatic)	@B
Undecanol, *see* Undecyl alcohol	B
Undecene	B
Undecyl alcohol	B
Undecylbenzene	[C]
Vinyl acetate-fumarate copolymer	#
Waxes:	[D]
Candelilla	@D
Carnauba	@D
Paraffin	III
Petroleum	#
White spirit *see White spirit (low (15-20%) aromatic)*	@B
White spirit (low (15-20%) aromatic)	B
Wine, *see* Alcoholic beverages, n.o.s.	III
Wool grease	#
Xylenes (*ortho-, meta-, para-*)	C

TABLE 30.25-1—LIST OF FLAMMABLE AND COMBUSTIBLE BULK LIQUID CARGOES—Continued

Cargoes	Pollution Category
Zinc dialkyldithiophosphate	#

Explanation of Symbols: As used in this table the following stands for:

A, B, C, D—NLS Category of Annex II of MARPOL 73/78.

I—Considered an "oil" under Annex I of MARPOL 73/78.

III—Appendix III of Annex II (non-NLS cargoes) of MARPOL 73/78.

LFG—Liquefied flammable gas.

#—No determination of NLS status. For shipping on an oceangoing vessel, see 46 CFR 153.900(c).

[]—A NLS category in brackets indicates that the product is provisionally categorized and that further data are necessary to complete the evaluation of its pollution hazards. Until the hazard evaluation is completed, the pollution category assigned is used.

@—The NLS category has been assigned by the U.S. Coast Guard, in absence of one assigned by the IMO. The category is based upon a GESAMP Hazard Profile or by analogy to a closely related product having an NLS assigned.

Words in italics are not part of the the cargo name but may be used in addition to the cargo name.

When one entry references another entry by use of the word "*see*", and both names are in roman type, either name may be used as the cargo name (e.g., Diethyl ether *see* Ethyl ether). However, the referenced entry is preferred.

PART 150—COMPATIBILITY OF CARGOES

3. The authority citation for part 150 continues to read as follows:

Authority: 46 U.S.C. 3703; 49 CFR 1.46, except § 150.160 which is issued under 46 U.S.C. 3306; 49 CFR 1.46.

4. By revising table I, table II, and appendix I to part 150 to read as follows:

TABLE I—ALPHABETICAL LIST OF CARGOES

Chemical name	Group No.	CHRIS code	Related CHRIS codes
Acetaldehyde	19	AAD	
Acetic acid	[2]4	AAC	
Acetic anhydride	11	ACA	
Acetone	[2]18	ACT	
Acetone cyanohydrin	[1, 2]0	ACY	
Acetonitrile	37	ATN	
Acetophenone	18	ACP	
Acetyl tributyl citrate	34		
Acrolein	[2]19	ARL	
Acrylamide solution	10	AAM	
Acrylic acid	[2]4	ACR	
Acrylonitrile	[2]15	ACN	
Acrylonitrile-Styrene copolymer dispersion in Polyether polyol	20	ALE	
Adiponitrile	37	ADN	
Alcohols (C13 and above)	20	ALY	TDN/TTN/PDC
Alcoholic beverages	20		
Alcohol polyethoxylates	20		APK/APL
Alcohol polyethoxylates, secondary	20		AEA/AEB
Alkyl acrylate-Vinyl pyridine copolymer in Toluene	32	AAP	
Alkyl(C9 - C17) benzenes	32	AKB	DBZ/UDB/DDB/TRB/TDB
Alkylbenzenesulfonic acid	[1, 2]0	ABS	
Alkylbenzenesulfonic acid, sodium salt solutions	33	ABT	
Alkyl phthalates	34		
Allyl alcohol	[2]15	ALA	
Allyl chloride	15	ALC	
Aluminium chloride, Hydrochloric acid solution	0	AHS	
Aluminum sulfate solution	[2]43	ASX	ALM
2-(2-Aminoethoxy)ethanol	8	AEX	
Aminoethyldiethanolamine, Aminoethylethanolamine solution	8		
Aminoethylethanolamine	8	AEE	
N-Aminoethylpiperazine	7	AEP	
2-Amino-2-hydroxymethyl-1,3-propanediol solution	43	AHL	
2-Amino-2-methyl-1-propanol	8	APR	
Ammonia, anhydrous	6	AMA	
Ammonium bisulfite solution	[2]43	ABX	ASU
Ammonium hydrogen phosphate solution	0		
Ammonium hydroxide (28% or less Ammonia)	6	AMH	
Ammonium nitrate solution	[1]0	ANR	AMN
Ammonium nitrate, Urea solution (containing Ammonia)	6	UAS	
Ammonium nitrate, Urea solution (not containing Ammonia)	43	ANU	
Ammonium polyphosphate solution	43		ANS/APP
Ammonium sulfate solution	43	AME	AMS
Ammonium sulfide solution	5	ASS	ASF
Ammonium thiocyanate, Ammonium thiosulfate solution	0	ACS	
Ammonium thiosulfate solution	43	ATV	ATF
Amyl acetate	34	AEC	IAT/AML/AAS/AYA
Amyl alcohol	20	AAI	IAA/AAN/ASE/APM
Amylene	30	AMZ	PTX/PTE

TABLE I—ALPHABETICAL LIST OF CARGOES—Continued

Chemical name	Group No.	CHRIS code	Related CHRIS codes
Amyl methyl ketone	18	AMK	
Amyl tallate	34		
Aniline	9	ANL	
Anthracene oil (Coal tar fraction), *see* Coal tar	33	AHO	COR
Asphalt	33	ASP	ACU
Asphalt blending stocks, roofers flux	33	ARF	
Asphalt blending stocks, straight run residue	33	ASR	
Aviation alkylates	33	AVA	GAV
Behenyl alcohol	20		
Benzene	32	BNZ	
Benzene hydrocarbon mixtures (having 10% Benzene or more)	32	BHB	
Benzenesulfonyl chloride	[1, 2]0	BSC	
Benzene, Toluene, Xylene mixtures	32	BTX	
Benzene tricarboxylic acid, trioctyl ester	34		
Benzylacetate	34	BZE	
Benzyl alcohol	21	BAL	
Benzyl chloride	36	BCL	
Brake fluid base mixtures	20	BFX	
Butadiene	30	BDI	
Butadiene, Butylene mixtures (cont. Acetylenes)	30	BBM	
Butane	31	BMX	IBT/BUT
Butene	30		IBL/BTN
Butene oligomer	30	BOL	
Butyl acetate	34	BAX	IBA/BCN/BTA/BYA
Butyl acrylate	14	BAR	BAI/BTC
Butyl alcohol	[2]20		IAL/BAN/BAS/BAT
Butylamine	7	BTY	IAM/BAM/BTL/BUA
Butylbenzene	32	BBE	
Butyl benzyl phthalate	34	BPH	
n-Butyl butyrate	34	BUB	
Butylene	30	BTN	IBL
Butylene glycol	[2]20	BUG	
Butylene oxide	16	BTO	
Butyl ether	41	BTE	
Butyl formate	34		BFI/BFN
iso-Butyl isobutyrate	34	BIB	
Butyl heptyl ketone	18	BHK	
Butyl methacrylate	14	BMH	BMI/BMN
Butyl methacrylate, Decyl methacrylate, Cetyl-Eicosyl methacrylate mixture	14	DER	
Butyl phenol, Formaldehyde resin in Xylene	32		
Butyl toluene	32	BUE	
Butyraldehyde	19	BAE	BAD/BTR/BFA
Butyric acid	4	BRA	IBR
gamma-Butyrolactone	[1, 2]0	BLA	
Calcium bromide solution	43		CBM
Calcium bromide, Zinc bromide solution *see* Drilling brine (containing Zinc salts)	43		DZB
Calcium chloride solution	43	CCS	CLC
Calcium hypochlorite solutions	5		CHZ/CHU/CHY
Calcium naphthenate in Mineral oil	34	CNM	
Calcium nitrate, Magnesium nitrate, Potassium chloride solution	34		
Calcium sulfonate, Calcium carbonate, Hydrocarbon solvent mixture	33		
Camphor oil	18	CPO	
Caprolactam solution	22	CLS	
Carbolic oil	21	CBO	
Carbon black base	33		
Carbon disulfide	38	CBB	
Carbon tetrachloride	36	CBT	
Cashew nut shell oil (untreated)	4	OCN	
Caustic potash solution	[2]5	CPS	
Caustic soda solution	[2]5	CSS	
Cetyl-Eicosyl methacrylate mixture	14	CEM	
Chlorinated paraffins (C10 - C13)	36	CLH	
Chlorinated paraffins (C14 - C17)	36		
Chlorine	[1]0	CLX	
Chloroacetic acid solution	4	CHM	CHL/MCA
Chlorobenzene	36	CRB	
Chlorodifluoromethane	36	MCF	

TABLE I—ALPHABETICAL LIST OF CARGOES—Continued

Chemical name	Group No.	CHRIS code	Related CHRIS codes
Chloroform	36	CRF	
Chlorohydrins	17	CHD	
4-Chloro-2-methylphenoxyacetic acid, Dimethylamine salt solution	9	CDM	
Chloronitrobenzene *see* o-Nitrochlorobenzene			CNO
Chloropropionic acid	4	CPM	CLA/CLP
Chlorosulfonic acid	[1]0	CSA	
Chlorotoluene	36	CHI	CTM/CTO/CRN
Choline chloride solutions	20	CCO	
Coal tar	33	COR	OCT
Coal tar pitch	33	CTP	
Coconut oil, fatty acid	34	CFA	
Corn syrup	43	CSY	
Cottonseed oil, fatty acid	34	CFY	
Creosote	[2]21	CCT	CCW/CWD
Cresols	21	CRS	CRL/CSL/CSO
Cresylate spent caustic	5	CSC	
Cresylic acid	21	CRY	
Cresylic acid, sodium salt solution	5		CSC
Crotonaldehyde	[2]19	CTA	
Cumene	32	CUM	
Cycloaliphatic resins	31		
1,5,9-Cyclododecatriene	30	CYT	
Cycloheptane	31	CYE	
Cyclohexane	31	CHX	
Cyclohexane oxidation product acid water	4		
Cyclohexanol	20	CHN	
Cyclohexanone	18	CCH	
Cyclohexanone, Cyclohexanol mixtures	[2]18	CYX	
Cyclohexyl acetate	34	CYC	
Cyclohexylamine	7	CHA	
1,3-Cyclopentadiene dimer	30	CPD	
Cyclopentadiene polymers	30		CPD
Cyclopentadiene, Styrene, Benzene mixtures	30	CSB	
Cyclopentane	31	CYP	
Cyclopentene	30	CPE	
Cymene	32	CMP	
Decahydronaphthalene	33	DHN	
Decaldehyde	19		IDA/DAL
Decane	31	DDC	PFN
Decanoic acid	4	DCO	
Decene	30	DCE	
Decyl acrylate	14	DAT	IAI/DAR
Decyl alcohol	[2]20	DAX	ISA/DAN
Decylbenzene	32	DBZ	AKB
Dextrose solution	43	DTS	
Diacetone alcohol	[2]20	DAA	
Dialkyl(C10 - C14) benzenes	32	DAB	
Dialkyl(C7 - C13) phthalates	34	DAH	DHP/DIE/DOP/ DIF/DTP/ DUP
Diammonium salt of Zinc EDTA solution	43	DSZ	
Dibutylamine	7	DBA	
Dibutyl phthalate	34	DPA	
Dichlorobenzene	36	DBX	DBM/DBO/DBP
Dichlorodifluoromethane	36	DCF	
1,1-Dichloroethane	36	DCH	
2,2'-Dichloroethyl ether	41	DEE	
2,2'-Dichloroisopropyl ether	36	DCI	
Dichloromethane	36	DCM	
2,4-Dichlorophenol	21	DCP	
2,4-Dichlorophenoxyacetic acid, Diethanolamine salt solution	43	DDE	
2,4-Dichlorophenoxyacetic acid, Dimethylamine salt solution	[1, 2]0	DAD	DDA/DSX
2,4-Dichlorophenoxyacetic acid, Triisopropanolamine salt solution	[2]43	DTI	
Dichloropropane	36	DPX	DPB/DPP/ DPC/DPL
1,3-Dichloropropene	15	DPS	DPU/DPF
Dichloropropene, Dichloropropane mixtures	15	DMX	
2,2-Dichloropropionic acid	4	DCN	
Dicyclopentadiene	30	DPT	
Didecyl dimethyl ammonium chloride, Ethanol mixture solution	43	DDX	

TABLE I—ALPHABETICAL LIST OF CARGOES—Continued

Chemical name	Group No.	CHRIS code	Related CHRIS codes
Diethanolamine	8	DEA	
Diethanolamine salt of 2,4-Dichlorophenoxyacetic acid solution	43	DDE	
Diethylamine	7	DEN	
Diethylaminoethanol	8		DAE
2,6-Diethylaniline	9	DMN	
Diethylbenzene	32	DEB	
Diethylene glycol	40	DEG	
Diethylene glycol butyl ether	40	DME	
Diethylene glycol butyl ether acetate	34	DEM	
Diethylene glycol dibutyl ether	40	DIG	
Diethylene glycol ethyl ether	40	DGE	
Diethylene glycol ethyl ether acetate	34	DGA	
Diethylene glycol methyl ether	40	DGM	
Diethylene glycol methyl ether acetate	34	DGR	
Diethylene glycol phenyl ether	40	DGP	
Diethylene glycol phthalate	34	DGL	
Diethylenetriamine	[2]7	DET	
Diethylethanolamine	8	DAE	
Diethyl ether	41		EET
Di-(2-ethylhexyl)adipate	34	DEH	
Di-(2-ethylhexyl)phosphoric acid	1	DEP	
Di-(2-ethylhexyl)phthalate	34	DIE	DIO/DOP/DAH
Diethyl phthalate	34	DPH	
Diethyl sulfate	34	DSU	
Diglycidyl ether of Bisphenol A	41	BDE	BPA
Diglycidyl ether of Bisphenol F	41	DGF	
Diheptyl phthalate	34	DHP	
Di-n-hexyl adipate	34	DHA	
Diisobutylamine	7	DBU	
Diisobutyl carbinol	20	DBC	
Diisobutylene	30	DBL	
Diisobutyl ketone	18	DIK	
Diisobutyl phthalate	34	DIT	
Diisodecyl phthalate	34	DID	
Diisononyl adipate	34	DNY	
Diisononyl phthalate	34	DIN	
Diisooctyl phthalate	34	DIO	
Diisopropanolamine	8	DIP	
Diisopropylamine	7	DIA	
Diisopropylbenzene	32	DIX	
Diisopropyl naphthalene	32	DII	
N,N-Dimethylacetamide	10	DAC	
N,N-Dimethylacetamide solution	10	DLS	
Dimethyl adipate	34	DLA	
Dimethylamine	7	DMA	
Dimethylamine solution	7		DMG/DMY/DMC
Dimethylamine salt of 4-Chloro-2-methylphenoxyacetic acid solution	9	CDM	
Dimethylamine salt of 2,4-Dichlorophenoxyacetic acid solution	[1, 2]0	DAD	DDA/DSX
2,6-Dimethylaniline	9	DMM	
Dimethylcyclicsiloxane hydrolyzate	34		
N,N-Dimethylcyclohexylamine	7	DXN	
Dimethylethanolamine	8	DMB	
Dimethylformamide	10	DMF	
Dimethyl furan	41		
Dimethyl glutarate	34	DGT	
Dimethyl hydrogen phosphite	[2]34	DPI	
Dimethyl naphthalene sulfonic acid, sodium salt solution	[2]34	DNS	
Dimethyloctanoic acid	4	DMO	
Dimethyl phthalate	34	DTL	
Dimethylpolysiloxane	34	DMP	
2,2-Dimethylpropane-1,3-diol	20	DDI	
Dimethyl succinate	34	DSE	
Dinitrotoluene	42	DNM	DTT/DNL/DNU
Dinonyl phthalate	34	DIF	DAH
Dioctyl phthalate	34	DOP	DAH
1,4-Dioxane	41	DOX	
Dipentene	30	DPN	
Diphenyl	32	DIL	
Diphenyl, Diphenyl ether mixture	33	DDO	DTH

TABLE I—ALPHABETICAL LIST OF CARGOES—Continued

Chemical name	Group No.	CHRIS code	Related CHRIS codes
Diphenyl ether	41	DPE	
Diphenyl ether, Diphenyl phenyl ether mixture	41	DOB	
Diphenylmethane diisocyanate	12	DPM	
Diphenylol propane-Epichlorohydrin resins	[1]0	DPR	
Di-n-Propylamine	7	DNA	
Dipropylene glycol	40	DPG	
Dipropylene glycol dibenzoate	34	DGY	
Dipropylene glycol methyl ether	40	DPY	
Distillates, flashed feed stocks	33	DFF	
Distillates, straight run	33	DSR	
Ditridecyl phthalate	34	DTP	DAH
Diundecyl phthalate	34	DUP	DAH
Dodecane	31	DOC	PFN
Dodecanol	20	DDN	LAL
Dodecene	30	DOZ	DDC/DOD
2-Dodecenylsuccinic acid, dipotassium salt solution	34		
Dodecylamine, Tetradecylamine mixture	[2]7	DTA	
Dodecyl alcohol	20		DDN/LAL
Dodecylbenzene	32	DDB	AKB
Dodecylbenzenesulfonic acid	[2]0	DSA	
Dodecyl diphenyl ether disulfonate solution	43	DOS	
Dodecyl methacrylate	14	DDM	
Dodecyl-Pentadecyl methacrylate mixtures	14	DDP	
Dodecyl phenol	21	DOL	
Drilling brine (containing Calcium, Potassium or Sodium salts)	43		DRB
Drilling brine (containing Zinc salts)	43	DZB	
Drilling mud (low toxicity) (*if flammable or combustible*)	33		DRM
Drilling mud (low toxicity) (*if non-flammable or non-combustible*)	43		DRM
Epichlorohydrin	17	EPC	
Epoxy resin	18		
Ethane	31	ETH	
Ethanolamine	8	MEA	
2-Ethoxyethanol	20	EEO	
2-Ethoxyethyl acetate	34	EEA	
Ethoxylated alcohols, C11-C15	20		EOD/ENP/ EOP/EOT/ ETD
Ethoxy triglycol	40	ETG	
Ethyl acetate	34	ETA	
Ethyl acetoacetate	34	EAA	
Ethyl acrylate	14	EAC	
Ethyl alcohol	[2]20	EAL	
Ethylamine	[2]7	EAM	
Ethylamine solution	7	EAN	
Ethyl amyl ketone	18	EAK	ELK
Ethylbenzene	32	ETB	
Ethyl butanol	20	EBT	
N-Ethyl-n-butylamine	7	EBA	
Ethyl butyrate	34	EBR	
Ethyl chloride	36	ECL	
Ethyl chlorothioformate	[2]0	ECT	
N-Ethylcyclohexylamine	7	ECC	
Ethylene	30	ETL	
Ethylene chlorohydrin	20	ECH	
Ethylene cyanohydrin	20	ETC	
Ethylenediamine	[2]7	EDA	EMX
Ethylenediaminetetracetic acid, tetrasodium salt solution	43	EDS	
Ethylene dibromide	36	EDB	
Ethylene dichloride	[2]36	EDC	
Ethylene glycol	[2]20	EGL	
Ethylene glycol acetate	34	EGO	
Ethylene glycol butyl ether	40	EGM	
Ethylene glycol tert-butyl ether	40		
Ethylene glycol butyl ether acetate	34	EMA	
Ethylene glycol diacetate	34	EGY	
Ethylene glycol dibutyl ether	40	EGB	
Ethylene glycol ethyl ether	40	EGE	
Ethylene glycol ethyl ether acetate	34	EGA	
Ethylene glycol isopropyl ether	40	EGI	
Ethylene glycol methyl ether	40	EME	

TABLE I—ALPHABETICAL LIST OF CARGOES—Continued

Chemical name	Group No.	CHRIS code	Related CHRIS codes
Ethylene glycol methyl ether acetate	34	EGT	
Ethylene glycol phenyl ether	40	EPE	
Ethylene glycol phenyl ether, Diethylene glycol phenyl ether mixture	40	EDX	
Ethylene glycol propyl ether	40	EGP	
Ethylene oxide	[1]0	EOX	
Ethylene oxide, Propylene oxide mixture	16	EPM	
Ethylene-Vinyl acetate copolymer emulsion	43		
Ethyl ether	41	EET	
Ethyl-3-ethoxypropionate	34	EEP	
2-Ethylhexaldehyde	19	EHA	
2-Ethylhexanoic acid	4	EHO	
2-Ethylhexanol	20	EHX	
2-Ethylhexyl acrylate	14	EAI	
2-Ethylhexylamine	7	EHM	
Ethyl hexyl phthalate	34	EHE	
Ethyl hexyl tallate	34	EHT	
Ethylidene norbornene	[2]30	ENB	
Ethyl methacrylate	14	ETM	
2-Ethyl-6-methyl-N-(1'-methyl-2-methoxyethyl)aniline	9	EEM	
o-Ethyl phenol	21	EPL	
Ethyl propionate	34	EPR	
2-Ethyl-3-propylacrolein	[2]19	EPA	
Ethyl toluene	32	ETE	
Fatty acids (saturated, C13 and above)	34		
Fatty acid amides	33		
Ferric chloride solution	1	FCS	FCL
Ferric hydroxyethylethylenediaminetriacetic acid, trisodium salt solution	[2]43	FHX	STA
Ferric nitrate, Nitric acid solution	3	FNN	
Fish solubles (*water based fish meal extracts*)	43	FSO	
Formaldehyde, Methanol mixtures	[2]19	MTM	
Formaldehyde solution	[2]19	FMS	
Formamide	10	FAM	
Formic acid	[2]4	FMA	
Fructose solution	43		
Fumaric adduct of Rosin, water dispersion	43	FAR	
Furfural	19	FFA	
Furfuryl alcohol	[2]20	FAL	
Gas oil, cracked	33	GOC	
Gasoline blending stock, alkylates	33	GAK	
Gasoline blending stock, reformates	33	GRF	
Gasolines:			
Automotive (*not over 4.23 grams lead per gal.*)	33	GAT	
Aviation (*not over 4.86 grams lead per gal*)	33	GAV	AVA
Casinghead (*natural*)	33	GCS	
Polymer	33	GPL	
Straight run	33	GSR	
Glutaraldehyde solution	19	GTA	
Glycerine	[2]20	GCR	
Glycerol polyalkoxylate	34		
Glyceryl triacetate	34		
Gylcidyl ester of tridecylacetic acid	34	GLT	
Glycidyl ester of Versatic acid	34		GLT
Glycol diacetate	34		
Glycols, Resins, and Solvents mixture	33		
Glyoxal solutions	19	GOS	
Heptane	31	HMX	HPI/HPT
n-Heptanoic acid	4	HEP	
Heptanol	20	HTX	HTN
Heptene	30	HPX	HTE
Heptyl acetate	34	HPE	
Herbicide (C15-H22-NO2-Cl)	33		MCO
Hexamethylenediamine solution	7	HMC	HMD
Hexamethylenetetramine	7	HMT	
Hexamethylenetetramine solutions	7	HTS	
Hexamethylenimine	7	HMI	
Hexane	[2]31	HXS	IHA/HXA
Hexanoic acid	4	HXO	
Hexanol	20	HXN	
Hexene	30	HEX	HXE/HXT
Hexyl acetate	34	HAE	HSA

TABLE I—ALPHABETICAL LIST OF CARGOES—Continued

Chemical name	Group No.	CHRIS code	Related CHRIS codes
Hexylene glycol	20	HXG	
Hydrochloric acid	1	HCL	
Hydrochloric acid, spent	1	HCS	
Hydrofluorosilicic acid	1	HFS	
Hydrogen peroxide solutions	[1]0		HPN/HPS/HPO
2-Hydroxyethyl acrylate	[1, 2]0	HAI	
N-(Hydroxyethyl)ethylenediaminetriacetic acid, trisodium salt solution	43	HET	
2-Hydroxy-4-(methylthio)butanoic acid	4	HBA	
Isophorone	[2]18	IPH	
Isophorone diamine	7	IPI	
Isophorone diisocyanate	12	IPD	
Isoprene	30	IPR	
Isopropylbenzene	32	CUM	
Jet fuels:			
JP-1	33	JPO	
JP-3	33	JPT	
JP-4	33	JPF	
JP-5	33	JPV	
JP-8	33	JPE	
Kaolin clay slurry	43		
Kerosene	33	KRS	
Ketone residue	18		
Kraft black liquor	5		KPL
Kraft pulping liquors (*Black, Green, or White*)	5	KPL	
Lactonitrile solution	37	LNI	
Latex, liquid synthetic	43	LLS	LTX
Lauric acid	34	LRA	
Lignin liquor	43		
Magnesium chloride solution	[1, 2]0		
Magnesium nonyl phenol sulfide	33		
Magnesium sulfonate	34	MSE	MAS
Maleic anhydride	11	MLA	
Maleic anhydride copolymer	33		
Mercaptobenzothiazol, sodium salt solution	5		SMB
Mesityl oxide	[2]18	MSO	
Metam sodium solution	7	MSS	SMD
Methacrylic acid	4	MAD	
Methacrylonitrile	15	MET	
Methane	31	MTH	
3-Methoxy-1-butanol	20		
3-Methoxybutyl acetate	34	MOA	
1-Methoxy-2-propyl acetate	34	MPO	
Methoxy triglycol	40	MTG	
Methyl acetate	34	MTT	
Methyl acetoacetate	34	MAE	
Methyl acetylene, Propadiene mixture	30	MAP	
Methyl acrylate	14	MAM	
Methyl alcohol	[2]20	MAL	
Methylamine	7	MTA	
Methylamine solutions	7	MSZ	
Methyl amyl acetate	34	MAC	
Methyl amyl alcohol	20	MAA	
Methyl amyl ketone	18	MAK	
Methyl bromide	36	MTB	
Methyl butenol	20	MBL	
Methyl butyl ketone	18	MBK	
Methyl tert-butyl ether	[2]41	MBE	
Methylbutynol	20	MBY	
3-Methyl butyraldehyde	19		
Methyl butyrate	34	MBU	
Methyl chloride	36	MTC	
Methylcyclohexane	31	MCY	
Methylcyclopentadiene dimer	30	MCK	
Methyl diethanolamine	8	MDE	MAB
4,4'-Methylene dianiline (43% or less), Polymethylene polyphenylamine, o-Dichlorobenzene mixtures	9	MDB	
2-Methyl-6-ethylaniline	9	MEN	
Methyl ethyl ketone	[2]18	MEK	
2-Methyl-5-ethylpyridine	9	MEP	
Methyl formal	41	MTF	
Methyl formate	34	MFM	

TABLE I—ALPHABETICAL LIST OF CARGOES—Continued

Chemical name	Group No.	CHRIS code	Related CHRIS codes
Methyl heptyl ketone	18	MHK	
2-Methyl-2-hydroxy-3-butyne	20	MHB	
Methyl isoamyl ketone	18		MAK
Methyl isobutyl carbinol	20	MIC	
Methyl isobutyl ketone	[2]18	MIK	
Methyl methacrylate	14	MMM	
3-Methyl-3-methoxybutanol	20		
3-Methyl-3-methoxybutyl acetate	34		
Methyl naphthalene	32	MNA	
Methylolureas	19	MUS	
2-Methyl pentane	31		IHA
2-Methyl-1-pentene	30	MPN	
4-Methyl-1-pentene	30	MTN	
Methylpyridine	9		MPR/MPE/MPF
N-Methyl-2-pyrrolidone	9	MPY	
Methyl salicylate	34	MES	
alpha-Methylstyrene	30	MSR	
Metolachlor	34	MCO	
Mineral spirits	33	MNS	
Molasses	20		
Molasses residue	0		
Monochlorodifluoromethane	36	MCF	
Morpholine	[2]7	MPL	
Motor fuel antiknock compounds containing lead alkyls	[1]0	MFA	
Myrcene	30	MRE	
Naphtha:			
Coal tar solvent	33	NCT	
Cracking fraction	[2]33		
Petroleum	33	PTN	
Solvent	33	NSV	
Stoddard solvent	33	NSS	
Varnish Makers' and Painters'	33	NVM	
Naphthalene	32	NTM	
Naphthalene sulfonic acid-formaldehyde copolymer, sodium salt solution	0	NFS	
Naphthalene sulfonic acid, sodium salt solution	34	NSA	
Naphthenic acid	4	NTI	
Naphthenic acid, sodium salt solution	43	NTS	
Neodecanoic acid	4	NEA	
Nitrating acid	[1]0	NIA	
Nitric acid (70% or less)	3	NCD	
Nitric acid (greater than 70%)	[1]0		NAC
Nitrobenzene	42	NTB	
o-Nitrochlorobenzene	42	CNO	CNP
Nitroethane	42	NTE	
o-Nitrophenol	[1, 2]0	NTP	NIP/NPH
Nitropropane	42	NPM	NPN/NPP
Nitropropane, Nitroethane mixture	42	NNM	
Nitrotoluene	42	NIT	NIE/NTT/NTR
Nonane	31	NAX	NAN
Nonanoic acid	4	NNA	NAI/NIN
Nonene	30	NON	NNE
Nonyl alcohol	[2]20	NNS	NNI/NNN
Nonyl methacrylate	14	NMA	
Nonyl phenol	21	NNP	
Nonyl phenol (ethoxylated)	40		NPE
Nonyl phenol poly(4-12)ethoxylates	40	NPE	
Nonyl phenol sulfide solution	33		NPS
Noxious Liquid Substance, n.o.s. (NLS's)	0		
1-Octadecene	30		
Octadecenoamide	10	ODD	
Octane	31	OAX	IOO/OAN
Octanoic acid	4	OAY	OAA
Octene	30	OTX	OTE
Octyl alcohol (Octanol)	[2]20	OCX	IOA/OTA
Octyl aldehyde	19	OAL	IOC/OLX
Octyl decyl adipate	34	ODA	
Octyl epoxytallate	34	OET	
Octyl nitrate	[2]34	ONE	
Octyl phenol	21		

TABLE I—ALPHABETICAL LIST OF CARGOES—Continued

Chemical name	Group No.	CHRIS code	Related CHRIS codes
Oil, edible:			
Babassu	34	OBB	
Castor	34	OCA	
Coconut	[2]34	OCC	
Corn	34	OCO	
Cottonseed	34	OCS	
Fish	[3]34	OFS	
Lard	34	OLD	
Olive	34	OOL	
Palm	[2]34	OPM	
Palm kernel	34	OPO	
Peanut	34	OPN	
Rapeseed	34	ORP	
Rice bran	34	ORB	
Safflower	34	OSF	
Soya bean	34	OSB	
Sunflower seed	34	OSN	
Tucum	34	OTC	
Vegetable	34	OVG	
Oil, fuel:			
No. 1	33	OON	
No. 1-D	33	OOD	
No. 2	33	OTW	
No. 2-D	33	OTD	
No. 4	33	OFR	
No. 5	33	OFV	
No. 6	33	OSX	
Oil, misc:			
Absorption	33	OAS	
Aliphatic	33		
Aromatic	33		
Clarified	33	OCF	
Coal	33		
Coconut oil, fatty acid methyl ester	34	OCM	
Cotton seed oil, fatty acid	34	CFY	
Crude	33	OIL	
Diesel	33	ODS	
Heartcut distillate	33		
Linseed	33	OLS	
Lubricating	33	OLB	
Mineral	33	OMN	
Mineral seal	33	OMS	
Motor	33	OMT	
Neatsfoot	33	ONF	
Oiticica	34	OOI	
Palm oil, fatty acid methyl ester	34	OPE	
Palm oil, methyl ester, *see* Palm oil, fatty acid methyl ester	34	OPE	
Penetrating	33	OPT	
Pine	33	OPI	
Range	33	ORG	
Residual	33		
Resin	33	ORS	
Resinous petroleum	33		
Road	33	ORD	
Rosin	33	ORN	
Seal	34		
Soapstock	34	OIS	
Soybean (epoxidized)	40		EVO
Sperm	33	OSP	
Spindle	33	OSD	
Spray	33	OSY	
Tall	34	OTL	
Tall, fatty acid	[3]34	TOF	
Tanner's	33	OTN	
Transformer	33	OTF	
Tung	34	OTG	
Turbine	33	OTB	
White (mineral)	33		
Olefin mixtures	30		OFX/OFY
alpha-Olefins (C6 - C18) mixtures	30	OAM	

TABLE I—ALPHABETICAL LIST OF CARGOES—Continued

Chemical name	Group No.	CHRIS code	Related CHRIS codes
alpha-Olefins (C13 and above)	30		
Oleic acid	34	OLA	
Oleum	[1, 2]0	OLM	
Oxyalkylated alkyl phenol formaldehyde	33		
Palm kernel oil, fatty acid	34	PNO	
Palm kernel oil, fatty acid methyl ester	34	PNF	
Palm stearin	34	PMS	
n-Paraffins (C10 - C20)	31	PFN	DCC/DOC/TRD
Paraldehyde	19	PDH	
Pentachloroethane	36	PCE	
Pentadecanol	20	PDC	
1,3-Pentadiene	30	PDE	PDN
Pentaethylenehexamine, Tetraethylenepentamine mixture	7	PEP	
Pentane	31	PTY	IPT/PTA
Pentene	30	PTX	PTE
Pentene, Miscellaneous hydrocarbon mixture	[2]30		
3-Pentenenitrile	37	PNT	
Pentyl aldehyde	19		
Perchloroethylene	36	PER	
Petrolatum	33	PTL	
Phenol	21	PHN	
1-Phenyl-1-xylyl ethane	32	PXE	
Phosphoric acid	1	PAC	
Phosphorus	[1]0		PPW/PPR/PPB
Phthalic anhydride	11	PAN	
Pinene	30	PIN	
Pine oil	33	OPI	
Polyalkenyl succinic anhydride amine	33		
Polyalkylene glycols, Polyalkylene glycol monoalkyl ethers mixtures	40	PPX	
Polyalkyl(C18 - C22) acrylate in Xylene	14	PIX	
Polyalkylene oxide polyol	20	PAO	
Polybutadiene, hydroxyl terminated	20		
Polybutene	30	PLB	
Polydimethylsiloxane	34		
Polyethylene glycol	40		
Polyethylene glycol dimethyl ether	40		
Polyethylene glycol monoalkyl ether	40	PEE	
Polyethylene polyamines	[2]7	PEB	
Polyferric sulfate solution	34	PSS	
Polyglycerol	20		GCR
Polymethylene polyphenyl isocyanate	12	PPI	
Polymethylsiloxane	34		
Poly(20)oxyethylene sorbitan monooleate	34	PSM	
Polypropylene	30	PLP	
Polypropylene glycol	40	PGC	
Polypropylene glycol methyl ether	40	PGM	
Polysiloxane	34		
Potassium hydroxide solution	[2]5		CPS
Potassium oleate	34	POE	
Propane	31	PRP	
Propanolamine	8	PAX	MPA/PLA
Propionaldehyde	19	PAD	
Propionic acid	4	PNA	
Propionic anhydride	11	PAH	
Propionitrile	37	PCN	
n-Propoxypropanol	40	PXP	
Propyl acetate	34		IAC/PAT
Propyl alcohol	[2]20		IPA/PAL
Propylamine	7		IPP/PRA/IPO
Propylbenzene	32	PBZ	
iso-Propylcyclohexane	31	IPX	
Propylene	30	PPL	
Propylene-butylene copolymer	30	PBP	
Propylene dimer	30	PDR	
Propylene glycol	[2]20	PPG	
Propylene glycol monoalkyl ether	40	PGE	PME/PGY
Propylene glycol ethyl ether	40	PGY	PGE
Propylene glycol methyl ether	40	PME	PGE
Propylene oxide	16	POX	
Propylene tetramer	30	PTT	

TABLE I—ALPHABETICAL LIST OF CARGOES—Continued

Chemical name	Group No.	CHRIS code	Related CHRIS codes
Propylene trimer	30	PTR	
Propyl ether	41		IPE/PRE
Pseudocumene	32		TME/TRE
Pyridine	9	PRD	
Pyridine bases	9	PRB	
Rosin oil	33	ORN	
Rosin soap (disproportionated) solution	43	RSP	
Rum	20		
Salicylaldehyde	19	SAL	
Sewage sludge	43		
Sodium acetate solution	34	SAN	
Sodium alkyl sulfonate solution	43	SSU	
Sodium aluminate solution	5	SAU	
Sodium benzoate solution	34	SBN	
Sodium borohydride, Sodium hydroxide solution	5	SBX	SBH/SBI
Sodium carbonate solutions	5	SCE	
Sodium chlorate solution	[1, 2]0	SDD	SDC
Sodium cyanide solution	5	SCS	SCN
Sodium dichromate solution	[1, 2]0	SDL	SCR
Sodium dimethyl naphthalene sulfonate solution	[2]34		DNS
Sodium hydrogen sulfide, Sodium carbonate solution	[2]0	SSS	
Sodium hydrogen sulfite solution	43	SHX	
Sodium hydrosulfide solution	[2]5	SHR	
Sodium hydrosulfide, Ammonium sulfide solution	[2]5	SSA	
Sodium hydroxide solution	[2]5		CSS
Sodium hypochlorite solution	5	SHP	SHC
Sodium 2-mercaptobenzothiazol solution	5	SMB	
Sodium naphthalene sulfonate solution	34	SNS	
Sodium nitrite solution	5	SNI	SNT
Sodium polyacrylate solution	[2]43		
Sodium salt of Ferric hydroxyethylethylenediaminetriacetic acid solution	43	STA	FHX
Sodium silicate solution	[2]43	SSN	SSC
Sodium sulfide, Hydrosulfide solution	[1, 2]0		SSH/SSI/SSJ
Sodium thiocyanate solution	[1, 2]0	STS	SCY
Sorbitol solutions	20		SBT
Stearic acid	34	SRA	
Styrene	30	STY	STX
Sulfolane	39	SFL	
Sulfur	[1]0	SXX	
Sulfuric acid	[2]2	SFA	
Sulfuric acid, spent	2	SAC	
Tall oil	34	OTL	
Tall oil soap (disproportionated) solution	43	TOS	
Tallow	[2]34	TLO	
Tallow fatty acid	[2]34	TFD	
Tallow fatty alcohol	20	TFA	
Tallow nitrile	37		
1,1,2,2-Tetrachloroethane	36	TEC	
Tetradecanol	20	TTN	
Tetradecene	30	TTD	
Tetradecylbenzene	32	TDB	AKB
Tetraethylene glycol	40	TTG	
Tetraethylenepentamine	7	TTP	
Tetrahydrofuran	41	THF	
Tetrahydronaphthalene	32	THN	
1,2,3,5-Tetramethylbenzene	32	TTB	
Tetrasodium salt of EDTA solution	43		EDS
Titanium tetrachloride	2	TTT	
Toluene	32	TOL	
Toluenediamine	9	TDA	
Toluene diisocyanate	12	TDI	
o-Toluidine	9	TLI	
Triarylphosphate	34		
Tributyl phosphate	34	TBP	
1,2,4-Trichlorobenzene	36	TCB	
1,1,1-Trichloroethane	[2]36	TCE	
1,1,2-Trichloroethane	36	TCM	
Trichloroethylene	[2]36	TCL	
1,2,3-Trichloropropane	36	TCN	
1,1,2-Trichloro 1,2,2-trifluoroethane	36	TTF	

TABLE I—ALPHABETICAL LIST OF CARGOES—Continued

Chemical name	Group No.	CHRIS code	Related CHRIS codes
Tricresyl phosphate	34		TCO/TCP
Tridecane	31	TRD	PFN
Tridecanol	20	TDN	
Tridecene	30	TDC	
Tridecylbenzene	32	TRB	AKB
Triethanolamine	[2]8	TEA	
Triethylamine	7	TEN	
Triethylbenzene	32	TEB	
Triethylene glycol	40	TEG	
Triethylene glycol butyl ether	40		
Triethylene glycol butyl ether mixture	40		
Triethylene glycol di-(2-ethylbutyrate)	34	TGD	
Triethylene glycol ether mixture	40		
Triethylene glycol ethyl ether	40	TGE	
Triethylenetetramine	[2]7	TET	
Triethyl phosphate	34	TPS	
Triethyl phosphite	[2]34	TPI	
Triisobutylene	30	TIB	
Triisooctyl trimellitate	34		
Triisopropanolamine	8	TIP	
Triisopropanolamine salt of 2,4-Dichlorophenoxyacetic acid solution	43		DTI
Trimethylacetic acid	4	TAA	
Trimethylbenzene	32	TRE	TME/TMB/TMD
Trimethylhexamethylenediamine (2,2,4- and 2,4,4-)	7	THA	
Trimethylhexamethylene diisocyanate (2,2,4- and 2,4,4-)	12	THI	
Trimethylol propane polyethoxylate	20	TPR	
2,2,4-Trimethyl pentanediol-1,3-diisobutyrate	34		
2,2,4-Trimethyl-1,3-pentanediol-1-isobutyrate	34	TMP	
2,2,4-Trimethyl-3-pentanol-1-isobutyrate	34		
Trimethyl phosphite	[2]34	TPP	
Tripropylene	30		
Tripropylene glycol	40	TGC	
Tripropylene glycol methyl ether	40	TGM	
Trisodium nitrilotriacetate	34		
Trixylenyl phosphate	34	TRP	
Turpentine	30	TPT	
Undecanoic acid	4	UDA	
Undecanol	20		UND
Undecene	30	UDC	
Undecyl alcohol	20	UND	
Undecylbenzene	32	UDB	AKB
Urea, Ammonium mono- and di-hydrogen phosphate, Potassium chloride solution	0	UPX	
Urea, Ammonium nitrate solution (containing Ammonia)	6	UAS	
Urea, Ammonium nitrate solution (not containing Ammonia)	43	ANU	
Urea, Ammonium phosphate solution	43	UAP	
Valeraldehyde	19		IVA/VAL/VAK
Vanillin black liquor	5	VBL	
Vegetable protein solution	43		
Vinyl acetate	13	VAM	
Vinyl acetate-Fumarate copolymer	34		
Vinyl chloride	35	VCM	
Vinyl ethyl ether	13	VEE	
Vinylidene chloride	35	VCI	
Vinyl neodecanate	13	VND	
Vinyltoluene	13	VNT	
Waxes:		WAX	
Carnauba	34	WCA	
Paraffin	31	WPF	
White spirit (low (15-20%) aromatic)	33	WSL	WSP
Xylene	32	XLX	XLM/XLO/XLP
Xylenols	21	XYL	
Zinc bromide, Calcium bromide solution *see* Drilling brine (containing Zinc salts)	43		DZB

[1] Because of very high reactivity or unusual conditions of carriage or potential compatibility problems, this product is not assigned to a specific group in the Compatibility Chart. For additional compatibility information, contact Commandant (G-MTH), U.S. Coast Guard, 2100 Second Street, SW., Washington, D.C. 20593-0001. Telephone (202) 267-1577.

[2] See Appendix I—Exceptions to the Chart.

Table II—Grouping of Cargoes

0. Unassigned Cargoes

Acetone cyanohydrin [1,2]
Alkylbenzenesulfonic acid [1,2]
Aluminium chloride, Hydrochloric acid solution [1]
Ammonium hydrogen phosphate solution [1]
Ammonium nitrate solution [1]
Ammonium thiocyanate, Ammonium thiosulfate solution [1]
Benzenesulfonyl chloride [1,2]
gamma-Butyrolactone [1,2]
Chlorine [1]
Chlorosulfonic acid [1]
2,4-Dichlorophenoxyacetic acid, Dimethylamine salt solution [1,2]
Dimethylamine salt of 2,4-Dichlorophenoxyacetic acid solution [1,2]
Diphenylol propane-Epichlorohydrin resins [1]
Dodecylbenzenesulfonic acid [1,2]
Ethyl chlorothioformate [1,2]
Ethylene oxide [1]
2-Hydroxyethyl acrylate [1,2]
Magnesium chloride solution [1,2]
Molasses residue [1]
Motor fuel antiknock compounds containing Lead alkyls [1]
Naphthalene sulfonic acid-formaldehyde copolymer, sodium salt solution [1]
Nitrating acid [1]
Nitric acid (greater than 70%) [1]
o-Nitrophenol [1,2]
Noxious Liquid Substance, n.o.s. (NLS's) [1]
Oleum [1,2]
Phosphorus [1]
Sodium chlorate solution [1,2]
Sodium dichromate solution [1,2]
Sodium hydrogen sulfide, Sodium carbonate solution [1,2]
Sodium sulfide, Hydrosulfide solution [1,2]
Sodium thiocyanate solution [1,2]
Sulfur [1]
Urea, Ammonium mono- and di-hydrogen phosphate, Potassium chloride solution

1. Non-Oxidizing Mineral Acids

Di-(2-ethylhexyl)phosphoric acid
Ferric chloride solution
Hydrochloric acid
Hydrochloric acid, spent
Hydrofluorosilicic acid
Phosphoric acid

2. Sulfuric Acids

Sulfuric acid [2]
Sulfuric acid, spent
Titanium tetrachloride

3. Nitric Acid

Ferric nitrate, Nitric acid solution
Nitric acid (70% or less)

4. Organic Acids

Acetic acid [2]
Acrylic acid [2]
Butyric acid
Cashew nut shell oil (untreated)
Chloroacetic acid solution
Chloropropionic acid
Cyclohexane oxidation product acid water
Decanoic acid
2,2-Dichloropropionic acid
2,2-Dimethyloctanoic acid
2-Ethylhexanoic acid
Formic acid [2]
n-Heptanoic acid
Hexanoic acid
2-Hydroxy-4-(methylthio)butanoic acid
Methacrylic acid
Naphthenic acid
Neodecanoic acid
Nonanoic acid
Octanoic acid
Propionic acid
Trimethylacetic acid
Undecanoic acid

5. Caustics

Ammonium sulfide solution
Calcium hypochlorite solutions
Caustic potash solution [2]
Caustic soda solution [2]
Cresylate spent caustic
Cresylic acid, sodium salt solution
Kraft black liquor
Kraft pulping liquors
Mercaptobenzothiazol, sodium salt solution
Potassium hydroxide solution [2]
Sodium aluminate solution
Sodium borohydride, Sodium hydroxide solution
Sodium carbonate solutions
Sodium cyanide solution
Sodium hydrosulfide solution [2]
Sodium hydrosulfide, Ammonium sulfide solution [2]
Sodium hydroxide solution [2]
Sodium hypochlorite solution
Sodium 2-mercaptobenzothiazol solution
Sodium nitrite solution
Vanillin black liquor

6. Ammonia

Ammonia, anhydrous
Ammonium hydroxide (28% or less Ammonia)
Ammonium nitrate, Urea solution (containing Ammonia)
Urea, Ammonium nitrate solution (containing Ammonia)

7. Aliphatic Amines

N-Aminoethylpiperazine
Butylamine
Cyclohexylamine
Dibutylamine
Diethylamine [2]
Diethylenetriamine
Diisobutylamine
Diisopropylamine
Dimethylamine
Dimethylamine solution
N,N-Dimethylcyclohexylamine
Di-n-propylamine
Dodecylamine, Tetradecylamine mixture [2]
Ethylamine [2]
Ethylamine solution
N-Ethyl-n-butylamine
N-Ethyl cyclohexylamine
Ethylenediamine [2]
2-Ethyl hexylamine
Hexamethylenediamine solution
Hexamethylenetetramine
Hexamethylenetetramine solutions
Hexamethylenimine
Isophorone diamine
Metam sodium solution
Methylamine
Methylamine solutions
Morpholine [2]
Pentaethylenehexamine, Tetraethylenepentamine mixture
Polyethylene polyamines [2]
Propylamine
Tetraethylenepentamine
Triethylamine
Triethylenetetramine [2]
Trimethylhexamethylene diamine (2,2,4- and 2,4,4-)

8. Alkanolamines

2-(2-Aminoethoxy)ethanol
Aminoethyldiethanolamine, Aminoethylethanolamine solution
Aminoethylethanolamine
2-Amino-2-methyl-1-propanol
Diethanolamine
Diethylaminoethanol
Diethylethanolamine
Diisopropanolamine
Dimethylethanolamine
Ethanolamine
Propanolamine
Triethanolamine [2]
Triisopropanolamine

9. Aromatic Amines

Aniline
4-Chloro-2-methylphenoxyacetic acid, Dimethylamine salt solution
2,6-Diethylaniline
Dimethylamine salt of 4-Chloro-2-methylphenoxyacetic acid solution
2,6-Dimethylaniline
2-Ethyl-6-methyl-N-(1'-methyl-2-methoxyethyl)aniline
4,4'-Methylene dianiline (43% or less), Polymethylene polyphenylamine, o-Dichlorobenzene mixtures
2-Methyl-6-ethyl aniline
2-Methyl-5-ethyl pyridine
Methyl pyridine
3-Methylpyridine
N-Methyl pyrrolidone
Pyridine
Pyridine bases
Toluenediamine
p-Toluidine

10. Amides

Acrylamide solution
N,N-Dimethylacetamide
N,N-Dimethylacetamide solution
Dimethylformamide
Formamide
Octadecenoamide

11. Organic Anhydrides

Acetic anhydride
Maleic anhydride
Phthalic anhydride
Propionic anhydride

12. Isocyanates

Diphenylmethane diisocyanate
Isophorone diisocyanate
Polymethylene polyphenyl isocyanate
Toluene diisocyanate
Trimethylhexamethylene diisocyanate (2,2,4- and 2,4,4-)

13. Vinyl Acetate

Vinyl acetate
Vinyl ethyl ether
Vinyl neodecanate
Vinyl toluene

14. Acrylates

Butyl acrylate
Butyl methacrylate
Butyl methacrylate, Decyl methacrylate, Cetyl-Eicosyl methacrylate mixture
Cetyl-Eicosyl methacrylate mixture
Decyl acrylate
Dodecyl methacrylate
Dodecyl-Pentadecyl methacrylate mixture
Ethyl acrylate
2-Ethylhexyl acrylate
Ethyl methacrylate
Methyl acrylate
Methyl methacrylate
Nonyl methacrylate
Polyalkyl(C18 - C22) acrylate in Xylene

15. Substituted Allyls

Acrylonitrile [2]
Allyl alcohol [2]
Allyl chloride
1,3-Dichloropropene
Dichloropropene, Dichloropropane mixtures
Methacrylonitrile

16. Alkylene Oxides

Butylene oxide
Ethylene oxide, Propylene oxide mixtures
Propylene oxide

17. Epichlorohydrin

Chlorohydrins
Epichlorohydrin

18. Ketones

Acetone [2]
Acetophenone
Amyl methyl ketone
Butyl heptyl ketone
Camphor oil
Cyclohexanone
Cyclohexanone, Cyclohexanol mixtures [2]
Diisobutyl ketone
Ethyl amyl ketone
Epoxy resin
Ketone residue
Isophorone [2]
Mesityl oxide [2]
Methyl amyl ketone
Methyl butyl ketone
Methyl butyl ketone
Methyl diethanolamine
Methyl ethyl ketone [2]
Methyl heptyl ketone
Methyl isoamyl ketone
Methyl isobutyl ketone [2]

19. Aldehydes

Acetaldehyde
Acrolein [2]
Butyraldehyde
Crotonaldehyde [2]
Decaldehyde
Ethylhexaldehyde
2-Ethyl-3-propylacrolein [2]
Formaldehyde, Methanol mixtures [2]
Formaldehyde solution [2]
Furfural
Glutaraldehyde solution
Glyoxal solutions
3-Methyl butyraldehyde
Methylolureas
Octyl aldehyde
Paraldehyde
Pentyl aldehyde
Propionaldehyde
Salicylaldehyde
Valeraldehyde

20. Alcohols, Glycols

Acrylonitrile-Styrene copolymer dispersion in Polyether polyol
Alcoholic beverages
Alcohol polyethoxylates
Alcohol polyethoxylates, secondary
Alcohols (C13 and above)
Amyl alcohol
Behenyl alcohol
Brake fluid base mixtures
Butyl alcohol [2]
Butylene glycol [2]
Choline chloride solutions
Cyclohexanol
Decyl alcohol [2]
Diacetone alcohol [2]
Diisobutyl carbinol
2,2-Dimethylpropane-1,3-diol
Dodecanol
Dodecyl alcohol
Ethoxylated alcohols, C11-C15
2-Ethoxyethanol
Ethyl alcohol [2]
Ethyl butanol
Ethylene chlorohydrin
Ethylene cyanohydrin
Ethylene glycol [2]
2-Ethylhexanol
Furfuryl alcohol [2]
Glycerine [2]
Heptanol
Hexanol
Hexylene glycol
3-Methoxy-1-butanol
Methyl alcohol [2]
Methyl amyl alcohol
Methyl butenol
Methylbutynol
2-Methyl-2-hydroxy-3-butyne
Methyl isobutyl carbinol
3-Methyl-3-methoxybutanol
Molasses
Nonyl alcohol [2]
Octyl alcohol [2]
Pentadecanol
Polyalkylene oxide polyol
Polybutadiene, hydroxyl terminated
Polyglycerol
Propyl alcohol [2]
Propylene glycol [2]
Rum
Sorbitol solutions
Tallow fatty alcohol
Tetradecanol
Tridecanol
Trimethylol propane polyethoxylate
Undecanol
Undecyl alcohol

21. Phenols, Cresols

Benzyl alcohol
Carbolic oil
Creosote [2]
Cresols
Cresylic acid
2,4-Dichlorophenol
Dodecyl phenol
o-Ethylphenol
Nonyl phenol
Octyl phenol
Phenol
Xylenols

22. Caprolactam Solutions

Caprolactam solution

23-29. Unassigned

30. Olefins

Amylene
Butadiene
Butadiene, Butylene mixtures (cont. Acetylenes)
Butene
Butene oligomer
Butylene
1,5,9-Cyclododecatriene
1,3-Cyclopentadiene dimer
Cyclopentadiene polymers
Cyclopentadiene, Styrene, Benzene mixture
Cyclopentene
Decene
Dicyclopentadiene
Diisobutylene
Dipentene
Dodecene
Ethylene
Ethylidene norbornene [2]
1-Heptene
Hexene
Isoprene
Methyl acetylene, Propadiene mixture
Methylcyclopentadiene dimer
2-Methyl-1-pentene
4-Methyl-1-pentene
alpha-Methyl styrene
Myrcene
Nonene
1-Octadecene
Octene
Olefin mixtures
alpha-Olefins (C6 - C18) mixtures
alpha-Olefins (C13 and above)
1,3-Pentadiene
Pentene
Pentene, Miscellaneous hydrocarbon mixture [2]
Pinene
Polybutene
Polypropylene
Propylene
Propylene-butylene copolymer
Propylene dimer
Propylene tetramer
Propylene trime
Dodecane
Ethane
Heptane
Hexane [2]
Methane
Methylcyclohexane
2-Methyl pentane
Nonane
Octane
n-Paraffins (C10 - C20)
Pentane
Propane
iso-Propylcyclohexane
Tridecane
Waxes:
Paraffin

32. Aromatic Hydrocarbons

Alkyl acrylate-Vinyl pyridine copolymer in Toluene
Alkyl(C9 - C17) benzenes
Benzene
Benzene hydrocarbon mixtures (having 10% Benzene or more)

Benzene, Toluene, Xylene mixtures
Butylbenzene
Butyl phenol, Formaldehyde resin in Xylene
Butyl toluene
Cumene
Cymene
Decylbenzene
Dialkyl(C10 - C14) benzenes
Diethylbenzene
Diisopropylbenzene
Diisopropyl naphthalene
Diphenyl
Dodecylbenzene
Ethylbenzene
Ethyl toluene
Isopropylbenzene
Methyl naphthalene
Naphthalene
1-Phenyl-1-xylyl ethane
Propylbenzene
Pseudocumene
Tetradecylbenzene
Tetrahydronaphthalene
1,2,3,5-Tetramethylbenzene
Toluene
Tridecylbenzene
Triethylbenzene
Trimethylbenzene
Undecylbenzene
Xylene

33. Miscellaneous Hydrocarbon Mixtures

Alkylbenzenesulfonic acid, sodium salt solutions
Asphalt blending stocks, roofers flux
Asphalt blending stocks, straight run residue
Aviation alkylates
Calcuim sulfonate, Calcium carbonate, Hydrocarbon solvent mixture
Carbon black base
Coal tar
Coal tar pitch
Decahydronaphthalene
Diphenyl, Diphenyl ether
Distillates, flashed feed stocks
Distillates, straight run
Drilling mud (low toxicity) *(if flammable or combustible)*
Fatty acid amides
Gas oil, cracked
Gasoline blending stock, alkylates
Gasoline blending stock, reformates
Gasolines:
  Automotive *(not over 4.23 grams lead per gal.)*
  Aviation *(not over 4.86 grams lead per gal.)*
  Casinghead *(natural)*
  Polymer
  Straight run
Glycols, Resins, and Solvents mixture
Herbicide (C15-H22-NO2-Cl)
Jet Fuels:
  JP-1
  JP-3
  JP-4
  JP-5
  JP-8
Kerosene
Magnesium nonyl phenol sulfide
Maleic anhydride copolymer
Mineral spirits
Naphtha:
  Coal tar solvent
  Cracking fraction [2]
  Petroleum
  Solvent
  Stoddard solvent
  Varnish Makers' and Painters'
Nonyl phenolsulfide solution
Oil, fuel:
  No. 1
  No. 1-D
  No. 2
  No. 2-D
  No. 4
  No. 5
  No. 6
Oil, misc:
  Absorption
  Aliphatic
  Aromatic
  Clarified
  Coal
  Crude
  Diesel
  Heartcut distillate
  Linseed
  Lubricating
  Mineral
  Mineral seal
  Motor
  Neatsfoot
  Penetrating
  Pine
  Range
  Resin
  Resinous petroleum
  Rosin
  Sperm
  Spindle
  Spray
  Tanner's
  Turbine
  White (mineral)
  Residual
  Road
  Transformer
Oxyalkylated alkyl phenol formaldehyde
Petrolatum
Pine oil
Polyalkenyl succinic anhydride amine
White spirit (low (15-20%) aromatic)

34. Esters

Acetyl tributyl citrate
Alkyl phthalates
Amyl acetate
Amyl tallate
Benzene tricarboxylic acid trioctyl ester
Benzyl acetate
Butyl acetate
Butyl benzyl phthalate
n-Butyl butyrate
Butyl formate
iso-Butyl isobutyrate
Calcium naphthenate in Mineral oil
Calcium nitrate, Magnesium nitrate, Potassium chloride solution
Coconut oil, fatty acid
Cottonseed oil, fatty acid
Cyclohexyl acetate
Dialkyl(C7 - C13) phthalates
Dibutyl phthalate
Diethylene glycol butyl ether acetate
Diethylene glycol ethyl ether acetate
Diethylene glycol methyl ether acetate
Diethylene glycol phthalate
Di-(2-ethylhexyl)adipate
Di-(2-ethylhexyl)phthalate
Diethyl phthalate
Diethyl sulfate
Diheptyl phthalate
Di-n-hexyl adipate
Diisobutyl phthalate
Diisodecyl phthalate
Diisononyl adipate
Diisononyl phthalate
Diisooctyl phthalate
Dimethyl adipate
Dimethylcyclicsiloxane hydrolyzate
Dimethyl glutarate
Dimethyl hydrogen phosphite [2]
Dimethyl naphthalene sulfonic acid, sodium salt solution [2]
Dimethyl phthalate
Dimethyl polysiloxane
Dimethyl succinate
Dinonyl phthalate
Dioctyl phthalate
Dipropylene glycol dibenzoate
Ditridecyl phthalate
2-Dodecenylsuccinic acid, dipotassium salt solution
Diundecyl phthalate
2-Ethoxyethyl acetate
Ethyl acetate
Ethyl acetoacetate
Ethyl butyrate
Ethylene glycol acetate
Ethylene glycol butyl ether acetate
Ethylene glycol diacetate
Ethylene glycol ethyl ether acetate
Ethylene glycol methyl ether acetate
Ethyl-3-ethoxypropionate
Ethyl hexyl phthalate
Ethyl hexyl tallate
Ethyl propionate
Ethyl propionate
Fatty acids (saturated, C13 and above)
Glycerol polyalkoxylate
Glyceryl triacetate
Gylcidyl ester of tridecylacetic acid
Glycidyl ester of Versatic acid
Glycol diacetate
Heptyl acetate
Hexyl acetate
Lauric acid
Magnesium sulfonate
3-Methoxybutyl acetate
1-Methoxy-2-propyl acetate
Methyl acetate
Methyl acetoacetate
Methyl amyl acetate
Methyl butyrate
Methyl formate
3-Methyl-3-methoxybutyl acetate
Methyl salicylate
Metolachlor
Naphthalene sulfonic acid, sodium salt solution (40% or less)
Octyl decyl adipate
Octyl epoxytallate
Octyl nitrate [2]
Oil, edible:
  Babassu
  Castor
  Coconut [2]
  Corn
  Cotton seed
  Fish [2]
  Lard
  Olive
  Palm [2]
  Palm kernel

Peanut
Rapeseed
Rice bran
Safflower
Soya bean
Sunflower
Sunflower seed
Tucum
Vegetable
Oil, misc:
Coconut oil, fatty acid methyl ester
Cotton seed oil, fatty acid
Palm oil, fatty acid methyl ester
Palm oil, methyl ester
Soapstock
Tall
Tall, fatty acid [2]
Tung
Oleic acid
Palm kernel oil, fatty acid
Palm kernel oil, fatty acid methyl ester
Palm stearin
Polydimethylsiloxane
Polyferric sulfate solution
Polymethylsiloxane
Poly(20)oxyethylene sorbitan monooleate
Polysiloxane
Potassium oleate
Propyl acetate
Sodium acetate solution
Sodium benzoate solution
Sodium dimethyl naphthalene sulfonate solution [2]
Sodium naphthalene sulfonate solution
Stearic acid
Tall oil
Tallow [2]
Tallow fatty acid [2]
Triarylphosphate
Tributyl phosphate
Tricresyl phosphate
Triethylene glycol di-(2-ethylbutyrate)
Triethyl phosphate
Triethyl phosphite [2]
Triisooctyl trimellitate [2]
2,2,4-Trimethyl pentanediol-1,3-diisobutyrate
2,2,4-Trimethyl-1,3-pentanediol-1-isobutyrate
2,2,4-Trimethyl-3-pentanol-1-isobutyrate
Trimethyl phosphite [2]
Trisodium nitrilotriacetate
Trixylenyl phosphate
Vinyl acetate-Fumarate copolymer
Waxes:
Carnauba

35. Vinyl Halides

Vinyl chloride
Vinylidene chloride

36. Halogenated Hydrocarbons

Benzyl chloride
Carbon tetrachloride
Chlorinated paraffins (C10 - C13)
Chlorinated paraffins (C14 - C17)
Chlorobenzene
Chlorodifluoromethane
Chloroform
Chlorotoluene
Dichlorobenzene
Dichlorodifluoromethane
1,1-Dichloroethane
2,2'-Dichloroisopropyl ether
Dichloromethane
Dichloropropane
Ethyl chloride
Ethylene dibromide
Ethylene dichloride [2]
Methyl bromide
Methyl chloride
Monochlorodifluoromethane
Pentachloroethane
Perchloroethylene
1,1,2,2-Tetrachloroethane
1,2,4-Trichlorobenzene
1,1,1-Trichloroethane [2]
1,1,2-Trichloroethane
Trichloroethylene [2]
1,2,3-Trichloropropane
1,1,2-Trichloro-1,2,2-trifluoroethane

37. Nitriles

Acetonitrile
Adiponitrile
Lactonitrile solution
3-Pentenenitrile
Propionitrile
Tallow nitrile

38. Carbon Disulfide

Carbon disulfide

39. Sulfolane

Sulfolane

40. Glycol Ethers

Diethylene glycol
Diethylene glycol butyl ether
Diethylene glycol dibutyl ether
Diethylene glycol ethyl ether
Diethylene glycol methyl ether
Diethylene glycol phenyl ether
Dipropylene glycol
Dipropylene glycol methyl ether
Ethoxy triglycol
Ethylene glycol tert-butyl ether
Ethylene glycol butyl ether
Ethylene glycol dibutyl ether
Ethylene glycol ethyl ether
Ethylene glycol isopropyl ether
Ethylene glycol methyl ether
Ethylene glycol phenyl ether
Ethylene glycol phenyl ether, Diethylene glycol phenyl ether mixture
Ethylene glycol propyl ether
Methoxy triglycol
Nonyl phenol (ethoxylated)
Nonyl phenol poly(4-12)ethoxylates
Oil, misc:
Soybean (epoxidized)
Polyalkylene glycols, Polyalkylene glycol monoalkyl ethers mixtures
Polyethylene glycols
Polyethylene glycol dimethyl ether
Polyethylene glycol monoalkyl ether
Polypropylene glycol methyl ether
Polypropylene glycols
n-Propoxypropanol
Propylene glycol monoalkyl ether
Propylene glycol ethyl ether
Propylene glycol methyl ether
Tetraethylene glycol
Triethylene glycol
Triethylene glycol butyl ether
Triethylene glycol butyl ether mixture
Triethylene glycol ether mixture
Triethylene glycol ethyl ether
Tripropylene glycol
Tripropylene glycol methyl ether

41. Ethers

Butyl ether
2,2'-Dichloroethyl ether
Digylcidyl ether of Bisphenol A
Diglycidyl ether of Bisphenol F
Dimethyl furan
1,4-Dioxane
Diphenyl ether
Diphenyl ether, Diphenyl phenyl ether mixture
Ethyl ether
Methyl-tert-butyl ether [2]
Methyl formal
Propyl ether
Tetrahydrofuran

42. Nitrocompounds

Dinitrotoluene
Nitrobenzene
o-Nitrochlorobenzene
Nitroethane
Nitropropane
Nitropropane, Nitroethane mixture
Nitrotoluene

43. Miscellaneous Water Solutions

Aluminum sulfate solution [2]
2-Amino-2-hydroxymethyl-1,3-propanediol solution
Ammonium bisulfite solution [2]
Ammonium nitrate, Urea solution (not containing Ammonia)
Ammonium polyphosphate solution
Ammonium sulfate solution
Ammonium thiosulfate solution
Calcium bromide solution
Calcium chloride solution
Corn syrup
Dextrose solution
Diammonium salt of Zinc EDTA solution
2,4-Dichlorophenoxy acetic acid, Diethanolamine salt solution
2,4-Dichlorophenoxyacetic acid, Triisopropanolamine salt solution [2]
Didecyl dimethyl ammonium chloride, Ethanol mixture solution
Diethanolamine salt of 2,4-Dichlorophenoxy acetic acid solution
Dodecyl diphenyl ether disulfonate solution
Drilling brine (containing Calcium, Potassium, or Sodium salts)
Drilling brine (containing Zinc salts)
Drilling mud (low toxicity) *(if non-flammable or non-combustible)*
Ethylenediaminetetracetic acid, tetrasodium salt solution
Ethylene-Vinyl acetate copolymer emulsion
Ferric hydroxyethylethylenediamine triacetic acid, trisodium salt solution [2]
Fish solubles *(water based fish meal extracts)*
Fructose solution
Fumaric adduct of Rosin, water dispersion
N-(Hydroxyethyl)ethylene diamine triacetic acid, trisodium salt solution
Kaolin clay slurry
Latex, liquid synthetic
Lignin liquor
Naphthenic acid, sodium salt solution
Rosin soap (disproportionated) solution
Sewage sludge, treated
Sodium alkyl sulfonate solution
Sodium hydrogen sulfite solution
Sodium polyacrylate solution [2]
Sodium salt of Ferric hydroxyethylethylenediamine triacetic acid solution
Sodium silicate solution [2]

Tall oil soap (disproportionated) solution
Tetrasodium salt of EDTA solution
Triisopropanolamine salt of 2,4-Dichlorophenoxyacetic acid solution
Urea, Ammonium nitrate solution (not containing Ammonia)
Urea, Ammonium phosphate solution
Vegetable protein solution (hydrolysed)

Footnotes to Table II

[1] Because of very high reactivity or unusual conditions of carriage or potential compatibility problems, this product is not assigned to a specific group in the Compatibility Chart. For additional compatibility information, contact Commandant (G-MTH), U.S. Coast Guard, 2100 Second Street, SW., Washington, D.C. 20593–0001. Telephone (202) 267–1577.

[2] See Appendix I—Exceptions to the Chart.

Appendix I—Exceptions to the Chart

(a). The binary combinations listed below have been tested as prescribed in Appendix III and found not to be dangerously reactive. These combinations are exceptions to the Compatibility Chart (Figure 1) and may be stowed in adjacent tanks.

Member of reactive group	Compatible with
Acetone (18)	Diethylenetriamine (7)
Acetone cyanohydrin (0).	Acetic acid (4)
Acrylonitrile (15)	Triethanolamine (8)
1,3-Butylene glycol (20).	Morpholine (7)
1,4-Butylene glycol (20).	Ethylamine (7) Triethanolamine (8)
Caustic potash, 50% or less (5).	Ethyl alcohol (20) Ethylene glycol (20) Isopropyl alcohol (20) Methyl alcohol (20) iso-Octyl alcohol (20)
Caustic soda, 50% or less (5).	Butyl alcohol (20) tert-Butyl alcohol, Methanol mixtures Decyl alcohol (20) Diacetone alcohol (20) Diethylene glycol (40) Ethyl alcohol (20) Ethyl alcohol (40%, whiskey) (20) Ethylene glycol (20) Ethylene glycol, Diethylene glycol mixture (20) Ethyl hexanol (Octyl alcohol) (20) Methyl alcohol (20) Nonyl alcohol (20) Propyl alcohol (20) Propylene glycol (20) Sodium chlorate (0) iso-Tridecanol (20)
Dodecyl and Tetradecylamine mixture (7).	Tall oil, fatty acid (34)
Ethylenediamine (7)	Butyl alcohol (20) tert-Butyl alcohol (20) Butylene glycol (20) Creosote (21) Diethylene glycol (40) Ethyl alcohol (20) Ethylene glycol (20) Ethyl hexanol (20) Glycerine (20) Isononyl alcohol (20) Isophorone (18) Methyl butyl ketone (18) Methyl iso-butyl ketone (18) Methyl ethyl ketone (18) Propyl alcohol (20) Propylene glycol (20)
Oleum (0)	Hexane (31) Dichloromethane (36) Perchloroethylene (36)
1,2-Propylene glycol (20).	Diethylenetriamine (7) Polyethylene polyamines (7) Triethylenetetramine (7)
Sulfuric acid (2)	Coconut oil (34) Coconut oil acid (34) Palm oil (34) Tallow (34)
Sulfuric acid, 98% or less (2).	Choice white grease tallow (34)

(b). The binary combinations listed below have been determined to be dangerously reactive, based on either data obtained in the literature or on laboratory testing which has been carried out in accordance with procedures prescribed in Appendix III. These combinations are exceptions to the Compatibility Chart (Figure 1) and may not be stowed in adjacent tanks.

Acetone cyanohydrin (0) is not compatible with Groups 1-12, 16, 17 and 22.

Acrolein (19) is not compatible with Group 1, Non-Oxidizing Mineral Acids.

Acrylic acid (4) is not compatible with Group 9, Aromatic Amines.

Alkylbenzenesulfonic acid (0) is not compatible with Groups 1-3, 5-9, 15, 16, 18, 19, 30, 34, 37, and strong oxidizers.

Allyl alcohol (15) is not compatible with Group 12, Isocyanates.

Aluminum sulfate solution (43) is not compatible with Groups 5-11.

Ammonium bisulfite solution (43) is not compatible with Groups 1, 3, 4, and 5.

Benzenesulfonyl chloride (0) is not compatible with Groups 5-7, and 43.

gamma-Butyrolactone (0) is not compatible with Groups 1-9.

Crotonaldehyde (19) is not compatible with Group 1, Non-Oxidizing Mineral Acids.

Cyclohexanone, Cyclohexanol mixture (18) is not compatible with Group 12, Isocyanates.

2,4-Dichlorophenoxyacetic acid, Triisopropanolamine salt solution (43) is not compatible with Group 3, Nitric Acid.

2,4-Dichlorophenoxyacetic acid solution, Dimethylamine salt (0) is not compatible with Groups 1-5, 11, 12, and 16.

Dimethyl hydrogen phosphite (34) is not compatible with Groups 1 and 4.

Dimethyl naphthalene sulfonic acid, sodium salt solution (34) is not compatible with Group 12, Formaldehyde, and strong oxidizing agents.

Dodecylbenzenesulfonic acid (0) is not compatible with oxidizing agents and Groups 1, 2, 3, 5, 6, 7, 8, 9, 15, 16, 18, 19, 30, 34, and 37.

Ethyl chlorothioformate (0) is not compatible with Groups 5, 6, 7, 8, and 9.

Ethylenediamine (7) is not compatible with Ethylene dichloride (36).

Ethylene dichloride (36) is not compatible with Ethylenediamine (7).

Ethylidene norbornene (30) is not compatible with Groups 1-3 and 5-8.

2-Ethyl-3-propylacrolein (19) is not compatible with Group 1, Non-Oxidizing Mineral Acids.

Ferric hydroxyethylethylenediamine triacetic acid, Sodium salt solution (43) is not compatible with Group 3, Nitric acid.

Fish oil (34) is not compatible with Sulfuric acid (2).

Formaldehyde (over 50%) in Methyl alcohol (over 30%) (19) is not compatible with Group 12, Isocyanates.

Formic acid (4) is not compatible with Furfural alcohol (20).

Furfuryl alcohol (20) is not compatible with Group 1, Non-Oxidizing Mineral Acids and Formic acid (4).

2-Hydroxyethyl acrylate is not compatible with Groups 2, 3, 5-8 and 12.

Isophorone (18) is not compatible with Group 8, Alkanolamines.

Magnesium chloride solution (0) is not compatible with Groups 2, 3, 5, 6 and 12.

Mesityl oxide (18) is not compatible with Group 8, Alkanolamines.

Methyl tert-butyl ether (41) is not compatible with Group 1, Non-oxidizing Mineral Acids.

Naphtha, cracking fraction (33) is not compatible with strong acids, caustics or oxidizing agents.

o-Nitrophenol (0) is not compatible with Groups 2, 3, and 5-10.

Octyl nitrates (all isomers) (34) is not compatible with Group 1, Non-oxidizing Mineral Acids.

Oleum (0) is not compatible with Sulfuric acid (2) and 1,1,1-Trichloroethane (36).

Pentene, Miscellaneous hydrocarbon mixtures (30) are not compatible with strong acids or oxidizing agents.

Sodium chlorate solution (50% or less) (0) is not compatible with Groups 1-3, 5, 7, 8, 10, 12, 13, 17 and 20.

Sodium dichromate solution (70% or less) (0) is not compatible with Groups 1-3, 5, 7, 8, 10, 12, 13, 17 and 20.

Sodium dimethyl naphthalene sulfonate solution (34) is not compatible with Group 12, Formaldehyde and strong oxidizing agents.

Sodium hydrogen sulfide, Sodium carbonate solution (0) is not compatible with Groups 6 (Ammonia) and 7 (Aliphatic amines).

Sodium hydrosulfide (5) is not compatible with Groups 6 (Ammonia) and 7 (Aliphatic amines).

Sodium hydrosulfide, Ammonium sulfide solution (5) is not compatible with Groups 6 (Ammonia) and 7 (Aliphatic amines).

Sodium polyacrylate solution (43) is not compatible with Group 3, Nitric Acid.

Sodium salt of Ferric hydroxyethylethylenediamine triacetic acid solution (43) is not compatible with Group 3, Nitric acid.

Sodium silicate solution (43) is not compatible with Group 3, Nitric Acid.

Sodium sulfide, hydrosulfide solution (0) is not compatible with Groups 6 (Ammonia) and 7 (Aliphatic amines).

Sodium thiocyanate (56% or less) (0) is not compatible with Groups 1-4.

Sulfuric acid (2) is not compatible with Fish oil (34), or Oleum (0).

Tallow fatty acid (34) is not compatible with Group 5, Caustics.

1,1,1-Trichloroethane (36) is not compatible with Oleum (0).

Trichloroethylene (36) is not compatible with Group 5, Caustics.

Triethyl phosphite (34) is not compatible with Groups 1, and 4.

Trimethyl phosphite (34) is not compatible with Groups 1 and 4.

PART 151—BARGES CARRYING BULK LIQUID HAZARDOUS MATERIAL CARGOES

5. The authority citation for part 151 is revised to read as follows:

Authority: 33 U.S.C. 1903(b), 46 U.S.C. 3703; 49 CFR 1.46.

6. In part 151, except in § 151.15–3(g) and (h), by removing the words "gage", "gages", and "gaging" wherever they may appear and adding, in their place, the words "gauge", "gauges", and "gauging", respectively.

§ 151.01–10 [Amended]

7. In § 151.01–10, by removing table 151.01–10(b) following paragraph (b) and by removing from paragraphs (b), (c), (c–1), (d), and (e) the words "Table 151.01–10(b)" and adding, in their place, the words "table 151.05".

§§ 151.01–15, 151.01–20, 151.04–1, and 151.04–5 [Amended]

8. In §§ 151.01–15(a) and (b), 151.01–20(a) and (b), 151.04–1(c), and 151.04–5(h), by removing the words "Table 151.01–10(b)" and adding, in their place, the words "table 151.05".

9. In § 151.05–1, by revising paragraphs (a), (o), and (p) to read as follows:

§ 151.05–1 Explanation of column headings in Table 151.05.

(a) *Cargo identification/name.* This column identifies cargoes by name. Words in italics are not part of the cargo name but may be used in addition to the cargo name. When one entry references another entry by use of the word "see" and both names are in roman type, either name may be used as the cargo name (e.g., "Diethyl either *see* Ethyl ether"). However, the referenced entry is preferred.

* * * * *

(o) *Special requirements.* This column refers to requirements in subparts 151.40, 151.50, 151.55, 151.56, and 151.58 of this part which apply to specific cargoes. The section numbers listed omit the preceding part designation, "151".

* * * * *

(p) *Electrical hazard class—group.* This column lists the electrical hazard class and group used for the cargo when determining requirements for electrical equipment under subchapter J (Electrical engineering) of this chapter.

* * * * *

10. By revising table 151.05, which follows § 151.05–1, to read as follows:

TABLE 151.05—SUMMARY OF MINIMUM REQUIREMENTS

Cargo identification			Hull type	Cargo segregation tank	Tanks			Cargo transfer		Environmental control		Fire protection required	Special requirements (Section in 46 CFR Part 151)	Electrical hazard class-group	Temp. control install.	Tank internal inspect. period—years
Name	Pressure	Temp.			Type	Vent	Gauging device	Piping class	Control	Cargo tanks	Cargo handling space					
Acetaldehyde	Press.	Amb.	II	1NA 2ii	Ind. Pressure	SR	Restr.	II	P-1	Inerted	Vent F	Yes	.55-1(h)	I-C	NA	G
Acetic acid	Atmos.	Amb.	III	1i 2ii	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	.55-1(g)	I-D	NA	G
Acetic anhydride	Atmos.	Amb.	III	1i 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	.55-1(g)	I-D	NA	G
Acetone cyanohydrin	Atmos.	Amb.	I	1ii 2i	Integral Gravity	PV	Closed	I	G-1	NR	Vent F	Yes	.50-5 **.50-70(b)** **.50-73** **.50-81**	NA	NA	G
Acetonitrile	Atmos.	Amb.	III	1i 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	No	I-D	NA	G
Acrylic acid	Atmos	Amb	III	1ii 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	.50-70(a) .50-73 **.50-81** .58-1(a)	I-D	NA	G
Acrylonitrile	Atmos.	Amb.	II	1ii 2ii	Integral Gravity	PV	Closed	II	G-1	NR	Vent F	Yes	.55-1(e) **.50-70(a)**	I-D	NA	G
Adiponitrile	Atmos.	Amb.	II	1ii 2i	Integral Gravity	PV	Open	II	G-1	NR	Vent F	Yes	No	NA	NA	G
Allyl alcohol	Atmos.	Amb.	I	1ii 2ii	Integral Gravity	PV	Closed	I	G-1	NR	Vent F	Yes	.50-5 **.50-73**	I-C	NA	G
Allyl chloride	Atmos.	Amb.	I	1ii 2ii	Integral Gravity	PV	Closed	I	G-1	NR	Vent F	Yes	.50-5	I-D	NA	G
Aluminum sulfate solution	Atmos	Amb	III	1i 2i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	.58-1(e)	NA	NA	G
Aminoethylethanolamine	Atmos.	Amb.	III	1i 2i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	.55-1(b)	NA	NA	G
Ammonia, anhydrous	Press.	Amb.	II	1NA 2ii	Ind. Pressure	SR 250 p.s.i.	Restr.	II	P-2	NR	Vent F	No	.50-30 .50-32	I-D	NA	G
Ammonia, anhydrous	Atmos.	Low	II	1NA 2ii	Ind. Gravity	PV	Restr.	II-L	G-2	NR	Vent F	No	.50-30 .50-32	I-D	.40-1(b)(1)	G
Ammonium bisulfite solution (70% or less).	Atmos	Amb	III	1i 2i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	No	.50-73 .56-1(a), (b), (c)	NA	NA	G
Ammonium hydroxide (28% or less NH_3).	Atmos.	Amb.	III	1i 2i	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	No	**.56-1(a), (b), (c), (f), (g).**	I-D	NA	G
Aniline	Atmos.	Amb.	I	1ii 2ii	Integral Gravity	PV	Closed	I	G-1	NR	Vent F	Yes	**.50-5, .50-73**	NA	NA	G
Anthracene oil (Coal tar fraction).	Atmos.	Amb. Elev.	II	1ii 2ii	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	No	I-D	NA	G
Argon, *liquefied*	Press.	Low	III	1NA 2i	Ind. Pressure	SR	Restr.	II-L	P-1	NR	Vent F	No	.40-1(a) .50-30 .50-36.	NA	.40-1(a)	G

Benzene	Atmos.	Amb.	III	1i 2ii	Integral Gravity	PV	Open	II	G-1	NR	Vent F	Yes	.50-60	I-D	NA	G
Benzene hydrocarbon mixtures (containing Acetylenes) (*having 10% Benzene or more*).	Atmos.	Amb.	III	1i 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	**.56-1(b), (d), (f), (g)**	I-D	NA	G
Benzene hydrocarbon mixtures (*having 10% Benzene or more*).	Atmos.	Amb.	III	1i 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	No	I-D	NA	G
Benzene, Toluene, Xylene mixtures (*having 10% Benzene or more*).	Atmos.	Amb.	III	1i 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	No	I-D	NA	G
Butadiene	Press.	Amb.	II	1NA 2ii	Ind. Pressure	SR	Restr.	II	P-2	NR	Vent F	Yes	**.50-70(a), .50-73**	I-B	NA	G
Butadiene, Butylene mixtures (*containing Acetylenes*).	Press.	Amb.	II	1NA 2ii	Ind. Pressure	SR	Restr.	II	P-1	NR	Vent F	Yes	**.50-30** **.50-70(a), .50-73** **.56-1(b), (d), (f), (g)**	I-B	NA	G
iso-Butyl acrylate	Atmos.	Amb.	III	1i 2ii	Integral Gravity	PV	Open	II	G-1	NR	Vent N	Yes	**.50-70(a)** **.50-81(a), (b)**	I-D	NA	G
n-Butyl acrylate	Atmos.	Amb.	III	1i 2ii	Integral Gravity	PV	Open	II	G-1	NR	Vent N	Yes	**.50-70(a)** **.50-81(a), (b)**	I-D	NA	G
Butylamine (all isomers)	Atmos.	Amb.	II	1ii 2ii	Ind. Gravity	PV	Closed	II	G-1	NR	Vent F	Yes	.55-1(c)	I-D	NA	G
Butyl methacrylate	Atmos.	Amb.	III	1i 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	**.50-70(a)** **.50-81(a), (b)**	I-D	NA	G
iso-Butyraldehyde	Atmos.	Amb.	III	1i 2ii	Integral Gravity	PV	Open	II	G-1	NR	Vent F	Yes	.55-1(h)	I-C	NA	G
n-Butyraldehyde	Atmos.	Amb.	III	1i 2ii	Integral Gravity	PV	Open	II	G-1	NR	Vent F	Yes	.55-1(h)	I-C	NA	G
Butyraldehydes (crude)	Atmos.	Amb.	III	1i 2ii	Integral Gravity	PV	Open	II	G-1	NR	Vent F	Yes	No	I-C	NA	G
Camphor oil (*light*)	Atmos.	Amb.	II	1ii 2ii	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	No	I-D	NA	G
Carbolic oil	Atmos.	Amb.	I	1ii 2ii	Integral Gravity	PV	Closed	I	G-1	NR	Vent F	Yes	.50-5 **.50-73**	NA	NA	G
Carbon dioxide, liquid	Press.	Low	III	1 NA 2i	Ind. Pressure	SR	Restr.	I-L	P-1	NR	Vent F	No	.50-30	NA	.40-1(b)(1)	G
Carbon disulfide	Atmos.	Amb.	II	1NA 2ii	Ind. Gravity	PV	Restr.	II	G-1	Inert	Vent F	Yes	.50-40 .50-41	I-A	NA	G
Carbon tetrachloride	Atmos.	Amb.	III	1i 2i	Integral Gravity	PV	Open	II	G-1	NR	Vent N	No	No	NA	NA	G
Caustic potash solution	Atmos.	Amb. Elev.	III	1i 2i	Integral Gravity	Open	Open	II	G-1	NR	NR	No	**.50-73** .55-1(j)	NA	NA	G
Caustic soda solution	Atmos.	Amb. Elev.	III	1i 2i	Integral Gravity	Open	Open	II	G-1	NR	NR	No	**.50-73** .55-1(j)	NA	NA	G
Chlorine	Press.	Amb.	I	1NA 2ii	Ind. Pressure	SR 300 p.s.i.	Indirect	I	P-2	NR	Vent F	No	.50-30 .50-31	NA	NA	**3**
Chlorobenzene	Atmos.	Amb.	III	1i 2ii	Integral Gravity	PV	Open	II	G-1	NR	Vent N	Yes	No	I-D	NA	G
Chloroform	Atmos.	Amb.	III	1i 2i	Integral Gravity	Open	Open	II	G-1	NR	Vent F	No	No	NA	NA	G

TABLE 151.05—SUMMARY OF MINIMUM REQUIREMENTS—Continued

Cargo identification			Hull type	Cargo segregation tank	Tanks			Cargo transfer		Environmental control		Fire protection required	Special requirements (Section in 46 CFR Part 151)	Electrical hazard class-group	Temp. control install.	Tank internal inspect. period—years
Name	Pressure	Temp.			Type	Vent	Gauging device	Piping class	Control	Cargo tanks	Cargo handling space					
Chlorohydrins (*crude*)	Atmos.	Amb.	I	1ii 2ii	Integral Gravity	PV	Closed	I	G-1	NR	Vent F	Yes	.50-5	I-D	NA	G
Chlorosulfonic acid	Atmos.	Amb.	III	1ii 2ii	Integral Gravity	PV	Open	II	G-1	NR	Vent N	No	.50-20 .50-21 **.50-73**	I-B	NA	G
Coal tar naphtha solvent	Atmos.	Amb.	III	1i 2i	Integral Gravity	PV	Restr	II	G-1	NR	**Vent F**	Yes	No	**I-D**	NA	G
Coal tar pitch (molten)	Atmos.	Elev.	III	1ii 2ii	Integral Gravity	PV	Restr	II	G-1	NR	Vent F	Yes	No	I-D	NA	G
Creosote	Atmos.	Amb.	III	1i 2i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	No	NA	NA	G
Cresols (all isomers)	Atmos.	Amb.	III	1i 2i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	No	NA	NA	G
Cresols with less than 5% Phenol see Cresols (all isomers).																
Cresols with 5% or more Phenol see Phenol.																
Cresylate spent caustic	Atmos.	Amb.	III	1ii 2i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	No	.50-73 .55-1(b)	NA	NA	G
Cresylic acid, sodium salt solution, *see* Cresylate spent caustic.																
Crotonaldehyde	Atmos.	Amb.	II	1ii 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	.55-1(h)	I-C	NA	G
Cyclohexanone	Atmos.	Amb.	III	1i 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	.56-1(a), (b)	I-D	NA	G
Cyclohexylamine	Atmos.	Amb.	III	1ii 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	.56-1(a), (b), (c), **(g)**	I-D	NA	G
iso-Decyl acrylate	Atmos.	Amb.	III	1i 2i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	**.50-70(a)** **.50-81(a), (b)** .55-1(c)	NA	NA	G
Dichlorobenzene (all isomers).	Atmos.	Amb.	III	1ii 2i	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	.56-1(a), (b)	I-D	NA	G
1,1-Dichloroethane	Atmos.	Amb.	III	1ii 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	No	I-D	NA	G
Dichlorodifluoromethane	Press.	Amb.	III	1NA 2i	Ind. Pressure	SR	Restr.	II	P-1	NR	NR	No	No	NA	NA	**G**
2,2'-Dichloroethyl ether	Atmos.	Amb.	II	1ii 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	.55-1(f)	I-D	NA	G
Dichloromethane	Atmos.	Amb.	III	1i 2i	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	No	No	NA	NA	G

2,4-Dichlorophenoxyacetic acid, diethanolamine salt solution.	Atmos.	Amb.	III	1i 2i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	No	.56-1(a), (b), (c), (g)	NA	NA	G
2,4-Dichlorophenoxyacetic acid, dimethylamine salt solution.	Atmos.	Amb/ Elev	III	1i 2i	Integral Gravity	PV	Restr	II	G-1	NR	Vent F	No	.56-1(a), (b), (c), (g)	NA	NA	G
2,4-Dichlorophenoxyacetic acid, trisopropanolamine salt solution.	Atmos.	Amb.	III	1i 2i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	No	.56-1(a), (b), (c), (g)	NA	NA	G
1,1-, 1,2-, or 1,3-Dichloropropane.	Atmos.	Amb.	III	1i 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	No	I-D	NA	G
1,3-Dichloropropene	Atmos.	Amb.	II	1ii 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	No	I-D	NA	G
Dichloropropene, Dichloropropane mixtures.	Atmos.	Amb.	II	1ii 2ii	Integral Gravity	PV	**Closed**	II	G-1	NR	Vent F	Yes	No	I-D	NA	G
2,2-Dichloropropionic acid	Atmos.	Amb.	II	1ii 2i	Integral Gravity	PV	Restr	II	G-1	Dry	**Vent F**	Yes	.50-73 **.58-1(e)**	NA	NA	G
Diethanolamine	Atmos.	Amb.	III	1i 2i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	.55-1(c)	NA	NA	G
Diethylamine	Atmos.	Amb.	III	1ii 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	.55-1(c)	I-C	NA	G
Diethylenetriamine	Atmos.	Amb.	III	1i 2i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	.55-1(c)	NA	NA	G
Diethyl ether *see* Ethyl ether.																
Diisobutylamine	Atmos.	Amb.	III	1ii 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	.55-1(c)	I-C	NA	G
Diisopropanolamine	Atmos.	Amb.	III	1i 2i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	.55-1(c)	NA	NA	G
Diisopropylamine	Atmos.	Amb.	II	1ii 2ii	Integral Gravity	PV	Closed	II	G-1	NR	Vent F	Yes	.55-1(c)	I-C	NA	G
N,N-Dimethylacetamide	Atmos	Amb.	III	**1ii** 2i	Integral Gravity	PV	Restr	II	G-1	NR	Vent F	Yes	**.56-1(b)**	**I-D**	NA	G
Dimethylamine	Press.	Amb.	II	1NA 2ii	Ind. Pressure	SR	Restr.	II	P-2	NR	Vent F	Yes	.55-1(c)	**I-C**	NA	**G**
Dimethylethanolamine	Atmos.	Amb.	III	1i 2ii	Integral Gravity	PV	Restr	II	G-1	NR	Vent F	Yes	.56-1(b), **(c)**	I-C	NA	G
Dimethylformamide	Atmos.	Amb.	III	1ii 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	.55-1(e)	I-D	NA	G
1,4-Dioxane	Atmos.	Amb.	II	1ii 2ii	Integral Gravity	PV	Closed	II	G-1	Inerted	Vent F	Yes	No	I-C	NA	G
Diphenylmethane diisocyanate.	Atmos.	Elev	II	1ii 2i	Integral Gravity	PV	Closed	I	G-1	Inert Dry	Vent F	Yes	.50-5 **.56-1(a), (b)**	NA	Yes	G
Di-n-propylamine	Atmos.	Amb.	II	1ii 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	.55-1(c)	I-C	NA	G
Epichlorohydrin	Atmos.	Amb.	I	1ii 2ii	Integral Gravity	PV	Closed	I	G-1	NR	Vent F	Yes	.50-5	I-C	NA	G
Ethanolamine	Atmos.	Amb.	III	1i 2i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	.55-1(c)	NA	NA	G
Ethyl acrylate	Atmos.	Amb.	III	1i 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	**.50-70(a)** **.50-81(a), (b)**	I-D	NA	G

TABLE 151.05—SUMMARY OF MINIMUM REQUIREMENTS—Continued

Cargo identification			Hull type	Cargo segregation tank	Tanks			Cargo transfer		Environmental control		Fire protection required	Special requirements (Section in 46 CFR Part 151)	Electrical hazard class-group	Temp. control install.	Tank internal inspect. period—years
Name	Pressure	Temp.			Type	Vent	Gauging device	Piping class	Control	Cargo tanks	Cargo handling space					
Ethylamine solution (72% or less).	Atmos.	Amb.	II	1ii 2ii	Integral Gravity	PV	Closed	II	G-1	NR	Vent F	Yes	.55-1(b)	I-D	NA	G
N-Ethylbutylamine	Atmos.	Amb.	III	1ii 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	.55-1(b)	I-C	NA	G
Ethyl chloride	Press.	Amb.	II	1NA 2ii	Ind. Pressure	SR	Restr.	II	P-2	NR	Vent F	Yes	No	I-D	NA	8
N-Ethylcyclohexylamine	Atmos.	Amb.	III	1ii 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	.55-1(b)	I-C	NA	G
Ethylene chlorohydrin	Atmos.	Amb.	I	1ii 2ii	Integral Gravity	PV	Closed	I	G-1	NR	Vent F	Yes	.50-5 **.50-73.**	I-D	NA	G
Ethylene cyanohydrin	Atmos.	Amb.	III	1i 2ii	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	No	NA	NA	G
Ethylenediamine	Atmos.	Amb.	III	1i 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	.55-1(c)	I-D	NA	G
Ethylene dibromide	Atmos.	Amb.	II	1ii 2i	Integral Gravity	PV	Closed	II	G-1	NR	Vent F	No	No	NA	NA	G
Ethylene dichloride	Atmos.	Amb.	III	1ii 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	No	I-D	NA	G
Ethylene glycol propyl ether	Atmos.	Amb.	III	1i 2i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	No	NA	NA	G
Ethylene oxide	Press.	Amb.	I	1NA 2ii	Ind. Pressure	SR	Restr.	II	P-2	Inert	Vent F	Yes	.50-10 .50-12	I-B	.40-1(c)	4
Ethyl ether	Atmos.	Amb.	II	1NA 2ii	Ind. Gravity	PV	Closed	II	G-1	Inert	Vent F	Yes	.50-40 .50-42	I-C	NA	G
2-Ethylhexyl acrylate	Atmos.	Amb.	III	1i 2ii	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	**.50-70(a)** **.50-81(a), (b)**	NA	NA	G
Ethylidene norbornene	Atmos.	Amb.	II	1ii 2ii	Integral Gravity	PV	Closed	II	G-1	NR	Vent F	Yes	.50-5 **.50-74**	I-C	NA	G
Ethyl methacrylate	Atmos	Amb	III	**1II** 2ii	Integral Gravity	PV	Restr	II	G-1	NR	Vent F	Yes	.50-70(a)	I-D	NA	G
2-Ethyl-3-propylacrolein	Atmos.	Amb.	III	1i 2i	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	No	I-C	NA	G
Ferric chloride solutions	Atmos.	Amb.	III	1ii 2ii	Integral Gravity	Open	Open	II	G-1	NR	Vent N	No	.50-20 **.50-75**	I-B	NA	G
Formaldehyde solution (37% to 50%).	Atmos.	Amb.	III	1ii 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	No	.55-1(h)	I-C	NA	G
Formic acid	Atmos.	Amb.	III	1ii 2i	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	.55-1(i)	I-D	NA	G
Furfural	Atmos.	Amb.	III	1ii 2i	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	.55-1(h)	I-C	NA	G
Glutaraldehyde solution (50% or less).	Atmos	Amb	III	1i 2i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	No	No	NA	NA	G

Hexamethylenediamine solution.	Atmos.	Amb.	III	1i 2i	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	.55-1(c)	I-D	NA	G
Hexamethyleneimine	Atmos.	Amb.	II	1ii 2i	Integral Gravity	PV	Restr	II	G-1	NR	Vent F	Yes	.56-1(b), (c)	I-C	NA	G
Hydrochloric acid	Atmos.	Amb.	III	1NA 2ii	Ind. Gravity	Open	Open	II	G-1	NR	Vent F	No	.50-20 .50-22 **.50-73**	I-B	NA	4
Hydrochloric acid, spent (15% or less).	Atmos.	Amb.	III	1ii 2ii	Integral Gravity	Open	Open	II	G-1	NR	Vent F	No	.50-75(a) .50-76 **.50-73**	I-B	NA	4
Hydrofluorosilicic acid (25% or less).	Atmos.	Amb.	II	1ii 2ii	Ind. Gravity	PV	Closed	II	G-1	NR	Vent F	No	.50-20 **.50-22** **.50-77**	I-B	NA	4
2-Hydroxyethyl acrylate	Atmos.	Amb.	I	1ii 2i	Integral Gravity	PV	Closed	I	G-1	NR	Vent F	Yes	.50-5 **.50-70(a)** .50-73 **.50-81(a), (b)**	NA	NA	G
Isopentaldehyde (mixed isomers) see Valeraldehyde (iso-, n-).																
Isoprene	Atmos.	Amb.	III	1i 2ii	Integral Gravity	PV	Open	II	G-1	NR	Vent F	Yes	**.50-70(a)** **.50-81(a), (b)**	I-D	NA	G
Kraft pulping liquors (free alkali content 3% or more) (*including: Black, Green, or White liquor*).	Atmos.	Amb.	III	1i 2i	Integral Gravity	Open	Open	II	G-1	NR	NR	No	**.50-73** .56-1(a), (c), (g)	NA	NA	G
Mesityl oxide	Atmos.	Amb.	III	1ii 2ii	Integral Gravity	PV	Restr	II	G-1	NR	Vent F	Yes	No	I-D	NA	G
Methylacetylene, Propadiene mixture.	Press.	Amb.	III	1 NA 2ii	Ind. Pressure	SR	Restr.	II	P-2	NR	Vent F	Yes	.50-79	**I-C**	NA	G
Methyl acrylate	Atmos.	Amb.	III	1i 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	**.50-70(a)** **.50-81(a), (b)**	I-D	NA	G
Methylamine (*anhydrous*)	Press.	Amb.	I	1NA 2ii	Ind. Pressure	SR	Closed	II	P-2	NR	Vent F	Yes	.50-30 .56-1(a), (b), (c)	I-D	NA	8
Methylamine solution (42% or less).	Atmos.	Amb.	II	1NA 2ii	Ind. Gravity	PV	**Closed**	II	G-1	NR	Vent F	Yes	.56-1(a), (b), (c), **(g)**	I-D	NA	G
Methyl bromide	Press.	Amb.	I	1NA 2ii	Ind. Pressure	SR	Closed	I	P-2	NR	Vent F	Yes	.50-5	I-D	NA	2
Methyl chloride	Press.	Amb.	II	1NA 2ii	Ind. Pressure	SR	Restr.	II	P-2	NR	Vent F	Yes	.55-1(c)	I-D	NA	8
Methylcyclopentadiene dimer.	Atmos	Amb	III	1i 2i	Integral Gravity	PV	Restr	II	G-1	NR	**Vent F**	Yes	No	**I-B**	NA	G
Methyl diethanolamine	Atmos	Amb	III	1i 2i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	.56-1(b), (c)	**I-C**	NA	G
2-Methyl-5-ethylpyridine	Atmos.	Amb.	III	1i 2i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	.55-1(e)	NA	NA	G
Methyl methacrylate	Atmos.	Amb.	III	1i 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	**.50-70(a)** **.50-81(a), (b)**	I-D	NA	G
2-Methylpyridine	Atmos.	Amb.	III	1i 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	.55-1(c)	I-D	NA	G
alpha-Methylstyrene	Atmos.	Amb.	III	1i 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	.50-70(a) .50-81(a), (b)	I-D	NA	G

TABLE 151.05—SUMMARY OF MINIMUM REQUIREMENTS—Continued

Cargo identification			Hull type	Cargo segregation tank	Tanks			Cargo transfer		Environmental control		Fire protection required	Special requirements (Section in 46 CFR Part 151)	Electrical hazard class-group	Temp. control install.	Tank internal inspect. period—years
Name	Pressure	Temp.			Type	Vent	Gauging device	Piping class	Control	Cargo tanks	Cargo handling space					
Monochlorodifluoromethane	Press.	Amb.	III	1NA 2i	Ind. Pressure	SR	Restr.	I	P-1	NR	NR	No	No	NA	NA	G
Morpholine	Atmos.	Amb.	III	1i 2ii	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	.55-1(c)	I-C	NA	G
Motor fuel anti-knock compounds (containing lead alkyls).	Atmos.	Amb.	I	1ii 2ii	Ind. Gravity	PV	Closed	I	G-1	NR	Vent F	Yes	.50-6	I-D	NA	.50-6
Nitric acid (70% or less)	Atmos.	Amb.	II	1ii 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	No	.50-20 **.50-73** **.50-80**	I-B	NA	4
Nitrobenzene	Atmos.	Amb.	I	1ii 2ii	Integral Gravity	PV	Closed	I	G-1	NR	Vent F	Yes	.50-5 **.50-73**	I-D	NA	G
Nitrogen, *liquefied*	Press.	Low	III	1NA 2i	Ind. Pressure	SR	Restr	II-L	P-1	NR	Vent F	No	.40-1(a) .50-30 .50-36	NA	.40-1(a)	G
1- or 2-Nitropropane	Atmos.	Amb.	III	1ii 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	.50-81	I-C	NA	G
Octyl nitrates (all isomers)	Atmos.	Amb.	III	1i 2ii	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	**.50-81** .50-86	NA	NA	G
Oleum	Atmos.	Amb.	III	1ii 2ii	Integral Gravity	Open	Open	II	G-1	NR	Vent N	No	.50-20 .50-21 **.50-73**	I-B	NA	4
Pentachloroethane	Atmos	Amb	III	1ii 2i	Integral Gravity	PV	Restr	II	G-1	NR	Vent F	No	No	NA	NA	G
1,3-Pentadiene	Atmos.	Amb.	III	1i 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	**.50-70(a)** **.50-81**	I-D	NA	G
Perchloroethylene	Atmos.	Amb.	III	1i 2i	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	No	No	NA	NA	G
Phenol	Atmos.	Amb.	I	1ii 2i	Integral Gravity	PV	Closed	I	G-1	NR	Vent F	Yes	.50-5 **.50-73**	NA	NA	2
Phosphoric acid	Atmos.	Amb.	III	1ii 2i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	No	.50-20 .50-23	I-B	NA	4
Phosphorus, elemental	Atmos.	Elev.	I	1ii 2ii	Integral Gravity	PV	Closed	I	G-1	Water Pad	Vent F	Yes	.50-50	NA	NA	4-8
Phthalic anhydride (molten)	Atmos.	Elev.	III	1ii 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	No	NA	NA	G
Polyethylene polyamines	Atmos.	Amb.	III	1i 2i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	.55-1(e)	NA	NA	G
Polymethylene polyphenyl isocyanate.	Atmos.	Amb.	II	1ii 2i	Integral Gravity	PV	Closed	II	G-1	Dry	Vent F	Yes	.55-1(e)	NA	NA	G
Potassium hydroxide solution *see* Caustic potash solution.																

iso-Propanolamine	Atmos.	Amb.	III	1i 2i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	.55-1(c)	I-D	NA	G
Propanolamine (iso-, n-)	Atmos.	Amb.	III	1i 2i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	.56-1(b), (c)	I-D	NA	G
Propionic acid	Atmos.	Amb.	III	1i 2ii	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	.55-1(g)	I-D	NA	G
iso-Propylamine	Atmos.	Amb.	II	1ii 2ii	Integral Gravity	PV	Closed	II	G-1	NR	Vent F	Yes	.55-1(c)	I-D	NA	G
Propylene oxide	Press.	Amb.	II	1NA 2ii	Ind. Pressure	SR	Restr.	II	P-1	Inerted	Vent F	Yes	.50-10 .50-13	I-B	NA	G
iso-Propyl ether	Atmos.	Amb.	III	**1ii** 2ii	Integral Gravity	PV	Restr	II	G-1	**Inert**	**Vent F**	Yes	**.50-70(a)**	I-D	NA	G
Pyridine	Atmos.	Amb.	III	1i 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	.55-1(e)	I-D	NA	G
Sodium aluminate solution	Atmos	Amb/ Elev	III	1i 2i	Integral Gravity	Open	Open	II	G-1	NR	NR	No	.50-73 .56-1(a), (b), (c)	NA	NA	G
Sodium chlorate solution (50% or less).	Atmos.	Amb.	III	1i 2i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	No	No	NA	NA	G
Sodium dichromate solution (70% or less).	Atmos.	Amb.	II	1ii 2ii	Integral Gravity	Open	Closed	II	G-1	NR	Vent N	No	.50-5(d) .50-73 .56-1(b), (c)	NA	NA	G
Sodium hydroxide solution *see* Caustic soda solution.																
Sodium hypochlorite solution (15% or less).	Atmos.	Amb.	III	**1i** 2ii	Integral Gravity	PV	Restr	II	G-1	NR	Vent F	**No**	.50-73 .56-1(a), (b)	NA	NA	G
Sodium sulfide, hydrosulfide solutions (H_2S 15ppm or less).	Atmos.	Amb.	III	1i 2i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	No	.50-73 .55-1(b)	NA	NA	G
Sodium sulfide, hydrosulfide solutions (H_2S greater than 15ppm but less than 200ppm).	Atmos.	Amb.	III	1ii 2i	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	No	.50-73 .55-1(b)	NA	NA	G
Sodium sulfide, hydrosulfide solutions (H_2S greater than 200ppm).	Atmos.	Amb.	II	1ii 2i	Integral Gravity	PV	Closed	II	G-1	NR	Vent F	No	.50-73 .55-1(b)	NA	NA	G
Sodium thiocyanate solution (56% or less).	Atmos	Amb	III	1i 2i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	**.58-1(a)**	NA	NA	G
Styrene *monomer*	Atmos.	Amb.	III	1i 2ii	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	**.50-70(a)** **.50-81(a), (b)**	I-D	NA	G
Sulfur (molten)	Atmos.	Elev.	III	**1i** 2ii	Integral Gravity	Open	Open	II	G-1	Vent N	Vent N	Yes	.50-55	I-C	.40-1(f)(1)	G
Sulfur dioxide	Press.	Amb.	I	1NA 2ii	Ind. Pressure	SR	Closed		P-2	NR	Vent F	No	.50-30 **.50-84** .55-1(j)	NA	NA	2
Sulfuric acid	Atmos.	Amb.	III	1ii 2ii	Integral Gravity	Open	Open	II	G-1	NR	Vent N	No	.50-20 .50-21 **.50-73**	I-B	NA	4
Sulfuric acid, spent	Atmos.	Amb.	III	1ii 2ii	Integral Gravity	Open	Open	II	G-1	NR	Vent N	No	.50-20 .50-21 **.50-73**	I-B	NA	4
1,1,2,2-Tetrachloroethane	Atmos.	Amb.	III	1ii 2ii	Integral Gravity	PV	Restr	II	G-1	NR	Vent F	No	No	NA	NA	G

TABLE 151.05—SUMMARY OF MINIMUM REQUIREMENTS—Continued

Cargo identification			Hull type	Cargo segregation tank	Tanks			Cargo transfer		Environmental control		Fire protection required	Special requirements (Section in 46 CFR Part 151)	Electrical hazard class-group	Temp. control install.	Tank internal inspect. period—years
Name	Pressure	Temp.			Type	Vent	Gauging device	Piping class	Control	Cargo tanks	Cargo handling space					
Tetraethylenepentamine	Atmos.	Amb.	III	1i 2ii	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	.55-1(c)	NA	NA	G
Tetrahydrofuran	Atmos	Amb	III	1i 2ii	Integral Gravity	PV	Restr	II	G-1	NR	Vent F	Yes	.50-70(b)	I-C	NA	G
Toluene diisocyanate	Atmos.	Amb.	I	1ii 2ii	Integral Gravity	PV	Closed	I	G-1	**Dry N_2**	Vent F	Yes	.50-5 .55-1(e)	NA	NA	G
1,1,2-Trichloroethane	Atmos	Amb	III	1ii 2i	Integral Gravity	PV	Restr	II	G-1	NR	Vent F	No	.50-73 .56-1(a)	I-D	NA	G
Trichloroethylene	Atmos.	Amb.	III	1i 2i	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	No	No	I-D	NA	G
1,2,3-Trichloropropane	Atmos.	Amb.	II	1ii 2i	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	**.50-73** **.56-1(a)**	NA	NA	G
Triethanolamine	Atmos.	Amb.	III	1i 2i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	.55-1(b)	NA	NA	G
Triethylamine	Atmos.	Amb.	II	1ii 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	.55-1(e)	I-C	NA	G
Triethylenetetramine	Atmos.	Amb.	III	1i 2i	Integral Gravity	Open	Open	II	G-1	NR	Vent N	Yes	.55-1(b)	NA	NA	G
Urea, Ammonium nitrate solution (containing more than 2% NH_3).	Atmos.	Amb.	III	1i 2i	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	No	**.56-1(b)**	I-D	NA	G
Valeraldehyde (iso-, n-)	Atmos.	Amb.	III	1i 2ii	Integral Gravity	PV	Restr.	II	G-1	Inert	Vent F	Yes	No	I-C	NA	G
Vanillan black liquor (free alkali content 3% or more).	Atmos.	Amb.	III	1i 2i	Integral Gravity	Open	Open	II	G-1	NR	NR	No	**.50-73** .56-1(a), (c), (g)	NA	NA	G
Vinyl acetate	Atmos.	Amb.	III	1i 2ii	Integral Gravity	PV	Open	II	G-1	NR	**Vent F**	Yes	**.50-70(a)** **.50-81(a), (b)**	I-D	NA	G
Vinyl chloride	Press.	Amb.	II	1NA 2ii	Ind. Pressure	SR	Closed	II	P-2	NR	Vent F	Yes	.50-30 .50-34	I-D	NA	8
Vinyl chloride	Atmos.	Low	II	1NA 2ii	Ind. Gravity	PV	Closed	II-L	G-2	NR	Vent F	Yes	.50-30 .50-34	I-D	.40-1(b)(1)	8
Vinylidene chloride	Atmos.	Amb.	II	1NA 2ii	Ind. Gravity	PV	Closed	II	P-2	Padded	Vent F	Yes	.55-1(f) **.50-70(a)** **.50-81(a), (b)**	I-D	NA	G
Vinyltoluene	Atmos.	Amb.	III	1i 2ii	Integral Gravity	PV	Restr.	II	G-1	NR	Vent F	Yes	.50-70(a) **.50-81** .56-1(a), **(b)**, (c), **(g)**	I-D	NA	G
For requirements see these sections:.			151.10-1	151.13-5	151.15-1	151.15-5	151.15-10	151.20-1	151.20-5	151.25-1	151.25-2	151.30		111.105 (Subchapter J)	151.40	151.04-5

Items in **boldface** are changes.

Terms and symbols:

Segregation—Tank—
Line 1—Segregation of cargo from surrounding waters:
i=Skin of vessel (single skin) only required. Cargo tank wall can be vessel's hull.
ii=Double skin required. Cargo tank wall cannot be vessel's hull.
Line 2—Segregation of cargo space from machinery spaces and other spaces which have or could have a source of ignition:
i=Single bulkhead only required. Tank wall can be sole separating medium.
ii=Double bulkhead required. Cofferdam, empty tank, pumproom, tank with Grade E Liquid (if compatible with cargo) is satisfactory.
Internal tank inspection—
G—Indicates cargo is subject to general provisions of 151.04-5(b).
Specific numbers in this column are changes from the general provisions.

Abbreviations used:

Tank type: Ind=Independent.
Vent:
PV=Pressure vacuum valve.
SR=Safety relief.
Gauging device: Restr.=Restricted.

General usage:

NR=No requirement.
NA=Not applicable.

§ 151.10–1 [Amended]

11. In § 151.10–1(b)(1)(i), by removing the word "compartmelt" and adding, in its place, the word "compartment".

§ 151.12–5 [Amended]

12. In § 151.12–5, by revising the list to read as follows:

* * * * *

Acetic acid
Acrylic acid
Adiponitrile
Aminoethylethanolamine
Ammonium bisulfite solution
Butyl methacrylate
Caustic soda solution
Chlorohydrins (*crude*)
Coal tar pitch
Cyclohexanone
Dichloromethane
2,2-Dichloropropionic acid
Diethylenetriamine
N,N-Dimethylacetamide
Dimethylethanolamine
Dimethylformamide
1,4-Dioxane
Ethanolamine
Ethylcyclohexylamine
Ethylene cyanohydrin
Ethyl methacrylate
Formic acid
Glutaraldehyde solution
Hydrochloric acid
Mesityl oxide
Methyl methacrylate
Morpholine
1- or 2-Nitropropane
Phosphoric acid
Polyethylene polyamine
Polymethylene polyphenyl isocyanate
Propionic acid
Propylene oxide
iso-Propyl ether
Pyridine
Tetraethylenepentamine
Tetrahydrofuran
Triethanolamine
Triethylenetetramine
n-Valeraldehyde

§ 151.15–3 [Amended]

13. In § 151.15–3(d)(1)(ii), by removing the word "of" in the last sentence and adding, in its place, the word "or".

14. In § 151.25–1, by adding a new paragraph (e) to read as follows:

§ 151.25–1 Cargo tank.

* * * * *

(e) *Dry.* All vapor space within the cargo tank is filled and maintained with a gas or vapor containing no more than 100 ppm water.

§ 151.45–2 [Amended]

15. In § 151.45–2(e)(3)(i), by removing the words "Table 151.01–10(b)" and adding, in their place, the words "table 151.50".

Subpart 151.50—[Amended]

16. By revising the heading to subpart 151.50 to read "Special Requirements".

17. In § 151.50–5, by adding introductory text before paragraph (a) and by removing and reserving paragraph (a) as follows:

§ 151.50–5 Cargoes having toxic properties.

When table 151.05 refers to this section, the following apply:

(a) [Reserved].

* * * * *

18. In § 151.50–20, by revising paragraph (k) to read as follows:

§ 151.50–20 Inorganic acids.

* * * * *

(k) The special requirements for hydrochloric acid in § 151.50–22, for hydroflurosilicic acid in § 151.50–77, for phosphoric acid in § 151.50–23, and for sulfuric acid in § 151.50–21 also apply to the carriage of those acids.

§ 151.50–22 [Amended]

19. In § 151.50–22(d), by removing the words "Commandant (MHM)" and adding, in their place, the words "Commandant (G–MTH)".

§ 151.50–24 [Removed]

20. By removing § 151.50–24, Hydrofluoric acid.

21. In § 151.50–30, by removing from paragraph (e) "§ 151.45–6(b)" and adding, in its place, "§ 151.45–6(b)", by removing from the table in paragraph (e) the entry for "Hydrogen chloride", and by revising paragraph (g) to read as follows:

§ 151.50–30 Compressed gases.

* * * * *

(g) The special requirements for ammonia (anhydrous) in § 151.50–32, for argon in § 151.50–36, for chlorine in § 151.50–31, for nitrogen in § 151.50–36, and for vinyl chloride in § 151.50–34 also apply to the carriage of those gases.

§ 151.50–32 [Amended]

22. By revising the section heading for § 151.50–32 to read "Ammonia, anhydrous".

§ 151.50–33 [Removed]

23. By removing § 151.50–33, Anhydrous hydrogen chloride.

§ 151.50–34 [Amended]

24. In § 151.50–34 (g)(3) and (k), by removing "29 CFR 1910.93q(g)" and adding, in its place, "29 CFR 1910.1017".

25. By adding a new § 151.50–36 to read as follows:

§ 151.50–36 Argon or nitrogen.

(a) A cargo tank that contains argon or nitrogen and that has a maximum allowable working pressure of 172 kPa (25 psig) or greater must have one of the following arrangements:

(1) A refrigeration system that keeps the tank pressure below the safety relief valve operating pressure when ambient temperatures are 46°C (115°F) air and 32°C (90°F) water.

(2) A relief valve or pressure control valve that maintains the tank pressure below the setting of the tank's required safety relief valve in ambient temperatures of 46°C (115°F) air and 32°C (90°F) water.

(b) A cargo tank with a maximum allowable working pressure of less than 172 kPa (25 psig) is approved by the Commandant (G–MTH) on a case by case basis.

(c) Section 151.50–30 also applies to the carriage of argon or nitrogen.

§§ 151.50–40 and 151.50–41 [Amended]

26. In §§ 151.50–40(f) and 151.50–41(g) and (h), by removing the words "carbon bisulfide" and adding, in their place, the words "carbon disulfide (*carbon bisulfide*)"; by revising the section heading for § 151.50–41 to read "Carbon disulfide (*carbon bisulfide*)" and by revising the section heading for § 151.50–40 to read "Additional requirements for carbon disulfide (*carbon bisulfide*) and ethyl ether.

27. In § 151.50–42(e), by removing "Class 1" and adding, in its place, "Class I" and by removing "§ 111.70–10(c)(4)" and adding, in its place, "part 111, subpart 111.105".

§ 151.50–55 [Amended]

28. By revising the section heading for § 151.50–55 to read "Sulfur (molten)".

§ 151.50–65 [Removed]

29. By removing § 151.50–65, Hydrogen fluoride.

30. By adding a new § 151.50–70 to read as follows:

§ 151.50–70 Cargoes requiring inhibition or stabilization.

When table 151.05 refers to this section, that cargo must be—

(a) Inhibited; or

(b) Stabilized.

§§ 151.50–71 and 151.72 [Removed]

31. By removing §§ 151.50–71, Benzene-hydrocarbon mixtures (containing acetylenes), and 151.50–72, Butadiene, butene mixture (inhibited).

32. By revising § 151.50–73 to read as follows:

§ 151.50–73 Chemical protective clothing.

When table 151.05 refers to this section, the following apply:

(a) The person in charge of cargo handling operations shall ensure that the following chemical protective clothing constructed of materials

resistant to permeation by the cargo being handled is worn by all personnel engaged in an operation listed in paragraph (b) of this section:

(1) Splash protective eyewear.

(2) Long-sleeved gloves.

(3) Boots or shoe covers.

(4) Coveralls or lab aprons.

Note: "Guidelines for the Selection of Chemical Protective Clothing", Third Edition, 1987, available from the American Conference of Governmental Industrial Hygienists, 6500 Glenway Ave., Cincinnati, OH 45211–4438, provides information on the proper clothing for the cargo being handled.

(b) The section applies during the following operations:

(1) Sampling cargo.

(2) Transferring cargo.

(3) Making or breaking cargo hose connections.

(4) Gauging a cargo tank, unless gauging is by closed system.

(5) Opening cargo tanks.

(c) Coveralls or lab aprons may be replaced by splash suits or aprons constructed of light weight or disposable materials if, in the judgment of the person in charge of cargo handling operations,

(1) Contact with the cargo is likely to occur only infrequently and accidentally; and

(2) The splash suit or apron is disposed of immediately after contamination.

(d) Splash protective eyewear must be tight-fitting chemical-splash goggles, face shields, or similar items intended specifically for eye protection from chemical splashing or spraying.

(e) The person in charge of cargo handling operations shall ensure that each person in the vicinity of an operation listed in the paragraph (b) of this section or in the vicinity of tanks, piping, or pumps being used to transfer the cargo wears splash protective eyewear under paragraph (d) of this section.

§ 151.50–74 [Amended]

33. By revising the section heading of § 151.50–74 to read "Ethylidene norbornene."

§ 151.50–75 [Amended]

34. In § 151.50–75, by removing paragraph (b) and the paragraph designation (a).

§ 151.50–78 [Removed]

35. By removing § 151.50–78, Industrial wastes (containing dimethyldisulfide, methyl mercaptan, and methomyl).

§ 151.50–80 [Amended]

36. In § 151.50–80(a), by adding at the end of the paragraph the words "See § 151.15–3(f)(2)".

37. In § 151.50–81, by revising the section heading and adding introductory text to read as follows:

§ 151.50–81 Special operating requirements for heat sensitive cargoes.

When table 151.05 refers to this section, the following apply to the cargo:

* * * * *

§§ 151.50–82 and 151.50–83 [Removed]

38. By removing §§ 151.50–82, Polyvinylbenzyltrimethyl ammonium chloride solution, and 151.50–83, Sodium sulfide, hydrosulfide solutions.

§ 151.50–84 [Amended]

39. In § 151.50–84(d)(12), by removing the word "bypss" and adding, in its place, the word "bypass".

§ 151.50–85 [Removed]

40. By removing § 151.50–85, 1,2,3-Trichloropropane.

41. By adding a new § 151.50–86 to read as follows:

§ 151.50–86 Octyl nitrates.

(a) The carriage temperature of octyl nitrates must be maintained below 100 °C (212 °F) in order to prevent the occurrence of a self-sustaining exothermic decomposition reaction.

(b) Octyl nitrates may not be carried in a deck tank unless the tank has a combination of insulation and a water deluge system sufficient to maintain the tank's cargo temperature below 100 °C (212 °F) and the cargo temperature rise at or below 1.5 °C (2.7 °F)/hour, for a fire of 650 °C (1200 °F).

42. In § 151.55–1, by adding a parenthetical at the end of paragraphs (b), (c), (d), (e), (f), (g), and (j) to read as follows:

§ 151.55–1 General.

* * * * *

(b) * * * .(Equivalent to § 151.56–1 (a), (b), and (c).)

(c) * * * .(Equivalent to § 151.56–1 (b), (c), and (g).)

(d) * * * .(Equivalent to § 151.56–1 (a), (c), and (d).)

(e) * * * .(Equivalent to § 151.56–1(b).)

(f) * * * .(Equivalent to § 151.56–1 (a) and (b).)

(g) * * * .(Equivalent to § 151.58–1(a).)

* * * * *

(j) * * * .(Equivalent to § 151.56–1 (a) and (c).)

43. By adding a new subpart 151.56 consisting of § 151.56–1 to read as follows:

Subpart 151.56—Prohibited Materials of Construction

§ 151.56–1 Prohibited materials.

When one of the following paragraphs of this section is referenced in table 151.05, the materials listed in that paragraph may not be used in components that contact the cargo or its vapor:

(a) Aluminum or aluminum alloys.

(b) Copper or copper alloys.

(c) Zinc, galvanized steel, or alloys having more than 10 percent zinc by weight.

(d) Magnesium.

(e) Lead.

(f) Silver or silver alloys.

(g) Mercury.

44. By adding a new Subpart 151.58 consisting of § 151.58–1 to read as follows:

Subpart 151.58—Required Materials of Construction

§ 151.58–1 Required materials.

When one of the following paragraphs of this section is referenced in table 151.05, only those materials listed in that paragraph may be used in components that contact the cargo or its vapor:

(a) Aluminum, stainless steel, or steel covered with a protective lining or coating. (See § 151.15–3(f)(2).)

(b)–(c) [Reserved]

(d) Solid austenitic stainless steel.

(e) Stainless steel or steel covered with a suitable protective lining or coating. (See § 151.15–3(f)(2).)

PART 153—SHIPS CARRYING BULK LIQUID, LIQUEFIED GAS, OR COMPRESSED GAS HAZARDOUS MATERIALS

45. The authority citation for part 153 is revised to read as follows:

Authority: 46 U.S.C. 3703; 49 CFR 1.46. Section 153.40 issued under 49 U.S.C. 1804. Sections 153.470 through 153.491, 153.1100 through 153.1132, and 153.1600 through 153.1608 also issued under 33 U.S.C. 1903(b).

46. In § 153.238, by adding new paragraphs (d) and (e) to read as follows:

§ 153.238 Required materials.

* * * * *

(d) Solid austenitic stainless steel.

(e) Stainless steel or steel covered with a suitable protective lining or coating. (See § 153.266.)

47. In § 153.558, by adding a note following paragraph (c) to read as follows:

§ 153.558 Special requirements for phosphoric acid.

* * * * *

(c) * * *

Note: "Phosphoric acid", as defined in § 153.2, includes phosphoric acid, superphosphoric acid, and aqueous solutions of phosphoric acid.

48. By adding a new § 153.560 to read as follows:

§ 153.560 Special requirements for octyl nitrates.

(a) The carriage temperature of octyl nitrates must be maintained below 100°C (212°F) in order to prevent the occurrence of a self-sustaining exothermic decomposition reaction.

(b) Octyl nitrates may not be carried in a deck tank unless the tank has a combination of insulation and a water deluge system sufficient to maintain the tank's cargo temperature below 100°C (212°F) and the cargo temperature rise at below 1.5°C(2.7°F)/hour, for a fire of 650°C (1200°F).

§ 153.907 [Amended]

49. In § 153.907(b)(2), by removing "§ 153.5(b)" and adding, in its place, "§ 153.900(d)".

50. By revising § 153.933 to read as follows:

§ 153.933 Chemical protective clothing.

When table 1 refers to this section, the following apply:

(a) The master shall ensure that the following chemical protective clothing constructed of materials resistant to permeation by the cargo being handled is worn by all personnel engaged in an operation listed in paragraph (b) of this section:

(1) Splash protective eyewear.
(2) Long-sleeved gloves.
(3) Boots or shoe covers.
(4) Coveralls or lab aprons.

Note: "Guidelines for the Selection of Chemical Protective Clothing", Third Edition, 1987, available from the American Conference of Governmental Industrial Hygienists, 6500 Glenway Ave., Cincinnati, OH 45211–4438, provides information on the proper clothing for the cargo being handled.

(b) This section applies during the following operations:

(1) Sampling cargo.
(2) Transferring cargo.
(3) Making or breaking cargo hose connections.
(4) Gauging a cargo tank, unless gauging is by closed system.
(5) Opening cargo tanks.

(c) Coveralls or lab aprons may be replaced by splash suits or aprons constructed of light weight or disposable materials if, in the judgment of the master—

(1) Contact with the cargo being handled is likely to occur only infrequently and accidentally; and

(2) The splash suit or apron is disposed of immediately after contamination.

(d) Splash protective eyewear must be tight-fitting chemical-splash goggles, face shields, or similar items intended specifically for eye protection from chemical splashing or spraying.

(e) The master shall ensure that each person in the vicinity of an operation listed in paragraph (b) of this section or in the vicinity of tanks, piping, or pumps being used to transfer the cargo wears splash protective eyewear under paragraph (d) of this section.

§ 153.1025 [Amended]

51. In § 153.1025(c), by removing "426–1217" and adding, in its place, "267–1217".

52. By revising § 153.1035 to read as follows:

§ 153.1035 Acetone cyanohydrin or lactonitrile solutions.

No person may operate a tankship carrying a cargo of acetone cyanohydrin or lactonitrile solutions, unless that cargo is stabilized with an inorganic acid.

53. By revising table 1 and table 2 following § 153.1608 to read as follows:

TABLE 1—SUMMARY OF MINIMUM REQUIREMENTS

Cargo name [1]	IMO Annex II pollution category [2]	Haz.[3]	Cargo containment system [4]	Vent height [5]	Vent [6]	Gauge [7]	Fire protection system [8]	Special requirements in 46 CFR Part 153 [9]	Electrical hazard class and group [10]
Acetic acid	D	S	III	4m	PV	Restr	A	.238(a), .527, .554	I-D
Acetic anhydride	D	S	II	4m	PV	Restr	A	.238(a), .526, .527, .554	I-D
Acetone cyanohydrin	A	S/P	II	B/3	PV	Closed	A	.238(a), .316, .336, .408, .525, .526, .527, .912(a)(2), .933, .1002, .1004, .1020, .1035.	I-D
Acetonitrile	III	S	II	B/3	PV	Restr	A	.525, .526, .1020	I-D
Acrylamide solution (50% or less)	D	S	II	NR	Open	Closed	NSR	.409, .525(a), (c), (d), (e), .912(a)(1), .1002(a), .1004, .1020.	NA
Acrylic acid	D	S	III	4m	PV	Restr	A	.238(a), .526, .912(a)(1), .1002(a), .1004	I-D
Acrylonitrile	B	S/P	II	B/3	PV	Closed	A	.236(a), (c), (d), .316, .408, .525, .526, .527, .912(a)(1), .1004, .1020.	I-D
Adiponitrile	D	S	III	4m	PV	Restr	A	.526	I-D
Alcohol(C6 - C17)(secondary) poly(3-6)ethoxylates.	A	P	II	NR	Open	Open	A	**.409**	NA
Alcohol(C6 - C17)(secondary) poly(7-12)-ethoxylates.	B	P	III	NR	Open	Open	A	.409, .440, .908(a), (b)	NA
Alcohol(C12 - C15) poly(1-3)ethoxylates	A	P	II	NR	Open	Open	A	.409	NA
Alcohol(C12 - C15) poly(3-11)ethoxylates	A	P	II	NR	Open	Open	A	**.409**	NA
Alkyl acrylate-Vinyl pyridine copolymer in Toluene.	C	P	III	4m	PV	Restr	A	.409	NA
Alkylbenzenesulfonic acid (*greater than 4%*).	C	S/P	III	NR	Open	Open	A, B	.440, .908(a)	NA
Alkylbenzenesulfonic acid, sodium salt solution.	C	P	III	NR	Open	Open	NSR	.440, .903, .908(a), (b)	NA
Allyl alcohol	B	S/P	II	B/3	PV	Closed	A	.316, .408, .525, .526, .527, .933, .1020	I-C
Allyl chloride	B	S/P	II	B/3	PV	Closed	A	.316, .408, .525, .526, .527, .1020	I-D
Aluminum chloride (30% or less), Hydrochloric acid (20% or less) solution.	D	S	III	4m	PV	Restr	NSR	.252, .526, .527, .554, .557, .933, .1045, .1052.	I-B
2-(2-Aminoethoxy) ethanol	D	S	III	NR	Open	Open	**A, C, D**	.236(b), (c), .409	NA
Aminoethylethanolamine	D	S	III	NR	Open	Open	A	.236(a), (b), (c), (g)	NA
N-Aminoethylpiperazine	D	S	III	4m	PV	Restr	**A**	.236(b), (c), .409, .526	I-C
2-Amino-2-methyl-1-propanol (90% or less)	D	S	III	NR	Open	Open	A	**.236(a), (b), (c), (g)**	I-D[16]
Ammonia aqueous (28% or less), *see* Ammonium hydroxide (28% or less NH_3).									
Ammonium hydroxide (28% or less NH_3)	C	S/P	III	4m	PV	Restr	**A, B, C**	.236(b), (c), (f), .526, .527	I-D
Ammonium nitrate solution (greater than 45% and less than 93%).	D	S	II	NR	Open	Open	NSR	**.238(d), .252,** .336, .409, .554(a), (b)	NA
Ammonium sulfide solution (45% or less)	B	S/P	II	B/3	PV	Closed	**A, C**	.236(a), (b), (c), (g), **.316,** .372, .408, .525, .526, **.527,** .933, .1002, .1020.	I-D
Ammonium thiocyanate (25% or less), Ammonium thiosulfate (20% or less) solution.	C	P	III	NR	Open	Open	NSR	None	NA
Ammonium thiosulfate solution (60% or less).	C	P	III	NR	Open	Open	NSR	**.440, .908(b)**	NA
(commercial, iso-, n-, sec-) Amyl acetate	C	P	III	4m	PV	Restr	A	.409	I-D
Aniline	C	S/P	II	B/3	PV	Closed	A	.316, .408, .525, .526, .933, .1020	I-D
Anthracene oil (Coal tar fraction) *see* Coal tar.									
Aviation alkylates (*C8 paraffins and isoparaffins, b. pt. 95-120 deg. C*).	C	P	III	4m	PV	Restr	B	**.409**	I-C

TABLE 1—SUMMARY OF MINIMUM REQUIREMENTS—Continued

Cargo name [1]	IMO Annex II pollution category [2]	Haz.[3]	Cargo containment system [4]	Vent height [5]	Vent [6]	Gauge [7]	Fire protection system [8]	Special requirements in 46 CFR Part 153 [9]	Electrical hazard class and group[10]
Benzene hydrocarbon mixtures (*having 10% Benzene or more*).	C	S/P	III	B/3	PV	Restr	**A, B**	.316, .440, .526, .908(b), .1060	I-D
Benzenesulfonyl chloride	D	S	III	4m	PV	Restr	**A, B, D**	.236(a), (b), (c), (g), .409, .526	I-D
Benzene, Toluene, Xylene mixtures (*having 10% Benzene or more*).	@C	S/P	III	B/3	PV	Restr	B	.316, .440, .526, .908(b), .1060	I-D
Benzyl acetate	C	P	III	NR	Open	Open	A	None	I-D[16]
Benzyl alcohol	C	P	III	NR	Open	Open	A	None	I-D
Benzyl chloride	B	S/P	II	B/3	PV	Closed	**A, B**	.316, .408, .525, .526, .527, .912(a)(2), .1004, .1020.	I-D
Butene oligomer	B	P	III	NR	Open	Open	A	None	NA
(iso-, n-) Butyl acetate	C	P	III	4m	PV	Restr	A	.409	I-D
(iso-, n-) Butyl acrylate	D	S/P	II	4m	PV	Restr	A	.526, .912(a)(1), .1002(a), (b), .1004	I-D
Butylamine (all isomers)	C	S/P	II	B/3	PV	Restr	A	.236(b), (c), .316, .408, .525, .526, .527, .1020.	I-D
Butylbenzene (all isomers)	A	P	II	4m	PV	Restr	A	.409	I-D[16]
Butyl benzyl phthalate	A	P	II	NR	Open	Open	A	**.409**	I-D
n-Butyl butyrate	C	P	III	4m	PV	Restr	A	.409	I-D[16]
1,2-Butylene oxide	C	S/P	III	4m	PV	Restr	A, C	.372, .408, .440, .500, .526, .530(a), (c), (e)-(g), (m)-(o), .1010, .1011.	I-B[15]
n-Butyl ether	C	S/P	III	B/3	PV	Restr	**A, D**	.500, .525, .526, .1020	I-C
Butyl heptyl ketone	[C]	P	III	NR	Open	Open	A	None	NA
iso-Butyl isobutyrate	[B]	P	III	4m	PV	Restr	A	.409	I-D[16]
Butyl methacrylate	D	S	III	4m	PV	Restr	A, D	.526, .912(a)(1), .1002(a), (b), .1004	I-D
Butyl methacrylate, Decyl methacrylate, Cetyl-Eicosyl methacrylate mixture.	D	S	III	4m	PV	Restr	**A, C, D**	.912(a)(1), .1002(a), (b), .1004	I-D
Butyl toluene	@A	P	II	NR	Open	Open	A	.409	I-D
(n-, crude) Butyraldehyde	B	S/P	III	4m	PV	Open	A	.526	I-C
iso-Butyraldehyde	C	S/P	III	4m	PV	Open	A	.526	I-C
Butyric acid	D	S	III	4m	PV	Restr	A	.238(a), .554	I-D
Calcium alkyl salicylate	C	P	III	NR	Open	Open	A	.440, .903, .908(a)	NA
Calcium bromide, Zinc bromide solution *see* Drilling brine (containing Zinc salts).									
Calcium hypochlorite solution (15% or less)	C	S/P	III	4m	PV	Restr	NSR	**.238(d)**	NA
Calcium hypochlorite solution (more than 15%).	B	S/P	III	4m	PV	Restr	NSR	**.238(d)**	NA
Calcium naphthenate in Mineral oil	A	P	III	NR	PV	Open	A	**None**	NA
Camphor oil	B	S/P	II	4m	PV	Open	**A, B**	.409	I-D
Carbolic oil	A	S/P	II	B/3	PV	Closed	A	.408, .440, .525, .526, .908(b), .933, .1020	NA
Carbon disulfide	B	S/P	II	B/3	PV	Closed	C	.236(c), .252, .408, .500, .515, .520, .525, .526, .527, .1020, .1040.	I-A
Carbon tetrachloride	B	S/P	III	B/3	PV	Closed	NSR	.316, .409, .525, .526, .527, .1020	NA
Cashew nut shell oil (untreated)	D	S	III	4m	PV	Restr	**A, B**	.526, .933	NA
Caustic potash solution	C	S/P	III	NR	Open	Open	NSR	.236(a), (c), (g), .440, .908(b), .933	NA
Caustic soda solution	D	S	III	NR	Open	Open	NSR	.236(a), (c), (g), .933	NA
Cetyl-Eicosyl methacrylate mixture	III	S	III	NR	Open	Open	**A, C, D**	.912(a)(1), .1002(a), (b), .1004	NA
Chlorinated paraffins (C10 - C13)	A	P	I	NR	Open	Open	A	.408	NA
Chloroacetic acid (80% or less)	C	S/P	II	B/3	PV	Closed	NSR	**.238(e)**, .408, .440, .554, .908(b)	I-D
Chlorobenzene	B	S/P	II	4m	PV	Restr	A, B	.409, .526	I-D
Chloroform	B	S/P	III	B/3	PV	Restr	NSR	.525, .526, .527, .1020	NA
(*crude*) Chlorohydrins	D	S	II	B/3	PV	Closed	A	.408, .525, .526, .1020	I-D

4-Chloro-2-methylphenoxyacetic acid, dimethylamine salt solution.	[C]	P	III	NR	Open	Open	NSR	**.236(a), (b), (c), (g)**	NA
o-Chloronitrobenzene *see* o-Nitrochlorobenzene									
2- or 3-Chloropropionic acid	C	S/P	III	NR	Open	Open	A	.238(a), .440, .554, .908(b)	NA
Chlorosulfonic acid	C	S/P	I	B/3	PV	Closed	NSR	.408, .525, .526, .527, .554, .555, .602, .933, .1000, .1020, .1045.	I-B[12]
o-Chlorotoluene	A	S/P	III	4m	PV	Restr	A, B, C	.526	I-D
m-Chlorotoluene	B	S/P	III	4m	PV	Restr	A, B, C	.526	I-D
p-Chlorotoluene	B	S/P	II	4m	PV	Restr	**A, B, C**	.409, .440, .526, .908(b)	I-D
Chlorotoluenes (mixed isomers)	A	S/P	II	4m	PV	Restr	**A, B, C**	**.409, .526**	I-D
Coal tar	A	S/P	II	4m	PV	Restr	B, D	.409	I-D[16]
Coal tar naphtha solvent	B	S/P	III	4m	PV	Restr	A, D	.526	I-D
Coal tar pitch (molten)	D	S	III	4m	PV	Restr	B, D	**.252, .409**	I-D[16]
Coconut oil, fatty acid	C	P	III	NR	Open	Open	A	.440, .903, .908(a), (b)	NA
Cottonseed oil, fatty acid	[C]	P	III	NR	Open	Open	A	.440, .903, .908(a)	NA
Creosote (wood)	A	S/P	II	NR	Open	Open	**A, B, D**	.409	NA
Creosote (coal tar)	C	S/P	III	NR	Open	Open	A, B, D	.409	I-D
Cresols (all isomers)	A	S/P	II	NR	Open	Open	A, B	.409, .440, .908(b)	I-D
Cresols with less than 5% Phenol see Cresols (all isomers)									
Cresols with 5% or more Phenol see Phenol									
Cresylate spent caustic (*mixtures of Cresols and Caustic soda solutions*).	A	S/P	II	NR	Open	Open	NSR	.236(a), (c), .933	NA
Cresylic acid, sodium salt solution *see* Cresylate spent caustic.									
Crotonaldehyde	B	S/P	II	B/3	PV	Restr	A	.316, .525, .526, .527, .1020	I-C
Cumene	B	P	III	4m	PV	Restr	A	.409	I-D
1,5,9-Cyclododecatriene	[B]	S/P	III	4m	PV	Restr	A	.236(b), (c), .409, .526, .912(a)(1), .1002(a), (b), .1004.	I-D[16]
Cycloheptane	C	P	III	4m	PV	Restr	A	**.409**	I-D[16]
Cyclohexane	C	P	III	4m	PV	Restr	A	.409, .440, .908(b)	I-D
Cyclohexanol	C	P	III	NR	Open	Open	A	.440, .908(a), (b)	I-D
Cyclohexanone	D	S	III	4m	PV	Restr	A	.236(a), (b), .526	I-D
Cyclohexanone, Cyclohexanol mixture	[C]	S/P	III	4m	PV	Restr	A	.236(a), (b), .526	I-D
Cyclohexyl acetate	B	P	III	4m	PV	Restr	A	.409	I-D[16]
Cyclohexylamine	C	S/P	III	4m	PV	Restr	**A, C, D**	.236(a), (b), (c), (g), .526	I-D
1,3-Cyclopentadiene dimer (molten)	B	P	II	4m	PV	Restr	A	.409, .440, .488, .908(a), (b)	I-C[16]
Cyclopentane	C	P	III	4m	PV	Restr	A	.409	I-D[16]
Cyclopentene	B	P	III	4m	PV	Restr	A	.409	I-D[16]
p-Cymene	C	P	III	4m	PV	Restr	A	.409	I-D
iso-Decaldehyde	@C	P	III	NR	Open	Open	A	None	I-C
n-Decaldehyde	@B	P	III	NR	Open	Open	A	None	I-C
Decanoic acid	C	P	III	NR	Open	Open	A	.440, .903, .908(a), (b)	NA
Decene	B	P	III	4m	PV	Restr	A	.409	I-D
(iso-, n-) Decyl acrylate	A	S/P	II	NR	Open	Open	A, C, D	.236(a), (b), (c), .409, .912(a)(1), .1002(a), (b), .1004.	I-D[16]
Decyl alcohol (all isomers)	B	P	III	NR	Open	Open	A	.440, .908(b)	I-D
Diammonium salt of Zinc ethylenediamine tetraacetic acid solution[14].	#	#	III	NR	Open	Open	NSR	**.238(e)**	I-B
Dibutylamine	C	S/P	III	4m	PV	Restr	**A, B, C, D**	.236(b), (c), .526	I-C
Dibutyl phthalate	A	P	II	NR	Open	Open	A	.409	I-D
Dichlorobenzenes (all isomers)[18]	B	S/P	II	4m	PV	Restr	A, B, D	.236(a), (b), .409, **.440, .488**[18], .526, **.908(a), (b)**[18].	**I-D**
1,1-Dichloroethane	B	S/P	III	4m	PV	Restr	A, B	.526, .527	I-D
2,2'-Dichloroethyl ether	B	S/P	II	4m	PV	Restr	A	.236(a), (b), .526	I-C[16]

TABLE 1—SUMMARY OF MINIMUM REQUIREMENTS—Continued

Cargo name [1]	IMO Annex II pollution category [2]	Haz.[3]	Cargo containment system [4]	Vent height [5]	Vent [6]	Gauge [7]	Fire protection system [8]	Special requirements in 46 CFR Part 153 [9]	Electrical hazard class and group [10]
2,2'-Dichloroisopropyl ether	C	S/P	II	B/3	PV	Restr	**A, B, C, D**	.236(a), (b), .316, .408(a), .440, .525, .526, .1020.	I-D
Dichloromethane	D	S	III	4m	PV	Restr	NSR	.526	I-D[16]
2,4-Dichlorophenol[15]	A	S/P	II	4m	PV	Restr	**A, B, C, D**	.236(a), (b), (c), (g), .409, .440, .500, .501, .526, .908(b), .933.	I-D[16]
2,4-Dichlorophenoxyacetic acid, diethanolamine salt solution.	A	S/P	III	NR	Open	Open	NSR	**.236(a), (b), (c), (g)**	NA
2,4-Dichlorophenoxyacetic acid, dimethylamine salt solution.	A	S/P	III	NR	Open	Open	NSR	None	NA
2,4-Dichlorophenoxyacetic acid, triisopropanolamine salt solution.	A	S/P	III	NR	Open	Open	NSR	None	NA
1,1-, 1,2-, or 1,3-Dichloropropane	B	S/P	II	B/3	PV	Restr	A, B	.525, .526, .1020	I-D
1,3-Dichloropropene	B	S/P	II	B/3	PV	Closed	**A, B**	.316, .336, .408, .525, .526, .527, .1020	I-D
Dichloropropene, Dichloropropane mixtures	B	S/P	II	B/3	PV	Closed	**A, B, C, D**	.316, .336, .408, .526, .527	I-D
2,2-Dichloropropionic acid	D	S	III	4m	PV	Restr	A	**.238(e)**, .266, .500, .501, .554	NA
Diethanolamine	III	S	III	NR	Open	Open	A	.236(b), (c)	NA
Diethylamine	C	S/P	III	B/3	PV	Restr	A	.236(a), (b), (c), (g), .525, .526, .527, .1020	I-C
Diethylaminoethanol *see* Diethylethanolamine									
2,6-Diethylaniline	[C]	S/P	III	NR	Open	Open	B, C, D	.236(b), .409, .440, .908(b)	NA
Diethylbenzene	C	P	III	4m	PV	Restr	A	.409	I-D
Diethylene gylcol methyl ether	C	P	III	NR	Open	Open	A	None	I-C
Diethylenetriamine	D	S	III	NR	Open	Open	A	.236(b), (c)	NA
Diethylethanolamine	C	S/P	III	4m	PV	Restr	**A, C**	.236(a), (b), (c), (g), .526	I-C
Diethyl ether *see* Ethyl ether									
Di-(2-ethylhexyl) phosphoric acid	C	S/P	III	NR	Open	Open	**A, B, C, D**	.236(b), (c)	I-D
Diethyl phthalate	C	P	III	NR	Open	Open	A	None	I-D
Diethyl sulfate	B	S/P	II	4m	PV	Closed	**A, D**	.236(a), (c), (d), .526	I-D[16]
Diglycidyl ether of Bisphenol A	B	P	III	NR	Open	Open	A	.440, **.908(a)**	NA
Diglycidyl ether of Bisphenol F	B	P	III	NR	Open	Open	A	.409, .440, .908(a)	NA
Di-n-hexyl adipate	B	P	III	NR	Open	Open	A	.409	NA
Diisobutylamine	C	S/P	II	4m	PV	Restr	**A, B, C, D**	.236(a), (b), (c), (g), .409, .525(a), (c), (d), (e), .526, .1020.	I-C
Diisobutylcarbinol	@C	P	III	NR	Open	Open	A	None	I-D[16]
Diisobutylene	B	P	III	4m	PV	Restr	A	.409	I-D
Diisobutyl phthalate	B	P	III	NR	Open	Open	A	.440, .908(a)	I-D
Diisopropanolamine	C	S/P	III	NR	Open	Open	A	.236(b), (c), .440, .908(a), (b)	I-D[16]
Diisopropylamine	C	S/P	II	B/3	PV	Closed	A	.236(b), (c), .408, .525, .526, .527, .1020	I-C
Diisopropylbenzene (all isomers)	A	P	II	NR	Open	Open	A	.409	I-D
N,N-Dimethylacetamide	D	S	III	B/3	PV	Restr	B	.236(b), .316, .525, .526, .527, .1020	I-D[16]
N,N-Dimethylacetamide solution (40% or less).	D	S	III	B/3	PV	Restr	B	.236(b), .316, .526	I-D[16]
Dimethyl adipate	B	P	III	NR	Open	Open	A	**.409**, .440, .908(b)	NA
Dimethylamine solution (45% or less)	C	S/P	III	B/3	PV	Restr	**A, C, D**	.236(a), (b), (c), (g), .525, .526, .527, .1020	I-C
Dimethylamine solution (over 45% but not over 55%).	C	S/P	II	B/3	PV	Closed	A, C, D	.236 (a), (b), (c), (g), .316, .408, .525, .526, .527, .1020.	I-C
Dimethylamine solution (over 55% but not over 65%).	C	S/P	II	B/3	PV	Closed	A, C, D	.236 (a), (b), (c), (g), .316, .372, .408, .525, .526, .527, .1020.	I-C

2,6-Dimethylaniline	[C]	S/P	III	NR	Open	Open	B, C, D	.236(b), .409, .440, .908(b)	I-D[16]
N,N-Dimethylcyclohexylamine	C	S/P	II	B/3	PV	Restr	A, C	.236(a), (b), (c), (g), **.316,** .409, .525, .526, .527, .1020.	NA
Dimethylethanolamine	D	S	III	4m	PV	Restr	A, D	.236(b), (c), .526	I-C
Dimethylformamide	D	S	III	4m	PV	Restr	A, D	.236(b), .526	I-D
Dimethyl glutarate	C	P	III	NR	Open	Open	A	None	NA
Dimethyl hydrogen phosphite	#	S	III	4m	PV	Restr	A, D	.526	NA
Dimethyl naphthalene sulfonic acid, sodium salt solution.	[A]	P	III	NR	Open	Open	NSR	None	NA
Dimethyloctanoic acid	C	P	III	NR	Open	Open	A	.440, .903, .908(b)	I-D[16]
Dimethyl phthalate	C	P	III	NR	Open	Open	A	None	I-D
Dimethyl succinate	C	P	III	NR	Open	Open	A	.440, .908(b)	NA
Dinitrotoluene (molten)[19]	B	S/P	II[19]	B/3	PV	Closed	A	.316, .408, .440, .525, .526, .527, .908(a), **(b),** .1020.	I-C
1,4-Dioxane	D	S	II	B/3	PV	Closed	A	.408, .525, .526, .1020	I-C
Dipentene	C	P	III	4m	PV	Restr	A	.409	I-D
Diphenyl	A	P	I	NR	Open	Open	B	**.408**	I-D[16]
Diphenyl, Diphenyl ether mixtures	A	P	I	NR	Open	Open	B	.408	I-D[16]
Diphenyl ether	A	P	III	NR	Open	Open	A	**None**	I-D
Diphenyl ether, Biphenyl phenyl ether mixtures.	A	P	III	NR	Open	Open	A, B	None	NA
Diphenylmethane diisocyanate[13]	B	S/P	II	B/3	PV	Closed	**A, B, C[13], D**	.236(a), (b), .316, .440, .500, .501, .525, .526, .602, .908(a), .1000, .1020.	NA
Diphenylol propane-epichlorohydrin resins	B	P	III	NR	Open	Open	A, B	.440, .908(a)	NA
Di-n-propylamine	C	S/P	III	4m	PV	Restr	A	.236(b), (c), .409, .525, .526, .1020	I-C
Dodecanol	B	P	III	NR	Open	Open	A	.440, **.488,** .908(a), (b)	I-D
Dodecene (all isomers)	B	P	III	NR	Open	Open	A	None	I-D
Dodecyl alcohol *see* Dodecanol									
Dodecylamine, Tetradecylamine mixture	[C]	S/P	III	4m	PV	Restr	A, D	.236(b), (c), .440, .526, .903, .908(a), (b)	NA
Dodecyl diphenyl ether disulfonate solution	B	S/P	III	NR	Open	Open	NSR	.440, **.488,** .908(a)	NA
Dodecyl methacrylate	III	S	III	NR	Open	Open	**A, C**	.236(b), (c), .912(a)(1), .1004	I-D
Dodecyl-Pentadecyl methacrylate mixture	III	S	III	NR	Open	Open	**A, C, D**	.912(a)(1), .1002(a), (b), .1004	NA
Dodecyl phenol	A	P	I	NR	Open	Open	A	.408	I-D
Drilling brine (containing Zinc salts)	A	P	II	NR	Open	Open	NSR	.409	NA
Epichlorohydrin	C	S/P	II	B/3	PV	Closed	A	.316, .408, .525, .526, .527, .1020	I-C
Ethanolamine	D	S	III	NR	Open	Open	A	.236(b), (c), .526	I-D[16]
2-Ethoxyethyl acetate	C	P	III	4m	PV	Restr	A	.409	I-C
Ethyl acrylate	B	S/P	II	4m	PV	Restr	A	.526, .527, .912(a)(1), .1002(a), (b), .1004	I-D
Ethylamine	C	S/P	II	B/3	PV	Closed	C, D	.236(b), (c), **.252,** .372, .525, .526, .527, .1020.	I-D
Ethylamine solution (72% or less)	C	S/P	II	B/3	PV	Closed	A, C	.236(a), (b), (c), (g), .372, .408, .525(a), (c), (d), (e), .526, .527, .1020.	I-D
Ethyl amyl ketone	C	P	III	4m	PV	Restr	A	.409	I-D
Ethylbenzene	C	P	III	4m	PV	Restr	A	.409	I-D
N-Ethylbutylamine	C	S/P	III	4m	PV	Restr	A	.236(a), (b), (c), (g), .409, .525(a), (c), (d), (e), .526, .1020.	I-C
Ethyl butyrate	C	P	III	4m	PV	Restr	A	**.409**	I-D
Ethylcyclohexane	C	P	III	4m	PV	Restr	A	.409	I-D[16]
N-Ethylcyclohexylamine	D	S	III	4m	PV	Restr	**A, C**	.236(a), (b), (c), (g), .409, .526	I-C
Ethylene chlorohydrin	C	S/P	II	B/3	PV	Closed	**A, D**	.316, .408, .525, .526, .527, .933, .1020	I-D
Ethylene cyanohydrin	D	S	III	NR	Open	Open	A	None	NA
Ethylenediamine	C	S/P	II	4m	PV	Restr	A	.236(b), (c), .440, .526, .908(b)	I-D
Ethylene dibromide	B	S/P	II	B/3	PV	Closed	NSR	.408, .440, .525, .526, .527, .908(b), .1020	NA
Ethylene dichloride	B	S/P	II	4m	PV	Restr	**A, B**	.236(b), .408, .526	I-D
Ethylene glycol butyl ether acetate	C	P	III	NR	Open	Open	A	None	I-C
Ethylene glycol diacetate	C	P	III	NR	Open	Open	A	**None**	I-D[16]

TABLE 1—SUMMARY OF MINIMUM REQUIREMENTS—Continued

Cargo name [1]	IMO Annex II pollution category [2]	Haz. [3]	Cargo containment system [4]	Vent height [5]	Vent [6]	Gauge [7]	Fire protection system [8]	Special requirements in 46 CFR Part 153 [9]	Electrical hazard class and group [10]
Ethylene glycol ethyl ether acetate *see* 2-Ethoxyethyl acetate									
Ethylene oxide (30% or less), Propylene oxide mixture.	D	S	II	B/3	PV	Closed	A, C	**.252,** .372, .408, .440, .500, .525, .526, .530, .1010, .1011, .1020.	I-B
Ethyl ether	III	S	II	4m	PV	Closed	A	.236(g), .252, .372, .408, .440, .500, .515, .526, .527.	I-C
Ethyl-3-ethoxypropionate	[C]	P	III	4m	PV	Restr	A	.409	NA
2-Ethylhexanol	@C	P	III	NR	Open	Open	A	None	I-D
2-Ethylhexyl acrylate	D	S/P	III	NR	Open	Open	A	.912(a)(1), .1002(a), (b), .1004	I-D
2-Ethylhexylamine	B	S/P	II	B/3	PV	Restr	A	.236(b), (c), .525, .526, .1020	I-D [16]
Ethyl hexyl phthalate	C	P	III	NR	Open	Open	A	None	NA
Ethylidene norbornene	B	S/P	III	B/3	PV	Restr	**A, B, C, D**	.236(b), .409, .526	NA
Ethyl methacrylate	D	S	III	4m	PV	Restr	**A, B, D**	.526, .912(a)(1), .1002(a), (b), .1004	I-D
Ethylphenol	A	S/P	III	NR	Open	Open	B	**.409**	I-D [16]
2-Ethyl-3-propylacrolein	B	S/P	III	4m	PV	Restr	A	.440, .526, .908(b)	I-C
Ethyl toluene	B	P	III	4m	PV	Restr	A	.409	I-D
Ferric chloride solutions	C	S/P	III	NR	Open	Open	NSR	.409, .440, .554, .555, .908(b), .1045	I-B
Ferric nitrate, Nitric acid solution	C	S/P	II	4m	PV	Restr	NSR	.408, .526, .527, .554, .555, .559, .933, .1045	I-B
Formaldehyde (50% or more), Methanol mixtures.	#	S/P	III	4m	PV	Closed	A	.526, .527	I-B
Formaldehyde solution (37% to 50%)	C	S/P	III	4m	PV	Restr	A	.526, .527	I-B
Formic acid	D	S	III	4m	PV	Restr	A	.238(b), (c), .526, .527, .554	I-D
Fumaric adduct of rosin, water dispersion	B	P	III	NR	Open	Open	NSR	.440, .908(a)	NA
Furfural	C	S/P	III	4m	PV	Restr	A	.526	I-C
Furfuryl alcohol	C	P	III	NR	Open	Open	A	None	I-C
Glutaraldehyde solution (50% or less)	D	S	III	NR	Open	Open	NSR	None	NA
Glycidyl ester of C10 Trialkyl acetic acid *see* Glycidyl ester of Tridecyl acetic acid.									
Glycidyl ester of Tridecyl acetic acid	B	P	III	NR	Open	Open	A	None	NA
Heptane (all isomers)	C	P	III	4m	PV	Restr	A	.409	I-D
Heptanol (all isomers)	C	P	III	4m	PV	Restr	A	.409	I-D
Heptene (all isomers)	C	P	III	4m	PV	Restr	A	.409	I-D
Heptyl acetate	B	P	III	NR	Open	Open	A	None	NA
Hexamethylenediamine solution	C	S/P	III	4m	PV	Restr	A	.236(b), (c), .409, .440, .526, .908(b)	I-D
Hexamethyleneimine	C	S/P	II	4m	PV	Restr	A, C	.236(a), (b), (c), (g), .526	I-C
Hexane (all isomers)	C	P	III	4m	PV	Restr	A	.409	I-D
Hexene (all isomers)	C	P	III	4m	PV	Restr	A	.409	I-D
Hexyl acetate	B	P	III	**4m**	PV	Restr	A	.409	I-D
Hydrochloric acid	D	S	III	4m	PV	Restr	NSR	.252, .526, .527, .554, .557, .933, .1045, .1052.	I-B [12]
Hydrogen peroxide solutions (over 8% but not over 60%).	C	S/P	III	B/3	PV	Closed	NSR	.238 (a), (c), .355, .409, .440(a) (1)&(2), .500, .933, .1004(a)(2), .1500.	NA
Hydrogen peroxide solutions (over 60% but not over 70%).	C	S/P	II	B/3	PV	Closed	NSR	.238 (a), (c), .355, .409, .440(a) (1)&(2), .500, .933, .1004(a)(2), .1500.	NA
2-Hydroxyethyl acrylate	B	S/P	II	B/3	PV	Closed	A	.408, .525, .526, .912(a)(1), .933, .1002 (a), (b), .1004, .1020.	NA
2-Hydroxy-4-(methylthio)butanoic acid	[C]	P	III	NR	Open	Open	A	.440, .903, .908(a)	NA
Isophorone diamine	D	S	III	4m	PV	Restr	A	.236(b), (c), .526	NA

Isophorone diisocyanate[13]	B	S/P	III	B/3	PV	Closed	A, B, C[13], D	.236(a), (b), .316, .500, .501 .526, .602, .1000, .1020.	NA
Isoprene	C	S/P	III	4m	PV	Restr	B	.372, .440, .912(a)(1), .1002(a), (b), .1004	I-D
Isopropylbenzene *see* Cumene									
Lactonitrile solution (80% or less)	B	S/P	II	B/3	PV	Closed	A, C, D	**.238(d), .252**, .316, .336, .408, **.440**, .525, .526, .527, **.908(a), .912(a)(2)**, .1002, **.1004**, .1020, .1035.	I-D[16]
Lauric acid	B	P	III	NR	Open	Open	A	.440, .488, .908(a), (b)	NA
Maleic anhydride[11]	D	S	III	4m	PV	Restr	[11]A, C	None	I-D[16]
Mercaptobenzothiazol, sodium salt solution *see* Sodium-2-mercaptobenzothiazol solution									
Mesityl oxide	D	S	III	4m	PV	Restr	A	.236(b), (c), .409, .526	I-D
Metam sodium solution	A	S/P	III	NR	Open	Open	NSR	.236(a), (b), (c), (g), .409	NA
Methacrylic acid	D	S	III	4m	PV	Restr	A	.238(a), .526, .912(a)(1), .1002(a), .1004	NA
Methacrylonitrile	B	S/P	II	B/3	PV	Closed	A	**.236(b)**, .316, .408, .525, .526, .527, .912(a)(1), .1002(a), .1004, .1020.	NA
Methyl acrylate	C	S/P	II	4m	PV	Restr	A, B	.526, .527, .912(a)(1), .1002(a), (b), .1004	I-D
Methylamine solution (42% or less)	C	S/P	II	B/3	PV	Closed	A, C, D	.236(a), (b), (c), (g), .316, .408, .525, .526, .527, .1020.	I-D
Methylamyl acetate	C	P	III	4m	PV	Restr	A	.409	I-D
Methylamyl alcohol	C	P	III	4m	PV	Restr	A	.409	I-D
Methylamyl ketone	C	P	III	4m	PV	Restr	A	.409	I-D
Methyl butyrate	C	P	III	4m	PV	Restr	A	.409	I-D[16]
Methylcyclohexane	C	P	III	4m	PV	Restr	A	.409	I-D[16]
Methylcyclopentadiene dimer	B	P	III	4m	PV	Restr	B	.409	I-B[16]
Methyl diethanolamine	[C]	S/P	III	NR	Open	Open	A	.236(b), (c), .440, .903, .908(a)	I-C[16]
Methylene chloride see Dichloromethane									
2-Methyl-6-ethylaniline	C	S/P	III	NR	Open	Open	**A, B, C, D**	None	NA
2-Methyl-5-ethylpyridine	B	S/P	III	NR	Open	Open	**A, D**	.236(b)	I-D
Methyl formate	D	S	II	B/3	PV	Restr	A	.372, .408, .440, .525, .526, .527, .1020	I-D
Methyl heptyl ketone	B	P	III	4m	PV	Restr	A	.409	I-D[16]
2-Methyl-2-hydroxy-3-butyne	III	S	III	4m	PV	Restr	**A, B, C, D**	.236(b), (d), (f), (g), .409, .526	I-D
Methyl methacrylate	D	S	II	4m	PV	Restr	**A, B**	.526, .912(a)(1), .1002(a), (b), .1004	I-D
2-Methyl-1-pentene	C	P	III	4m	PV	Restr	A	.409	I-D
4-Methyl-1-pentene	[C]	P	III	4m	PV	Restr	A	.409	I-D[16]
2-Methylpyridine	B	S/P	II	B/3	PV	Closed	**A, C**	.236(b), .408, .525(a), (c), (d), (e), .1020	I-D
3-Methylpyridine	[B]	S/P	II	B/3	PV	Closed	**A, C**	.236(b), .408, .525(a), (c), (d), (e), .1020	I-D[16]
4-Methylpyridine	B	S/P	II	B/3	PV	Closed	**A, C, D**	.236(b), .408, .440, .525(a), (c), (d), (e), .526, .908(b), .1020.	I-D
N-Methyl-2-pyrrolidone	B	P	III	NR	Open	Open	A	None	I-D
Methyl salicylate	B	P	III	NR	Open	Open	A	None	I-D
alpha-Methylstyrene	A	S/P	III	4m	PV	Restr	D	.409, .526, **.903**, .912(a)(1), .1002(a), (b), .1004.	I-D
Metolachlor	@B	P	III	NR	Open	Open	A	None	NA
Morpholine	D	S	III	4m	PV	Restr	A	.236(b), (c)	I-C
Motor fuel anti-knock compounds (containing lead alkyls).	A	S/P	II	B/3	PV	Closed	**A, B, C**	.252, .316, .336, .408, .525, .526, .527, .933, .1020, .1025.	I-D
Myrcene	[B]	P	III	4m	PV	Restr	A	.409	NA
Naphthalene (molten)	A	S/P	II	4m	PV	Restr	A, D	.409, .440, .908(b)	I-D[16]
Naphthalene sulfonic acid, sodium salt solution (40% or less).	[A]	P	III	NR	Open	Open	NSR	None	NA
Naphthenic acid	A	P	II	NR	Open	Open	A	.409	NA
Naphthenic acid, sodium salt solution	[A]	P	II	NR	Open	Open	NSR	.409	NA
Neodecanoic acid	**C**	P	III	NR	Open	Open	A	None	NA
Nitrating acid (*mixture of Sulfuric and Nitric acids*).	C	S/P	II	B/3	PV	Closed	NSR	.316, .408, .526, .527, .554, .555, .556, .559, **.602**, .933, .1000, .1045.	I-B[12]

TABLE 1—SUMMARY OF MINIMUM REQUIREMENTS—Continued

Cargo name [1]	IMO Annex II pollution category [2]	Haz.[3]	Cargo containment system [4]	Vent height [5]	Vent [6]	Gauge [7]	Fire protection system [8]	Special requirements in 46 CFR Part 153 [9]	Electrical hazard class and group [10]
Nitric acid (70% or less)	C	S/P	II	4m	PV	Restr	NSR	.408, .526, .527, .554, .555, .559, .933, .1045	I-B[12]
Nitrobenzene	B	S/P	II	B/3	PV	Closed	**A, D**	.316, .336, .408, .440, .525, .526, .908(b), .933, .1020.	I-D
o-Nitrochlorobenzene	B	S/P	II	B/3	PV	Closed	**A, B, C, D**	.316, .336, .408, .440, .525, .526, .908(a), (b), .1020.	NA
o-Nitrophenol (molten)	B	S/P	II	B/3	PV	Closed	**A, C, D**	.440, .525, .526, .908(a), (b), .1020	NA
1- or 2-Nitropropane[11]	D	S	III	4m	PV	Restr	[11]A, C	.526	I-C
Nitropropane (60%), Nitroethane (40%) mixture[11].	D	S	III	4m	PV	Restr	[11]**A, C**	.236(b), .526	I-C
(o-, p-) Nitrotoluene	C	S/P	II	B/3	PV	Closed	A, B	.316, .408, .440, .525, .526, .908(b), .1020	I-D[16]
Nonane (all isomers)	C	P	III	4m	PV	Restr	B, C	.409	I-D
Nonene	B	P	III	4m	PV	Restr	A	.409	I-D
Nonyl alcohol (all isomers)	C	P	III	NR	Open	Open	A	None	I-D
Nonyl phenol	A	P	II	NR	Open	Open	A	**.409**	I-D
Nonyl phenol poly(4-12)ethoxylates	B	P	III	NR	Open	Open	A	.409, .440, .488[18], .908(a), (b)	I-D[16]
Noxious liquid, N.F., (1) n.o.s. ("trade name" contains "principal components") ST 1, Cat A.	A	P	I	NR	Open	Open	A	.408	NA
Noxious liquid, F., (2) n.o.s. ("trade name" contains "principal components") ST 1, Cat A.	A	P	I	4m	PV	Restr	A	.408	NA
Noxious liquid, N.F., (3) n.o.s. ("trade name" contains "principal components") ST 2, Cat A.	A	P	II	NR	Open	Open	A	.409	NA
Noxious liquid, F., (4) n.o.s. ("trade name" contains "principal components") ST 2, Cat A.	A	P	II	4m	PV	Restr	A	.409	NA
Noxious liquid, N.F., (5) n.o.s. ("trade name" contains "principal components") ST 2, Cat B.	B	P	II	NR	Open	Open	A	.409; (.440, .903, .908)[18]	NA
Noxious liquid, N.F., (6) n.o.s. ("trade name" contains "principal components") ST 2, Cat B, mp. equal to or greater than 15 deg. C.	B	P	II	NR	Open	Open	A	.409, .440, .488, .908(b); (.903, .908(a))[18]	NA
Noxious liquid, F., (7) n.o.s. ("trade name" contains "principal components") ST 2, Cat B.	B	P	II	4m	PV	Restr	A	.409; (.440, .903, .908)[18]	NA
Noxious liquid, F., (8) n.o.s. ("trade name" contains "principal components") ST 2, Cat B, mp. equal to or greater than 15 deg. C.	B	P	II	4m	PV	Restr	A	.409, .440, .488, .908(b); (.903, .908(a))[18]	NA
Noxious liquid, N.F., (9) n.o.s. ("trade name" contains "principal components") ST 3, Cat A.	A	P	III	NR	Open	Open	A	None	NA
Noxious liquid, F., (10) n.o.s. ("trade name" contains "principal components") ST 3, Cat A.	A	P	III	4m	PV	Restr	A	.409	NA
Noxious liquid, N.F., (11) n.o.s. ("trade name" contains "principal components") ST 3, Cat B.	B	P	III	NR	Open	Open	A	(.440, .903, .908)[18]	NA

Noxious liquid, N.F., (12) n.o.s. ("trade name" contains "principal components") ST 3, Cat B, mp. equal to or greater than 15 deg. C.	B	P	III	NR	Open	Open	A	.440, .488, .908(b); (.903, .908(a))[18]	NA
Noxious liquid, F., (13) n.o.s. ("trade name" contains "principal components") ST 3, Cat B.	B	P	III	4m	PV	Restr	A	.409; (.440, .903, .908)[18]	NA
Noxious liquid, F., (14) n.o.s. ("trade name" contains "principal components") ST 3, Cat B, mp. equal to or greater than 15 deg. C.	B	P	III	4m	PV	Restr	A	.409, .440, .488, .908(b); (.903, .908(a))[18]	NA
Noxious liquid, N.F., (15) n.o.s. ("trade name" contains "principal components") ST 3, Cat C.	C	P	III	NR	Open	Open	A	(.440, .903, .908)[18]	NA
Noxious liquid, F., (16) n.o.s. ("trade name" contains "principal components") ST 3, Cat C.	C	P	III	4m	PV	Restr	A	(.440, .903, .908)[18]	NA
Octane (all isomers)	C	P	III	4m	PV	Restr	A	.409	I-D
Octanol (all isomers)	C	P	III	NR	Open	Open	A	None	I-D
Octene (all isomers)	B	P	III	4m	PV	Restr	A	.409	I-D
Octyl aldehydes	B	P	III	4m	PV	Restr	A	.409, **.440, .908(b)**	I-C[16]
Octyl nitrates (all isomers)	A	S/P	II	NR	Open	Open	A, B	.409, .560, .1002	NA
Olefin mixtures (C5 - C7)	C	P	III	4m	PV	Restr	A	.409	I-D
Olefin mixtures (C5 - C15)	B	P	III	4m	PV	Restr	A	.409	I-D
alpha-Olefins (C6 - C18) mixtures	B	P	III	4m	PV	Restr	A	.409, .440, .908(a), (b)	I-D
Olefins, straight chain mixtures see Olefin mixtures (C5 - C7) *or* (C5 - C15).									
Oleum	C	S/P	II	B/3	PV	Closed	NSR	.316, .408, .440, .526, .527, .554, .555, .556, .602, .908(a), .933, .1000, .1045, .1052.	I-B[12]
Palm kernel oil, fatty acid	C	P	III	NR	Open	Open	B	.440, .903, .908(a), (b)	NA
Palm kernel oil, fatty acid methyl ester	[C]	P	III	NR	Open	Open	A	.440, .903, .908(a)	NA
Paraldehyde	C	S/P	III	4m	PV	Restr	A	.440, .908(b)	I-C
Pentachloroethane	B	S/P	II	B/3	PV	Restr	NSR	.316, .409, .525, .526, .1020	NA
1,3-Pentadiene	C	S/P	III	4m	PV	Restr	**A, B**	.526, .912(a)(1), .1002, .1004	I-D
Pentane (all isomers)	C	P	III	4m	PV	Restr	A	.409	I-D
Pentene (all isomers)	C	P	III	4m	PV	Restr	A	**.409**	I-D
Perchloroethylene	B	S/P	III	4m	PV	Restr	NSR	.526	NA
Phenol (*or solutions with 5% or more Phenol*).	B	S/P	II	B/3	PV	Closed	A	.408, .440, **.488**, .525, .526, .908**(a)**, (b), .933, .1020.	I-D[16]
1-Phenyl-I-xylyl ethane	C	P	III	NR	Open	Open	**A, B**	None	NA
Phosphoric acid	D	S	III	NR	Open	Open	NSR	.554, .555, .558, .1045, .1052	I-B[12]
Phthalic anhydride (molten)	C	S/P	III	4m	PV	Restr	**A, D**	.440, .908(b)	I-D[16]
Pinene	B	P	III	4m	PV	Restr	A	.409	I-D
Pine oil	[B]	P	III	NR	Open	Open	A	.440, .908(a)	I-D[16]
Polyalkyl(C18 - C22) acrylate in Xylene	[C]	P	III	4m	PV	Restr	A	.409, .440, .903, .908(a)	NA
Polyalkylene oxide polyol	[C]	P	III	NR	Open	Open	A	.440, .903, .908(a)	NA
Polyethylene polyamines	C	S/P	III	NR	Open	Open	A	.236(b), (c), .400, .440, .908(b)	NA
Polyferric sulfate solution	C	S/P	III	NR	Open	Open	NSR	.238(d)	NA
Polymethylene polyphenyl isocyanate[13]	D	S	II	B/3	PV	Closed	**A, C[13], D**	.236 (a), (b), .409, .500, .501, .525, .526, .602, .1000, .1020.	NA
Poly(20)oxyethylene sorbitan monooleate	[B]	P	III	NR	Open	Open	A	.440, .908(a)	NA
Potassium hydroxide solution *see* Caustic potash solution									
iso-Propanolamine	C	S/P	III	NR	Open	Open	A	.236 (b), (c), .440, .526, **.903, .908(b)**	**I-D**[16]
n-Propanolamine	C	S/P	III	NR	Open	Open	**A, D**	.236 (b), (c), .440, .526, .908(b)	NA
Propionaldehyde	D	S	III	4m	PV	Restr	A	.316, .526, .527	I-C
Propionic acid	D	S	III	4m	PV	Restr	A	.238(a), .527, .554	I-D
Propionic anhydride	C	S/P	III	4m	PV	Restr	A	.238(a), .526	I-D
Propionitrile	C	S/P	II	B/3	PV	Closed	A, D	**.252**, .316, .336, .408, .525, .526, .527, .1020	I-D

TABLE 1—SUMMARY OF MINIMUM REQUIREMENTS—Continued

Cargo name [1]	IMO Annex II pollution category [2]	Haz.[3]	Cargo containment system [4]	Vent height [5]	Vent [6]	Gauge [7]	Fire protection system [8]	Special requirements in 46 CFR Part 153 [9]	Electrical hazard class and group [10]
iso-Propylamine	C	S/P	II	B/3	PV	Closed	C, D	.236(b), (c), .372, .408, .440, .525, .526, .527, .1020.	I-D
n-Propylamine	C	S/P	II	B/3	PV	Closed	**A, C, D**	.236(b), (c), .408, .500, .525, .526, .527, .1020.	I-D
n-Propylbenzene	C	P	III	4m	PV	Restr	A	.409	I-D[16]
iso-Propylcyclohexane	C	P	III	4m	PV	Restr	A	.409, .440, .903, .908(a)	I-D[16]
Propylene dimer	C	P	III	4m	PV	Restr	A	.409	NA
Propylene oxide	D	S	II	B/3	PV	Closed	A, C	.372, .408, .440, .500, .526, .530, .1010, .1011.	I-B
Propylene tetramer	B	P	III	4m	PV	Restr	A	.409	I-D[16]
Propylene trimer	B	P	III	4m	PV	Restr	A	.409	I-D
iso-Propyl ether	D	S	III	4m	PV	Restr	A	.409, .500, .515, .912(a)(1)	I-D
Pyridine	D	S	III	4m	PV	Restr	A	.236(b)	I-D
Rosin *see* Rosin oil									
Rosin oil	B	P	III	NR	Open	Open	A	**None**	I-D
Rosin soap (disproportionated) solution	B	P	III	NR	Open	Open	A	None	NA
Sodium borohydride (15% or less), Sodium hydroxide solution.	C	S/P	III	NR	Open	Open	NSR	.236(a), (b), (c), (g), .440, .908(a), .933	NA
Sodium chlorate solution (50% or less)	III	S	III	NR	Open	Open	NSR	.409, .933, .1065	NA
Sodium dichromate solution (70% or less)	C	S/P	II	B/3	Open	Closed	NSR	.236(b), (c), .408, .525, .933, .1020	NA
Sodium dimethyl naphthalene sulfonate solution *see* Dimethyl naphthalene sulfonic acid, sodium salt solution.									
Sodium hydrogen sulfide (6% or less), Sodium carbonate (3% or less) solution.	[C]	P	III	NR	Open	Open	NSR	None	NA
Sodium hydrogen sulfite solution (35% or less).	D	S	III	NR	Open	Open	NSR	None	NA
Sodium hydrosulfide solution (45% or less)	B	S/P	III	4m	PV	Restr	NSR	.526, .440, .908(b), .933	NA
Sodium hydrosulfide, Ammonium sulfide solution.	B	S/P	II	B/3	PV	Closed	**A, C**	.236(a), (b), (c), (g), .316, .372, .408, .525, .526, .527, .933, .1002, .1020.	NA
Sodium hydroxide solution *see* Caustic soda solution									
Sodium hypochlorite solution (15% or less)	C	S/P	III	4m	PV	Restr	NSR	.236(a), (b)	NA
Sodium-2-mercaptobenzothiazol solution	B	S/P	III	NR	Open	Open	NSR	.236(a), (b), (c), (g), .440, .908(b), .933	NA
Sodium N-methyldithiocarbamate solution *see* Metam sodium solution.									
Sodium naphthalene sulfonate solution (40% or less) *see* Naphthalene sulfonic acid, sodium salt solution (40% or less).									
Sodium naphthenate solution *see* Naphthenic acid, sodium salt solution.									
Sodium nitrite solution	B	S/P	II	NR	Open	Open	NSR	.408, .525(a), (c), (d), (e), .1020	NA
Sodium thiocyanate solution (56% or less)	B	P	III	NR	Open	Open	NSR	.238(a), **.409**	NA
Styrene *monomer*	B	S/P	III	4m	PV	Open	**A**, B	.236(b), .912(a)(1), .1002(a), (b), .1004	I-D
Sulfur (molten)	III	S	III	NR	Open	Open	NSR	.252, .440, .526, .545	I-C
Sulfuric acid	C	S/P	III	NR	Open	Open	NSR	.440, .554, .555, .556, .602, .908 (a), (b), .933, .1000, .1045, .1046, .1052.	I-B[12]
Tall oil (*crude and distilled*)	B	P	III	NR	Open	Open	A	**None**	NA
Tall oil, fatty acid (*resin acids less than 20%*).	C	P	III	NR	Open	Open	A	None	NA

Tall oil soap (disproportionated) solution	B	P	III	NR	Open	Open	A	.440, .908(a), **(b)**	NA
1,1,2,2-Tetrachloroethane	B	S/P	III	B/3	PV	Restr	NSR	.316, .525, .526, .1020	NA
Tetradecylbenzene	[C]	P	III	NR	Open	Open	A	.440, .908(b)	I-D[16]
Tetraethylenepentamine[14]	D	S	III	NR	Open	Open	A	.236(b), (c), (g)	I-C[16]
Tetrahydrofuran	D	S	III	4m	PV	Restr	**A, D**	.526, .912(a)(2), .1004	I-C
Tetrahydronaphthalene	C	P	III	NR	Open	Open	A	None	I-D
1,2,3,5-Tetramethylbenzene	C	P	III	NR	Open	Open	A	None	I-D[16]
Toluene	C	P	III	4m	PV	Restr	A	.409	I-D
Toluenediamine	C	S/P	II	B/3	PV	Closed	**A, B, C, D**	.236(a), (b), (c), (g), .316, .408, .440, .525, .526, .527, .908(b), .933, .1020.	NA
Toluene diisocyanate[13]	C	S/P	II	4m	PV	Closed	**A, C[13], D**	.236(b), .316, .408, .440, .500, .501, .525, .526, .527, .602, .908(b), .1000, .1020.	I-D[16]
o-Toluidine	C	S/P	II	B/3	PV	Closed	**A, C**	.316, .408, .525, .526, .933, .1020	I-D[16]
Tributyl phosphate	B	P	III	NR	Open	Open	A	None	I-D
1,2,4-Trichlorobenzene	B	S/P	II	4m	PV	Restr	**A, B, C**	.409, .440, .526, .908(b)	I-D
1,1,1-Trichloroethane	B	P	III	NR	Open	Open	A	None	I-D
1,1,2-Trichloroethane	B	S/P	III	B/3	PV	Restr	NSR	**.525**, .526, **.1020**	I-D
Trichloroethylene	B	S/P	III	B/3	PV	Restr	NSR	.316, .525, .526, .1020	I-D
1,2,3-Trichloropropane	B	S/P	II	B/3	PV	Closed	**A, B, C, D**	.316, .408, .525, .526, .1020	I-D
1,1,2-Trichloro-1,2,2-trifluoroethane	C	P	III	NR	Open	Open	NSR	None	NA
Tricresyl phosphate (less than 1% of the ortho isomer).	A	P	II	NR	Open	Open	A	**.409**	I-D[16]
Tricresyl phosphate (1% or more of the ortho isomer).	A	S/P	I	4m	PV	Closed	**A, B**	**.408, .525(a), (c), (d), (e), .1020**	I-D[16]
Tridecylbenzene	[C]	P	III	NR	Open	Open	NSR	**.440, .908(b)**	I-D[16]
Triethanolamine	D	S	III	NR	Open	Open	A	.236(a), (b), (c), (g)	I-C[16]
Triethylamine	C	S/P	II	B/3	PV	Restr	**A, B, C**	.236(b), (c), .525, .526, .527, .1020	I-C
Triethylbenzene	A	P	II	NR	Open	Open	A	.409	I-D
Triethylene glycol di-(2-ethylbutyrate)	[C]	P	III	NR	Open	Open	A	None	I-C[16]
Triethylenetetramine	D	S	III	NR	Open	Open	A	.236(a), (b), (c)	I-C[16]
Triethyl phosphite	#	S	III	B/3	PV	Restr	**A, B, D**	.526	NA
Trimethylacetic acid	D	S	III	4m	PV	Restr	A, C	.238(a), .266, .554	I-D
Trimethylbenzenes (all isomers)	B	P	III	4m	PV	Restr	A	.409	I-D
Trimethylhexamethylenediamine (2,2,4- and 2,4,4- isomers).	D	S	III	NR	Open	Open	A, C	.236 (a), (b), (c), (g), .409	NA
Trimethylhexamethylene diisocyanate (2,2,4- and 2,4,4- isomers) [13].	B	S/P	II	B/3	PV	Closed	A, C[13]	.316, .500, .501, .525, .526, .602, .1000, .1020.	NA
2,2,4-Trimethyl-1,3-pentanediol-1-isobutyrate.	C	P	III	NR	Open	Open	A	None	I-D
Trimethyl phosphite	#	S	III	4m	PV	Restr	A, D	.409, .526, **.602,** .1000	I-D
Tritolyl phosphate see Tricresyl phosphate									
Trixylenyl phosphate	A	P	I	NR	Open	Open	A	**.408**	NA
Trixylyl phosphate *see* Trixylenyl phosphate									
Turpentine	B	P	III	4m	PV	Restr	A	.409	I-D
Undecanoic acid	C	P	III	NR	Open	Open	A	.440, .903, .908(a), (b)	NA
1-Undecene	B	P	III	NR	Open	Open	A	None	I-D
Undecyl alcohol	B	P	III	NR	Open	Open	A	.440, .908(b)	I-D
Undecylbenzene	[C]	P	III	NR	Open	Open	A	None	I-D[16]
Urea, Ammonium nitrate solution (containing more than 2% NH_3).	C	S/P	III	4m	PV	Restr	A	.236(b), .526	I-D
iso-Valeraldehyde	C	S/P	III	4m	PV	Restr	A	.500, .526	I-C
n-Valeraldehyde	D	S	III	4m	PV	Restr	A	.500, .526	I-C
Vinyl acetate	C	S/P	III	4m	PV	Open	A	.912(a)(1), .1002 (a), (b), .1004	**I-D**
Vinyl ethyl ether	C	S/P	II	4m	PV	Closed	A	.236(b),(d),(f),(g), **.252,** .372, .408, .440, .500, .515, .526, .527, .912(a)(1), .1002 (a), (b), .1004.	I-C[16]
Vinylidene chloride	B	S/P	II	4m	PV	Restr	B	.236 (a), (b), .372, .440, .550, .526, .527, .912(a)(1), .1002 (a), (b), .1004.	I-D

TABLE 1—SUMMARY OF MINIMUM REQUIREMENTS—Continued

Cargo name [1]	IMO Annex II pollution category [2]	Haz.[3]	Cargo containment system [4]	Vent height [5]	Vent [6]	Gauge [7]	Fire protection system [8]	Special requirements in 46 CFR Part 153 [9]	Electrical hazard class and group[10]
Vinyl neodecanate	C	S/P	III	NR	Open	Open	**A, B**	.912(a)(1), .1002 (a), (b), .1004	NA
Vinyltoluene	A	S/P	III	4m	PV	Restr	**A, B, D**	.236 (a), (b), (c), (g), .409, .912(a)(1), .1002(a), (b), .1004.	I-D
White spirit (low (15-20%) aromatic)	B	P	II	4m	PV	Restr	A	.409	NA
Xylenes[17] (*ortho-, meta-, para-*)	C	P	III	4m	PV	Restr	A	.409, .440, .908(b)[17]	I-D
Xylenol	B	S/P	III	NR	Open	Open	**A, B**	.440, .908(a), (b)	NA

Items in **boldface** are changes.

COLUMN HEADING FOOTNOTES:

[1] The cargo name must be as it appears in this column **(see 153.900, 153.907).** Words in italics are not part of the cargo name but may be used in addition to the cargo name. When one entry references another entry by use of the word "*see*", and both names are in roman type, either name may be used as the cargo name (e.g., Diethyl ether *see* Ethyl ether). However, the referenced entry is preferred.

[2] This column lists the IMO Annex II Pollution Category.

A, B, C, D—NLS Category of Annex II of MARPOL 73/78.

III—Appendix III of Annex II (non-NLS cargoes) of MARPOL 73/78.

#—No determination of NLS status. For shipping on an oceangoing vessel, see 46 CFR 153.900(c).

[]—A NLS category in brackets indicates that the product is provisionally categorized and that further data are necessary to complete the evaluation of its pollution hazards. Until the hazard evaluation is completed, the pollution category assigned is used.

@—The NLS category has been assigned by the U.S. Coast Guard, in absence of one assigned by the IMO. The category is based upon a GESAMP Hazard Profile or by analogy to a closely related product having an NLS assigned.

[3] This column lists the hazard(s) of the commodity:

S—The commodity is included because of its safety hazards.

P—The commodity is included because of its pollution hazards.

S/P—The commodity is included because of both its safety and pollution hazards.

[4] This column lists the type of containment system the cargo must have (see 153.230 through 153.232).

[5] This column lists the height of any vent riser required (see 153.350 and 153.351).

[6] This column lists any vent control valve required (see 153.355).

[7] This column lists the type of gauging system required (see 153.400 through 153.406).

[8] This column lists the type of fire protection system required. Where more than one system is listed, any listed system may be used. A dry chemical system may not be substituted for either type of foam system unless the dry chemical system is listed as an alternative or the substitution is approved by Commandant (G-MTH) (153.460). The types are as follows:

A is a foam system for water soluble cargoes (polar solvent foam).

B is a foam system for water insoluble cargoes (non-polar solvent foam).

C is a water spray system.

D is a dry chemical system.

NSR means there is no special requirement applying to fire protection systems.

[9] This column lists sections that apply to the cargo in addition to the general requirements of this part. The 153 Part number is omitted.

[10] This column lists the electrical hazard class and group used for the cargo when determining requirements for electrical equipment under Subchapter J (Electricial engineering) of this chapter.

Abbreviations used:

NR—No requirement.

NA—Not applicable.

FOOTNOTES OF SPECIFIC CARGOES:

[11] Dry chemical extinguishers should not be used on fires involving this cargo since some dry chemicals may react with the cargo and cause an explosion.

[12] The I-B electrical hazard for acids does not apply to weather deck locations. See 46 CFR Part 111.

[13] Water is effective in extinguishing open air fires but will generate hazardous quantities of gas if put on the cargo in enclosed spaces.

[14] Aluminum is a questionable material of construction with this cargo since pitting and corrosion have been reported. The IMO Chemical Code prohibits aluminum as a material of construction for this cargo.

[15] Some tank pitting has been reported when this cargo is contaminated with water, including moisture in the air. The IMO Chemical Code requires that the vapor space over this cargo be kept dry.

[16] Electrical Hazard Class and Group based upon that which appears in "Classification of Gases, Liquids and Volatile Solids Relative to Explosion-Proof Electrical Equipment", Publication NMAB 353-5, National Academy Press, 1982, but not appearing in NFPA 497M, "Manual for Classification of Gases, Liquids and Dusts for Electrical Equipment in Hazardous Classified Locations." See also Subchapter J (Electrical Engineering) of this chapter.

[17] Special requirement .908(b) only applies to the para isomer, and mixtures containing the para isomer having a melting point of 0 deg C (32 deg F) or more.
[18] Special applicability:

153.440 and .908(a) apply to the chemical, and mixtures containing the chemical, with a viscosity of 25 mPa.s at 20 deg C (68 deg F).
153.440 and .908(b) apply to the chemical, and mixtures containing the chemical, with a melting point of 0 deg C (32 deg F) and above.
153.448 applies to the chemical, and mixtures containing the chemical, with a melting point of 15 deg C (59 deg F) and above.
[19] Dinitrotoluene should not be carried in deck tanks.
ABBREVIATIONS FOR NOXIOUS LIQUID CARGOES:

N.F.—non-flammable (flash point greater than 60 degrees C (140 degrees F) cc).
F.—flammable (flash point less than or equal to 60 degrees C (140 degrees F) cc).
n.o.s.—not otherwise specified.
ST—Ship type.
Cat—Pollution category.

TABLE 2—CARGOES NOT REGULATED UNDER SUBCHAPTERS D OR O OF THIS CHAPTER WHEN CARRIED IN BULK ON NON-OCEANGOING BARGES

Cargoes	Pollution Category
2-Amino-2-hydroxymethyl-1,3-propanediol solution	III
Ammonium hydrogen phosphate solution	[III]
Ammonium nitrate solution (45% or less)	D
Ammonium nitrate, Urea solution (2% or less NH_3)	D
Ammonium phosphate solution	#
Ammonium phosphate, Urea solution	D
Ammonium polyphosphate solution	@D
Ammonium sulfate solution (20% or less)	D
Apple juice	III
Calcium bromide solution	III
Calcium carbonate slurry	III
Calcium chloride solution	III
Calcium hydroxide slurry	D
Calcium nitrate, Magnesium nitrate, Potassium chloride solution	III
Chlorinated paraffins (C14-C17) (with 52% Chlorine)	III
2-Chloro-4-ethylamino-6-isopropylamino-5-triazine solution	#
Choline chloride solution	D
Clay slurry	III
Coal slurry	III
Dextrose solution	III
Diethylenetriamine pentaacetic acid, pentasodium salt solution	III
1,4-Dihydro-9,10-dihydroxy anthracene, disodium salt solution	D
Dodecenylsuccinic acid, dipotassium salt solution	D
Drilling brine (containing Calcium, Potassium, or Sodium salts)	III
Drilling brine (containing Zinc salts)	A
Drilling mud (low toxicity) (*if non-flammable and non-combustible*)	[III]
Ethylenediaminetetraacetic acid, tetrasodium salt solution	D
Ethylene-Vinyl acetate copolymer (*emulsion*)	III
Ferric hydroxyethylethylene diamine triacetic acid, trisodium salt solution	D
Fish solubles (*water based fish meal extracts*)	[D]
Fructose solution	#
Glucose solution	III
Glycine, sodium salt solution	III
Hexamethylenediamine adipate	D
N-(Hydroxyethyl)ethylenediamine triacetic acid, trisodium salt solution	D
Kaolin clay solution	III
Kaolin slurry	III
Kraft pulping liquor (free alkali content, 1% or less) *including: Black, Green, or White liquor*	#
Lignin liquor (free alkali content, 1% or less)	#
including:	
Calcium lignosulfonate solution	
Sodium lignosulfonate solution	@III
Lignin sulfonic acid, sodium salt solution	III
Magnesium chloride solution	III
Magnesium hydroxide slurry	III
Milk	III
Molasses	III
Molasses residue (*from fermentation*)	[III]
Noxious liquid, n.o.s. (17) ("trade name," contains "principal components"), Category D (*if non-flammable or non-combustible*)	D
Non-noxious liquid, n.o.s. (18) ("trade name," contains "principal components"), Appendix III (*if non-flammable or non-combustible*)	III
Pentasodium salt of Diethylenetriamine pentaacetic acid solution, *see* Diethylenetriamine pentaacetic acid, pentasodium salt solution	III
Polyaluminum chloride solution	III
Sewage sludge,treated (*treated so as to pose no additional decompositional and fire hazard; stable, non-corrosive, non-toxic, non-flammable*)	#
Silica slurry	[III]
Sludge,treated (*treated so as to pose no additional decompositional and fire hazard; stable, non-corrosive, non-toxic, non-flammable*)	#
Sodium aluminosilicate slurry	III
Sodium carbonate solution	D
Sodium naphthenate solution (free alkali content, 3% or less) *see* Naphthenic acid, sodium salt solution	A
Sodium polyacrylate solution	[III]
Sodium silicate solution	D
Sodium sulfate solution	[III]
Sorbitol solution	III
Tetrasodium salt of Ethylenediaminetetraacetic acid solution, *see* Ethylenediaminetetraacetic acid, tetrasodium salt solution	D
1,1,1-Trichloroethane	B
1,1,2-Trichloro-1,2,2-trifluoroethane	C
Trisodium salt of N-(Hydroxyethyl)-ethylenediaminetriacetic acid solution, *see* N-(Hydroxyethyl)ethylenediamine triacetic acid, trisodium salt solution	D
Urea, Ammonium mono- and di-hydrogen phosphate, Potassium chloride solution	D
Urea, Ammonium nitrate solution (2% or less NH_3), see Ammonium nitrate, Urea solution (2% or less NH_3)	D
Urea, Ammonium phosphate solution, see Ammonium phosphate, Urea solution	D
Urea solution	III
Vanillan black liquor (free alkali content, 1% or less)	#
Vegetable protein solution (*hydrolysed*)	III
Water	III
Zinc bromide, Calcium bromide solution *see* Drilling brine (containing Zinc salts)	A

Explanation of Symbols: As used in this table, the following stand for:

A, B, C, D—NLS Category of Annex II of MARPOL 73/78.

I—Considered an "oil" under Annex I of MARPOL 73/78.

III—Appendix III of Annex II (non-NLS cargoes) of MARPOL 73/78.

LFG—Liquefied flammable gas.

#—No determination of NLS status. For shipping on an oceangoing vessel, see 46 CFR 153.900(c).

[]—A NLS category in brackets indicates that the product is provisionally categorized and that further data are necessary to complete the evaluation of its pollution hazards. Until the hazard evaluation is completed, the pollution category assigned is used.

Dated: September 22, 1989.

M. J. Schiro,

Captain, U.S. Coast Guard Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89-23183 Filed 9-28-89; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[CC Docket No. 88-161]

Public Land Mobile Services; Cellular Services

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule (53 FR 48909, December 5, 1988) which amends part 22.6 of the Commission's Rules relating to filing applications in the Mobile Services Division.

EFFECTIVE DATE: September 29, 1989.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Sandra Donnell, Mobile Services Division, Common Carrier Bureau, (202) 632-6450.

SUPPLEMENTARY INFORMATION: On November 16, 1988, the Commission released a Report and Order (FCC-88-339) amending part 22 of the Commission's Rules. As part of this Report and Order, § 22.6(d)(2) was added in FR Doc. 88-27109, provided in the Monday, December 5, 1988, **Federal Register** on page 48910, § 22.6(d)(2) is correctly added to read as follows:

§ 22.6 Filing of applications, fees, and numbers of copies.

* * * * *

(d) * * *

(2) Non-cellular and Non-initial Cellular Applications. All non-cellular and non-initial cellular applications must have the following information printed on the mailing envelope, the microfiche envelope, and on the title area at the top of the microfiche: i) the name of the applicant; ii) the city and state of the applications; and iii) if the application refers to an existing station, the call sign of the station.

* * * * *

Federal Communications Commission.

Gerald Brock,

Chief, Common Carrier Bureau.

[FR Doc. 89-23028 Filed 9-28-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-318; RM-6387]

Radio Broadcasting Services; York, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 285C2 for Channel 257A at York, AL, and modifies the Class A license of Grantell Broadcasting Company for Station WSLY(FM), as requested, to specify operation on the higher class channel, thereby providing that community with its first expanded coverage FM service. See, 53 FR 26612, July 14, 1988. An expression of interest in the non-adjacent modification, filed on behalf of Wayne Booth Dowdle, Jr., was unacceptable for consideration since it failed to provide an appropriate commitment to reimburse Station WHOD(FM), Jackson, AL, for its cost in changing frequency to accommodate the York modification. With this action, the proceeding is terminated.

EFFECTIVE DATE: November 6, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88-318, adopted August 24, 1989, and released September 21, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

47 CFR PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for Alabama, is amended for York, by removing Channel 257A and adding Channel 285C2.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-23029 Filed 9-28-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-449, RM-6329]

Radio Broadcasting Services; Seligman, AZ

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 277A to Seligman, Arizona, as a first local broadcast service, in response to a petition filed by Rick L. Murphy. Coordinates for Channel 277A are 35-19-36 and 112-52-30. With this action the proceeding is terminated.

DATE: *Effective:* November 6, 1989; The window period for filing applications on Channel 277A at Seligman, Arizona will open on November 7, 1989, and close on December 7, 1989.

FOR FURTHER INFORMATION CONTACT: Ordee Pearson, (202) 634-6530. Questions related to the window application filing process at Seligman, Arizona should be addressed to the Audio Service Division, FM Branch, Mass Media Bureau, (202) 632-0394.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report

and Order in MM Docket No. 88-449, adopted August 24, 1989, and released September 22, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

47 CFR PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of Allotments, is amended by adding Seligman, Arizona, Channel 277A.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-23030 Filed 9-28-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 80

Maritime Radio Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action makes non-substantive amendments to the Commission's maritime services rules. On October 2, 1986, the Commission reorganized and revised the maritime rules contained in parts 81 and 83 and combined them into a single part 80. Since that time, a number of rules requiring clarification or correction have been brought to our attention by the maritime community and through staff review. This Order updates the maritime rules by clarifying and correcting Part 80 accordingly.

EFFECTIVE DATE: September 29, 1989.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: J. Joy Alford, Aviation & Marine Branch, Private Radio Bureau, (202) 632-7175.

SUPPLEMENTARY INFORMATION:

In the matter of editorial amendments to Part 80 of the rules concerning the Maritime Radio Services.

Order

Adopted: September 13, 1989.

Released: September 22, 1989.

By the Chief, Private Radio Bureau:

1. This Order amends Part 80 of the Commission's Rules 47 CFR part 80, governing the maritime radio services. These rule amendments correct typographical errors and omissions, update references, conform these rules to other rules and revise wording to clarify the affected sections. Because these amendments are non-substantive, the notice and comment provisions and the effective date requirements of the Administrative Procedure Act are inapplicable. See 5 U.S.C. 553 (b) and (d) 47 CFR 1.412(b) and 47 CFR 1.427(b).

2. Because a Notice of Proposed Rule Making is not required, the Regulatory Flexibility Act, Public Law 93-354, does not apply.

3. Authority for this action is contained in section 4(i), 5(c)(1) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 155(c)(1) and 303(r) and by § 0.331(a)(1) of the Commission's Rules, 47 CFR 0.331(a)(1).

4. Accordingly, IT IS ORDERED that part 80 of the Commission's Rules is amended as set forth below, effective September 29, 1989.

Lists of Subjects in 47 CFR Part 80

Coast stations, Communications equipment, Maritime services, Radiotelegraph, Radiotelephone, Vessels.

Federal Communications Communications.

Ralph A. Haller,

Chief, Private Radio Bureau.

Part 80 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 80—STATIONS IN THE MARITIME SERVICES

1. The authority citation for Part 80 continues to read:

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

2. In the table of contents, the undesignated center heading appearing before § 80.311 is revised to read as follows: "Distress, Alarm, Urgency and Safety Procedures."

§ 80.153 [Amended]

3. In § 80.153, paragraph (c)(2) is revised to read, "An operational fixed station associated with a coast station may be operated by the operator of the associated coast station."

§ 80.159 [Amended]

4. In § 80.159:

Paragraph (c)(2) is revised to read, "Where the station power exceeds 1500 watts peak envelope power, the operator must hold a general radiotelephone radio operator license or higher class license."

Paragraph (d)(2) is revised to read, "Where the station power exceeds 250 watts carrier power or 1500 watts peak envelope power, the radio operator must hold a general radiotelephone operator license or higher class license."

§ 80.169 [Amended]

5. In § 80.169, paragraph (a) is revised to read; "All adjustments of radio transmitters in any radiotelephone station or coincident with the installation, servicing, or maintenance of such equipment which may affect the proper operation of the station, must be performed by or under the immediate supervision and responsibility of a person holding a first or second class radiotelegraph operator's certificate or a general radiotelephone operator license."

§ 80.207 [Amended]

6.-7. In § 80.207, paragraph (a)(1) is revised to read, "That these signalling techniques, other than digital selective calling, are not used on frequencies designated for general purpose DSC calling and distress and safety DSC calling as listed in § 80.359 (a) and (b)."

§ 80.211 [Amended]

8. In § 80.211, the introductory text in paragraph (b) is revised to read, "For transmitters operating in the band 1626.5-1646.5 MHz. In any 4 kHz band the mean power of emissions shall be attenuated below the mean output power of the transmitter as follows:"

§ 80.213 [Amended]

9. In § 80.213, paragraph (a)(2) is revised to read, "When phase or frequency modulation is used in the 156-162 MHz and 216-220 MHz bands the peak modulation must be maintained between 75 and 100 percent. A frequency deviation of ±5 kHz is defined as 100 percent peak modulation; and"

§ 80.215 [Amended]

10. In § 80.215, paragraph (d)(2)(iii) is revised to read, "All ships—Open waters; 4000-27500 kHz—1.5kW[5]".

---

[5] For passenger ships 5,000 gross tons and over 3kW

§ 80.221 [Amended]

11. In § 80.221, paragraph (b)(1) is revised to read, "The frequency tolerance of each tone must be ±1.5 percent;"

§ 80.363 [Amended]

12.–13. In § 80.363:

The introductory text is revised to read, "The non-paired frequencies with F1C, F3C, J2C or J3C emission which are assignable to ship and public coast stations for facsimile are as follows:"

The frequency chart in paragraph (a) is amended to add carrier frequency 2073.1 to the column designated Series No. 1 before carrier frequency 4159.2, correct carrier frequency 6327.2 in the column designated Series No. 1 to read 6237.2 and to add carrier frequency 2071.1 to the column designated Series No. 2 before carrier frequency 2075.1.

Paragraph (b) is revised to read, *"Public coast station frequencies.* Frequencies in the 2000–27500 kHz bands listed in part 2 of the Commission's rules as available for shared use by the maritime mobile service and other radio services are assignable to public coast stations for facsimile."

§ 80.373 [Amended]

14. In § 80.373:

Amend the table in paragraph (f) to add footnote designator 13 following Channel designator 15, and to add footnote 13 to read, "Available for assignment to coast stations, the use of which is in accord with an agreed program, for the broadcast of information to ship stations concerning the environmental conditions in which vessels operate, i.e., weather; sea conditions; time signals; notices to mariners; and hazards to navigation."

Footnote 3 of paragraph (f) is revised to read, "156.550 MHz, 156.600 MHz and 156.700 MHz are available in the U.S. Coast Guard designated port areas only for VTS communications and in the Great Lakes available primarily for communications relating to the movement of ships in sectors designated by the St. Lawrence Seaway Development Corporation or the U.S. Coast Guard. The use of these frequencies outside VTS and ship movement sector protected areas is permitted provided they cause no interference to VTS and ship movement communications in thier respective designated sectors."

§ 80.381 [Amended]

15. In § 80.381, amend the table to remove footnote designator 1 everywhere it appears, and remove footnote 1.

§ 80.409 [Amended]

16. In § 80.409, paragraph (f)(1) is revised to read, "Radiotelephony stations subject to parts II and III of title III of the Communications Act and/or the Safety Convention must record entries indicated by paragraphs (e)(1) through (e)(11) of this section."

17. § 80.559 is amended by revising paragraph (c) and by adding footnote 1 to read as follows:

§ 80.559 Licensing limitations.

* * * * *

(c) Stations located between 16 km (10 miles) and 128 km (80 miles) of a TV transmitter operating on either Channel 4 or 5, or from the post office of a community in which either channel is assigned but not in operation, are secondary to TV operations within the Grade B service contour.[1]

§ 80.871 [Amended]

18. In § 80.871:

Paragraph (a) is revised to read, "All passenger ships irrespective of size and all cargo ships of 300 gross tons and upwards subject to part II of title III of the Communications Act or to the Safety Convention are required to carry a VHF radiotelephone station complying with this subpart. Ships subject only to the Communications Act may use a VHF radiotelephone installation meeting the technical standards of the Bridge-to-Bridge Act to satisfy the watch requirements of § 80.305(a)(3) if the equipment can transmit and receive on 156.800 MHz.

The table in paragraph (d) is amended by revising the ship station transmitting frequency for channel designator 24 to read, "157.200", and the coast station transmitting frequencies for channel designators 21, 81, 23 and 83 to read, "161.650, 161.675, 161.750 and 161.775", respectively.

§ 80.911 [Amended]

19. § 80.911 is amended by adding paragraph (d)(5) to read, "For primary supply voltages, measured in accordance with the procedures of this paragraph, greater than 11.5 volts, but less than 12.6 volts, the required transmitter output power shall be equal to or greater than the value calculated from the formula

$$P=4.375(V)-35.313$$

where V equals the measured primary voltage and P is the calculated output power in watts."

Subpart W [Amended]

20. In the table of contents and in the text, the title of subpart W immediately following § 80.1061 is revised to read, "Global Maritime Distress and Safety System (GMDSS)—[Reserved]".

[FR Doc. 89–23031 Filed 9–28–89; 8:45 am]
BILLING CODE 6712-01-M

[1] OET Bulletin No. 67, March 1988, entitled "Potential Interference from Operational Fixed Stations in the 72–76 MHz Band to Television Channels 4 and 5" describes an analytical model that can be used to calculate the potential interference that might result from a given fixed station operation. Copies of the bulletin may be obtained from the Commission's current duplication contractor. Information concerning the current duplication contractor may be obtained from the Office of Public Affairs, Consumer Assistance and Small Business Division, Telephone (202) 632–7000.

GENERAL SERVICES ADMINISTRATION

48 CFR Ch. 5

General Services Administration Acquisition Regulation; Reissuance and Revision; Correction

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule; correction.

SUMMARY: This document corrects the General Services Administration Acquisition Regulation (GSAR), Chapter 5 (APD 2800.12A), as a result of a general review of the final rule published in the **Federal Register** June 23, 1989 (54 FR 26486).

FOR FURTHER INFORMATION CONTACT: Ms. Ida Ustad, Office of GSA Acquisition Policy (VP), (202) 566–1224.

SUPPLEMENTARY INFORMATION: In FR document 89–14084, beginning on page 26486, in the issue of June 23, 1989, make the following corrections:

PART 502—DEFINITIONS OF WORDS AND TERMS

1. Section 502.101 is corrected by revising the definition "Contracting activity competition advocate" to read as follows:

502.101 Definitions.

* * * * *

"Contracting activity competition advocate" means the (a) Director of Contract Review, (b) FSS Competition Advocate, Office of Commodity Management, (c) Director, Agency Liaison Officer Program Division, IRMS, (d) Special Assistant to the Director, Program Support Office, FPRS, and (e) Deputy Regional Administrator for Regions 2, 3, 4, 5, 6, 7, 9, and the National Capital Region. The Director of the Office of Contract Review serves as the contracting activity competition

advocate for Central Office contracting activities outside of FSS, IRMS, and FPRS.

* * * * *

PART 504—ADMINISTRATIVE MATTERS

2. Section 504.803 is corrected by revising paragraph (a)(23) to read as follows:

504.803 Contents of contract files.

* * * * *

(a) * * *

(23) Contractual action. Successful bid or proposal and all pertinent correspondence applicable to the contractual action. Subcontracting plans that are incorporated in and made a material part of a contract, as required by FAR 19.705–5(a)(5), should be filed under this tab.

* * * * *

PART 505—PUBLICIZING CONTRACT ACTIONS

3. Section 505.303–70 is corrected by revising paragraph (b)(3)(iii) to read as follows:

505.303–70 Notification of proposed substantial awards and awards involving Congressional interest.

* * * * *

(b) * * *

(3) * * *

(iii) Include the contractor's name and address (including county and Congressional district, if known) and indicate the dollar value of the contract for each production point. When there are multiple production points and specific items, and their points of production are not shown, or when the number of production points exceed 10, write "multiple" and indicate immediately after, in parentheses, the total number of production points.

* * * * *

PART 509—CONTRACTOR QUALIFICATIONS

4. Section 509.407–3 is corrected by revising paragraph (b)(6)(iii) to read as follows:

509.407–3 Procedures.

* * * * *

(b) * * *

(6) * * *

(iii) Provide the suspending official with a determination as to whether the evidence is adequate to support a cause for suspension. Hearings will be conducted as outlined in 509.406–3(b)(8).

PART 519—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

5. Section 519.704 is corrected by revising paragraph (c)(2) to read as follows:

519.704 Subcontracting plan requirements.

* * * * *

(c) * * *

(2) *Commercial products plans.* A commercial products plan is approved by the first Federal agency awarding a contract for commercial products during the contractor's fiscal year, and is applicable to every additional Federal contract for commercial products awarded to that contractor during the contractor's same fiscal year. If the approved plan is limited to a division or plant, it only applies to additional contracts for commercial products of that particular division or plant. The cutoff date for applying a previously approved commercial products plan to additional Federal contracts is the end of the company's fiscal year in which the plan was approved. If the contract extends beyond the contractor's fiscal year, the GSA contracting officer responsible for monitoring the existing plan, under 519.706–70 (d) and (e), must request a new plan 30 days prior to the end of the contractor's fiscal year.

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

6. The table of contents for part 552 is corrected by revising the section title of 552.219–72 to read as follows:

* * * * *

552.219–72 Notice to offerors of subcontracting plan requirements.

* * * * *

7. Section 552.212–72 is corrected by revising the introductory paragraph to read as follows:

552.212–72 Availability for inspection, testing, and shipment/delivery.

As prescribed in 512.104(a)(5), insert the following clause:

* * * * *

8. Section 552.215–75 is corrected by revising paragraph (c) to read as follows:

552.215–75 Data Universal Numbering System (DUNS).

* * * * *

(c) If DUNS numbers have not been established for the addresses indicated in paragraphs (a) and (b) of this provision, GSA will arrange for the assignment of these numbers after award of a contract, and will notify the Contractor accordingly.

(End of Provision)

9. Section 552.219–71 is corrected by revising the introductory paragraph to read as follows:

552.219–71 Allocation of orders—partially set-aside items.

As prescribed in 519.508, insert the following clause:

* * * * *

10. Section 552.219–72 is corrected by revising the section title and the provision title to read as follows:

552.219–72 Notice to offerors of subcontracting plan requirements.

As prescribed in 519.708 insert the following provision:

Notice to Offerors of Subcontracting Plan Requirements (Nov 1988)

* * * * *

11. Section 552.225–70 is corrected by revising the provisional text preceding the table to read as follows:

552.225–70 Buy American Act—Hand or measuring tools or stainless steel flatware.

* * * * *

Offers of foreign end products will be evaluated in accordance with GSAR 525.105–70(c) (48 CFR 525.105–70(c)). Offerors that intend to supply foreign end products must specify below or on an attachment to this offer the amount of duty (a) applicable if a duty-free entry certificate was *not* issued (for Canadian end products only) or (b) included in each offered price (for all other offers of foreign end products). If no duty is specified, the differential in GSAR 525.105–70(c)(2)(i) will be applied to the offered price.

* * * * *

12. Section 552.228–75 is corrected by revising the GSAR reference in the introductory paragraph to read as follows:

552.228–75 Workmen's compensation laws.

As prescribed in 528.310, insert the following clause:

13. Section 552.232–78 is amended by correcting paragraph (c) of the clause to read as follows:

552.232–73 Adjusting payments.

* * * * *

(c) All or a portion of the final payment may be delayed or withheld until the Contracting Officer makes a final decision on the proposed deduction. If the Contracting Officer determines that any or all of the proposed deductions are warranted, the Contracting Officer shall so notify the Contractor, and adjust payments under the contract accordingly.

(End of Clause)

14. Section 552.236–73 is corrected by deleting the word "clause" in the first paragraph in Alternates I, II and III and

adding the word "provision" to read as follows:

552.236-73 Basis of award—construction contract.

* * * * *

Alternate I

If the solicitation includes a base bid and options, the Contracting Officer shall delete paragraph (a) of the basic provision and insert paragraph (a) substantially as follows:

* * * * *

Alternate II

If the solicitation includes a base bid and alternates, the Contracting Officer shall delete paragraph (a) of the basic provision and insert paragraphs (a), (c), and (d) substantially as follows:

* * * * *

Alternate III

If the solicitation includes a base bid, alternates, and options, the Contracting Officer shall delete paragraph (a) of the basic provision and insert paragraphs (a), (c), and (d) substantially as follows:

* * * * *

15. Section 552.237-72 is corrected by revising paragraph (a) to read as follows:

552.237-72 Certification regarding "Quasi-Military Armed Forces."

* * * * *

(a) By signing this offer, the offeror certifies that the individual, firm, or corporation submitting this offer is not a "Quasi-Military Armed Force" within the meaning of the decision of the court in United States ex. rel. Weinberger v. Equifax, 557 F. 2d 456 (5th Cir., 1977).

* * * * *

16. Section 552.246-17 is corrected by revising paragraph (c)(7) to read as follows:

552.246-17 Warranty of supplies of a noncomplex nature.

* * * * *

(c) * * *

(7) In addition to other marking requirements of this contract, the Contractor shall stamp or mark the supplies delivered or otherwise furnish notice with the supplies of the existence of the warranty. The marking should briefly include (i) a statement that the warranty exists, (ii) the substance of the warranty, (iii) its duration, and (iv) who to notify if the supplies are found to be defective.

(End of Clause)

* * * * *

17. Section 552.249-70 is corrected by revising paragraph (b) to read as follows:

552.249-70 Termination for convenience of the government (fixed price) (short form).

* * * * *

(b) The clause at [Contracting Officer inserts 52.249-1 or 52.249-2, as applicable] of the FAR shall apply to the supply portion of the contract and the clause at 52.249-4 of the FAR shall apply to the service portion of the contract.

* * * * *

PART 570—ACQUISITION OF LEASEHOLD INTERESTS IN REAL PROPERTY

18. Section 570.802 is corrected by revising paragraph (c) to read as follows:

570.802 GSA forms.

* * * * *

(c) GSA Form 1364, Proposal To Lease Space To The United States of America, may be used to obtain offers from prospective offerors.

* * * * *

Dated: September 25, 1989.

Richard H. Hopf, III,

Associate Administrator for Acquisition Policy.

[FR Doc. 89-22944 Filed 9-28-89; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF VETERANS AFFAIRS

48 CFR Ch. 8

Nomenclature Changes; Technical Amendments

AGENCY: Department of Veterans Affairs.

ACTION: Final technical amendments.

SUMMARY: The Department of Veterans Affairs Act established the Veterans Administration as the Department of Veterans Affairs, an executive-level Department (see 54 FR 10476). The Department of Veterans Affairs (VA) is making technical amendments to Title 48, Code of Federal Regulations, Chapter 8, to bring its nomenclature into conformance with the changes required by the Act.

EFFECTIVE DATE: These final amendments are retroactively effective to March 15, 1989, the effective date of the Veterans Administration becoming the Department of Veterans Affairs.

FOR FURTHER INFORMATION CONTACT: Lynn H. Covington, Director, Paperwork Management and Regulations Services (70Y73), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-3616.

SUPPLEMENTARY INFORMATION: VA is updating 48 CFR Chapter 8 nomenclature to conform to the Department of Veterans Affairs Act, Pub. L. 100-527. However, the Department's reorganization under Pub. L. 100-527 is not yet totally finalized. Any further changes requiring amendment of 48 CFR Chapter 8 will be published at a later date. Those changes will primarily reflect new titles for personnel responsible for certain functions which appear in 48 CFR Chapter 8. At this time, VA is also taking the opportunity to ensure that certain terms used by the Department are consistent throughout 48 CFR Chapter 8 to avoid any confusion. For example, the terms field facility and field station have been used interchangeably in 48 CFR Chapter 8; the term field facility is now used throughout the title.

VA finds that good cause exists for making these amendments final without previous publication of a notice of proposed rulemaking, and for making them retroactively effective to the date of the establishment of the Department of Veterans Affairs, March 15, 1989. All the changes contained in these regulations are technical ones designed to correct erroneous references. There are no substantive changes. Public participation in this rulemaking is therefore unnecessary (38 CFR 1.12 and 5 U.S.C. 553(b)(3)).

Since a notice of proposed rulemaking is unnecessary and will not be published, these final amendments do not come within the term "rule" as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2), and are therefore not subject to the requirements of the Act. These amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612.

These final regulatory amendments do not contain a major rule as that term is defined by Executive Order 12291, Federal Regulation. The final regulatory amendments will not have a $100 million annual effect on the economy, and will not cause a major increase in costs and prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete in domestic or foreign-based markets.

These final regulatory amendments do not impose any additional reporting or recordkeeping requirements on the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501 et seq.

List of Subjects in 48 CFR Ch. 8

Government procurement.

Approved: September 25, 1989.

Edward J. Derwinski,

Secretary of Veterans Affairs.

48 CFR Chapter 8, Department of Veterans Affairs, is amended as follows:

CHAPTER 8—[AMENDED]

1. The authority citation for 48 CFR Chapter 8 continues to read as follows:

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

2. In 48 CFR Chapter 8 remove the words "Veterans Administration" or "Veterans' Administration" wherever they appear, and add in their place, the words "Department of Veterans Affairs".

3. In 48 CFR Chapter 8 remove the words "Department of Medicine and Surgery" wherever they appear, and add in their place, the words "Veterans Health Services and Research Administration".

4. In 48 CFR Chapter 8 remove the words "Department of Veterans Benefits" wherever they appear, and add in their place, the words "Veterans Benefits Administration".

5. In 48 CFR Chapter 8 remove the words "Department of Memorial Affairs" wherever they appear, and add in their place, the words "National Cemetery System".

6. In 48 CFR Chapter 8 remove the acronym "DM&S" wherever it appears, and add in its place, the acronym "VHS&RA".

7. In 48 CFR Chapter 8 remove the words "Administrator" and "Administrator's" wherever they appear, and add in their place, the words "Secretary" and "Secretary's", respectively.

8. In 48 CFR Chapter 8 remove the words "Administrator of Veterans Affairs" wherever they appear, and add in their place, the words "Secretary of Veterans Affairs".

9. In 48 CFR Chapter 8 remove the words "Deputy Administrator" wherever they appear, and add in their place, the words "Deputy Secretary".

10. In 48 CFR Chapter 8 remove the words "Chief Memorial Affairs Director" wherever they appear, and add in their place, the words "Director, National Cemetery System".

11. In 48 CFR Chapter 8 remove the words "Director, Office of Procurement and Supply" wherever they appear, and add in their place, the words "Deputy Assistant Secretary for Acquisition and Materiel Management".

12. In 48 CFR Chapter 8 remove the words "Director, Office of Facilities" wherever they appear, and add in their place, the words "Deputy Assistant Secretary for Facilities".

In addition to the amendments set forth above, 48 CFR Chapter 8 is further amended as follows:

PART 801—[AMENDED]

801.103 [Amended]

1. In 801.103(a) remove the word "agency" and add in its place, the word "Department".

801.104-1 [Amended]

2. In 801.104-1(a) remove the words "VA (Veterans Affairs)" and the word "title" and add in their place, the words "Department of Veterans Affairs' (VA)" and "Title", respectively.

Subpart 801.3—Department Acquisition Regulations

3. The heading in Subpart 801.3 is revised as set forth above.

801.301-70 [Amended]

4. In 801.301-70(b)(2) remove the words "OMB (Office of Management and Budget)" and add in their place, the words "Office of Management and Budget (OMB)".

801.304 [Amended]

5. In 801.304 in the section heading, remove the word "Agency" and add in its place, the word "Department".

801.470 [Amended]

6. In 801.470(a) remove the words "OFPP (Office of Federal Procurement Policy)" and "agency" and add in their place, the words "Office of Federal Procurement Policy (OFPP)" and "Department", respectively.

801.602-71 [Amended]

7. In 801.602-71(b)(3), remove the words "Office of Acquisition and Materiel Management" and add in their place, the words "Deputy Assistant Secretary for Acquisition and Materiel Management", and in 801.602-71(c) in the introductory heading remove the words "field stations" and add in their place, the words "field facilities".

801.602-72 [Amended]

8. In 801.602-72(d)(4), remove the words "COTR's (contracting officer's technical representaive)" and "A/E (architect-engineer)" and add in their place, "contracting officer's technical representative (COTR)" and "architect-engineer (A/E)", respectively, and in 801.602-72(d)(6)(iv) remove the words "PNM (Price Negotiation Memorandum)" and add in their place the words "Price Negotiation Memorandum (PNM)".

801.603-70 [Amended]

9. In 801.603-70(b) remove the words "department head" and add in its place, the words "administration head".

801.603-71 [Amended]

10. In 801.603-71(a) remove the word "station" and add in its place, the word "facility", in 801.603-71(d) remove the words "Veterans Affairs Supply Depot" and add in their place, the words "VA Supply Depot", and in 801.603-71(e) remove the words "Veterans Administration Marketing Center" and add in their place, the words "VA Marketing Center".

801.670-2 [Amended]

11. In 801.670-2(b) remove the word "emloyees" and add in its place, the word "employees".

801.670-5 [Amended]

12. In 801.670-5(a)(2) remove the words "Director, Office of" and add in their place, the words "Deputy Assistant Secretary for".

801.670-6 [Amended]

13. In 801.670-6 remove the words "Medical Centers" and add in their place, the words "medical centers", and add a comma between the words "Invoice" and "will".

801.690-1 [Amended]

14. In 801.690-1(d) and (e), remove the word "Agency" wherever it appears and add in its place, the word "Department".

801.690-3 [Amended]

15. In 801.690-3(d) remove the words "Procurement and Supply" and add in their place, the words "Acquisition and Materiel Management".

PART 802—[AMENDED]

802.100 [Amended]

16. In 802.100(a) remove the words "the VA" and "Director, Procurement Service" and add in their place, the words "VA" and "Director, Acquisition Management Service", respectively, and in 802.100(b) remove the words "The Associate Deputy Administrator for Logistics" and "the VA" and add in their place, the words "The Assistant Secretary for Acquisition and Facilities" and "VA", respectively.

PART 803—[AMENDED]

803.101-3 [Amended]

17. In 803.101-3 in the section heading, remove the word "Agency" and add in its place, the word "Department".

PART 805—[AMENDED]

805.207 [Amended]

18. In 805.207(a) remove the words "CBD (Commerce Business Daily) and "VADATS (Veterans Administration Data Transmission System), and add in their place, the words "Commerce Business Daily (CBD)" and "VA Data Transmission System (VADATS)", respectively.

PART 806—[AMENDED]

806.302-5 [Amended]

19. In 806.302–5(c) remove the word "title" wherever it appears and add in its place, the word "Title", and in paragraph (c)(3)(ii) remove the word "station" and add in its place, the word "facility".

806.304 [Amended]

20. In 806.304(a)(1)(i) remove the words "Director" and "DM&S (Department of Medicine and Surgery)" and add in their place, the words "director" and "Veterans Health Services and Research Administration (VHS&RA)", respectively.

806.401 [Amended]

21. In 806.401 remove the words "the VA" and add in their place, the word "VA".

806.501 [Amended]

22. In 806.501(a) remove the words "Office of Procurement and Supply" and add in their place, the words "Acquisition and Materiel Management".

PART 807—[AMENDED]

807.302 [Amended]

23. In 807.302(a) remove the word "departments" and add in their place, the word "administrations".

807.304-72 [Amended]

24. a. In 807.304–72 paragraphs (d)(i) and (d)(ii) are redesignated as paragraphs (d)(1) and (d)(2), respectively.

b. In 807.304–72(b) remove the words "the VA" and add in their place, the word "VA", in newly-designated paragraph (d)(2) and in paragraph (e) remove the words "department head" and add in their place, the words "administration head".

PART 808—[AMENDED]

808.001 [Amended]

25. In 808.001(a)(6) remove the words "Agency Inventory" and add in their place, the words, "agency inventory".

808.307-70 [Amended]

26. In 808.307–70 remove the word "Construction" and add in its place the word "Facilities."

808.404-1 [Amended]

27. In 808.404–1 (a) and (b) remove the word "Center" wherever it appears and add in its place, the word "Center,".

808.405-5 [Amended]

28. In 808.405–5 remove the word "Center" and add in its place, the word "Center,".

PART 809—[AMENDED]

809.106-1 [Amended]

29. In 809.106–1(a) remove the word "station" wherever it appears and add in its place, the word "facility", and remove the word "stations" and add in its place, the word "facilities".

809.206 [Amended]

30. In 809.206 (a) and (b) remove the word "department" and add in its place the word "administration".

809.702 [Amended]

31. In 809.702 remove the word "departments" and add in its place, the word "administrations".

PART 810—[AMENDED]

810.006 [Amended]

32. In 810.006(c)(2) and (c)(9) remove the word "station's" and add in its place, the word "facility's", in paragraph (c)(9) remove the word "station" and "station's" and add in their place, the word "facility" and "facility's", respectively, and in paragraph (c)(11) remove the word "Station" and add in its place, the word "Facility".

810.007 [Amended]

33. In 810.007(a)(1) remove the word "station's" and add in its place, the word "facility's".

810.011 [Amended]

34. In 810.011 remove the word "Desired" and add in its place, the word "desired".

PART 812—[AMENDED]

812.302 [Amended]

35. In 812.302(c)(8) remove the words "Director, Office of Construction" and "station" and add in their place, the words "Deputy Assistant Secretary for Facilities" and "facility", respectively.

PART 813—[AMENDED]

813.103 [Amended]

36. In 813.103 (a) and (b) remove the word "title" and add in their place, the word "Title".

PART 814—[AMENDED]

814.103-1 [Amended]

37. In 814.103–1 remove the words "chapter 37, title 38," and add in their place, the words "Chapter 37, Title 38,".

814.304-4 [Amended]

38. In 814.304–4 remove the words "the VA" and add in their place, the word "VA".

814.404-70 [Amended]

39. In 814.404–70 remove the words "Director, Office of Construction" and add in their place, the words "Deputy Assistant Secretary for Facilities".

814.407-1 [Amended]

40. In 814.407–1(a) remove the words "Service", "station-level", and "Procurement Service" and add in their place, the words "Service,", "facility-level", and "Acquisition Management", respectively.

814.407-71 [Amended]

41. In 814.407–71(a) remove the words "Director, Office of Construction," and add in their place, the words "Deputy Assistant Secretary for Facilities".

814.408 [Amended]

42. In 814.408(b) remove the words "the VA" and add in their place, the word "VA".

PART 815—[AMENDED]

815.502 [Amended]

43. In 815.502 remove the words "the VA" and "agency" and add in their place, the words "VA" and "Department", respectively.

815.506 [Amended]

44. In 815.506 in the section heading, remove the word "Agency" and add in its place the word "Department".

815.506-1 [Amended]

45. In 815.506–1(a) remove the words "the VA" and add in their place, the word "VA".

815.804-70 [Amended]

46. In 815.804–70 remove the word "PLanning" and add in its place, the word "Planning".

815.805-5 [Amended]

47. In 815.805–5(a) remove the words "Office of Procurement and Supply" and

add in their place, the words "Office of Acquisition and Materiel Management", and in paragraph (b) remove the word "station" and add in its place, the word "facility".

815.7001 [Amended]

48. In 815.7001(c)(4) remove the word "station" and add in its place, the word "facility", in paragraph (d)(1) remove the word "euqivalent" and add in its place, the word "equivalent", and in paragraphs (d)(4) and (e) remove the word "title" and add in its place, the word "Title".

815.7002 [Amended]

49. In 815.7002(b) remove the words "the VA" and add in their place, the word "VA".

PART 816—[AMENDED]

816.603 [Amended]

50. In 816.603 remove the words "department head or staff office director" and add in their place, the words "administration head or key staff official".

816.7001 [Amended]

51. in 816.7001(b)(1)(ii) remove the word "agency," and add in its place, the word "Department,".

PART 817—[AMENDED]

817.402 [Amended]

52. In 817.402 remove the word "agency" and add in its place, the word "Department".

PART 819—[AMENDED]

819.000 [Amended]

53. In 819.000 remove the words "SBA (Small Business Administration)" and add in their place, the words "Small Business Administration (SBA)".

819.201 [Amended]

54. In 819.201(b) remove the word "agency" and add in its place, the word "Department", and in paragraph (d) remove the word "stations" and add in its place, the word "facilities".

55. In 819.201, paragraph (a) is revised to read as follows:

819.201 General policy.

(a) The Director, Office of Small and Disadvantaged Business Utilization (OSDBU) (005SB), supervises and directs the OSDBU staff. OSDBU will be responsible for the overall supervision of the Department of Veterans Affairs Small and Disadvantaged Business Utilization program and will assist administrations and key staff officials in developing their respective small business programs. The OSDBU staff will also assist contracting officers with duties contained in 819.202–70 (g), (h), (i), (j), and (k).

* * * * *

819.202–5 [Amended]

56. In 819.202–5 remove the words "Department heads," and add in their place, the words "Administration heads,".

819.602–3 [Amended]

57. In 819.602–3 (a), (c), and (d), remove the words "the VA" wherever they appear, and add in their place, the word "VA".

819.801 [Amended]

58. In 819.801(b) remove the words "Director, OSDBU (Office of Small and Disadvantaged Business Utilization) (005C)," and add in their place, the words "Director, Office of Small and Disadvantaged Business Utilization (OSDBU) (005SB),".

819.807–70 [Amended]

59. In 819.807–70 remove the words "Disadvantaged", "(005C)", and "005C" and add in their place, the words "Disadvantaged", "(005SB)", and "005SB", respectively.

819.7002 [Amended]

60. In 819.7002(a) remove the words "1964" and "1975" and add in their place, the words "1964," and "1975,", respectively.

819.7004 [Amended]

61. In 819.7004 remove the words "the VA" and add in their place, the word "VA".

PART 820—[AMENDED]

820.104 [Amended]

62. In 810.104 remove the words "LSA (labor surplus area)" and add in their place, the words "labor surplus area (LSA)".

PART 822—[AMENDED]

822.478 [Amended]

63. In 822.478 (a), (b) and (c), remove the words "Office of Construction" and "Director, Office of Construction" wherever they appear and add in their place, the words "Office of Facilities" and "Deputy Assistant Secretary for Facilities", respectively.

PART 824—[AMENDED]

824.102 [Amended]

64. In 824.102 remove the word "Agency" and add in its place, the word "Department".

824.202 [Amended]

65. In 824.202 remove the word "agency" and add in its place, the word "Department".

PART 825—[AMENDED]

825.102–70 [Amended]

66. In 825.102–70(b) remove the word "station" and add in its place, the word "facility".

825.202–70 [Amended]

67. In 825.202–70(b) remove the word "station" and add in its place, the word "facility".

825.203 [Amended]

68. In 825.203 remove the words "the VA" and add in their place, the word "VA".

825.902 [Amended]

69. In 825.902 remove the words "Comptroller general" and add in their place, the words "Comptroller General".

PART 829—[AMENDED]

829.270–2 [Amended]

70. In 829.270–2(b) remove the word "station" and insert in its place, the word "facility".

71. In 829.270–2, the section heading is revised to read as follows:

829.270–2 Processing of order by the Department of Veterans Affairs.

* * * * *

PART 831—[AMENDED]

831.7001 [Amended]

72. In 831.7001(b) and (b)(2) remove the words "The VA" and "the VA" wherever they appear, and add in their place, the word "VA".

831.7001–3 [Amended]

73. In 831.7001–3(a)(1) and (a)(8) remove the words "the VA" wherever they appear and add in their place, the word "VA".

831.7001–4 [Amended]

74. In 831.7001–4(b)(1) remove the words "chapter 31" and add in their place, the words "Chapter 31", and in paragraph (c) remove the words "The VA" and add in their place, the word "VA".

831.7001–6 [Amended]

75. In 831.7001–6(b)(5) remove the word "premanent" and add in its place, the word "permanent".

831.7001–7 [Amended]

76. In 831.7001–7 remove the words "chapter 31" and add in their place, the words "Chapter 31".

PART 832—[AMENDED]

832.805-70 [Amended]

77. In 832.805-70(b) remove the word "stations" and add in their place, the word "facilities".

PART 833—[AMENDED]

833.102 [Amended]

78. In 833.102 in the introductory text, remove the words "GAO (General Accounting Office) and "GSBCA (GSA Board of Contract Appeals)" and add in their place, the words "General Accounting Office (GAO)" and "GSA Board of Contract Appeals (GSBCA)", respectively.

833.103 [Amended]

79. In 833.103 in the section heading, remove the word "agency" and add in its place, the word "Department," in paragraph (b)(7) remove the words "the VA" and add in their place, the word "VA", and in paragraph (b)(7)(i) remove the word "agency" and add in its place, the word "Department".

833.104 [Amended]

80. In 833.104 (a) and (b) remove the word "agency" and add in its place, the word "Department", and in paragraph (c) remove the words "the VA" and add in their place, the word "VA".

833.105 [Amended]

81. In 833.105(a) remove the word "agency's" and add in its place, the word "Department's".

833.211 [Amended]

82. In 833.211(d) remove the word "i.e." and add in its place, the word "i.e.,".

PART 836—[AMENDED]

836.202 [Amended]

83. In 836.202(c) remove the words "the VA" and add in their place, the word "VA".

836.208 [Amended]

84. In 836.208 remove the words "M&R (Maintenance and Repair)" and add in their place, the words "Maintenance and Repair (M&R)".

836.602-2 [Amended]

85. In 836.602-2(a) remove the word "departments" and add in their place, the word "administrations".

836.602-72 [Amended]

86. In 836.607-72 remove the words "station Director" wherever it appears and add in its place, the words "facility director".

PART 837—[AMENDED]

837.200 [Amended]

87. In 837.200 remove the word "agency" and add in its place, the word "Department".

837.204 [Amended]

88. In 837.204(c) remove the words "FFP (firm fixed-price)" and add in their place, the words "firm fixed-price (FFP)", and in paragraph (g) remove the words "department head" and "Agency" and add in their place, the words "administration head" and "Senior", respectively.

837.205 [Amended]

89. a. In 837.205(a)(3) remove the word "agency" and add in its place, the word "Department".

b. In 837.205(b) remove the words "COTR (Contracting Officer's Technical Representative)" and add in their place, the words "Contracting Officer's Technical Representative (COTR)".

c. In 837.205 (c)(2) and (c)(3) remove the words "department heads, Associate Deputy Administrators," and add in their place, the words "administration heads, Deputy Assistant Secretaries,".

d. In 837.205(c)(3) remove the words "Director, Office of Budget and Finance" and add in their place, the words "Principal Deputy Assistant Secretary for Finance and Planning."

837.270 [Amended]

90. In 837.270(b) remove the words "prescribed-in" and add in their place, the words "prescribed in", and in paragraph (c) remove the words "department head" and add in their place, the words "administration head".

837.271-1 [Amended]

91. In 837.271-1(b) remove the word "agency" and add in its place, the word "Department".

837.7003 [Amended]

92. In 837.7003(e) remove the words "Services" and "Service" and add in their place, the words "Services," and "Service,", respectively.

837.7004 [Amended]

93. In 837.7004 (b) and (c) remove the word "station" wherever it appears and add in its place, the word "facility".

PART 842—[AMENDED]

842.705 [Amended]

94. In 842.705(b) remove the word "stations," and add in its place, the word "facilities,".

PART 846—[AMENDED]

846.408-70 **[Amended]**

95. In 846.408-70(a)(1) remove the words "USDA (U.S. Department of Agriculture)" and add in their place, the words "U.S. Department of Agriculture (USDA)".

846.470 [Amended]

96. In 846.470(a) remove the word "Agency" and add in its place, the word "agency".

PART 847—[AMENDED]

847.304 and 847.304-1 **[Amended]**

97. In 847.304 in the section heading and in 847.304-1 in the section heading, remove "847-304" and "847-304-1" and add in their place "847.304" and 847.304-1", respectively.

PART 849—[AMENDED]

849.107 [Amended]

98. In 849.107 remove the words "(53C) to" and add in their place, the words "(53C), to".

PART 852—[AMENDED]

852.203-70 [Amended]

99. In 852.203-70 in paragraphs (a) and (b) of the provision, remove the word "agency" wherever it appears and add in its place, the word "Department".

852.210-70 [Amended]

100. In 852.210-70(c) remove the word "station" and add in its place, the word "facility", and in the last line in the clause in paragraph (c) remove the word "quanitity" and add in its place, the word "quantity".

852.210-73 [Amended]

101. In 852.210-73 remove the word "station:" and add in its place, the word "facility:".

852.219-70 [Amended]

102. In 852.219-70 in paragraph (1) of the certification, remove the words "1964" and "1975" and add in their place, the words "1964," and "1975,", respectively.

103. In 852.233-2, the provision is revised to read as follows:

852.233-2 Service of protest.

* * * * *

Service of Protest (July 1985) (Deviation FAR 52.233-2)

A copy of any protest, as defined in FAR 33.101, that is filed with the General Accounting Office (GAO) or the General Services Administration Board of Contract Appeals (GSBCA), shall be served on the contracting officer _____* and the

_____**. The copy of any such protest must be received in the offices designated above on the same day a protest is filed with the GSBCA, or within 1 day of filing a protest with the GAO.

(End of Provision)

* * * * *

852.236-76 [Amended]

104. In 852.236-76 in the last line in the clause, remove the word "station" and add in its place, the word "facility".

852.236-82 [Amended]

105. In 852.236-82 in the clause titled Supplement I (Jan. 1988), in paragraph (6)(ii), remove the words "the VA" and add in their place, the word "VA".

852.236-83 [Amended]

106. a. In 852.236-83 in paragraph (a)(2)(ii) in the clause titled Payments Under Fixed-Price Construction Contracts (Apr 1984), remove the words "NAS (Network Analysis System)" and add in their place, the words "Network Analysis System (NAS)".

b. In 852.236-83 in paragraph (6)(iii) of the clause titled Supplement I (Jan. 1988), remove the words "the VA" and add in their place, the word "VA".

852.236-89 [Amended]

107. In 852.236-89 in the introductory text, and in paragraphs (b), (c), and (d) of the clause, remove the words "the VA" and "the VA's" wherever they appear and add in their place, the words "VA" and "VA's", respectively.

PART 853—[AMENDED]

853.000 [Amended]

108. In 853.000 remove the words "the VA" wherever they appear and add in their place, the word "VA".

853.107 [Amended]

109. In 853.107 remove the word "obtaind" and add in its place, the word "obtained".

PART 870—[AMENDED]

110. In part 870, in the heading of subchapter I, remove the word "AGENCY" and add in its place, the word "DEPARTMENT".

870.111 [Amended]

111. In 870.111-5(a) remove the words "USDA (U.S. Department of Agriculture)" and add in their place, the words "U.S. Department of Agriculture (USDA)", and in paragraph (b) remove the words "USDC (U.S. Department of Commerce)" and add in their place, the words "U.S. Department of Commerce (USDC)".

870.112 [Amended]

112. In 870.112(b) remove the words "Date Management and Telecommunications" and add in their place, the words "Information Resources Operations".

870.113 [Amended]

113. In 870.113(b)(4) remove the words "the VA" and add in their place, the word "VA".

870.114 [Amended]

114. In 870.114-3 in the introductory text, remove the words "Director, Engineering Service (10A4A5)" and add in their place, the words "Director, Facilities Engineering Service (085E)".

870.114-4 [Amended]

115. In 870.114-4 remove the words "Engineering Service (10A4A5)" and add in their place, the words "Facilities Engineering Service (085E)".

PART 871—[AMENDED]

871.101 [Amended]

116. In 871.101 remove the word "chapter" and add in its place, the word "Chapter".

871.201-3 [Amended]

117. In 871.201-3 remove the word "department" and add in its place the word "administration".

871.206 [Amended]

118. In 871.206 remove the word "chapter" and add in its place, the word "Chapter".

[FR Doc. 89-22948 Filed 9-28-89; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 107, 171, 172, 173, 174, and 178

[Docket No. HM-189H, Amdt. Nos. 107-21, 171-107, 172-120, 173-219, 174-67, 178-95]

Hazardous Materials Regulations; Editorial Corrections and Clarifications

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This amendment corrects editorial errors and makes minor regulatory changes to the Hazardous Materials Regulations (HMR). This action is necessary to reduce misunderstandings of the HMR. The intended effect is to promote accuracy of the HMR. These amendments are minor regulatory changes which will not impose any new requirements on persons subject to the HMR.

EFFECTIVE DATE: September 29, 1989.

FOR FURTHER INFORMATION CONTACT: Jacquelyn F. Smith, Standards Division, Office of Hazardous Materials Transportation, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590, Telephone (202) 366-4488.

SUPPLEMENTARY INFORMATION: In its maintenance of the HMR, RSPA performs an annual review of the regulations to detect errors which may be causing confusion to users. Inaccuracies detected in title 49, Code of Federal Regulations (49 CFR), parts 100 through 199, revised as of October 1, 1988, include typographical errors, incorrect references to other rules and regulations in the CFR, and misstatements of certain regulatory requirements. Additionally, in response to inquiries which RSPA received concerning the clarity of particular requirements specified in the HMR, changes are made which should reduce uncertainties.

Since these amendments do not impose new requirements, notice and public procedure are unnecessary. For the same reason, these amendments are effective without the customary 30-day delay following publication. This will allow the changes to appear in the next revision of 49 CFR.

The RSPA has determined that this rule, as promulgated, is not a major rule under the terms of Executive Order 12291 or significant under DOT implementing procedures (44 FR 11034). A final regulatory evaluation and environmental assessment were not prepared, as these amendments are not substantive changes to the HMR.

Based on limited information available concerning the size and nature of entities likely to be affected by these amendments, I certify that these amendments will not, as promulgated have a significant economic impact on a substantial number of small entities.

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

The following is a section-by-section summary of the amendments:

Appendix to Subpart B of Part 107

The title of the contact, name of the office, and daytime telephone number for "Motor Carriers" is changed to read: "Chief, Hazardous Materials Division, Office of Motor Carrier Field Operations, Federal Highway Administration, Department of Transportation, Washington, DC 20590. Day (202) 366–4415 and Night (202) 267–2100".

Section 171.3

In paragraph (b)(1), third line "§ 397.21" is corrected to read "§ 390.21".

Section 171.8

In the definition of "Organic Peroxide", the section cite is corrected to read "§ 173.151a".

Section 172.101

In the Hazardous Material Table, the entries "Isopropyl mercaptan" and "Propyl mercaptan", under column 3(A), the identification number is corrected to read "NA2402". A space is added in the entry "Poisonous liquid orgas, flammable, n.o.s" between "or" and "gas". The entry "Sodium Nitrate bags. See Bags, sodium nitrate, empty and unwashed" is removed. The extra hyphen in column 3 of the entry "Sulfur molten", "ORM—C", is removed, and the entry is corrected to read "ORM–C". The entry "Thinner for rust preventive coating. See Rust preventing coating" is corrected to read "Thinner for rust preventive coating. See Paint related material". The first parenthesis in the entry (mono-(Trichloro) tetra-(monopotassium dichloro)-penta-s-triazinetrione, dry" is removed. The entry is corrected to read "mono-(trichloro) tetra-(monopotassium dichloro)-penta-s-triazinetrione, dry". The entry "Ethyl phosphonothioic dichloride, anhydrous" is removed to place the entry in proper alphabetical sequence. The entry "Ethyl phosphonothioic dichloride, anhydrous" is added immediately following the entry "Ethyl phenyl dichlorosilane".

§ 172.101 Appendix, "List of Hazardous Substances and Reportable Quantities"

The asterisk indicating that "hexachlorobutadiene" is also listed in the § 172.101 Hazardous Materials Table is removed.

Part 173, Table of Contents, Subpart H, Section 173.386.

In the heading for § 173.386, the word "Ethiologic" is corrected to read "Etiologic".

Section 173.6

In paragraph (c), line 3, one of the "§"signs before "§§ 172.101" is removed. In paragraph (c), line 3, the word "and" and the cite "173.1020" are removed.

Section 173.104

In paragraph (c), line 7, the words "FUSE, MILD DETONATING, METAL CLAD—HANDLE CAREFULLY or" are added between the words "CAREFULLY' and "or" to read: "CORD, DETONATING—HANDLE CAREFULLY" or "FUSE, MILD DETONATING, METAL CLAD-HANDLE CAREFULLY" or "FLEXIBLE LINEAR SHAPED CHARGES, METAL CLAD—HANDLE CAREFULLY".

Section 173.242

In paragraph (b), line 13, the word "strenght" is corrected to read "strength".

Section 173.247

In paragraph (a), line 11 the word "acetic" is corrected to read "acetyl".

Section 173.249

In the heading, lines 2 and 3, the words "alkaline corrosive battery fluid" are deleted. In paragraph (a), lines 2 and 3, the words "alkaline corrosive battery fluid" are removed.

Section 173.249a

In the heading, line 4, the word "or" is added between the words "compound" and "mixture" to read "compound or mixture".

Section 173.272

In paragraph (b), the "(b)" is corrected to read "(1)", and "(b)" is reserved.

Section 173.306

In paragraph (d)(2), line 3, the word "liquiefied" is corrected to read "liquefied".

Section 173.353a

In paragraph (a), line 5, "§ 173.353a" is corrected to read "§ 173.353".

Section 173.373

In the heading, "Ortho-nitroaniline and paranitroaniline" is corrected to read "Nitroaniline, ortho or para". In paragraph (a), lines 1 and 2, the words "Ortho-nitroaniline and paranitroaniline" is corrected to read "Nitroaniline, ortho or para".

Section 173.403

In paragraph (i), line 5, the typographical error "wh9ch" is corrected to read "which".

Section 174.104

In paragraphs (c), (d), and (f) all references to " § 215.15" are corrected to read "§ 215.11".

Section 178.51–15

Paragraph (b), line 4, remove the comma between the words "inches, provided" and add a semicolon, to read "inches; provided".

Section 178.115–3

In the table in paragraph (b), under the column entitled "Gauge No.", on the third line, "30" is corrected to read "20".

Section 178.210–12

In paragraph (a), the symbol appearing in the rectangle is corrected to read "DOT–12A**".

Section 178.224–2

Paragraph (d), line 4, the word "as" is corrected to read "at".

List of Subjects

49 CFR Part 107

Hazardous Materials, Program procedures.

49 CFR Part 171

Hazardous materials transportation, General information, Incorporation by reference, Definitions.

49 CFR Part 172

Hazardous materials transportation, Hazardous materials tables.

49 CFR Part 173

Hazardous materials transportation, Packagings.

49 CFR Part 174

Hazardous materials transportation, Carriage by rail.

49 CFR Part 178

Hazardous Materials, Shipping container specifications.

In consideration of the foregoing 49 CFR parts 107, 171, 172, 173, 174, and 178 are amended as follows:

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

1. The authority citation for part 107 continues to read as follows:

Authority: 49 App. U.S.C. 1421(c); 49 U.S.C. 1802, 1806, 1808–1811; 49 CFR 1.45 and 1.53, and Pub. L. 89–670 (49 App. U.S.C. 1653(d), 1655).

Appendix B—[Amended]

2. Under appendix A to subpart B, in part 107, the paragraph under the heading "Motor Carriers" is revised to read as follows: "Chief, Hazardous

Materials Division, Office of Motor Carrier Field Operations, Federal Highway Administration, Department of Transportation, Washington, DC 20590. Day (202) 366–4415 and Night (202) 267–2100.".

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

3. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1808; 49 CFR part 1.

§ 171.3 [Amended]

4. In paragraph (b)(1) of § 171.3, the citation "§ 397.21" is changed to read "§ 390.21".

§ 171.8 [Amended]

5. In the entry for "Organic Peroxide" in § 171.8, the cite "§ 173.151" is changed to read "§ 173.151a".

PART 172—HAZARDOUS MATERIALS TABLES, HAZARDOUS MATERIALS COMMUNICATIONS REQUIREMENTS AND EMERGENCY RESPONSE INFORMATION REQUIREMENTS

6. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. App. 1803, 1804, 1808; 49 CFR part 1.

7. In § 172.101, the Hazardous Materials Table is amended by revising, in appropriate alphabetical sequence, the entries listed below:

§ 172.101 HAZARDOUS MATERIALS TABLE

(1)	(2)	(3)	(3A)	(4)	(5)		(6)		(7)		
					Packaging		Maximum net quantity in one package		Water Shipments		
					(a)	(b)	(a)	(b)	(a)	(b)	(c)
+/A/W	Hazardous materials descriptions and proper shipping names	Hazard Class	Identification number	Label(s) required (if not excepted)	Exceptions	Specific requirements	Passenger carrying aircraft or railcar	Cargo only aircraft	Cargo vessel	Passenger vessel	Other Requirements
	REVISED										
	Ethyl phenyl dichlorosilane.	Corrosive material.	UN 2435	Corrosive	None	173.280	Forbidden	10 gallons	1	5	
	Ethyl phosphonothioic dichloride, anhydrous.	Corrosive material.	NA 1760	Corrosive	173.244	173.245 173.245a	1 quart	1 quart	1	4	
	Isopropyl mercaptan	Flammable liquid.	NA 2402	Flammable liquid.	None	173.141	Forbidden	10 gallons	1,3	5	
	mono-(Trichloro) tetra-(monopotassium dichloro)-penta-s-triazinetrione, dry (*containing over 39% available chlorine*).	Oxidizer	NA 2468	Oxidizer	173.153	173.217	50 pounds	100 pounds	1,3	1,3	
	Poisonous liquid *or* gas, flammable, n.o.s.	Poison A	NA 1953	Poison gas and Flammable gas.	None	173.328	Forbidden	Forbidden	1	5	Segregation same as for flammable gas.
	Propyl mercaptan	Flammable liquid.	NA 2402	Flammable liquid.	None	173.141	Forbidden	10 gallons	1,2	5	
	Sulfur, molten	ORM-C	NA 2448	None	173.505	173.1080	Forbidden	Forbidden	1	1	Stow away from oxidizers and living quarters.
	REVISE										
	Thinner for rust prevention. *See* Paint related materials.										

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

8. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1808; 49 CFR part 1.

PART 173—[AMENDED]

9. Under the subpart H heading in the table of contents for § 173.386, "Ethiologic" is changed to read "Etiologic".

§ 173.6 [Amended]

10. In paragraph (c) of § 173.6, one of the "§" signs before "§§ 172.101" and the reference "and 173.1020" are removed.

§ 173.104 [Amended]

11. In paragraph (c) of § 173.104, in the second sentence, revise the marking to read: "CORD, DETONATING—HANDLE CAREFULLY" or "FUSE, MILD DETONATING, METAL CLAD—HANDLE CAREFULLY" or "FLEXIBLE LINEAR SHAPED CHARGES, METAL CLAD—HANDLE CAREFULLY".

§ 173.242 [Amended]

12. In paragraph (b) of § 173.242, in the second sentence, the word "strenght" is changed to read "strength".

§ 173.247 [Amended]

13. In paragraph (a) of § 173.247, the words "trimethyl acetic chloride" are

changed to read "trimethyl acetyl chloride".

§ 173.249 [Amended]

14. In the heading of § 173.249, the words "alkaline corrosive battery fluid;" are removed.

a. In paragraph (a) of § 173.249, the words "alkaline corrosive battery fluid;" are removed.

§ 173.249a [Amended]

15. In the heading of § 173.249a, the word "or" is added between the words "compound" and "mixture" to read "compound or mixture".

§ 173.272 [Amended]

16. In paragraph (b), the designation (b) is correctly designated as (1), and (b) is reserved.

§ 173.306 [Amended]

17. In paragraph (d)(2) of § 173.306, the word "liquiefied" is corrected to read "liquefied".

§ 173.353a [Amended]

18. In paragraph (a) of § 173.353a, the reference "§ 173.353a" is changed to read "§ 173.353".

§ 173.373 [Amended]

19. The heading of § 173.373 is revised to read "Nitroaniline, ortho or para.".

a. In the introductory text to paragraph (a) of § 173.373, the words "Ortho-nitroaniline and paranitroaniline" are changed to read "Nitroaniline, ortho or para".

§ 173.403 [Amended]

20. In paragraph (i) of § 173.403, the typographical error "wh9ch" is changed to read "which".

PART 174—CARRIAGE BY RAIL

21. The authority citation for part 174 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1808; 49 CFR part 1.

§ 174.104 [Amended]

22. In paragraphs (c), (d), and (f) of § 174.104 all references to "§ 215.15" and "49 CFR 215.15" are changed to read "§ 215.11" and "49 CFR 215.11", respectively.

PART 178—SHIPPING CONTAINER SPECIFICATIONS

23. The authority citation for part 178 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, 1808; 49 CFR part 1, unless otherwise noted.

§ 178.51-15 [Amended]

24. Paragraph (b) of § 178.51–15, in the first sentence, remove the comma between the words "inches, provided" and add a semicolon, to read "inches; provided".

§ 178.115-3 [Amended]

25. In the table in paragraph (b) of § 178.115–3, in the third entry under the column entitled "Gauge No.", "30" is changed to read "20".

§ 178.210-12 [Amended]

26. Paragraph (a) of § 178.210–12, the symbol appearing in the rectangle is changed to read "DOT–12A**".

§ 178.224-2 [Amended]

27. Paragraph (d) of § 178.224–2, in the first sentence, the words "taken as random" are changed to read "taken at random".

Issued in Washington, DC, on September 26, 1989, under the authority delegated in 49 CFR part 1.

Travis P. Dungan,

Administrator, Research and Special Programs Administration.

[FR Doc. 89–23086 Filed 9–28–89; 8:45 am]

BILLING CODE 4910-60-M

National Highway Traffic Safety Administration

49 CFR Part 591

[Docket No. 89–5; Notice 2]

RIN 2127–AD00

Importation of Vehicles and Equipment Subject to Federal Motor Vehicle Safety Standards

AGENCY: National Highway Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to adopt procedures that will govern the importation of motor vehicles and equipment subject to Federal safety standards on and after January 31, 1990. This rule supersedes the existing joint regulation of the Departments of Treasury and Transportation on this subject, 19 CFR 12.80, which has been in effect since 1968. In most instances, the new rules are mandated by the Imported Vehicle Safety Compliance Act of 1988, and primarily affect importation of motor vehicles not manufactured to comply with the Federal motor vehicle safety standards. Requirements concerning vehicles and equipment that conform to the Federal safety standards, and nonconforming equipment, remain unchanged.

The Supplementary Information of this notice contains a full discussion of the present regulation, the proposal, and the changes made in response to that proposal.

DATE: The effective date of the final rule is January 31, 1990.

FOR FURTHER INFORMATION CONTACT: Taylor Vinson, Office of Chief Counsel, NHTSA, (202–366–5263).

SUPPLEMENTARY INFORMATION: Although NHTSA provided a full discussion of the proposed amendments in its prior proposal, it is repeating much of that discussion in this notice because of the major changes that the rule occasions, and the need that interested persons be fully informed as to the changes and their effect upon importation procedures that have been in effect for over 20 years.

On October 31, 1988, the President signed Public Law 100–562, the Imported Vehicle Safety Compliance Act of 1988 ("the 1988 Act"). Notice of its enactment was published by the agency in the **Federal Register** on December 5, 1988 (53 FR 49003), and a notice of proposed rulemaking to establish Part 591 was published on April 25, 1989 (54 FR 17772). As the notice stated, the 1988 Act amends those provisions of the National Traffic and Motor Vehicle Safety Act of 1966 ("the Vehicle Safety Act") that relate to the importation of motor vehicles subject to the Federal motor vehicle safety standards (section 108(b), 15 U.S.C. 1397(b)).

Specifically, the 1988 Act revokes sections 108(b)(3), and (b)(4) of the Vehicle Safety Act, effective January 31, 1990. These sections authorized the issuance of regulations jointly by the Secretaries of Transportation and Treasury to prohibit the importation of motor vehicles and equipment not complying with the Federal motor vehicle safety standards, except under such terms and conditions as may appear to them appropriate to ensure that a noncomplying vehicle or equipment item will be brought into conformance or will be exported or abandoned to the United States. The temporary admission of nonconforming used vehicles and equipment items by exempted persons was also permitted. Pursuant to this authority, the two Secretaries issued an implementing regulation, 19 CFR 12.80, which has governed the importation of merchandise subject to Federal motor vehicle safety standards since 1968, and will continue to do so through January 31, 1990.

Under the 1988 Act, new sections (c) and (j) are added to section 108 to replace revoked sections (b)(3) and (b)(4). The authority to issue joint regulations is replaced by a rulemaking

authority vested alone in the Secretary of Transportation (and delegated to NHTSA through existing delegations of authority).

The purpose of this notice is to promulgate a final rule to implement the 1988 Act, and to explain how importation of motor vehicles and equipment will be affected by this new authority. First, the existing regulation, 19 CFR 12.80, will continue to be a regulation under the joint authority of the two Departments with respect to the importation provisions of the Motor Vehicle Information and Cost Savings Act under which the Bumper Standard (49 CFR part 581) and the Theft Prevention Standard (49 CFR part 541) were issued. With respect to the Vehicle Safety Act, however, the new NHTSA regulation, 49 CFR part 591, will become the primary importation regulation, and 19 CFR 12.80 will become the conforming regulation of the U.S. Customs Service. In the future, substantive changes to importation procedures will be effected by NHTSA alone, through amendments to part 591, and Customs will make conforming amendments to 19 CFR 12.80, as required.

A similar relationship presently exists between regulations of the Environmental Protection Agency ("EPA") and Customs (*see*, respectively, 40 CFR 85.1501 *et seq.* and 19 CFR 12.73). This relationship has established a precedent for Customs to amend its regulations without notice and opportunity for comment on the basis that full notice and opportunity had been offered by EPA in promulgating its regulations, and that the amendments by Customs were merely conforming in nature (*See* 53 FR 26240).

In establishing part 591, NHTSA has attempted to formulate a program that will ensure that all imported motor vehicles conform to the Federal motor vehicle safety standards without imposing unnecessary burdens on importers. Therefore, NHTSA has tried in this rule to impose only those requirements that are mandated by the 1988 Act, with amplifications only where it appeared necessary to implement the safety intent of the statute.

In response to the proposal published on April 25, 1989, NHTSA received 19 written comments, and, as well, several inquiries by telephone. Seven comments were received from the following motor vehicle manufacturers: BMW of North America, Freightliner Corp., Austin Rover Cars of North America, General Motors Corp., Volkswagen of America, Ford Motor Co., and Chrysler Corp. Five comments were received from the following manufacturing firms in Canada: Intercontinental Truck Body Ltd., Barber Industries Ltd., Cancade Co., Western-Hydro Air Drilling Ltd., and Canterra Equipment Inc. Also commenting from Canada was an import/export consulting firm, All Alta. Agencies Ltd. Two comments were received from importers of vehicles not originally manufactured to conform to Federal motor vehicle safety standards: U.S. Trade Corp. and Auburn Motors/Superior Auto Sales (whose submission was supported by the National Federation of Independent Businesses). Two comments were received from trade organizations: National Automobile Dealers Association and The Dealer Action Association. Written comments were submitted by the State of Texas, and a private citizen, George Ziolo. During the pendency of the rulemaking action, questions were raised in telephone conversations, reported to the Docket, and these will be addressed to this notice where appropriate.

The principal paragraphs of part 591 are those dealing with the importer's declarations (§ 591.5), documents accompanying declarations (§ 591.6), and restrictions upon importation and bond requirements (§ 591.7). As paragraphs 591.6 and 591.7 relate directly to paragraph 591.5, issues that were raised in connection with them will be discussed in the appropriate portions of paragraph 591.5.

Importation of Motor Vehicles

Under existing § 12.80, a motor vehicle offered for importation into the United States is admitted pursuant to one of nine declarations regarding the status of the vehicle in relation to the motor vehicle safety and bumper standards (§ 12.80 is in the process of being amended to incorporate reference to the theft prevention standard). The requirements of the 1988 Act affect some of these declarations, and establish new exceptions. A discussion of these changes follows.

1. The Vehicle is Not a "Motor Vehicle"

Under 19 CFR 12.80(b)(1)(viii), a vehicle is not required to be brought into compliance if it is not a motor vehicle as defined by the Vehicle Safety Act, *i.e.*, if it is not "designed primarily for use on the public streets, roads, and highways" (15 U.S.C. 1391(3). Because of the uncertainty regarding certain types of vehicles (*e.g.*, golf carts, construction equipment) NHTSA has required that all importers of self-propelled wheeled vehicles execute a declaration, which has allowed the agency to review the status of vehicles for which an exemption is claimed, and to require re-entry as a nonconforming vehicle when it disagrees with the importer's assessment that the vehicle is not subject to the Federal motor vehicle safety standards. This exemption remains (paragraph 591.5(a)(i)) because this agency has no jurisdiction regarding non-motor vehicles under the Vehicle Safety Act and the 1988 Act makes no jurisdictional change. There were no comments on this issue.

2. The Vehicle Conforms and is So Certified

Under the existing regulation, a motor vehicle is allowed immediate entry without the posting of bond upon a declaration that it conforms to all applicable Federal motor vehicle safety standards and bears a certification label to that effect permanently affixed by the original manufacturer (§ 12.80(b)(1)(ii)). This same paragraph also allows immediate entry if a vehicle is only technically noncompliant, *i.e.*, because readily attachable equipment items are not attached, but will be installed before the vehicle is offered for sale.

The 1988 Act makes no change affecting this category of importation. The agency interprets the new amendments, however, as imposing new restrictions upon the importation of vehicles that may have been conformed prior to entry but bear a certification by a person other than the original manufacturer. The 1988 Act amends 15 U.S.C. 1397(a)(1)(A) to add the words "and is covered by a certification issued under section 114" as an addition to the existing requirement that a vehicle may not be imported "unless it is in conformity". A certification issued under section 114 is that of the "manufacturer", the entity which is responsible for the original assembly of the vehicle, and not that of a converter, whose operations consist of alterations to a previously assembled vehicle. To reflect this amendment, the agency proposed, and is now adopting, a definition of the term "original manufacturer" (paragraph 591.4) which excludes converters outside the United States who certify and conform vehicles to the standards after the vehicles have been manufactured in fully assembled form by a person other than the converter. The agency believes that the 1988 Act justifies this interpretation. The definition was specifically supported by The Dealer Action Association. An interpretation that would allow entry of a vehicle pursuant to a declaration of conformity and a certification by a person other than its original manufacturer could well result in the importation of vehicles for which the

Administrator had made no determination of capability of modification to meet Federal standards, and defeat the purpose of the 1988 Act. However, even if the converted vehicle is one that the Administrator has deemed eligible for entry and is certified as conforming by its converter, under part 591 it must enter the country only through a registered importer (or through one who has a contract with a registered importer), under bond, and its compliance must be established after entry in accordance with the new procedures.

One commenter, U.S. Trade Corp., though headquartered in the U.S., apparently owns a conversion facility in Germany. Assuming that it will become a registered importer, it commented that it ought to be able to import its converted vehicles without bond, provided that it submitted documentation to NHTSA 30 days in advance of the arrival of its vehicles. NHTSA Notes, however, that these are vehicles imported pursuant to 15 U.S.C. 1397(c)(3), and paragraph (c)(2) specifically requires a bond to be furnished "in the case of any motor vehicle imported under paragraph (3) * * *" Though sympathetic to U.S. Trade Corp.'s desire for expedited treatment, NHTSA believes that it is contrary to the 1988 Act for it to receive certification from an importer in advance of the arrival of a vehicle. Section 1397(c)(3)(E)(i) allows a registered importer to release custody of a vehicle 30 days after certification to the Secretary (if the Secretary has not in the interim demanded an inspection of the vehicle). Acceding to U.S. Trade Corp.'s request for early submission of certification could result in the 30-day period expiring before arrival of the vehicle in the U.S., and its immediate release from custody upon entry. NHTSA does not deem it desirable to demand *pro forma* an inspection of each such vehicle to delay its release from custody. Accordingly, it is informing U.S. Trade Corp. and others who are contemplating becoming registered importers that it will not accept certification data in advance of the arrival of a vehicle in the United States, and that the earliest date on which certification documentation may be submitted is the date of the importation declaration. Consequently, a motor vehicle that has been modified by a registered importer after its manufacture and before entry, will be treated as a nonconforming motor vehicle, and subject to the same entry requirements as a nonconforming vehicle.

Although the exclusory language in the definition of "Original manufacturer" remains as proposed, a modification has been made in the preliminary portion which defined the term as "the entity responsible for the original design, engineering, and manufacture of a motor vehicle * * *." Volkswagen commented that the definition was overly restrictive by its inclusion of design and engineering, and recommended a definition that would be consistent with the definition of "manufacturer" in the Vehicle Safety Act (15 U.S.C. 1391(5)). NHTSA concurs with this analysis and recommendation. The agency is aware that on occasion a vehicle manufacturer in one country may contract with a firm in another for design and engineering studies for future production vehicles. Accordingly, the preliminary portion of the final definition reads "the entity responsible for the original manufacture or assembly of a motor vehicle * * *." VW also recommended that the definition include motor vehicle equipment. The agency has not adopted this recommendation, as the amendments of the 1988 Act do not affect motor vehicle equipment.

Other issues regarding interpretations of conformity were raised by commenters. Canadian companies who appeared to be final stage manufacturers, and who were concerned that their vehicles would be treated as "nonconforming" under the amendments, asked for a clarification. The agency wishes to reassure these commenters that the new requirements do not affect final stage manufacturers outside the United States who complete chassis-cabs manufactured and certified in the United States, and certify compliance of the finished vehicle with those U.S. Federal motor vehicle safety standards for which the manufacturer of the chassis-cab has not previously furnished certification. The final stage manufacturer is and remains the "original manufacturer" for purposes of the certification that it furnishes, and vehicles certified by Canadian final stage manufacturers will be admissible as conforming vehicles under new paragraph 591.5(b).

With respect to vehicles certified as conforming to the Canadian motor vehicle safety standards, Auburn Motors/Superior Auto Sales, importers of such vehicles, commented that NHTSA had not addressed the issue of vehicles manufactured to meet the Federal motor vehicle safety standards, but which may not be so certified. In their view, Canadian vehicles do meet the U.S. standards, and special accommodation should be provided for them. Auburn/Superior cited The Free Trade Act between Canada and the United States in support, as well as a settlement with EPA which was published in the Federal Register on July 8, 1988 (53 FR 25331), which, according to Auburn/Superior recognized the identicality of standards. After reviewing Auburn/Superior's comments, NHTSA cannot concur with the conclusion that a special accommodation ought to be made. In many respects, the Canadian standards may be identical, but they also differ in certain other significant respects. For example, the Canadian vehicle lighting standard allows the use of headlamps meetings ECE standards. Federal Motor Vehicle Safety Standard No. 108 does not allow the use of European light sources, or of replaceable bulb headlamps that do not meet stringent environmental standards which are not specified in European regulations. Another example: The Canadian standard on controls and displays requires the use of metric speedometers and odometers; the primary U.S. requirement is that they be in miles per hour, though metric markings are permissible. The fact that similarity exists between the standards of the two nations today does not preclude either the U.S. or Canada from adopting significantly different ones in the future, as allowed by Article 603 of the Free Trade Act, if the demonstrable purpose is to achieve a legitimate domestic objective, such as enhancement of the public safety. The EPA "settlement" cited by Auburn/Superior was, in fact, simply a 3-month conditional stay of the applicability of that agency's new importation regulation, to expire October 1, 1988, based upon a petition for reconsideration of the rule. NHTSA notes that only one Federal standard was involved, engine emissions, and that the Federal safety standards are far greater in number. Even if vehicles certified to the Canadian safety standards do meet U.S. emission requirements, that fact is of no relevance to the quantum of compliance with the U.S. safety standards. A manufacturer's certification attached to a vehicle remains the statutorily approved method of establishing a presumption of compliance with the U.S. safety standards.

A telephone call was received from Barry Wood, a customs broker, about the treatment of reentry into the United States of a used certified vehicle that was driven to Canada for modifications involving the installation of a different load-carrying structure. An associated issue is the treatment of new certified

vehicles sent to Canada for modifications requiring the affixation of an alterer's certificate as required by 49 CFR 567.7. NHTSA replies that the thrust of the 1988 Act is to regulate vehicles that were not originally manufactured to comply with Federal safety standards, and not to ensure continuing compliance of those that were. Assuming that the original manufacturer's certification remains affixed to an altered vehicle, whether that vehicle is new or used, the vehicle should be readmitted to the United States under paragraph 591.5(b) as a conforming vehicle. Of course, the U.S. owner/importer should ensure with the Canadian alterer that its modifications do not result in changes (such as installation of tinted glass that may not conform with Standard No. 205, or an increase in GVWR) that would raise a question of conformity with the U.S. Customs Service, so as to delay reentry, or require its readmission as a nonconforming vehicle in spite of the presence of its certification label.

Ford Motor Company raised the issue of discovery in transit of a noncompliance in vehicles it imports from abroad for sale under its nameplate, but which are manufactured and certified by a second party. Ford stated that part 591 ought to permit importation for modification by Ford as the agent of the foreign manufacturer, and asked that the final rule allow such modifications to be made in the U.S., or confirmation that the rule already allows it. The agency's analysis differs from Ford's although its conclusion should meet Ford's concern. Where a noncompliance is discovered in transit, NHTSA believes that only a technical violation of the Vehicle Safety Act would occur with the importation of a motor vehicle certified as conforming to the safety standards, but in fact known to the importer to be noncompliant with at least one of them. As an importer for resale, Ford becomes the "manufacturer" under the Vehicle Safety Act and responsible for all notification and remedial responsibilities imposed by that Act. Thus, it will be required to file a part 573 Noncompliance Report with NHTSA not later than 5 days after its determination of the existence of the noncompliance. As the Act forbids sale of a nonconforming vehicle, Ford will be under a legal obligation to remedy the noncompliance before it is sold. Provided that the noncompliance is corrected before the vehicles are offered for sale, there would appear to be no harm to the public safety by allowing the importation.

The agency responds similarly to a comment by General Motors. Under the proposal, a technically noncompliant vehicle could be admitted pursuant to the declaration that "the vehicle will conform when readily attachable equipment items carried within it are attached." This represents a slight departure from the current declaration which does not require the equipment items to be carried within the vehicle. GM points out that it may well be that components will be added from domestic sources prior to sale, or arrive from abroad by separate shipments. Because of the importer's legal obligation not to offer a vehicle for sale in a noncompliant condition, it is irrelevant whether or not the equipment items are carried within the vehicle, and NHTSA has eliminated the proposed restriction from the final rule, adopting language virtually idential to that presently existing in § 12.80(b)(1)(ii). GM also suggested that a manufacturer's "agents" be permitted to attach the detached equipment items. Given the fact that the vehicle must fully comply when offered for sale, NHTSA believes that the answer must be a practical one, and that the items may be attached by the manufacturer or the dealer, as appears best.

One further comment regarding paragraph 591.5(b) resulted in minor modifications in the final rule. Under the proposal, the vehicle or equipment item to be imported must bear a certification label or tag affixed by the original manufacturer "to the vehicle or to the equipment item or its container." NADA commented that the language could be construed as allowing certification of vehicles on vehicle containers rather than on the vehicle itself. To meet this concern, NHTSA has placed a comma between the word "vehicle" and the disjunctive "or." In agreement with NADA's suggestion that the paragraph contain an appropriate citation to labeling regulations as is currently done in § 12.80, NHTSA has added the statutory references. This should help clarify that the labeling requirement remains the same in spite of the advent of a new importation regulation.

3. The Vehicle is Intended Solely for Export

A nonconforming vehicle is allowed immediate entry without bond upon the declaration that the importation is solely for purposes of export, and bears a label to that effect § 12.80(b)(1)(iv)). This declaration is allowed pursuant to a specific statutory exclusion in the Vehicle Safety Act, section 108(b)(5). Under the 1988 Act, the section becomes 108(b)(3), but is otherwise unchanged, and the exclusion remains (Paragraph 591.5(c)). There were no comments on this issue.

4. Nonresident Temporary Importations

If the importer is a nonresident of the United States and is importing the nonconforming vehicle primarily for personal use for a period of 1 year or less, the current regulations allow entry without bond and conformance, but the declaration must also state that the importer will not sell the nonconforming vehicle in the United States during that period § 12.80(b)(1)(v)). There is no similar provision in the 1988 Act.

This provision was intended to benefit two classes of importers. The first class is comprised fo U.S. citizens who are between foreign work assignments, and need to use their noncomplying cars while in transit, on home leave, or on temporary assignment in the U.S. The second class of importer is comprised of non-U.S. citizens. They may be Mexican or Canadian residents who use the American roads on an infrequent basis, or citizens of other countries who bring their campers or cars with them to facilitate their vacations in the U.S.

One authority for the previously existing allowance was section 1397(b)(4) which authorized the adoption of regulations allowing the "temporary importation" of noncomplying vehicles or equipment items. This authority has been deleted by the 1988 Act. However, a further authority for the nonresident exemption was the existence of two international treaties to which the United States is a signatory that address the movement of vehicles among various countries (I. Customs Convention on the Temporary Importation of Private Road Vehicles opened for signature June 4, 1954, 8 U.S.T. 2097, T.I.A.S. No. 3943, entered into force December 15, 1957. II. Convention on the Regulation of Inter-American Automotive Traffic, opened for signature December 15, 1943, 61 Stat. 1129, T.I.A.S. No. 1567, entered into force October 29, 1946). NHTSA believes that elimination of the present allowance may be inconsistent with the intent of the treaties, and proposed that it be retained in clarified form, allowing the temporary importation of any vehicle by a nonresident that is registered in a country other than the United States, provided it is for personal use, imported for a period not to exceed one year, will not be resold in the U.S. during that time, and will be exported at the end of that time (Paragraph 591.5(d)).

No commenter disagreed with the concept of temporary importation, though concern was expressed as to the

effect of the requirement. Texas commented that the proposal was unclear whether nonconforming vehicles of Mexican or Canadian registry will continue to be treated as before. This was also the concern of Western Hydro-Air Drilling of Canada, a mineral drilling specialist operating in both the U.S. and Canada using the same units in both countries from time to time. The Dealer Action Association was concerned with the possible sale of noncomforming vehicles by nonresidents, as well as NHTSA's lack of substantive proposals to guard against abuse. It sought to encourage NHTSA to work with Customs to ensure that neither Canada nor Mexico become a "grey market export platform." George Ziolo commented that the phrase "for personal use" should not be adopted as "this includes commercial carriers and may confuse Customs".

The agency believes it must interpret Congressional intent in light of the realities of cross-border traffic, and the existence of treaties and agreements to which the U.S. is a party. Under long-standing NHTSA interpretations, cross-border traffic involved in daily operation in the United States over an extended period of time (as opposed to the casual tourist) is deemed subject to the Vehicle Safety Act and to the Federal motor vehicle safety standards. However, it must defer to the U.S. Customs Service to identify such vehicles, to refuse entry as a nonresident, and then to require entry as a nonconforming vehicle which must be conformed or exported. Because of the substantial nature of cross-border traffic, it is obvious that Customs cannot require a written declaration of every vehicle of Mexican or Canadian registry, and NHTSA's legal interpretation has not been capable of rigorous enforcement. These practical considerations are not changed by the 1988 Act, nor does NHTSA read the 1988 Act as a mandate from Congress to enhance motor vehicle safety by increasing restrictions on the use of Canadian or Mexican vehicles operated in the U.S. To respond to the comment of the Dealer Action Association, the *modus vivendi* with respect to these vehicles has not, as of the present time, resulted in the border countries becoming a grey market export platform to any discernible extent. Given the present low volume of grey market cars expected, less than 3000 per year, it does not appear likely that this is a realistic concern for the near future. As for Mr. Ziolo's comment, NHTSA seeks to retain as much of the presently existing regulatory language as is consistent with the 1988 Act, and thus has not stricken "for personal use" from the final rule. The agency is not aware of any confusion that use of this term has caused in the existing regulation.

5. The Vehicle Does Not Conform to Federal Safety Standards

This is the category of motor vehicle whose importation is most affected by the 1988 amendments. Under 19 CFR 12.80, a nonconforming vehicle is imported pursuant to a declaration that it will be brought into conformance within 120 days of entry. The importer gives a bond for the production of a statement, after conformance, certifying that the conformance work has been accomplished. The statement describes the conformance work, identifies the conformer, and certifies that the vehicle will not be sold until NHTSA has issued an approval letter to the district director of Customs that the bond may be released. The bond is for the dutiable value of the vehicle § 12.80(b)(1)(iii) and (e)).

The 1988 amendments impose criteria which motor vehicles must meet in order to be imported. Under new section 108(c)(3)(A), a vehicle cannot be imported at all (with certain exceptions set out below) unless NHTSA determines that it is capable of modification to meet the Federal safety standards. Determinations may be made on NHTSA's own initiative, or upon petition of any registered importer (see discussion below) or any motor vehicle manufacturer, and will be subject to public comment.

A nonconforming vehicle that is not offered for importation under one of the exceptions discussed herein may be imported under either of the following two scenarios. The first scenario, specified by section 108(c)(3)(A)(i)(I), will involve the making of two determinations: (1) That the nonconforming vehicle is substantially similar to a motor vehicle of the same model year originally manufactured for importation into and sold in the U.S., (and thus in compliance with the safety standards) and (2) that the vehicle is capable of being readily modified to conform.

The second scenario, specified by section 108(c)(3)(A)(i)(II), will arise if the agency does not make a determination of substantial similarity regarding a vehicle. In that case, it will still be permissible to import the vehicle if the agency determines that the vehicle's safety features comply with the U.S. standards, or are capable of being modified to comply with those standards, "based on destructive crash data or such other evidence" as NHTSA determines is adequate.

Under either scenario, a positive determination regarding a vehicle will permit any registered importer to modify vehicles of the same model covered by the determination.

If the agency makes a negative determination regarding a model's ability to be modified, the agency will be temporarily prohibited from taking up the issue of that model's importability again. If the negative determination was made in response to a petition, section 108(c)(3)(C)(ii) of the Act prohibits the agency from considering a petition regarding the same model of vehicle until at least 3 months after that decision. If the negative determination was made in a proceeding begun at the agency's own initiative, the agency will not be able to make another determination regarding the same model of motor vehicle until at least 3 months after the negative one (section 108(c)(3)(C)(iii)). The agency addresses these matters in companion final rules published simultaneously with this one, part 592, Registered Importers of Vehicles Not Originally Manufactured to Conform to Federal Motor Vehicle Safety Standards, and part 593, Determinations That a Vehicle Not Originally Manufactured to Conform to Federal Motor Vehicle Safety Standards is Eligible for Importation.

Once a vehicle has been determined eligible for importation, it may then be imported by a registered importer who will undertake to conform it with the safety standards (paragraph 591.5(f)(i)). The importer is required by section 108(c)(2) to give a bond to ensure conformance or alternatively to ensure that the vehicle will be exported or abandoned to the United States. The bond is to be not less than the "dutiable value" of the vehicle as determined by the Secretary of the Treasury, and not more than 150 per cent of the "dutiable value." The U.S. Customs Service has recommended that the term "entered value" be used, as under recent changes to its regulations vehicles imported from certain areas may not have duties imposed. It views "entered value" as the equivalent of the statutory term "dutiable value" for purposes of importations of vehicles under part 591. Both NHTSA and Customs view this bond as one that is separate from the general importation bond, which will continue to be required. Further, the statute is interpreted as requiring a separate bond for each vehicle imported. This means that the 1988 Act requires an individual bond to be given for each vehicle imported. A bond is not

blanket in nature, covering any vehicle that may be imported by a registered importer. In other words, the required bond will be of a single entry nature, and not of a continuous nature. The bond is acquired by the vehicle owner. Thus, a Registered Importer may not import a vehicle in which it has no ownership interest.

The new requirements were set forth in proposed § 591.5(f). NADA expressed its general support. General Motors commented that part 591 as proposed did not state the conditions of the bond, nor that the vehicle was being imported under bond for conformance purposes. It recommended eliminating the ambiguity by including a statement of purpose in the declaration required in paragraph 591.5(f), specifically that "the vehicle is being imported under bond to ensure conformance, delivery to the Secretary of the Treasury for export at no cost to the United States, or abandonment to the United States". NHTSA agrees with this comment, and an appropriate addition has been made to the declaration required by paragraph 591.5(f).

Because the bond is given to secure performance to the requirements of the Vehicle Safety Act, rather than to fulfill obligations under Customs' regulations, it will be a bond of the Department of Transportation. No mitigation of the bond is contemplated for vehicles that appear to conform only partially, unlike the practice today. If full conformance is not achieved, the vehicle must be exported, or abandoned to the U.S. If none of these occur, the bond is forfeited. NHTSA has decided that the bond shall be 150% of the entered value of the vehicle, as determined by Customs. The bond must have been obtained prior to, or at the time of, entry of the vehicle, and attached to the declaration form. If the bond is not attached, or in an improper amount, the vehicle will be refused entry.

6. The Vehicle Requires Further Manufacturing Operations

Under new section 108(e), the prohibitions in subsections (a)(1)(A) and (a)(1)(C) shall not apply to any motor vehicle if it requires further manufacturing operations to perform its intended function (as determined under regulations prescribed by the Secretary), and is accompanied at the time of entry by its manufacturer's written statement which indicates the applicable Federal motor vehicle safety standard with which the vehicle does not comply. The corresponding current provision is § 12.80(b)(1)(ix): a vehicle may be imported if it is an "incomplete vehicle" as defined by 49 CFR part 568 Vehicles Built in Two or More Stages. Under part 568, an incomplete vehicle manufacturer must provide with an incomplete vehicle a document that contains the information specified in paragraph 568.4. With respect to the safety standards, the document must list the specific vehicle types into which the incomplete vehicle may be appropriately manufactured, and, with respect to each standard that applies to each such type, make one of three statements. These statements are (1) that the vehicle when completed will conform to the standard if no alterations are made to the specified components of the vehicle (2) the specific conditions of final manufacture under which the manufacturer specifies that the complete vehicle will conform to the standard, or (3) that conformity with the standard is not substantially affected by the design of the incomplete vehicle, and that the incomplete vehicle manufacturer makes no representation of conformity with the standard. The justification for this exception in § 12.80 has been that the vehicle must conform, and be certified as conforming, upon completion by its final stage manufacturer, and that this is an obligation that exists independent of the importation process which serves to ensure that safety needs are met.

As NHTSA noted in its proposal, the question of the type and extent of manufacturing required for performance of intended function, will, of course, vary. However, the existing requirements for alterers of certified vehicles (paragraph 568.8) afforded a basis for proposing criteria that distinguish between completed vehicles and those that require further manufacturing. Accordingly, NHTSA proposed paragraph 591.5(e), the declaration that "The vehicle or equipment item requires further manufacturing operations to perform its intended function, other than the addition of readily attachable equipment items, or minor finishing operations." By so doing, NHTSA also intended to establish a clear dividing line between entry under the technical nonconformance conditions of paragraph 591.5(b), applicable to completed vehicles, and the greater manufacturing operations required for entry under paragraph (591.5(e).

Virginia Department of Motor Vehicles asked what are vehicles requiring further manufacturing operations. In commenting on the proposal, The Dealer Action Association found the declaration insufficiently comprehensive to limit its application, and recommended that NHTSA limit this exception to original equipment manufacturers, to enable them to manufacture vehicles in stages, initially outside the United States, and completion within. NADA commented that the further manufacturing specification should be clearly stated as applying to Part 568-type vehicles which must ultimately comply with Federal safety standards. Freightliner stated that it imports "kits" that are "incomplete vehicles" as defined under part 568, and asked whether it would have to be registered as an importer.

NHTSA has carefully considered these comments. The question raised by Virginia is, of course, fundamental to this provision. The proposal indicated that at a minimum the term included vehicles fitting the definition of "incomplete vehicle" in part 568. This conclusion is reinforced by reading *in pari passu* the definitions of both "completed vehicle" and "incomplete vehicle" established by part 568, definitions that are mutually exclusive. If a vehicle is not incomplete, it is complete. Therefore a vehicle requiring further manufacturing operations to perform its intended function is an "incomplete vehicle" as defined by part 568.

The issue raised by The Dealer Action Association is whether importation under this provision can be limited to original equipment manufacturers. No such limitation appears upon the face of the statute. The thrust of the requirement is towards the vehicle itself: it is one requiring further manufacturing, and it is accompanied by an appropriate document. While the vehicle must ultimately conform, the statute does not impose the obligation of conformance upon the importer. NHTSA is loath to read a restriction of this nature into the 1988 Act that does not appear on its face. Even were it sympathetic to the comment, it believes that such a restriction would have to be formally proposed for comment. However, NHTSA will monitor importations under this section and if remedial action appears required for motor vehicle safety, will propose an appropriate restrictive amendment.

With respect to NADA's comment, NHTSA has decided to clarify that the document accompanying the declaration be a statement in the form specified in part 568. This document in its essential respects complies with the language of section 108(e). If the vehicle is not in compliance with an applicable standard, that fact will be reflected in the statement made with respect to such standard pursuant to paragraph 568.4. As for a description of the further manufacturing operations required for the vehicle to perform its intended

function, NHTSA believes that this must be read within the safety context of the 1988 Act. An incomplete vehicle manufacturer will not in many instances know the manner in which a specific vehicle will be completed, as for example, whether a chassis-cab will be finished with a school bus body, or with a dumping apparatus. But he must make statements relevant to the further manufacturing operations connected with completion of the vehicle in accordance with the Federal safety standards. NHTSA therefore has decided that this document will satisfy the intent of section 108(e). The only new requirement imposed is that the document must accompany the declaration.

Finally, with respect to Freightliner's question whether an importer of a vehicle requiring further manufacturing operations must be registered, the answer is no. There are no safety standards that apply to an incomplete vehicle, and the obligation of conformance arises after importation, upon completion of manufacture. However, if the incomplete vehicle is a chassis-cab and is not certified as required, its importer must be a registered importer who undertakes to bring it into conformance with applicable standards. Where manufacture has been completed before importation and the vehicle was not originally manufactured to conform to the standards, the importer of that type of vehicle is required to be registered.

Finally, NHTSA wants to make plain that it will countenance no importations under paragraph 591.5(e) that appear to be subterfuges to avoid compliance responsibility. Instances have arisen in the past in which an importer offered for importation a motor vehicle without its engine, or other running gear parts, claiming that the merchandise was, in fact, equipment to which no standard applied, and the importer separately imported the engine or parts. The agency has treated these cases as *de facto* importations of noncomplying motor vehicles, and required them to be entered as nonconforming motor vehicles and evidence of conformity to be subsequently submitted. The agency intends to follow this policy, and will not consider such an assemblage to be a vehicle requiring further manufacturing operations.

7. The Importer Has a Contract With a Registered Importer

The primary eligibility requirements placed by the 1988 Act on persons importing nonconforming vehicles are that they will have to be, subject to certain exceptions, registered as importers, or they will have to have contracts with registered importers to conform the vehicles. A person importing under contract with a registered importer will have to furnish, at the time of entry, an appropriate bond (which, under the 1988 amendments, is not less than 100 percent of the dutiable value of the vehicle and not more than 150 percent), a copy of the contract or other agreement with a registered importer, and certification that an affirmative decision has been made regarding the eligibility of the vehicle for importation. These matters, specified in section 108(f), are covered in paragraph 591.5(f)(ii). Under paragraph 591.6(d), the declaration must be accompanied by a copy of the contract or agreement. The purpose of the new requirements is to increase the likelihood that nonconforming vehicles will be properly modified and actually brought into compliance with the safety standards.

8. The Importer is Eligible To Import Under Present Requirements

Nonresidents are affected in another way by the 1988 Act. Under certain circumstances, and for a limited time, section 108(g) of the Vehicle Safety Act permits a nonresident (including any member of the Armed Forces) to continue to import a vehicle under the present regulation, that is, to have it conformed by a person other than a registered importer. This exception applies to a single vehicle imported, for personal use and not for resale, between January 31, 1990, and October 31, 1992, by an individual whose assigned place of employment was outside the United States for the total period between October 31, 1988, and the date of importation, provided that the vehicle was acquired (or was subject to a binding contract to acquire) before October 31, 1988, and that the individual has not previously imported a nonconforming motor vehicle. This amendment is reflected in paragraph 591.5(g). There were no comments on this subject. However, the Virginia Department of Motor Vehicles asked what standard a vehicle purchased or ordered before October 31, 1988, would have to meet when it is imported. The answer is, those standards that applied to such a vehicle on the day of its manufacture, i.e., assembly. This requirement of the Vehicle Safety Act is unchanged by the 1988 Act.

9. Importation by Diplomats and Foreign Military Personnel

Any person who is a member of the armed forces of a foreign country on assignment in the U.S., or any person who is a member of the Secretariat of a public international organization so designated under the International Organization Immunities Act and who is within the class of persons for whom free entry of motor vehicles has been authorized by the Secretary of State may currently import a nonconforming vehicle for the duration of their stay pursuant to the declaration that the vehicle is for personal use only (§ 12.80(b)(b)(1)(vi)). Section 108(h) of the Vehicle Safety Act specifically retains this exclusion, but in addition requires NHTSA to ensure that any such vehicle will be exported or abandoned when the importer ceases to reside in the U.S. It also forbids the sale while within the United States of any motor vehicle imported under this provision.

The enforcement of this provision would appear to rest with the Office of Foreign Missions of the Department of State. NHTSA understands that foreign personnel in the exempted categories who import nonconforming vehicles into the United States, are required to register their vehicles with this Office. Under the registration process, the Office takes possession of the foreign title of the vehicle, and issues registration plates to the importer after verifying that the vehicle is insured. The importer does not take repossession of the title until the registration plates are returned to the Office. At that time, the Office asks for an explanation. The usual reason is that the importer's assignment in the United States has ended, and that the importer is leaving the country. Documentary proof is required, such as a copy of the importer's orders. Heretofore, however, no documentary proof has been required that the vehicle is being, or has been, exported. Thus, it is possible that a nonconforming vehicle could be sold between the time the importer repossesses the title and actually leaves the country, but the Office believes that this is only an infrequent occurrence. NHTSA has informally approached the Office as to the possibility that it could require proof of exportation of diplomatic vehicles, and has found the Office amenable to that suggestion. This approach appears less cumbersome than requiring a bond for the exportation of diplomatic vehicles. Accordingly, NHTSA is adopting as one of the declarations a diplomatic importer must make under paragraph 595.5(h) that (s)he will provide the Office of Foreign Missions, at the conclusion of a tour of duty and before departure from the United States, with documentary proof that the vehicle is being, or has been, exported.

Under the existing law and regulations, it has been the practice to allow an exempted diplomatic importer to sell his or her nonconforming vehicle to another person in one of the exempted categories. The justification for this practice is that the exempted buyer is himself eligible to import a nonconforming vehicle. The agency does not construe the 1988 Act as forbidding this type of sale between exempted importers.

However, the 1988 Act has another effect. Heretofore, the agency had no objection if sale of a nonconforming diplomatic vehicle to a nonexempted party occurred after the vehicle had been brought into conformance with applicable Federal safety standards. NHTSA commented in the preamble to the April proposal that if this practice is to continue, it would have to be greatly modified. If an exempted importer wishes to sell a nonconforming vehicle in the United States, NHTSA indicated that the importer be prohibited from doing so unless (1) the vehicle is one which the Administrator has determined is modifiable to conform to the safety standards, and (2) the vehicle will be conformed through a registered importer. In so suggesting, NHTSA believed that this type of transaction was also within the intent of the 1988 Act, and that otherwise, a nonconforming vehicle may not be sold if imported pursuant to the diplomatic exemption. The sole commenter on this declaration. The Dealer Action Association, recommended forbidding this type of transaction, and restricting sales to those between diplomatic personnel. As an alternative, it suggested establishing procedures analogous to those under paragraph 591.5(f)(2) by which an individual would contract with a registered importer.

The agency has reviewed this comment, and has concluded that sales should be restricted to those between diplomatic personnel. After reviewing the 1988 amendments, NHTSA believes that vehicles imported pursuant to the diplomatic exemption should be exported at the end of the diplomat-importer's tour of duty, unless the vehicle is sold to a person who would have been eligible to have imported it under such exemption. If a diplomat wishes to enter a nonconforming vehicle with the intent of selling it in the United States, he must do so outside the diplomatic exception and through either a registered importer, or pursuant to a contract with one. As both a practical and legal matter, NHTSA would find it difficult to enforce a no sale provision against diplomatic personnel, and the regulation has not been adopted so as to allow this type of sale.

10. The Vehicle is 25 or More Years Old

A motor vehicle is allowed immediate entry under § 12.80(b)(1)(i) if it was manufactured before any applicable Federal motor vehicle safety standards were in effect. All motor vehicles, other than motorcycles, manufactured on or after January 1, 1968, have been covered by safety standards. Accordingly, this declaration has been used only for the entry of vehicles manufactured before January 1, 1968. Under section 108(i), added by the 1988 Act, a motor vehicle may be allowed entry without the necessity of conformance if it is 25 years old or older. Thus, after January 1, 1993, vehicles that were manufactured on or after January 1, 1968, will be relieved of the necessity to conform as they reach 25 years of age. The existing declaration will be retained until January 1, 1993, although clarified by specifying the January 1, 1968 date (paragraph 591.5(i)). This is necessary to prevent the importers of vehicles which are less than 25 years old but manufactured before January 1, 1968, from being inadvertently required to enter their vehicles pursuant to the 1988 amendments. During 1992, the agency will amend paragraph 591.5(i) to implement the 25-year old exclusion effective January 1, 1993. There were no comments on this aspect of the regulation.

11. Importation for Research, Investigations, Studies, etc.

Importation of nonconforming vehicles without bond is presently allowed if the importation is solely for the purpose of show, test, experiment, competition, repair, or alteration (§ 12.80(b)(1)(vii)). If the vehicle is imported for test or experiment, it may be licensed for use on the public roads for a period not to exceed one year, extendable for two successive year periods, or a period of three years in all. Importation for this class of noncomplying motor vehicles has been permitted pursuant to the assumption that motor vehicle safety would not be affected by the temporary importation of noncomplying motor vehicles not generally used on the public roads, and whose appearance on them would be limited.

Section 108(j) of the Vehicle Safety Act modifies these categories. It provides NHTSA with authority to exempt a vehicle from importation and certification violations upon such terms and conditions as may be necessary solely for the purpose of research, investigations, studies, demonstrations or training, or competitive racing events. It does not include the terms "show" and "repair" currently in use. In the notice of proposed rulemaking, NHTSA observed that prospective importers ought not to be unduly concerned at this. In NHTSA's experience, importation for repair has averaged, perhaps, one vehicle every two years. Manufacturers who have imported nonconforming products for display at auto shows to gauge public reaction to new styling or engineering features will not be precluded from declaring that such importation is for "research" or "demonstrations". And museums will be able to bring in nonconforming vehicles under the 25-year exception. NHTSA proposed to allow importation for the statutory purposes specified, provided that the declaration is accompanied by certain information and statements. If this information indicates that on-road use for a period that is greater than 1 year is required for these purposes, the importer will not be required to petition NHTSA for yearly extensions, as is presently the case. At the end of 3 years, the importer is subject to termination of the Customs Temporary Importation Bond under which the vehicle entered. At that point, the vehicle must be destroyed, exported, or abandoned to the United States. Alternatively, if duty is paid at the time of importation of the nonconforming vehicle, the vehicle must not remain in the United States for a period longer than 5 years after entry. The proposal also prohibited an importer of a vehicle imported for competitive racing events from licensing it for use on the public roads.

NHTSA also stated in the proposal that it envisioned that a registered importer who intends to file a petition under Part 593 for a determination that a vehicle is eligible for importation because it is capable of modification could avail itself of the demonstration exception to import such vehicles as may be necessary in order to develop the documentation needed to demonstrate the vehicle's capability for modification.

Comments to this proposal varied in nature and content. A number of commenters pointed out a contradiction between the blanket prohibition against licensing for on-road use contained in proposed paragraph 591.5(j), and the associated provision in paragraph 591.6(f) requiring submission of certain information if the vehicle is to be licensed for on-road use during its stay in the United States. BMW suggested that NHTSA conform its provisions to accord with similar ones of EPA contained in 19 CFR 12.73(h) and 40 CFR

85.1511(b)(2). General Motors, Volkswagen, and Ford recommended specifying the exceptions, such as allowing on road use when such use is an integral part of the purpose for which it was imported. Austin Rover asked NHTSA to clarify that the licensing for use prohibition applies only to vehicles imported for competitive racing events, and Volkswagen wanted the prohibition struck for this type of vehicle. Barry Wood noted in a phone call that the proposal did not cover vehicles imported from Canada for repair and returned to that country. He observed that this was a not infrequent practice in his part of the United States. Finally, General Motors asked that this exception not terminate after 5 years, but be available for an unlimited period of time, citing the allowance by EPA of unlimited use of vehicles not conforming to Federal emission requirements.

The agency agrees that the proposal appears to present a conflict between paragraphs 591.5(j) and 591.6(f). The comments have caused NHTSA to review closely the new statutory language, and the agency has concluded that it provides sufficient flexibility to respond favorably to many of the comments. The specific language of new section 108(j) is "The Secretary may exempt any motor vehicle or item of motor vehicle equipment from subsections (a)(1) and (c)(1) upon such terms and conditions as the Secretary may find necessary solely for the purpose of research, investigations, studies, demonstrations or training, or competitive racing events." Subsection (a)(1) contains the statutory prohibition against importation of noncomplying vehicles, and their introduction into interstate commerce. Subsection (c)(1) contains the requirement of vehicle certification. In other of the 1988 Act amendments, Congress has flatly stated that subsections (a)(1) and (c)(1) shall not apply provided specified steps are taken. Subsection (j), on the other hand, implies that subsections (a)(1) and (c)(1) do apply, but that NHTSA has the flexibility to determine when they do not. For example, if NHTSA has allowed importation and on-road use for a period of 4 years, and the vehicle is not exported at the end of that time, NHTSA may impose a civil penalty. As a further example, if NHTSA has determined that indefinite on-road use is required to achieve the importer's stated purpose, NHTSA could inform the importer that it would not find that the Vehicle Safety Act had been violated. If licensing for on-road use is an absolute requirement of a competitive event, NHTSA could allow it for a limited period of time, and under circumstances prescribed in its letter of permission. Thus, the final rule has been modified to reflect the agency's conclusions. Under § 591.6(f), any person seeking to import a motor vehicle under § 591.5(j) must write NHTSA in advance of such importation with a full and complete statement of the purposes of the importation, and whether on-road use is contemplated. NHTSA's reply, if affirmative, will impose such terms and conditions as may seem required for motor vehicle safety. Violations of any of these terms and conditions will be considered a violation of section 108(a)(1)(A) of the Vehicle Safety Act, for which a civil penalty may be imposed. A copy of NHTSA's letter or permission must be provided Customs upon entry of the vehicle, attached to the declaration form. Under § 591.7(f) in its final form, vehicles imported pursuant to paragraph 591.5(j) for which duties have been paid, must be exported not later than 5 years after entry, unless permission has been obtained from NHTSA.

There remains the question raised by Barry Wood, whether a nonconforming vehicle may be imported for "repair" in the absence of any express statutory authority allowing it, or any discussion of it in the legislative history of the 1988 Act. Although the joint regulations have permitted this practice for over 20 years, it was omitted from the categories of vehicles importable pursuant to paragraph 591.5(j). There are really two issues here, rather than one. The situation mentioned by Mr. Wood involves vehicles that are returned to Canada after repair. That is to say, they do not appear to be vehicles temporarily imported by U.S. residents, but vehicles that are temporarily exported by their Canadian owners. As such, they appear to be vehicles involved in international traffic, imported for a limited period of time by nonresidents of the United States. In NHTSA's view, Canadian-owned vehicles that are repaired in the United States and returned to Canada at the completion of repairs are properly entered pursuant to paragraph 591.5(d). The other issue is importation by U.S. residents of nonconforming vehicles for repair. The agency has no knowledge of any importation by U.S. residents of nonconforming vehicles for repair, followed by their subsequent exportation. At most, it appears highly infrequent, so that the failure of Congress to include it in the 1988 Act ought not to work a hardship.

Importation of Motor Vehicle Equipment

Under 19 CFR 12.80, the first seven of the nine declarations applicable to motor vehicles also apply to motor vehicle equipment. The primary focus of the 1988 Act is upon motor vehicles, however, and some of the new exceptions do not apply to motor vehicle equipment. An analysis of the equipment provisions and final rules follows.

First, the agency has no jurisdiction over an item that does not fit the definition of motor vehicle equipment, as contained in 15 U.S.C. 1391(4). Thus, such an item may be entered pursuant to the declaration that it is not a system, part, or component of a motor vehicle (paragraph 591.5(a)(2)).

The 25-year old exception for motor vehicles does not extend to motor vehicle equipment. This means that equipment covered by an equipment standard continues to be importable without the necessity for conformance (absent other exceptions) only if manufactured on a date before a standard applied to it (paragraph 591.5(i)(2)).

An equipment item that is certified as conforming to applicable equipment standards continues to be admissible upon a simple declaration that it conforms (paragraph 591.5(b)).

Because the importation for export exception is provided for by the Vehicle Safety Act, and not affected substantively by the 1988 Act, nonconforming equipment may continue to be imported for export, provided that it or its container bears a label or tag to that effect at the time of importation. (See section 108(b)(5) of the Vehicle Safety Act, redesignated as 108(b)(3) by the 1988 Act and paragraph 591.5(c)).

Under new section 108(e), an equipment item need not comply upon importation if it requires further manufacturing operations to perform its intended function. In the final rule, the agency has decided to adopt terminology from part 568 to implement this requirement for motor vehicles. Manifestly, part 568 does not apply to "incomplete" equipment, and the agency is adopting the exact language of the 1988 Act as the requirement for entry of motor vehicle equipment subject to section 108(e).

The new provisions regarding importation for purposes of research, investigation, studies, demonstrations or training, or competitive racing events (section 108(j)) expressly include motor vehicle equipment as well as vehicles, and thus supersede existing requirements which make no provision for them. This change is reflected in paragraph 591.5(j).

Because the 1988 Act is specific about the conditions under which nonconforming equipment items may be

admissible, there appear to be certain areas in which a right to import a nonconforming equipment item no longer exists. Although § 12.80(b)(1)(iii) allows importation of a nonconforming equipment item under bond for conformance within 120 days of entry, no similar provisions appear in the 1988 Act; the bond, registered importer, and eligibility determination provisions apply only to importation of motor vehicles. Therefore, as of January 31, 1990, nonconforming equipment may no longer be imported pursuant to a declaration that it will be brought into conformance. Although NHTSA has incorporated nonresident importation procedures for motor vehicles without specific authority in the 1988 Act, it does not believe that is required to extend those procedures to cover nonconforming equipment items (other than those attached and in use on a vehicle), as is presently provided for under § 12.80(b)(1)(v). Similarly, the diplomatic/foreign military exception will no longer cover nonconforming equipment items, as it presently does in § 12.80(b)(vi). Although the agency did not call specific attention to these omissions in the preamble to the proposal, the omissions are readily apparent in the text of the proposed regulation.

Provision of New Declaration Forms

NADA asked that the agency either revise or publish a new HS–7 importation form as part of the final rule, or indicate how that form will be revised as part of a new Customs Service regulation.

Development of a new form in its definitive state must await receipt and action upon petitions for reconsideration, if any, regarding this final rule. However, NHTSA believes that it would be in the public interest to publish the new form in the **Federal Register** at the earliest practicable time, and will endeavor to do so in a further notice under Docket 89–5.

IMPACTS

NHTSA has considered the impacts of this rulemaking action and has determined that it is not major within the meaning of Executive Order 12291 "Federal Regulation". It implements Public Law 100–562 under which primary authority to establish regulations governing the importation of motor vehicles and equipment into the United States is shifted to NHTSA, rather than being jointly shared with the U.S. Customs Service. As such, it establishes the rights and duties of those who may import nonconforming motor vehicles, and the types of nonconforming motor vehicles that may be imported. It is not significant under Department of Transportation regulation policies and procedures. Less than 3,000 motor vehicles a year are currently imported, and it is anticipated that this number will not increase. There is no substantial impact upon a major transportation safety program, and the action does not involve any substantial public interest or controversy. There is no substantial effect on state and local governments. The impact upon the Federal Government is that certain present obligations of the U.S. Customs Service are transferred to the Department of Transportation. As discussed previously, many of the new requirements are specified by the 1988 Act, and thus do not reflect any exercise of agency discretion. These include not only importation through or by contract with a registered importer, but also importation of vehicles and equipment requiring further manufacturing to perform their intended function, importation of vehicles by specified foreign diplomatic and military personnel, importation of vehicles more than 25 years old, and importation of vehicles for the purpose of research, investigations, studies, demonstrations or training, or competitive racing events, and importation under a separate performance bond. Nevertheless, a regulatory evaluation analyzing the economic impacts of this and the related final rules required by Public Law 100–562 has been prepared, and is available for review in the docket, as part of the Regulatory Flexibility Analysis.

The agency has also considered the effects of this rule in relation to the Regulatory Flexibility Act. I certify that this rule will not have a significant economic impact upon a substantial number of small entities. Although entities that currently modify nonconforming vehicles are small businesses within the meaning of the Regulatory Flexibility Act, there is no restriction prohibiting them from registering as importers and continuing their activities. Although a registered importer will have to pay a fee or fees to the agency, as required by statute, the agency does not view this requirement as resulting in a significant impact. Further, small organizations and governmental jurisdictions will not be significantly affected as they are not generally importers and purchasers of nonconforming motor vehicles. However, a Regulatory Flexibility Analysis has been prepared covering all regulations that implement the 1988 Act, and placed in the public docket.

NHTSA has analyzed this rule for purposes of the National Environmental Policy Act. The rule will not have a significant effect upon the environment because it is anticipated that the annual volume of motor vehicles imported under the rule will not vary significantly from that existing before promulgation of the rule.

The declaration requirements in this rule 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. The declarations have been submitted to OMB for its approval, pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The information collection requirements in this rule become effective when they have been approved by OMB.

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

List of Subjects in 49 CFR Part 591

Imports, Motor vehicles safety, Motor vehicles.

In consideration of the foregoing, a new part 591, Importation of Vehicles and Equipment Subject to Federal Motor Vehicle Safety Standards, is added to title 49, chapter V, to read as follows:

PART 591—IMPORTATION OF VEHICLES AND EQUIPMENT SUBJECT TO FEDERAL MOTOR VEHICLE SAFETY STANDARDS

Sec.

Authority: Public Law 100–562, 15 U.S.C. 1401, 1407; delegations of authority at 49 CFR 1.50 and 501.8

§ 591.1 Scope.

This part establishes procedures governing the importation of motor vehicles and motor vehicle equipment subject to the Federal motore vehicle safety standards.

§ 591.2 Purpose.

The purpose of this part is to ensure that motor vehicles and motor vehicles equipment permanently imported into the United States conform with, or are

brought into conformity with, all applicable Federal motor vehicle safety standards issued under part 571 of this chapter, and to ensure that vehicles and equipment items imported on a temporary basis are ultimately either exported or abandoned to the United States.

§ 591.3 Applicability.

This part applies to any person offering a motor vehicle or item of motor vehicle equipment for importation into the United States. Regulations prescribing further procedures for importation of motor vehicles and items of motor vehicles equipment into the Customs territory of the United States, as defined in 19 U.S.C. 1202, are set forth in 19 CFR 12.80.

§ 591.4 Definitions.

All terms used in this part that are defined in section 102 of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1391) are used as defined in the Act.

Administrator means the Administrator of NHTSA.

NHTSA means the National Highway Traffic Safety Administration of the Department of Transportation.

Original manufacturer means the entity responsible for the original manufacture or assembly of a motor vehicle, and does not include any person (other than such entity) who converts the motor vehicle after its manufacture to conformance with the Federal motor vehicle safety standards.

§ 591.5 Declarations required for importation.

No person shall import a motor vehicle or item of motor vehicle equipment into the United States unless, at the time it is offered for importation, its importer files a declaration, in duplicate, which declares one of the following:

(a)(1) The vehicle was not manufactured primarily for use on the public roads and thus is not a motor vehicle subject to the Federal motor vehicle safety standards; or

(2) The equipment item is not a system, part, or component of a motor vehicle and thus is not an item of motor vehicle equipment subject to the Federal motor vehicle safety standards.

(b) The vehicle or equipment item conforms with all applicable safety standards (or the vehicle does not conform solely because readily attachable equipment items which will be attached to it before it is offered for sale to the first purchaser for purposes other than resale are not attached), and bears a certification label or tag to that effect permanently affixed by the original manufacturer to the vehicle, or to the equipment item or its delivery container, in accordance with, as applicable, 49 CFR parts 555, 567, 568, or 571 (for certain equipment items).

(c) The vehicle or equipment item does not comply with all applicable Federal motor vehicle safety standards, but is intended solely for export, and the vehicle or equipment item, and the outside of the container of the equipment item, if any, bears a label or tag to that effect.

(d) The vehicle does not conform with all applicable Federal motor vehicle safety standards, but the importer is eligible to import it because:

(1) (S)he is a nonresident of the United States and the vehicle is registered in a country other than the United States,

(2) (S)he is temporarily importing the vehicle for personal use for a period not to exceed one year, and will not sell it during that time,

(3) (S)he will export it not later than the end of one year after entry, and

(4) The declaration contains the importer's passport number and country of issue.

(e) The vehicle or equipment item requires further manufacturing operations to perform its intended function, other than the addition of readily attachable equipment items such as mirrors, wipers, or tire and rim assemblies, or minor finishing operations such as painting, and upon completion of such further manufacturing operations will comply with all applicable Federal motor vehicle safety standards.

(f) The vehicle does not conform with all applicable Federal motor vehicle safety standards, but the importer is eligible to import it because:

(1) The importer has furnished a bond, which is attached to the declaration, in amount equal to 150% of the entered value of the vehicle as determined by the Secretary of the Treasury, to ensure that the vehicle will be brought into compliance with all applicable Federal motor vehicle safety standards, or, in the absence of such compliance, that it will be delivered to the Secretary of the Treasury for export, or abandoned to the United States, and that if the Administrator determines that the vehicle has not been brought into compliance with all such standards, the importer states (s)he will deliver to the Secretary of the Treasury for export, or abandon to the United States, such vehicle within the time limit imposed by the Administrator; and

(2)(i) The importer has registered with NHTSA pursuant to part 592 of this chapter, and such registration has not been revoked or suspended, and the Administrator has determined pursuant to part 593 of this chapter that the model and model year of the vehicle to be imported is eligible for importation into the United States; or

(ii) The importer has executed a contract or other agreement with an importer who has registered with NHTSA pursuant to part 592 of this chapter and whose registration has not been suspended or revoked; and the Administrator has determined pursuant to part 593 of this chapter that the model and model year of the vehicle to be imported is eligible for importation into the United States;

(g) The vehicle does not conform with all applicable Federal motor vehicle safety standards, but the importer is eligible to import it because:

(1) The importer's assigned place of employment has been outside the United States at all times between October 31, 1988, and the date the vehicle is entered into the United States;

(2) The importer has not previously imported a motor vehicle into the United States that was subject to the Federal motor vehicle safety standards;

(3) The importer had acquired (or entered into a binding contract to acquire) the vehicle before October 31, 1988; and

(4) The vehicle will be entered into the United States not later than October 31, 1992.

(h) The vehicle does not conform with all applicable Federal motor vehicle safety standards, but the importer is eligible to import it because:

(1) (S)he is a member of:

(i) The armed forces of a foreign country on assignment in the United States; or

(ii) The Secretariat of a public international organization so designated under the International Organizations Immunities Act (22 U.S.C. 288) on assignment in the United States; or

(iii) The personnel of a foreign government for whom free entry of vehicles has been authorized by the Department of State; and

(iv) The motor vehicle is being imported on a temporary basis, and for the personal use of the importer.

(2) (S)he will not sell the vehicle to any person in the United States, other than a person eligible to import a vehicle under this subsection; and

(3) (S)he will provide the Office of Foreign Missions of the State Department, before departing the United States at the conclusion of a tour of duty, with documentary proof that the vehicle is being, or has been, exported.

(i)(1) The vehicle was manufactured before January 1, 1968, or, if a motorcycle, before January 1, 1969; or

(2) The equipment item was manufactured on a date when no applicable safety standards were in effect.

(j) The vehicle or equipment item does not conform with all applicable Federal motor vehicle safety standards, but is being imported solely for the purpose of:

(1) research;

(2) investigations;

(3) studies;

(4) demonstrations or training; or

(5) competitive racing events;

and the importer has received written permission from NHTSA.

§ 591.6 Documents accompanying declarations.

Declarations of eligibility for importation made pursuant to § 591.5 must be accompanied by the following certification and documents, where applicable.

(a) A declaration made pursuant to § 591.5(a) shall be accompanied by a statement substantiating that the vehicle was not manufactured for use on the public roads, or that the equipment item was not manufactured for use on a motor vehicle or is not an item of motor vehicle equipment.

(b) A declaration made pursuant to § 591.5(e) shall be accompanied by:

(1) (For a motor vehicle) a document meeting the requirements of § 568.4 of part 568 of this chapter.

(2) (For an item of motor vehicle equipment) a written statement issued by the manufacturer of the equipment item which states the applicable Federal motor vehicle safety standard(s) with which the equipment item is not in compliance, and which describes the further manufacturing required for the equipment item to perform its intended function.

(c) A declaration made pursuant to § 591.5(f) shall be accompanied by a bond in an amount equal to 150% of the entered value of the vehicle as determined by the Secretary of the Treasury for the conformance of the vehicle with all applicable Federal motor vehicle safety standards, or, if conformance is not achieved, for the delivery of such vehicle to the Secretary of the Treasury for export at no cost to the United States, or for its abandonment.

(d) A declaration made pursuant to § 591.5(f) by an importer who is not a Registered Importer shall be accompanied by a copy of the contract or other agreement that the importer has with a Registered Importer to bring the vehicle into conformance with all applicable Federal motor vehicle safety standards.

(e) A declaration made pursuant to § 591.5(g) shall be accompanied by certification, including appropriate documentary proof that the vehicle for which declaration is made had been acquired by the importer as of October 31, 1988, or, if not so acquired, by a copy of a contract to acquire the vehicle, dated before October 31, 1988, which was binding upon the importer.

(f) A declaration made pursuant to § 591.5(h) shall be accompanied by a copy of the importer's official orders, or, if a qualifying member of the personnel of a foreign government on assignment in the United States, the name of the embassy to which the importer is accredited. A declaration made pursuant to § 591.5(j) shall be accompanied by a letter from the Administrator authorizing importation pursuant to that paragraph. Any person seeking to import a motor vehicle or item of motor vehicle equipment pursuant to § 591.5(j) shall submit in advance of such importation, a written request to the Administrator containing a full and complete statement identifying the specific purpose(s) of importation, which describes the use to be made of the vehicle or equipment item. If use on the public roads is an integral part of the purpose for which the vehicle or equipment item is imported, the statement shall request permission to license the vehicle for use (or use the equipment item) on the public roads, describing the purpose for which such use is necessary, and stating the estimated period of time necessary to use the vehicle or equipment item on the public roads. The statement shall also state the intended disposition to be made of the vehicle or equipment item after completion of the purpose for which it is imported. Any violation of a term or condition imposed by the Administrator shall be considered a violation of 15 U.S.C. 1397(a)(1)(A) for which a civil penalty may be imposed.

§ 591.7 Restrictions on importations.

(a) A vehicle or equipment item which has entered the United States under a declaration made pursuant to § 591.5(j), and for which a Temporary Importation Bond has been provided to the Secretary of the Treasury, shall not remain in the United States for a period that exceeds 3 years from its date of entry.

(b) A vehicle or equipment item which has entered the United States under a declaration made pursuant to § 591.5(j), and for which duty has been paid, shall not remain in the United States for a period that exceeds 5 years from its date of entry, unless written permission has been obtained from the Administrator, NHTSA.

(c) An importer of a vehicle which has entered the United States under a declaration made pursuant to § 591.5(j) may license it for use on the public roads only if written permission has been granted by the Administrator, NHTSA, pursuant to § 591.6(f).

Issued on: September 26, 1989.

Jeffrey R. Miller,

Acting Administrator.

[FR Doc. 89-23080 Filed 9-27-89; 11:07 am]

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49 CFR Part 571

[Docket No. 88-03, Notice 2]

RIN 2127-AC 76

Federal Motor Vehicle Safety Standards; Hydraulic Brake Systems; Air Brakes

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

ACTION: Final rule.

SUMMARY: Standards No. 105, *Hydraulic Brake Systems,* and No. 121, *Air Brake Systems,* specify procedures for the burnishing or "breaking-in" of a vehicle's brakes. Under the two standards' test procedures, a vehicle's brakes are burnished prior to conducting some of the performance tests for vehicle braking. Today's notice amends these standards to specify, for all types of vehicles, that automatic brake adjusters on vehicles so equipped must remain operational during the burnish procedures and subsequent brake tests.

DATES: This rule will become effective September 1, 1991. Optional compliance is permitted October 30, 1989.

ADDRESSES: Petitions for reconsideration should be submitted to the Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Carter, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC (202-366-5274).

SUPPLEMENTARY INFORMATION: Standards No. 105, *Hydraulic Brake Systems,* and No. 121, *Air Brake Systems,* specify procedures for the burnishing or "breaking-in" of a vehicle's brakes. Under the two standards' test procedures, a vehicle's brakes are burnished prior to conducting

some of the performance tests for vehicle braking.

On July 27, 1983, NHTSA published in the **Federal Register** (48 FR 29560) a notice of proposed rulemaking (NPRM) to amend the burnish procedures of Standards No. 105 and No. 121, as they apply to heavy vehicles. One of the proposed changes concerned automatic adjusters. The agency noted that Standard No. 105 specifies for hydraulic-braked vehicles that automatic adjusters can be disconnected prior to the burnish procedure, but if disconnected, they must remain disconnected throughout the brake tests. If the devices are not disconnected, a brake adjustment is permitted at the end of the burnish and all remaining tests are performed with the adjusters connected. On the other hand, NHTSA has interpreted Standard No. 121 to require for air-braked vehicles that automatic adjusters not be disconnected. Today's final rule affirms that interpretation. The July 1983 NPRM proposed to specify in both standards, for heavy vehicles, that automatic adjusters remain operational during brake tests. Under that proposal, vehicles with gross vehicle weight ratings (GVWR's) of 10,000 pounds or less would continue to have been permitted to be tested with automatic adjusters deactivated.

Some of the commenters on the June 1983 NPRM argued that there is no reason to treat vehicles with a GVWR in excess of 10,000 pounds differently from vehicles with a GVWR of 10,000 pounds or less. These commenters stated that if deactivation of automatic adjusters is permitted for light vehicles, heavier vehicles should be offered the same option.

On May 23, 1985, NHTSA published in the **Federal Register** (50 FR 21313) a supplemental NPRM (SNPRM) concerning a number of the issues raised by commenters in response to the June 1983 notice. With respect to automatic adjusters, the agency stated that it agreed with the implicit point that the reasons for and against permitting the deactivation of automatic adjusters apply equally to all vehicles with those adjusters, regardless of size. NHTSA announced in that notice that rather than address the question of the deactivation of automatic brake adjusters in a piecemeal fashion, it would instead issue a notice addressing that issue for all vehicles.

On January 14, 1988, NHTSA published in the **Federal Register** (53 FR 934) an NPRM proposing to amend Standards No. 105 and No. 121 to specify, for all types of vehicles, that automatic brake adjusters remain operational during the burnish procedures and subsequent brake tests. The proposal allowed for a post-burnish brake adjustment in accordance with the manufacturer's recommendations as furnished to the purchaser (i.e., in the owner's manual). Nine comments were received. Of these, seven commenters expressed general concurrence with the proposed approach, and two objected to it.

Austin Rover, Volkswagen of America, the Heavy Duty Manufacturers Association, and Bendix Heavy Vehicle Systems (commenting on Standard No. 121 only) expressed support for the proposal.

General Motors and Chrysler supported the proposal, but felt it was inappropriate to require the specific brake adjustment information in the owner's manual. NHTSA agrees that requiring this technical information in the owner's manual serves little or no useful purpose to the consumer. The final rule has been revised to specify that after burnishing, the brakes are to be adjusted in accordance with the manufacturer's recommendation. This will provide manufacturers with flexibility to specify recommended adjustments in service literature, rather than being required to provide that information in the owner's manual.

General Motors, in a comment that is beyond the scope of today's rulemaking, also suggested that NHTSA issue an SNPRM to clarify the provisions of Standards No. 105 and No. 121 that are applicable to various types of vehicles. Chrysler recommended that the wording of S7.4.1.2 and S7.4.2.2 in Standard No. 105 be revised to eliminate language addressing the lock out of automatic adjusters. NHTSA eliminated the language in S7.4.2.2 in a March 14, 1988, final rule, Burnish Procedures for Heavy Duty Vehicles, (53 FR 8190). Today's final rule eliminates the language referring to adjuster lock out contained in S7.4.1.2.

Rockwell International and Bendix Heavy Vehicle Systems both recommended that NHTSA allow manual adjustment of automatic adjusters during burnish procedures under Standard No. 121. Although these comments are outside the scope of today's rulemaking, NHTSA notes that such adjustments are not precluded by the existing regulatory language. The March 1988 rule provides, with regard to heavy vehicles, that the brakes be adjusted in accordance with the manufacturer's recommendations at specified intervals during the burnish procedure, as well as at the end of the procedure. Under that rule, automatic adjusters are permitted to be manually adjusted at the same times as other types of brake adjustments during burnish. *See,* 53 FR 8201–2. That requirement is not being changed by today's rule.

Rockwell also suggested that S5.3 of Standard No. 121 be revised to allow the readjustment of brakes prior to each test sequence. This comment is beyond the scope of today's rulemaking.

Freightliner Corp. indicated that permitting different standards for vehicles with automatic, as opposed to manual, brake adjusters unfairly penalizes manufacturers using automatic adjusters. Freightliner also provided a comment outside the scope of today's rulemaking, relating to brake adjustment intervals during brake burnishing. This issue was addressed in the March 1988 final rule.

Ford and Bendix Chassis and Brake Division (a supplier of passenger car brake components to Ford) submitted comments opposing the proposal to prohibit the deactivation of automatic adjusters during burnishing and testing under Standard No. 105. Ford believed that the proposed revisions had no relation to improved safety, would provide no benefit to Ford's customers, and would require the redesign of brakes on various Ford vehicles, resulting in additional costs. Bendix pointed out that its brakes are subject to over-adjustment when the automatic adjusters are activated during burnishing and testing, although it is not aware of any over-adjustment problems occurring during actual use by consumers. Bendix also explained that redesign of its brakes to include an automatic adjuster that would be insensitive to the type of stops required by Standard 105 would require a major retooling effort and a substantial test and development program. Finally, Bendix stated that the increased costs of such an effort were not justified, and that the proposal should not be adopted because it results in no benefit to the public, or improvement in safety.

Since the close of the public comment period on the NPRM, NHTSA has been advised by Ford that it is changing the designs of its brake systems so that they will no longer require deactivation of the automatic adjusters during burnishing and testing. As a result, Ford has indicated that it no longer objects to the revised standard as proposed as long as adequate lead time is provided. The final rule provides a lead time which NHTSA believes should be adequate for all manufacturers, including Ford.

In the past, problems were sometimes experienced with automatic brake

adjusters during burnish procedures. For some vehicles, the swelling of linings at high temperatures made it difficult to complete the burnish procedures, an occurrence which led the agency to permit automatic adjusters to be disconnected during testing under Standard No. 105. However, newer designs for linings and automatic adjusters have essentially eliminated these problems, particularly for lighter vehicles. NHTSA is aware of only one manufacturer, Ford, which currently specifies that the automatic adjusters on any of its vehicles with a GVWR of 10,000 pounds or less be deactivated for purposes of brake testing. However, as noted above, Ford has notified NHTSA of its intention to modify the brakes on these models to eliminate the need for deactivation.

One of the purposes behind the various test conditions and procedures specified in Standards No. 105 and No. 121 is to test vehicles as they will perform when used on the road. Since automatic brake adjusters are operational during normal use, specifying that they be operational during brake testing helps approximate real-world conditions and provides a better test of real-world performance.

While it may not be considered normal or typical, the potential exists for motorists to drive their vehicles in a manner that could result in the automatic adjusters over-adjusting, an occurrence which could lead to unexpected brake overheating and thus fade. NHTSA believes it is important to amend the rule to reduce the possibility of over-adjusting.

As indicated above, the March 1988 final rule did not cover burnish procedures for vehicles with a GVWR of 10,000 pounds or less. Under today's rule, manual adjustment for vehicles with a GVWR of 10,000 pounds or less is permitted only at the end of the burnish procedure. This is consistent with Standard No. 105's current requirements for vehicles whose automatic adjusters are not deactivated. It is also consistent with the agency's proposal for an internationally harmonized passenger car brake standard. See 52 FR 1474, January 14, 1987.

NHTSA believes that compliance with today's rule will not impose an unreasonable burden upon Ford or any other manufacturer. The necessary designs and technology needed to overcome any tendency toward over-adjusting are available inexpensively and are in use by virtually all other manufacturers. NHTSA has estimated the cost of adding the improved adjuster design to be no more than 60¢ per vehicle. In addition, neither Ford nor Bendix submitted any data showing that over-adjustment problems during burnish and testing still exist with the Ford brake systems. NHTSA believes that requiring adjusters to be activated during testing and burnishing procedures is appropriate and promotes the agency's goal of improved motor vehicle safety. Finally, as discussed above, Ford has indicated its intention to change its existing brake designs voluntarily so as to eliminate the need for deactivation of the adjusters. Since Ford has been the last manufacturer to avail itself of the provisions allowing lockout of adjusters, there appears to be no reason to retain these provisions.

Today's rule will become effective on September 1, 1991. Optional compliance witll be permitted effective 30 days after publication in the **Federal Register.** The time period will enable manufacturers to conduct compliance testing, as well as make any minor changes to their vehicles that might be necessary in order to ensure compliance.

The agency has considered the costs and other impacts of this rule and has determined that it is neither major within the meaning of Executive Order 12291 nor significant within the meaning of the Department of Transportation's regulatory procedures. This rule should have little effect on the cost or design of the vehicles to which it is applicable. The rule makes only minor changes in the test procedures for Standard No. 105, which will require few, if any design or manufacturing changes. Since the effects of the final rule are 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 this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis has been prepared. The effect of this final rule on any small manufacturers of vehicles or brake systems would be minimal, since it makes only minor changes in the test procedures for the braking standards. Few, if any, design or manufacturing changes are required of these manufacturers. Small organizations and governmental units will not be significantly affected, since any price impacts associated with this action are so minimal as not to affect the purchasing of new motor vehicles by these entities.

Finally, the agency has considered the environmental implications of this final rule in accordance with the National Environmental Policy Act of 1969 and determined that the proposed rule would not significantly affect the human environment.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 571—[AMENDED]

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.105 [Amended]

2. S7 is revised to read as follows:

* * * * *

S7. *Test procedures and sequence.* Each vehicle shall be capable of meeting all the applicable requirements of S5. when tested according to the procedures and in the sequence set forth below, without replacing any brake system part or making any adjustments to the brake system other than as permitted in burnish and reburnish procedures and in S7.9 and S7.10. (For vehicles only having to meet the requirements of S5.1.2 and S5.1.3 in section S5.1, the applicable test procedures and sequence are S7.1, S7.2, S7.4, S7.9, S7.10 and S7.18. However, at the option of the manufacturer, the following test procedures and sequence may be conducted: S7.1, S7.2, S7.3, S7.4, S7.5, S7.6, S7.7, S7.8, S7.9, S7.10 and S7.18. The choice of this option shall not be construed as adding to the requirements specified in S5.1.2 and S5.1.3.) For vehicles manufactured before September 1, 1991, automatic adjusters may be locked out, at the option of the manufacturer, when the vehicle is prepared for testing. If this option is selected, adjusters must remain locked out for the entire sequence of tests. For vehicles manufactured on or after September 1, 1991, automatic adjusters must remain activated at all times. A vehicle shall be deemed to comply with the stopping distance requirements of S5.1 if at least one of the stops at each speed and load specified in each of S7.3, S7.5, S7.8, S7.9, S7.10, S7.15, or S7.17 (check stops) is made within a stopping distance that does not exceed the corresponding distance specified in Table II. When the transmission selector control is required to be in neutral for a deceleration, a stop or snub shall be obtained by the following procedures: (1) Exceed the test speed by 4 to 8 mph; (2) close the throttle and coast in gear to approximately 2 mph above the test

speed; (3) shift to neutral; and (4) when the test speed is reached, apply the service brakes.

* * * * *

3. S7.4.1.2 is revised to read as follows:

* * * * *

S7.4.1.2 *Brake adjustment—post burnish.* After burnishing, adjust the brakes in accordance with the manufacturer's published recommendations.

* * * * *

4. S7.4.2.2 is revised to read as follows:

* * * * *

S7.4.2.2 *Brake adjustment—post burnish.* After burnishing, adjust the brakes in accordance with the manufacturer's published recommendations.

* * * * *

§ 571.121 [Amended]

5. S6 is revised to read as follows:

* * * * *

S6. *Conditions.* The requirements of S5 shall be met by a vehicle when it is tested according to the conditions set forth below, without replacing any brake system part or making any adjustments to the brake system except as specified. Unless otherwise specified, where a range of conditions is specified, the vehicle must be capable of meeting the requirements at all points within the range. On vehicles equipped with automatic brake adjusters, the automatic brake adjusters must remain activated at all times.

* * * * *

Issued on September 25, 1989.

Jeffrey R. Miller,

Acting Administrator.

[FR Doc. 89-22970 Filed 9-28-89; 8:45 am]

BILLING CODE 4910-59-M

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49 CFR Part 580

[Docket No. 87-09 Notice 11]

RIN 2127-AC42

Odometer Disclosure Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule; correction.

SUMMARY: On August 30, 1989, this agency published a Final Rule clarifying the responsibilities imposed on all parties in conjunction with the disclosure of mileage information in connection with the transfer of motor vehicle ownership. Among other things, the final rule set forth the circumstances under which a secure power of attorney may become void. It has come to NHTSA's attention that there is an error in the text of the final rule which inadvertently mischaracterizes the situation in which the power of attorney is voided. This notice changes the final rule to correct this mistake.

DATE: This amendment is effective September 29, 1989.

FOR FURTHER INFORMATION CONTACT: Mattie Cohan, Office of the Chief Counsel, Room 5219, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202-366-1834).

SUPPLEMENTARY INFORMATION: The last sentence of § 580.13(f), disclosure of odometer information by power of attorney, appearing on page 35888 of the August 30, 1989 issue of the **Federal Register**, reads "If the mileage disclosed on the power of attorney form is higher than the mileage appearing on the title, the power of attorney is void and the dealer shall not complete the mileage disclosure on the title." As is clear from the preamble to the final rule, the power of attorney is voided when the mileage disclosed on the power of attorney form is lower than the mileage appearing on the title. This amendment corrects the mistake in the text of 580.13(f).

This change represents only a technical correction to the agency's odometer disclosure requirements. Accordingly, the agency finds for good cause that notice and opportunity for comment are unnecessary, and this change is effective as soon as this notice is published.

PART 580—[AMENDED]

In consideration of the foregoing, § 580.13(f) of 49 CFR 580.13 is revised to read as follows:

§ 580.13 [Amended]

* * * * *

(f) Upon receipt of the transferor's title, the transferee shall complete the space for mileage disclosure on the title exactly as the mileage was disclosed by the transferor on the power of attorney form. The transferee shall submit the original power of attorney form to the State that issued it, with the application for new title and the transferor's title. If the mileage disclosed on the power of attorney form is lower than the mileage appearing on the title, the power of attorney is void and the dealer shall not complete the mileage disclosure on the title.

Issued on September 25, 1989.

Jeffrey R. Miller,

National Highway Traffic Safety, Acting Administrator.

[FR Doc. 89-22965 Filed 9-28-89; 8:45 am]

BILLING CODE 4910-59-M

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49 CFR Part 592

[Docket 89-6; Notice 2]

RIN 2127-AC97

Registered Importers of Vehicles Not Orginally Manufactured to Conform to Federal Motor Vehicle Safety Standards

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

ACTION: Final rule.

SUMMARY: With certain exceptions, the National Traffic and Motor Vehicle Safety Act, as amended by the Imported Vehicle Safety Compliance Act of 1988, will permit a motor vehicle not originally manufactured to conform to Federal motor vehicle safety standards to be imported only by a person who has registered with this agency, or by an individual who has a contract with a registered importer for making the modifications necessary for bringing the vehicle into conformance with applicable safety standards.

In partial implementation of the 1988 amendments, this rule adopts procedures and requirements regarding the registration of importers and the duties and obligations of registered importers. In most instances, the particular provisions of these procedures and requirements are mandated by the 1988 amendments.

Part 592 establishes eligibility requirements for persons wishing to acquire and maintain registration. Among the requirements are ones regarding recordkeeping, allowance of inspection of records and facilities relating to the motor vehicles which the importer has imported and/or modified, certification to the Administrator that the vehicles have been brought into compliance, and insurance to ensure that the importer will be able technically and financially to carry out noncompliance and defect notification and remedy responsibilities should they arise. Part 592 also adopts procedures for revocation or suspension of importer registration (and reinstatement) for failures to pay required fees or comply with regulations, or for filing a misleading or false certification. The rule also adopts post-modification

vehicle inspection and bond release procedures.

DATE: The effective date for the rule is October 30, 1989.

FOR FURTHER INFORMATION CONTACT: Taylor Vinson, Office of Chief Counsel, NHTSA (202–366–5263).

SUPPLEMENTARY INFORMATION: On October 31, 1988, the President signed Public Law 100–562, the Imported Vehicle Safety Compliance Act of 1988 ("the 1988 Act"). Notice of its enactment was published in the Federal Register on December 5, 1988 (53 FR 49003), and a notice of proposed rulemaking with respect to part 592 was published on April 25, 1989 (54 FR 17780). As the notice stated, the 1988 Act amends those provisions of the National Traffic and Motor Vehicle Safety Act of 1966 ("the Vehicle Safety Act") (15 U.S.C. 1381, at 1397) that relate to the importation of motor vehicles subject to the Federal motor vehicle safety standards. Specifically, the amendments strike paragraphs (b)(3) and (b)(4) of 15 U.S.C. 1397, (section 1397 may also be cited as section 108 of the Vehicle Safety Act), redesignates paragraph (b)(5) as paragraph (b)(3), redesignates paragraph (c) of 15 U.S.C. 1397 as paragraph (k), and adds new paragraphs (c) through (j).

As the agency explained in its proposal, and now repeats so that readers will have an overview of part 592, the category of importer primarily affected by the 1988 Act is the importer of motor vehicle that was not originally manufactured to conform to the Federal motor vehicle safety standards that applied to vehicles of its type at the time of its original manufacture. Under the current regulation, 19 CFR 12.80(b)(1)(iii), a nonconforming vehicle may be imported by any person. Under the 1988 Act, an importer will have to be, subject to certain exceptions, a "registered importer" (one who meets the statutory criteria and has registered with the agency pursuant to the terms and conditions of the regulation that this notice adopts), or an individual who has contracted with a registered importer. The principal obligations of the Registered Importer with respect to the vehicles it imports are (1) to bring those vehicles into compliance, or to demonstrate that they have been brought into compliance before importation, (2) to provide the Administrator with certification that the vehicles conform, and (3) in the event that noncompliances or safety related defects occur in vehicles it certifies, to notify owners, and provide a remedy. With respect to those vehicles it imports for resale, a Registered Importer falls within the long-standing definition of "manufacturer" under the Vehicle Safety Act and is responsible for notification of purchasers and remedy of noncompliances and safety related defects determined to exist in those vehicles. The 1988 Act adds a further responsibility: it makes the Registered Importer responsible for notification and remedy covering any vehicle covered by its certificate of conformity to the standards, including vehicles imported by individuals who have contracted with the Registered Importer, if a noncompliance or defect is determined to exist in substantially similar vehicles originally manufactured and certified for sale in the United States. However, the manufacturer or Registered Importer would be afforded an opportunity to demonstrate to NHTSA that the vehicles covered by the certification do not contain the noncompliance or defect.

NHTSA is attempting in this rulemaking action to formulate a program that will ensure that all imported motor vehicles conform to the Federal motor vehicle safety standards without imposing unnecessary burdens on importers. Therefore, NHTSA has tried in part 592 to impose only those requirements that are mandated by the 1988 Act, with amplifications only where it appeared necessary to implement the safety intent of the statute.

There were 10 substantive comments on the proposed rule, including questions raised by telephone or letter. Four were received from manufacturers or authorized importers (General Motors Corporation, Volkswagen of America, Mercedes-Benz of North America, and IVECO), and one each from a foreign converter (Gerhard Feldevert), authorized import dealer association (The Dealer Action Association), an importer of Canadian vehicles (Auburn Motors, Inc.), a dealer association (National Automotive Dealer Association), a truck importer (LaPine Truck Sales and Equipment Co.), and a member of the public (George Ziolo). General comments and questions to other dockets by the States of Texas and Virginia, and U.S. Trade Corp. appeared relevant, and will be discussed.

Requirements for Registration as Importer

The requirements for registration as an importer and maintenance of registration are established by paragraph 592.5. Under the regulation adopted by this notice, any person who wishes to become a Registered Importer, and who has not previously had a registration revoked, may file an application with the Administrator (new section 108(c)(3)(D)(i)). Comments to the docket raised basic questions as to who is permitted to register, and under what circumstances registration is required. IVECO, a manufacturer, asked whether it is required to register when its activities include importing nonconforming vehicles for test purposes, or vehicles requiring further manufacturing operations. Volkswagen raised the possibility that it might import nonconforming cars, and conform them before sale in the United States. While seemingly recognizing that it would have to acquire registered status, it nevertheless argued that insurance and recordkeeping requirements that NHTSA proposed for Registered Importers would be unnecessary, and it recommended that the final rule exempt original manufacturers from insurance and recordkeeping requirements. A letter from a foreign national, Gerhard Feldevert, expressing a wish to become a Registered Importer, raises the question whether the 1988 Act permits a Registered Importer to be located outside the United States.

The principal obligation of a Registered Importer is to certify that a vehicle not originally manufactured in conformance with the Federal motor vehicle safety standards has been brought into conformity with them before it is licensed for use on the public roads. Since a vehicle requiring further manufacturing operations is a vehicle whose original manufacture is incomplete, its importer need not be a Registered Importer. This type of importation is governed exclusively by the special provision for it in section 108(e), thus excluding it from vehicles subject to the Registered Importer provision of section 108(f). Similarly, vehicles imported for test purposes are governed by section 108(j), not section 108(f) and IVECO need not be a Registered Importer for these types of importations. On the other hand, Volkswagen correctly surmises that its hypothetical importation of nonconforming vehicles which it intends to conform before sale subjects it to the Registered Importer requirements. The 1988 Act does not distinguish between U.S. subsidiaries of major foreign automotive corporations and corner garages; any person wishing to import a nonconforming motor vehicle for sale in the United States must be a Registered Importer, or have a contract with a Registered Importer. Furthermore, the vehicle itself is subject to a determination by NHTSA of its eligibility for importation, and Volkswagen is required to petition for an agency decision under part 593. To be sure, the sheer size of a company such as Volkswagen may justify a

different treatment of the issue of financial capability. Although NHTSA cannot adopt a different requirement in this final rule, it will study the matter with a view towards proposing, at an early date, an alternative method for factory-authorized importers, or corporations of a certain size, to demonstrate their financial capability to fulfill notification and remedy responsibilities.

Finally, it seems clear from the obligations imposed by statute upon Registered Importers that they must be resident in the United States. The ability of NHTSA to inspect vehicles, records, and facilities to verify conformance and the capabilities of Registered Importers would be severely hampered if those entities were located beyond the direct jurisdiction of the Department of Transportation and subject to the laws of another country. Accordingly, NHTSA will consider and grant applications only from Registered Importers who are residents of, and whose facilities are located in a "State" as defined by 15 U.S.C. 1391(8): The 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, and the Commonwealth of the Northern Marianas.

Because section 108(c)(3)(D)(i) also provides that registration may be denied "to any person who is or was, directly or indirectly, owned or controlled by, or under common ownership or control with, a person who has had a registration revoked * * *", as part of its application, an applicant will be required to disclose the names of its owners, shareholders, or partners (paragraph 592.5(a)(4)). In the opinion of Mercedes-Benz, the agency should define "common ownership" to include any ownership interest, no matter how small, in order to identify an importer whose registration has been revoked and who may hold a minority interest. The agency believes that its requirements will accomplish this, and that a definition is not required. If any of the owners are corporations, a requirement to provide the names of all shareholders might be unduly burdensome, and the regulation requires only that the names of shareholders whose ownership interest is 10% or more be supplied (paragraph 592.5(a)(5)). If the agency discovers that a revoked registrant has an ownership position in a Registered Importer or applicant, and may profit by the actions of the Importer (such as providing the facilities where the conversion work will occur), the agency will take this fact into consideration when it is reviewing applications or their renewals.

Chief among the registration requirements stated in section 108(c)(3)(D)(ii) is proof of financial ability to carry out notification and remedy responsibilities should a noncompliance or safety related defect be found in any vehicle the Registered Importer has imported and/or for which it has furnished a certificate of conformity. In developing a provision addressing the financial ability of a Registered Importer to carry out its notification and remedial obligations, the agency was guided by the experience of the Environmental Protection Agency ("EPA") in developing and promulgating regulatory provisions addressing the financial ability of Independent Commercial Importers ("ICI's) to honor emissions warranties. (40 CFR 85.1510(b)(2)(i), 52 FR 36136). ICIs are importers of motor vehicles and engines, and have registered with the EPA. Some of them may register with NHTSA. Thus, a NHTSA requirement that parallels the EPA one is not likely to add significantly to the regulatory burden of those who import nonconforming vehicles subject to Federal regulations.

Commenters on EPA's regulations at the proposal stage, principally original equipment vehicle and engine manufacturers, and the State of California, suggested that ICIs acquire prepaid insurance and/or bonds to cover ICI warranty and recall liability for the useful life of each vehicle. There was no opposition from ICIs regarding this concept. Based on its experiences under the California emissions standards for motor vehicles, the California Air Resources Board (CARB) noted that the modification industry is composed of small businesses, and argued that it is likely that a number of firms will fail over time. Without a requirement for an insurance policy or bond to cover warranty and recall repairs, owners of vehicles obtained from firms that are no longer in business would have to bear the warranty costs. CARB offers modifiers a choice between obtaining insurance or a bond.

EPA decided to require a prepaid mandatory service insurance policy that, in effect, assures effective warranty coverage. That agency reasoned that it was unnecessary to require a bond to assure an effective recall and warranty program. Because the prepaid mandatory service insurance policy seemed acceptable to modifiers as a means of assuring their performance regarding recalls and warranties, NHTSA proposed in paragraph 592.5(a)(8) that the application contain "a copy of a contract to acquire, effective upon its registration as an importer, a prepaid mandatory insurance policy underwritten by an independent insurance company, in an amount sufficient to ensure that the applicant will be able financially to remedy any noncompliance or safety related defect determined to exist in any vehicle for which it has furnished a certificate of conformity to the Administrator * * *" However, NHTSA had no knowledge of the burden the insurance requirement might impose upon an applicant, and requested comments on this point. NHTSA also requested comments upon alternate appropriate means of assuring financial ability to carry out notification and remedial activities. Finally, NHTSA requested comments on the amount of insurance that would be necessary to demonstrate "sufficient financial responsibility." (section 108(d)(2)). The premium paid for such a policy would appear to encompass the relatively low costs of notification (i.e., discerning, through records or R.L. Polk, the names and addresses of vehicle owners), and the somewhat higher costs of remedy (through repair, repurchase, or replacement), as affected by the yearly number of vehicles for which the registered importer estimates it will submit certification. NHTSA understands that one company is currently insuring ICI's under EPA's program, but given the difference between Federal safety and emission standards the cost experience is not directly comparable.

Substantive comments were received on this issue from Mercedes-Benz, the Dealer Action Association, National Automotive Dealers Association, and U.S. Trade Corp. Mercedes stated that its remedial experience indicated that a prepaid insurance policy in an amount equal to $2000 per vehicle should be sufficient (adjusted annually for inflation), or 5% of the dutiable value of the vehicle), whichever is the lesser. A similar comment was forthcoming from the Dealer Action Association, which suggested a surety bond as an alternative to the prepaid insurance policy, but for 5% of the dutiable value of the vehicle. It also commented that $2000, self-adjusting for inflation, seemed a fair estimate of remedial costs. U.S. Trade Corp., a potential applicant to become a Registered Importer, commented that a financial ability requirement parallel to that of EPA would probably not add much to the Registered Importer's burden, but would add to the costs to the consumer. It

argued that possession of standard liability insurance that covers the work of each Registered Importer should be sufficient to cover the vehicle owner.

The agency has reviewed these comments. Given the historical fact that a large portion of nonconforming vehicles have been originally manufactured by Mercedes-Benz, NHTSA has carefully considered the comments of Mercedes-Benz of North America. The figure of $2,000 per vehicle was supported by the Dealer Action Association, and, to NHTSA, appears a reasonable estimate of the costs to repair or replace a major component of a motor vehicle. The agency will review campaigns involving Registered Importers to determine whether this figure requires adjustment for inflation or other factors, but is not requiring a self-adjusting feature. Although a Registered Importer would be required, when repair is impossible, to replace the vehicle with an equivalent one, or repurchase the vehicle, at a cost that might well exceed $2,000, such a contingency has occurred so infrequently in NHTSA's history that, for the present, the agency has concluded that it need not be part of a Registered Importer's showing of financial capability. With respect to the alternative suggestion that the policy amount be 5% of the entered value of the vehicle, the agency observes that repair costs for older vehicles of low value could be as expensive as for newer models. Further, percentage calculations would appear to add variables into the process whereas a flat figure of $2,000 per vehicle treats all vehicles on an equal basis.

Additional comments were offered. The Dealer Action Association recommended that the policy be sufficient to compensate authorized dealers when Registered Importers are unable to perform recall work. NADA suggested that NHTSA consider EPA's approach toward vehicle repair in the final rule, to ensure that repairs are adequately performed and paid for, if not performed by, the Registered Importer. It recommended that the vehicle owner be provided with a transferable copy of the service insurance contract to facilitate repairs at facilities other than those of the Registered Importer. Although oriented towards compensation of authorized dealers, these comments are directed towards situations where it may not be practicable for the owner of a vehicle to return the vehicle to the facilities of the Registered Importer, such as when the Registered Importer is located at a great distance from the vehicle owner.

This possibility is a likely one, and of concern to NHTSA. In the agency's opinion, the Registered Importer's obligation to remedy without charge is an absolute one, and cannot be contingent upon the Importer itself performing the repairs, even for defects or noncompliances it has introduced in the conversion process. Thus the question is, how may NHTSA best ensure that repairs without charge be furnished a vehicle owner when repairs are performed by persons other than the Registered Importer. It was suggested that NHTSA consider EPA's approach, but the agency does not find this exactly on point. Under the provisions of the Clean Air Act, converters are required to supply owners with engine performance warranties. The warranties are required to be insured, transferable, and provide that warranty work may be performed anywhere if the converter's facility is not reasonably available (i.e., within 50 miles) 40 CFR 85.1510(b)(2). The regulation thus does not touch upon the mechanics of compensation for warranty work performed elsewhere. In the absence of regulatory guidance, NHTSA assumes that an owner pays for the repairs at the non-converter service facility, and presents the bill to the converter for reimbursement. If such a course were followed by owners of vehicles converted to meet the safety standards, it would meet the statutory requirement of remedy without charge, although the owner would be temporarily out of pocket for the repair expenses. However, a Registered Importer should have the right to impose reasonable restrictions upon the type of facility to which a vehicle for which it has remedial responsibility may be taken. A reasonable restriction would be that the vehicle must be repaired at a factory-authorized dealership for its make (e.g., a gray market Jaguar must be repaired by the service facilities of a Jaguar new-car dealership). Because the remedial obligation exists with respect to the vehicle and not the owner, no specific requirement for transferability of insurance is required. Some of the comments indicate that a form of insurance may be available under which a claim for compensation may be made by a non-converter repair facility directly to an insurance company. Remedy without charge through this mechanism would also fulfill the statutory requirement. The agency believes that the method of ensuring remedy without charge should be the choice of the person who is required to provide it. The requirement it is adopting in response to these comments is one that follows the EPA specification for allowance of repairs at alternative locations when the Registered Importer's facility is not reasonably available, and one which requires an explanation of how remedy without charge will be ensured. The agency notes that the Registered Importer must provide NHTSA with copies of its communications to vehicle owners, and must supply the owner with NHTSA's address for complaints in the event remedy without charge is not provided. NHTSA therefore anticipates that no serious problems will arise. Further it expects that authorized dealers, or others performing campaign repairs, will be adequately compensated.

In developing part 592, the agency proposed that the application contain a statement whether the Registered Importer would modify the vehicles for which it will furnish certificates of conformity, and if not, to provide the names and address of all agents who would be the actual modifiers.

The concept that a Registered Importer could delegate actual conformance work was opposed by Mercedes-Benz and The Dealer Action Association. Both commenters argued that this did not fulfill the statutory purpose of increased accountability for conversions, and cited statements from the Congressional Record in support. In Mercedes' opinion, NHTSA would open an area of potential dispute when the object of the 1988 Act was to clarify NHTSA's jurisdiction. Conformance operations must be carried out by Registered Importers, their employees, or subsidiaries. The legal line between an "agent" and an "independent contractor" is not always clear, raising the possibility that a Registered Importer might structure a relationship to avoid acts of a modifier, including fraud.

NHTSA has carefully considered these comments. It believes that the provisions of the 1988 Act are complex enough that regulations should not be adopted that open additional avenues of potential dispute or complications with Registered Importers that might dilute the responsibility imposed by the 1988 Act, and which might result in less than full achievement of the intent of Congress when these approaches have not been specifically directed by Congress. Therefore, it agrees with the comments of Mercedes and the Dealer Action Association, and has not adopted those aspects of the proposal that countenanced delegation of conformance responsibilities to an agent.

The 1988 Act also requires that the regulation contain "provision for

ensuring that the importer (or any successor in interest) will be able * * * to carry out the importer's responsibilities * * * relating to discovery, notification, and remedy of defects." Paragraph 592.5(a)(9) requires that the applicant show that it will maintain a system of VINs, and names and addresses of owners of vehicles for which it provides certifications. Although the 1988 Act contemplates that a Registered Importer could have a "successor in interest", NHTSA proposed that registrations not be transferable. Such a prohibition appears the most feasible way to ensure that notification responsibilities are met, as well as ensuring that transfers do not occur to Importers whose registration may have been revoked or suspended. There was no comment on this point, and, accordingly, the agency has adopted paragraph 592.5(g) which states that registrations are not transferable. If there is a change in ownership interest, such as a transfer resulting in a new person acquiring more than 10% of ownership, a Registered Importer must notify NHTSA (paragraph 592.5(f)). This paragraph requires notification of changes in any of the information supplied with the application. A registration will continue indefinitely until revoked or suspended. However, a Registered Importer, in order to maintain its registration, will be required to affirm annually that there has been no change in previously provided information (paragraph 592.5(e)). This should ensure that the financial ability of a Registered Importer can be monitored, and that fees are received in a timely manner.

Duties of a Registered Importer

Paragraph 592.6 sets forth the duties of a Registered Importer. The first duty specified is to provide a bond for each vehicle that it imports to ensure that it will bring the vehicle into conformance, or that it will be exported or abandoned to the United States (paragraph 592.6(a).

The second duty required for a Registered Importer is that it establish, maintain, and retain for 8 years from the date of entry of a vehicle for which it furnishes a certificate of conformity the records specified in paragraph 592.6(b)(1) through (5), generally relating to substantiation of conformance work and vehicle ownership. Eight years was proposed because it is the period specified in the National Traffic and Motor Vehicle Safety Act for which a manufacturer is obliged to remedy a noncompliance or safety related defect at no cost to the vehicle owner (15 U.S.C. 1414(a)(1)(4)). For a fuller interpretation as to how the 8-year limit affects the obligations of a Registered Importer, the reader should consult the section of this notice discussing paragraph 592.6(f).

Comments on record-keeping were submitted by NADA and Mercedes-Benz. NADA commented that the final rule should emphasize the continuing duty of Registered Importers towards the vehicle, by requiring that they continually update their owner lists since notification obligations extend beyond first purchasers. It is true that there is a continuing obligation towards the vehicle, but NHTSA believes that existing notification procedures, which will be applicable to Registered Importers, sufficiently meet the need for safety. To require an updated list of owners would create an obligation that does not exist with respect to original manufacturers, and would be of questionable success should an owner fail to respond to a Registered Importer's query. Such a requirement would impose an unnecessary burden upon a Registered Importer. The vehicle is identifiable through its VIN and in the event of notification, the Registered Importer is required by 15 U.S.C. 1413(c)(1) to notify owners "whose named and address is reasonably ascertainable by the manufacturer through State records or other sources available to him." Mercedes-Benz commented that based upon past experience it is not likely that many gray market importers will remain in business for the normal useful life of the vehicles they certify. It recommended that the final rule address the issue of retention of records on dissolution of a business, and that Registered Importers be required to deliver all vehicle conformance records to NHTSA in this event in order to assure the ability to reach gray market owners. NHTSA believes that one effect of the 1988 Act will be that the number of gray market importers will be substantially reduced, and that those which remain will be relatively stable financially. Mercedes' comment appears based upon the assumption that, in the absence of a Registered Importer *qua* manufacturer, NHTSA must make its own determinations of noncompliance or safety related defect, and that its ability to notify owners in the aftermath of such determinations will be impaired without such records. This assumption is based upon an erroneous understanding of NHTSA's procedures. The statutory purpose of NHTSA's determinations is to order the manufacturer to notify and remedy when the manufacturer fails to make its own determination. If there is no viable manufacturer (or Registered Importer), NHTSA will not proceed to such a determination. Should safety considerations warrant, NHTSA may issue a press release advising owners of the conditions giving rise to concern and advise precautions to be taken. Thus, NHTSA has not adopted this suggestion.

The third major responsibility of a Registered Importer is to affix a certification label to each vehicle it conforms in the manner required of original vehicle manufacturers, which identifies the Registered Importer (paragraph 592.6(c)). NADA recommended that the certification label specifically designate the vehicle as "Nonconforming Import", consistent with labels required for incomplete or intermediate vehicle manufacturers, that it include specific reference to conformance with Theft Prevention Act requirements, as well as language consistent with certification by alterers pursuant to 49 CFR 567.7(a). The agency declines to adopt the suggestions. The imported vehicle will presumably no longer be "Nonconforming" after its modification. Under existing regulations, certification to Theft Prevention requirements must be provided separately from certification to other standards (paragraph 567.4(k)), and no good reason has been advanced to require otherwise. Unlike the alterer, who supplements an existing certification, a Registered Importer certifies *de novo,* and thus must certify according to 49 CFR 567.4. As the person affixing the label to the vehicle under that regulation, the Registered Importer will be clearly identified, as will the original manufacturer or assembler of the vehicle.

The fourth duty of a Registered Importer is to provide NHTSA with certification upon completion of modifications that the vehicle conforms and that it is the party responsible for conformity (paragraph 592.6(d)). NHTSA proposed that substantiation of certification through photographic and documentary evidence be submitted for the initial certification provided for a specific model and model year only, and with subsequent certifications of that model and model year only if requested by NHTSA. The proposal has been adopted as written (paragraph 592.6(e)), although the Dealer Action Association argued that NHTSA should require full documentary evidence for each vehicle. In essence, NHTSA does: paragraph 592.6(b)(4) requires the Registered Importer to keep records both photographic and documentary reflecting the modifications made and submitted to NHTSA pursuant to paragraph 592.6(e), which must be made

available to NHTSA to inspect (paragraph 592.6(g)). NHTSA does not wish to create unnecessary burdens upon either a Registered Importer or itself by requiring excessive documentation. If a Registered Importer fails in its obligations to conform the vehicle (not always apparent through photographic evidence), its registration may be suspended or revoked, and civil penalties imposed.

A Registered Importer also has notification and remedial obligations imposed by the 1988 Act. These obligations have been incumbent upon manufacturers of motor vehicles since enactment of the Vehicle Safety Act. Although a "manufacturer" includes any person importing motor vehicles for resale, these obligations have not always been understood or followed by importers for resale of nonconforming vehicles, nor have they always been enforced by NHTSA. However, Congress has specifically indicated its intent that these importers fulfill this sometimes dormant responsibility (section 103(d)), and broadened its applicability. For purposes of notification and remedy, the Registered Importer shall be treated as the manufacturer with respect to any motor vehicle that it imports (regardless of whether or not it imports the vehicle for resale), or brings into conformity on behalf of an individual importer who has a contract with it. Furthermore, if the vehicle is one that is substantially similar (as determined under part 593) to one certified for sale in the United States by its original manufacturer, and a noncompliance or safety related defect is determined to exist in the substantially similar vehicle, the 1988 Act deems it to exist in the conformed vehicle as well, unless the manufacturer or Registered Importer can show otherwise. These obligations are reflected in paragraphs 592.6(f). NADA commented that the final rule should emphasize that this responsibility encompasses conditions created by the modification process, as well as incorporated into the vehicle by its original manufacturer. NHTSA regards this suggestion as well made, and paragraph 592.6(f)(2) incorporates it.

In reviewing the relationship of the notification/remedial requirements of the 1988 Act to those already existing in the Vehicle Safety Act, NHTSA has identified an ambiguity as to the length of time for which remedy without cost must be provided. According to 15 U.S.C. 1414(a)(4), the requirement shall not apply "if the motor vehicle * * * was purchased by its first purchaser more than 8 years * * * before * * * notification is furnished * * *." The general intent of Congress appears to be that manufacturers should not be required to provide free remedy for vehicles whose age exceeds 8 years, even if no corresponding limitation is imposed upon notification. If the date of first purchase is known for used imported nonconforming vehicles (such as through title documents accompanying it), there will be no difficulty determining when the 8-year period begins. However, if the date of first purchase is not known, NHTSA believes that any vehicle manufactured within 8 years of the date of notification should be eligible for remedy without charge. However, noncompliances or safety related defects could be created by a Registered Importer in the conformance process, and they may be introduced in an imported vehicle approaching or beyond an age of 8 model years. It seems fairest in this instance to regard conformance operations as a "manufacturing" process, and to commence the 8-year period with the sale of the vehicle to its first purchaser, regardless of its age. Disagreements may arise as to whether a safety related defect is attributable to the manufacturer or the Registered Importer, but these will simply have to be handled on an *ad hoc* basis.

The agency also notes that one duty of a Registered Importer arises under the bond given upon importation of each vehicle: the fulfillment of the condition that if vehicle conformance is not achieved, the vehicle will be exported at no cost to the United States by the Secretary of the Treasury, or abandoned to the United States (section 108(c)(2)(B)). If this duty, set forth in paragraph 592.6(f), is not fulfilled, and the vehicle is sold without full conformance, not only will the bond be forfeit but grounds will then exist to suspend or revoke the Importer's registration.

A final question relating to the duties of a Registered Importer was asked by LaPine: who establishes the amount of charges to be made by the Registered Importer for conformance work? These charges are a matter of contract between the Registered Importer and the person for whom the work is done, and are not established by Federal regulations.

Revocation, Suspension, and Reinstatement of Registration

Paragraph 592.7 establishes the requirements for revocation, suspension, and reinstatement of the registration of Registered Importers.

Section 108(c)(3)(D)(iii) requires the Secretary to establish procedures for revoking or suspending the registration of any Registered Importer for failure to comply with any requirement of section 108 of the Vehicle Safety Act or of any regulation issued under that section. Those procedures are also required to provide for automatically suspending the registration of a Registered Importer which knowingly files a false or misleading certification, or fails to pay a required fee in a timely manner. To cover the expenses of the registration program and certain other activities, the statute provides that each Registered Importer will have to pay an annual fee; this fee will be established on a fiscal year basis. A Registered Importer under suspension may be reinstated when the cause giving rise to the suspension ceases to exist. In determining revocation or suspension, other than automatic suspension as provided by section 108(c)(3)(D)(iii) for nonpayment of fees or for knowingly filing a false or misleading certification, the Administrator will provide notice in writing to the Registered Importer, affording it an opportunity to present data, views, and arguments as to why its registration should not be suspended or revoked. Other than its provision for automatic suspension, the 1988 Act does not distinguish suspension from revocation; either may be invoked for failure to comply with any requirement of section 108 or the regulations issued under section 108. The agency interprets the 1988 Act as leaving the decision whether to suspend or to revoke to the discretion of the Administrator, with the exception of the automatic suspension provisions discussed above.

No comments were received on this aspect of the rulemaking, and it is adopted as proposed.

Inspection; Release of Vehicles and Bond

Paragraph 592.8 establishes the requirements for inspection of modified vehicles, and their release for registration, as well as release of the performance bond under which they entered. As is currently required, an importer of record, whether a Registered Importer or one who has a comformance contract with a Registered Importer, will have to furnish the Secretary of the Treasury (the U.S. Customs Service, acting for NHTSA), a bond for each vehicle it imports to ensure that the vehicle is brought into compliance with the safety standards, or that it is exported at no cost to the United States, or abandoned to the United States. When the modifications of an imported vehicle are completed, the Registered Importer will have to attach its label to

the vehicle stating that it complies with the safety standards, and certify that conformance to NHTSA. If the vehicle is one that the Administrator has determined to be substantially similar to one certified by its original manufacturer for sale in the U.S., the Registered Importer may rely in making its certification on the original manufacturer's certification with respect to identical safety features if it certifies to the Administrator that its modifications did not affect compliance of the vehicle's safety features. Under the 1988 Act, the Registered Importer will be able to license the vehicle, or release the vehicle from its custody for licensing, 30 days after its submission of the certification to NHTSA. NHTSA, however, can demand an inspection of the vehicle within the 30-day period, or ask for certification verification. In that event, the vehicle can be released only upon the agency's written notice of its acceptance of the certification or written notice of its completion of an inspection that does not show any failure to comply. The vehicle and the performance bond can be released immediately upon issuance of either notification. Section 108(c)(3)(E)(v), added by the 1988 Act, provides that any release of bond, however, does not constitute a determination under section 152 of the Vehicle Safety Act that the vehicle conforms with all applicable standards.

Section 108(c)(3)(E)(i) requires NHTSA and the Secretary of the Treasury to establish procedures to ensure the release of a motor vehicle and bond at the expiration of the 30-day period, and this was proposed as paragraph 592.8(f). At the time of the proposal, it had not been detemined whether the bond would be one of the U.S. Customs Service, or of NHTSA. The determination has been made that the bond will be NHTSA's, and therefore no such provision is required in the final rule. NHTSA will continue to inform Customs when requirements subject to the general importation bond (bumper and theft prevention standards) have been met, and will make these determinations contemporaneously with those regarding compliance with the safety standards.

These requirements were the subject of little comment. In paragraph 592.8(b), NHTSA had proposed that each submission shall be provided either by certified mail (return receipt requested), or electronically in a manner to be specified by NHTSA. George Ziolo found this too restrictive, and recommended allowing submission through private concerns and in person as well. This comment is well taken. It is important that a Registered Importer know when its submission has been received, and, hence, when the 30-day period has begun. Given the agency's own experience with failure to receive certified mail return receipts, it believes that a Registered Importer must be able to submit its certification in the manner it believes will best inform it of the date of receipt. The final rule is adopted as suggested. Further, NHTSA has specified in the final rule the electronic means it prefers, and has provided the FAX number of the agency.

Auburn Motors, an importer of cars from Canada, thought that Registered Importers of such cars should not have to wait 30 calendar days after submission of certification to be informed by NHTSA of their release. It should be noted that 30 days is the maximum period, and it may well be that in practice bonds may be released more expeditiously.

The State of Texas asked for clarification of the events that would transpire in the event the bond was forfeited. In the event that NHTSA determines that the primary condition of the performance bond, the conformance of the vehicle, has not been met, the agency will demand fulfillment of one of the remaining two alternative conditions: the export of the vehicle at no cost to the United States, or its abandonment to the United States. NHTSA shall specify a time in which this is to be accomplished. Because the 1988 Act requires strict adherence to these provisions, it does not appear to allow the agency to consider petitions for mitigation on such grounds as hardship, or the achievement of partial compliance. If the bond is forfeited through failure to fulfill any of the three conditions of performance, NHTSA will review the circumstances of the case and, when appropriate, inform Customs that the importer appears to have made a false declaration under the conforming regulation, 19 CFR 12.80. Customs has appropriate sanctions, including the seizure of the vehicle, when violations of its regulations occur. Civil penalty sanctions may be also be imposed by NHTSA. As discussed previously, if a Registered Importer forfeits a performance bond, its registration will be subject to suspension or revocation.

Commenting that in some jurisdictions a DOT bond release letter is required before registration of vehicles is allowed, Texas also asked what would occur if a vehicle is automatically released at the end of 30 days without a bond release letter having been issued. If a vehicle is automatically released from custody of the Registered Importer at the end of 30 days without a bond release letter having been issued, there are two possible scenarios. The first is that such a letter will eventually be forthcoming if the certification is found acceptable. If the certification is unacceptable, no such letter will be forthcoming, and conformance problems will have to be resolved between NHTSA, the Registered Importer, and the owner of the car who presumably will have taken possession of it, but may have found himself unable to license it.

Virginia Department of Motor Vehicles wondered if NHTSA and EPA could issue a single release notice. NHTSA has previously considered the feasibility of parallel action with EPA such as a common declaration form. This does not appear practicable. Two different Federal agencies are involved, proceeding under two different legislative authorities, with their own distinctive requirements. Although the regulated persons are of the same class (importers of motor vehicles) there is not a sufficient identity of regulatory action to allow common forms or time frames. In fact, the motor vehicle standards administered by NHTSA itself that must be met by imported vehicles originate in three distinctly different regulatory authorities: Title I of the National Traffic and Motor Vehicle Safety Act (safety standards), and Titles I (bumper standard) and VI (theft prevention) of the Motor Vehicle Information and Cost Savings Act.

Impacts

After considering the impacts of this rulemaking action, NHTSA has determined that the final rule is not major within the meaning of Executive Order 12291 "Federal Regulation". It implements Public Law 100–562 under which motor vehicles not originally manufactured to conform to the Federal motor vehicle safety standards may be imported only by importers who have registered with NHTSA under this part, or by those who have contracts with them. Nor is it significant under Department of Transportation regulatory policies and procedures. The final rule involves no substantial public interest or controversy. It has no substantial effect on state and local governments. There is no substantial impact on a major transportation safety program. Nevertheless, a regulatory evaluation analyzing the economic impacts of this and the related final rules required by Public Law 100–562 has been prepared, and is available for review in the docket, as part of the Regulatory Flexibility Analysis.

NHTSA has analyzed this rule for purposes of the National Environmental Policy Act. The rule will not have a significant effect upon the environmental because it is anticipated that the annual volume of motor vehicles imported through Registered Importers will not vary significantly from that existing before promulgation of the rule.

The agency has also considered the effects of this rule in relation to the Regulatory Flexibility Act. I certify that this rule will not have a significant economic impact upon a substantial number of small entities. Although entities that currently modify nonconforming vehicles are small businesses within the meaning of the Regulatory Flexibility Act, the agency has no reason to believe that a substantial number of these companies could not qualify to become registered importers. However, small businesses currently conforming vehicles may choose not to register as importers because of the recordkeeping and other requirements, and the obligation to notify/remedy in the event of the occurrence of a noncompliance or safety related defect, and these businesses would no longer be able to perform conformance work on vehicles imported on or after January 31, 1990. The cost to owners or purchasers of modifying nonconforming vehicles to conform with the safety standards may be expected to increase to the extent necessary to reimburse the Registered Importer for the fees payable to the agency for the cost of administering the registration program, for making determinations that nonconforming vehicles are eligible for entry, and to compensate Customs for its bond processing costs. The Registered Importer's fee for administration of the registration program will be $255, and it is probable that a share of this cost may be assigned to each vehicle conformed. If a vehicle has been imported pursuant to a determination petition filed by its Registered Importer, a share of the petition fees ($1,560 or $2,150 depending upon the type of petition) may also be assigned to each vehicle conformed. When these costs are divided among the number of vehicles that a Registered Importer may conform, they are not expected to add significantly to the price of an imported vehicle that, past experience shows, is likely to be in the upper ranges of the luxury market. The cost of compensating Customs for its bond processing costs will be $4.35 per vehicle, and it is expected that this will be a direct cost to owners or purchasers of nonconforming vehicles.

Governmental jurisdictions will not be affected at all since they are generally neither importers nor purchasers of nonconforming motor vehicles. However, a Regulatory Flexibility Analysis covering all regulations proposed to implement the 1988 Act has been prepared, and placed in the public docket.

The agency has analyzed the rule in accordance with the principles and criteria contained in Executive Order 12612 "Federalism" and determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The registration requirements in this rule 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 OMB for its approval, pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The information collection requirements in this rule become effective when they have been approved by OMB.

List of Subjects in 49 CFR Part 592

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, a new part 592, *Registered Importers of Vehicles not Originally Manufactured to Conform to the Federal Motor Vehicle Safety Standards,* is added to title 49, chapter V, to read as follows:

PART 592—REGISTERED IMPORTERS OF VEHICLES NOT ORIGINALLY MANUFACTURED TO CONFORM TO THE FEDERAL MOTOR VEHICLE SAFETY STANDARDS

Sec.

Authority: Pub. L. 100-562, 15 U.S.C. 1401, 1407; delegation of authority at 49 CFR 1.50.

§ 592.1 Scope.

This part establishes procedures under section 108(c)(3)(D) of the National Traffic and Motor Vehicle Safety Act, as amended (15 U.S.C. 1397(c)(3)(D)), for the registration of importers of motor vehicles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards. This part also establishes the duties of Registered Importers.

§ 592.2 Purpose.

The purpose of this part is to provide content and format requirements for persons who wish to register with the Administrator as importers of motor vehicles not originally manufactured to conform to all applicable Federal motor vehicle safety standards, to provide procedures for the registration of importers and for the suspension, revocation and reinstatement of registration, and to set forth the duties required of Registered Importers.

§ 592.3 Applicability.

This part applies to any person who wishes to register with the Administrator as an importer of nonconforming vehicles, and to any person who is registered as an importer.

§ 592.4 Definitions.

All terms in this part that are defined in section 102 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1391) are used as defined therein.

Administrator means the Administrator, National Highway Traffic Safety Administration.

NHTSA means the National Highway Traffic Safety Administration.

Registered Importer means any person that the Administrator has registered as an importer pursuant to section 592.5(b).

§ 592.5 Requirements for registration and its maintenance.

(a) Any person wishing to register an as importer of motor vehicles not originally manufactured to conform to all applicable Federal motor vehicle safety standards must file an application which:

(1) Is headed with the words "Application for Registration as Importer", and submitted in three copies to: Administrator, National Highway Traffic Safety Administration, Washington, DC 20590, Attn: Importer Registration.

(2) Is written in the English language.

(3) Sets forth the full name, address, and title of the person preparing the application, and the name, address, and telephone number of the person for whom application is made.

(4) Sets forth, as applicable, the names of all owners, including shareholders, partners, or sole proprietors, of the person for whom application is made.

(5) If any of the owners listed in paragraph (a)(4) of this section are corporations, sets forth the names of all

shareholders of such corporation whose ownership interest is 10 percent or greater.

(6) Contains a statement that the applicant has never had a registration revoked pursuant to § 592.7, nor is it or was it, directly or indirectly, owned or controlled by, or under common ownership or control with, a person who has had a registration revoked pursuant to § 592.7.

(7) Contains a certified check payable to the Treasurer of the United States, for the amount of the initial annual fee established pursuant to part 594 of this chapter.

(8) Contains a copy of a contract to acquire, effective upon its registration as an importer, a prepaid mandatory service insurance policy underwritten by an independent insurance company, or a copy of such policy, in an amount that equals $2,000 for each motor vehicle for which the applicant will furnish a certificate of conformity to the Administrator, for the purpose of ensuring that the applicant will be able financially to remedy any noncompliance or safety related defect determined to exist in any such motor vehicle in accordance with part 573 and part 577 of this chapter. If the application is accompanied by a copy of a contract to acquire such a policy, the applicant shall provide NHTSA with a copy of the policy within 10 days after it has been issued to the applicant.

(9) Sets forth in full data, views, and arguments of the applicant sufficient to establish that the applicant will be able, through a records system of acquiring and maintaining names and addresses of owners of vehicles for which it furnishes a certificate of conformity, and Vehicle Identification Numbers (VINs) of such vehicles, to notify such owners that a noncompliance or safety related defect exists in such vehicles, and that it will be financially able to remedy a noncompliance or safety related defect through repurchase or replacement of such vehicles, or technically able through repair of such vehicles, in accordance with part 573 and part 577 of this chapter.

(10) Segregates and specifies any part of the information and data submitted under this part that the applicant wishes to have withheld from public disclosure in accordance with part 512 of this chapter.

(11) Contains a statement that the applicant will fully comply with all duties of a registered importer as set forth in § 592.6.

(12) Has the applicant's signature acknowledged by a notary public.

(b) If the information submitted is incomplete, the Administrator notifies the applicant of the areas of insufficiency, and that the application is in abeyance.

(c) If the Administrator deems it necessary for a determination upon the application, NHTSA conducts an inspection of the applicant and/or its agents. Subsequent to the inspection, NHTSA calculates the costs attributable to such inspection, and notifies the applicant in writing that such costs comprise a component of the initial annual fee and must be paid before a determination is made upon its application.

(d) When the application is complete (and, if applicable, when a sum representing the inspection component of the initial annual fee is paid), it is reviewed and a determination made whether the applicant should be granted the status of Registered Importer. Such determination may be based, in part, upon an inspection by NHTSA of the conformance, storage, and recordkeeping facilities of the applicant and agents, if any. If the Administrator determines that the application is acceptable, (s)he informs the applicant in writing that its application is approved, and issues it a Registered Importer Number. If the information is not acceptable, the Administration informs the applicant in writing that its application is not approved. No refund is made of those components of the initial annual fee representing the costs of processing the application, and conducting an inspection. Refund is made of that component of the initial annual fee representing the remaining costs of administration of the registration program.

(e) In order to maintain its registration, a Registered Importer shall provide an annual statement that affirms that all information provided under paragraphs (a)(4), (a)(5), (a)(6), (a)(9), and (a)(11) of this section remains correct, and that includes a current copy of its insurance policy procured pursuant to paragraph (a)(8) of this section. Such statement shall be titled "Yearly Statement of Registered Importer", and shall be filed not later than October 31 of each year. A Registered Importer shall also pay such annual fee or fees as the Administrator may from time to time establish under part 594 of this chapter. An annual fee shall be paid not later than October 31 of any calendar year, and shall be the annual fee for the fiscal year that began on October 1 of that calendar year. Any other fee shall be payable not later than 30 calendar days after the date that the Administrator has notified the Registered Importer of it in writing.

(f) A Registered Importer shall notify the Administrator in writing of any change that occurs in the information which is submitted in its application, not later than the end of the 30th calender day after such change.

(g) A registration granted under this part is not transferable.

§ 592.6 Duties of a registered importer.

Each Registered Importer shall:

(a) With respect to each motor vehicle that it imports into the United States, furnish to the Secretary of the Treasury (acting on behalf of the Administrator) a bond in an amount not less than the entered value of the vehicle, as determined by the Secretary of the Treasury, nor more than 150 per cent of such value, to ensure that such vehicle either will be brought into conformity with all applicable Federal motor vehicle safety standards prescribed under part 571 of this chapter within 120 calendar days after such importation, or will be exported (at no cost to the United States) by the importer or the Secretary of the Treasury, or abandoned to the United States.

(b) Establish, maintain, and retain for 8 years from the date of entry of any nonconforming vehicle for which it furnishes a certificate of conformity pursuant to paragraph (e) of this section, organized records, correspondence and other documents relating to the importation, modification, and substantiation of certification of conformity to the Administrator, including but not limited to:

(1) The declaration required by § 591.5 of this chapter, and 19 CFR 12.80.

(2) All vehicle or equipment purchase or sales orders or agreements, conformance agreements with importers other than Registered Importers, and correspondence between the Registered Importer and the owner or purchaser of each vehicle for which it has furnished a certificate of conformity.

(3) The last known name and address of the owner or purchaser of each motor vehicle for which it has furnished a certificate of conformity, and the VIN number of such vehicle.

(4) Records, both photographic and documentary, reflecting the modifications made and submitted to the Administrator pursuant to paragraph (e) of this section.

(b) Records, both photographic and documentary, sufficient to substantiate each subsequent certificate furnished to the Administrator for a vehicle of the same model and model year for which documentation has been furnished NHTSA in support of the initial certificate.

(c) Permanently affix to each motor vehicle, upon completion of modifications, a label that meets the requirements of § 567.4 of this chapter, which identifies the Registered Importer, and provide to the Administrator a photocopy of the label attesting that such vehicle has been brought into conformity with all applicable Federal motor vehicle safety and bumper standards.

(d) Certify to the Administrator, upon completion of modifications, that the vehicle has been brought into conformity with all applicable Federal motor vehicle safety and bumper standards, and that it is the person legally responsible for bringing the vehicle into conformity.

(e) In substantiation of the initial certification provided for a specific model and model year, submit to the Administrator photographic and documentary evidence of conformance with each applicable Federal motor vehicle safety and bumper standard, and with respect to subsequent certifications of such model and model year, such information, if any, as the Administrator may request.

(f) With respect to any motor vehicle for which it has furnished a certificate of conformity to the Administrator, provide notification and remedy according to part 573 and part 577 of this chapter, under any determination.

(1) That a vehicle to which it is substantially similar, as determined under part 593 of this chapter, incorporates a safety related defect or fails to conform with an applicable Federal motor vehicle safety standard. However, this obligation does not exist if the manufacturer of the vehicle or Registered Importer demonstrates to the Administrator that the defect or noncompliance is not present in such vehicle.

(2) That the vehicle incorporates a safety related defect or fails to conform with an applicable Federal motor vehicle safety standard, without reference to whether such may exist in a vehicle to which it is substantially similar, or whether such exists because it was created by the original manufacturer or by the Registered Importer.

(i) The requirement of 15 U.S.C. 1414(a)(2)(B) that remedy shall be provided without charge shall not apply if the noncompliance or safety related defect exists in a motor vehicle whose first sale after importation occurred more than 8 calendar years before notification respecting the failure to comply is furnished pursuant to Part 577 of this chapter, except that if a safety related defect exists and is attributable to the original manufacturer and not the Registered Importer, the requirements of 15 U.S.C. 1414(a)(2)(B) shall not apply to a motor vehicle whose date of first purchase, if known, or, if not known, whose date of manufacture, as determined by the Administrator, is more than 8 years from the date on which notification is furnished pursuant to part 577 of this chapter.

(ii) Notification furnished pursuant to this paragraph and part 577 of this chapter shall include the statement that in the absence of the Registered Importer's facility being within 50 miles of the owner's mailing address for performance of repairs, such repairs may be performed at a specific facility designated by the Registered Importer within 50 miles, or, if no such facility is designated, anywhere, and shall also include an explanation how repair is to be accomplished without charge to the vehicle owner.

(g) In order to allow the Administrator to determine whether a Registered Importer is meeting its statutory responsibilities, admit representatives of NHTSA during operating hours, upon demand, and upon presentation of credentials, to copy documents, or to inspect, monitor, or photograph any of the following:

(1) Any facility where any vehicle, for which a Registered Importer has the responsibility of providing a certificate of conformity to applicable safety standards, is being modified, tested, or stored;

(2) Any facility where any record or other document relating to modification, testing, or storage of vehicles being conformed, is filed;

(3) Any part or aspect of activities relating to the modification, testing, and/or storage of vehicles by the Registered Importer.

(4) Any motor vehicle for which it has provided a certification of conformity to the Administrator, and which remains in its custody or under its control.

(h) Maintain in effect a prepaid mandatory service insurance policy underwritten by an independent insurance company as a guarantor of its performance under paragraph (f) of this section.

(i) With respect to any motor vehicle it has imported and for which it has furnished a performance bond, to deliver such vehicle to the Secretary of the Treasury for export, or to abandon it to the United States, upon demand by the Administrator if such vehicle has not been brought into conformity with all applicable Federal motor vehicle safety standards.

§ 592.7 Revocation, suspension and reinstatement of registration.

(a) If the Administrator has not received any fee assessed and owing by the end of the 30th calendar day after such fee is due and payable, a registration is automatically suspended at the beginning of the 31st calendar day, and the Registered Importer is immediately notified in writing of the suspension at the address contained in its most recent annual statement or amendment thereof.

(b) If the Administrator has reason to believe that a Registered Importer has knowingly filed a false or misleading certification, and that its registration should be automatically suspended or revoked, (s)he notifies the Registered Importer in writing of the facts giving rise to such reason to believe, affording an opportunity to present data, views, and arguments, either in writing or in person, within 30 calendar days after receipt of the Administrator's letter, as to whether it has submitted false or misleading certification, and as to why the registration ought not to be revoked or suspended. The Administrator then makes a decision after the 30-day period on the basis of all information then available. If, after consideration of all the data available, the Administrator determines that the Registered Importer has knowingly filed a false or misleading certification, the registration is automatically suspended or revoked, and the Registered Importer notified in writing. Any suspension or revocation is effective as of the date of the Administrator's determination. The Administrator shall state the period of any suspension in the notice to the Registered Importer.

(c) The Administrator may suspend a registration if a Registered Importer fails to comply with any requirement set forth in 15 U.S.C. 1397(c)(3)(D), § 592.5(c), or § 592.6, or if s(he) denies an application filed under § 592.5(d). The Administrator may revoke a registration after any failure to comply with any such requirement, or if (s)he denies an application filed under § 592.5(d). If the Administrator has reason to believe that there has been such a failure to comply and that the Registered Importer's registration should be revoked or suspended, (s)he notifies the Registered Importer in writing, affording an opportunity to present data, views, and arguments, either in writing or in person, within 30 calendar days after receipt of the Administrator's letter, as to whether there has been a failure to comply and as to why the registration ought not to be revoked or suspended. The Administrator then

makes a decision after the 30-day period on the basis of all information then available. If the Administrator determines that a registration should be revoked or suspended, (s)he notifies the Registered Importer in writing. A revocation is effective immediately. A suspension is effective beginning with a date specified in the written notification.

(d) A Registered Importer whose registration has been revoked or suspended may request reconsideration of the revocation or suspension if the request is supported by factual matter which was not available to the Administrator at the time the registration was suspended or revoked.

(e) If its registration has been revoked, a Registered Importer is ineligible to apply for reregistration under this part. No refund is provided of any annual or other fees the Registered Importer has paid for the fiscal year in which its registration is revoked. If its registration has been suspended, it may file an application for reinstatement of its registration.

(f) The Administrator shall reinstate a suspended registration if the cause that led to the suspension no longer exists, as determined by the Administrator, either upon the Administrator's motion, or upon the submission of further information or fees by the Registered Importer.

§ 592.8 Inspection; release of vehicle and bond.

(a) With respect to any motor vehicle for which it is obligated to provide a certificate of conformity to the Administrator as required by § 592.6(d), a Registered Importer shall not obtain licensing or registration of the motor vehicle for use on the public roads, or release custody of it for such licensing and registration, except in accordance with the provisions of this section.

(b) When conformance modifications to a motor vehicle have been completed, a Registered Importer shall submit the certification required by § 592.6(d) to the Administrator. In certifying a vehicle that the Administrator has determined to be substantially similar to one that has been certified by its original manufacturer for sale in the United States, the Registered Importer may rely on any certification by the original manufacturer with respect to identical safety features if it also certifies that any modification that it undertook did not affect the compliance of such safety features. Each submission shall be mailed by certified mail, return receipt requested, or by private carriers such as Federal Express, to: Administrator, National Highway Traffic Safety Administration, Washington, DC, 20590 ATTN: NEF-32, or be submitted electronically by FAX (202-366-2536), or in person. Each submission shall identify the location where the vehicle will be stored and is available for inspection, pending NHTSA action upon the submission.

(c) Before the end of the 30th calendar day after receipt of certification of a motor vehicle pursuant to § 592.6(d), the Administrator may inform the Registered Importer in writing that an inspection of the vehicle is required to ascertain the veracity of the certification. Written notice includes a proposed inspection date, which is as soon as practicable. If inspection of the vehicle indicates that the vehicle has been properly certified, at the conclusion of the inspection the Registered Importer is provided an instrument of release. If inspection of the vehicle shows that the vehicle has not been properly certified, the Registered Importer shall either make the modifications necessary to substantiate its certification, and provide a new certification for the standard(s) in the manner provided for in paragraph (b) of this section, or deliver the vehicle to the Secretary of the Treasury for export, or abandon it to the United States. Before the end of the 30th calendar day after receipt of new certification, the Administrator may require a further inspection in accordance with the provisions of this subsection.

(d) The Administrator may by written notice request certification verification by the Registered Importer before the end of the 30th calendar day after the date the certification was received by the Administrator. If the basis for such request is that the certification is false or contains a misrepresentation, the Registered Importer shall be afforded an opportunity to present written data, views, and arguments as to why the certification is not false or misleading or does not contain a misrepresentation. The Administrator may require an inspection pursuant to paragraph (c) of this section. The motor vehicle and performance bond involved shall not be released unless the Administrator is satisfied with the certification.

(e) If a Registered Importer has received no written notice from the Administrator by the end of the 30th calendar day after it has furnished a certification to the Administrator, the Registered Importer may release from custody the vehicle that is covered by the certification, or have it licensed or registered for use on the public roads.

(f) If the Administrator accepts a certification without requiring an inspection, (s)he notifies the Registered Importer in writing, and provides a copy to the importer of record. Such notification shall be provided not later than the 25th calendar day after the Administrator has received such certification.

(g) Release of the performance shall constitute acceptance of certification or completion of inspection of the vehicle concerned, but shall not preclude a subsequent determination by the Administrator pursuant to section 152 of the Act (15 U.S.C. 1451) that the vehicle fails to conform to any applicable Federal motor vehicle safety standard.

Issued on September 26, 1989.

Jeffrey R. Miller,

Acting Administrator.

[FR Doc. 89-23081 Filed 9-27-89; 11:19am]

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49 CFR PART 593

[Docket No. 89-7; Notice 2]

Determinations That a Vehicle not Originally Manufactured To Conform to the Federal Motor Vehicle Safety Standards Is Eligible for Importation

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

ACTION: Final rule.

SUMMARY: Effective January 31, 1990, the National Traffic and Motor Vehicle Safety Act, as amended by the Imported Vehicle Safety Compliance Act of 1988, will place new limits on the importation of foreign motor vehicles not originally manufactured to meet Federal motor vehicle safety standards. The 1988 amendments prohibit, with certain exceptions, the importation of such a vehicle unless it is a model that meets specified eligibility criteria. The criteria are that the model is determined by this agency to be substantially similar to one that was originally manufactured for importation and sale into the United States, and that it is capable of being readily modified to conform to the Federal safety standards. Alternatively, for a model for which there is not a substantially similar vehicle, the agency must determine that the safety features of the model comply or are capable of being modified to comply with the safety standards. This rule adopts procedural regulations for petitions and for determinations regarding the meeting of these criteria. Most details of the rule are dictated by the 1988 amendments.

DATE: The effective date of the rule is October 30, 1989.

FOR FURTHER INFORMATION CONTACT: Taylor Vinson, Office of Chief Counsel, NHTSA (202–366–5263).

SUPPLEMENTARY INFORMATION: On October 31, 1988, the President signed into law the Imported Vehicle Safety Compliance Act of 1988, Public Law 100–562 ("the 1988 Act"). The Act amends those provisions of the National Traffic and Motor Vehicle Safety Act of 1966 ("the Vehicle Safety Act") that relate to the importation of motor vehicles subject to the Federal motor vehicle safety standards (Section 108(b), 15 U.S.C. 1397(b)). The 1988 Act imposes restrictions upon the eligibility of motor vehicles for importation. The principal restriction upon a motor vehicle is that it cannot be imported at all unless NHTSA determines that the motor vehicle model is capable of modification to meet the Federal safety standards.

Determinations will be made on NHTSA's own initiative, or upon petition of any registered importer (see discussion below) or any motor vehicle manufacturer, and will be subject to public comment. A notice of proposed rulemaking on this subject was published on April 25, 1989 (54 FR 17786).

As the agency explained in the notice, and repeats here so that readers may have an overview of the determination process, a nonconforming vehicle may be imported under either of the following two scenarios. The first scenario will involve the making of two determinations by the agency: that the nonconforming model is substantially similar to a model of the same "model year" which was originally manufactured for importation into and sale in the U.S. and was certified as conforming to the Federal safety standards, and that a vehicle belonging to the model is capable of being readily modified to conform fully with the applicable standards.

The second scenario will arise if the agency has not made a substantial similarity determination regarding a model. In that case, it will still be permissible to import a vehicle of that model if the agency determines that its safety features comply with the U.S. standards, or are capable of being modified to comply with those standards, "based on destructive crash data or such other evidence" as NHTSA determines is adequate.

Under either scenario, a positive determination regarding a model will permit *any* registered importer to import vehicles of the same model that are covered by that determination.

If the agency makes a negative determination regarding a model's ability to be modified, the agency will be temporarily prohibited from taking up the issue again. If the decision was made in response to a petition, the 1988 Act prohibits the agency from considering a petition regarding the same model of vehicle until at least 3 months after that decision. If the negative determination was made in a proceeding begun at the agency's own initiative, the agency will not be able to make another determination regarding the same model of motor vehicle until at least 3 months after the negative one.

NHTSA is attempting in this rulemaking action to formulate a program that will ensure that all imported motor vehicles conform to the Federal motor vehicle safety standards without imposing unnecessary burdens on importers. Therefore, NHTSA has tried in this rule to impose only those requirements that are mandated by the 1988 Act, with amplifications only where it appeared necessary to implement the safety intent of the statute.

There were four substantive comments submitted on the proposal, by Mercedes-Benz of North America, Auburn Motors, Europa International, Inc., and George Ziolo.

Section 593.5 Petitions for eligibility determinations

Paragraph 593.5 establishes the requirements for submissions of petitions for determinations that a motor vehicle not originally manufactured to conform with the Federal motor vehicle safety standards is eligible for importation into the United States. New section 108(c)(3)(C)(i)(I) of the Vehicle Safety Act requires the Administrator to make eligibility determinations "on the petition of any registered importer or any manufacturer". Under this Act, a "manufacturer" is defined to include any person who imports motor vehicles for resale. Thus, "manufacturer" excludes the individual who imports a vehicle, through a registered importer, for his or her own use. It also excludes the general public and trade associations.

The basic procedural requirements for a petition are similar to those the agency specifies for other petitions: That they be in the English language, state the full name and address of the petitioner, be submitted in 3 copies to the Administrator, state the basis upon which petition is made, and specify any part of the submission for which confidential treatment is requested. The petition must be accompanied by a certified check for the amount of the vehicle eligibility petition fee established in accordance with part 594.

Europa International asked that documentation substantiating vehicle alterations be withheld from public dockets for proprietary reasons, as its release would enable others to modify without compensation to the original registered importer. This is a request that must be made by a petitioner when petitioning. In the absence of such a request, confidential treatment will not be afforded by NHTSA. When a request for confidentiality is made, the request is referred to the Office of Chief Counsel for a determination, and the petitioner informed of such a determination. The agency proposed (and is adopting) paragraph 593.10(b) under which information made available for public inspection does not include information for which confidentiality has been requested and granted. With specific reference to Europa's comment, NHTSA notes that paragraph (b) provides that "to the extent that a petition contains material relating to the methodology by which the petitioner intends to achieve conformance with a specific standard, the petitioner may request confidential treatment of such material on the grounds that it contains a trade secret or confidential information".

Those who wish to request confidential treatment should be advised that consideration of the merits of the petition will be in abeyance until resolution of confidentiality requests, and that this delay should be taken into consideration in the petitioner's plans. Therefore, petitioners are encouraged to make arguments relating to a vehicle's capability of conformance that minimize discussion of specific design solutions of a possibly proprietary nature (which are entirely appropriate as support for certificates of conformity).

Section 593.6 Basis for petition

Paragraph 593.6 details the information to be provided in support of the petition. In accordance with the proposal, the agency has not specified the number and types of components that must be identified as capable of modification in order to demonstrate compliance with each applicable standard (the petitioner must, of course, show that a vehicle is readily modifiable, or capable of modification, as the case may be, so that it will comply with *all* applicable safety standards). Since the Federal motor vehicle safety standards are performance standards, NHTSA believes that registered importers, like original manufacturers, should be free to reach individual design solutions. Whether a petitioner's arguments are persuasive will be reflected in the agency's eventual determination. NHTSA's conclusions will be explained

in a notice of determination published in the Federal Register.

Section 593.6(a) Petitions on the basis of substantial similarity

If the basis of the petition is that the model for which a determination is sought is substantially similar to one that was originally manufactured for importation into and sale in the United Sates, and which bore a certification of compliance affixed by its original manufacturer, the petitioner must identify the original manufacturer of the certified vehicle, and the model and model year of the vehicle to be compared (paragraphs 593.6(a) (1) and (2)), and substantitate that the certified vehicle was in fact certified (paragraph 593.6(a)(3)). It must also submit data, views, and arguments, with respect to each applicable Federal motor vehicle safety standard, that the vehicle is capable of being readily modified to meet that standard (paragraphs 593.6(a) (4) and (5)).

The phrases "substantially similar" and "capable of being readily modified" are not defined by the 1988 Act. However, NHTSA begins with the assumption that a vehicle that is "substantially similar" to one that was originally manufactured for importation and sale in the United States which bore its original manufacturer's certification is one whose visual appearance and structural details are "substantially similar" to the certified model. For example, a Renault 21 manufactured in France could be viewed as "substantially similar" to the Renualt/ Eagle Medallion, manufactured in France and certified by Renault for sale in the United States because its exterior sheetmetal appears virtually identical. On the other hand, a Renault 25 manufactured in France would not be viewed as substantialy similar to the Eagle Premier manufactured in Canada and certified by Chrysler for sale in the United States, even though Chrysler purchases the platform and drive train of the Premier from Renault. Both its exterior and interior appearance and components differ from that of the Premier. There is no common exterior sheetmetal, different dash panels and seats are provided, and there is no interchangeability between doors and glazing. Comments were requested on the degree of interior and exterior similarity of appearance and structural details, and on the extent of parts interchangeability necessary to support a determination of substantial similarity. Comments were also requested as to what parts are most critically related to compliance with the standards, particularly those standards which specify dynamic vehicle crash testing or other types of destructive testing.

Obviously, if a vehicle already conforms to a safety standard, the question of modification capability is not reached. To substantiate that no modifications are required with respect to that standard, a petition may be supported by a letter from the vehicle's original manufacturer confirming that the vehicle model under consideration was manufactured to comply with the standard. This method of substantiation would be appropriate for petitions based on substantial similarity as well as for petitions which are not so based.

Auburn Motors commented that recognition should be given that vehicles certified as meeting Canadian standards are virtually identical to U.S. ones, and that they should be exempted from the final rule. It submitted a letter from American Honda stating that in model years 1988 and 1989, cars manufactured for both markets were identical. The agency notes that, at the present time, there is a notable similarity between the U.S. and Canadian motor vehicle safety standards. However, since they are not in all respects similar, it cannot grant Auburn's request. NHTSA does believe that there is a strong basis on which a petitioner could argue that there is a "substantial similarity" of Canadian vehicles compared with U.S. ones. Further, if the Canadian-manufactured Hondas are not certified as meeting U.S. standards, the manufacturer's letter attesting to identicality could serve as the basis for the certificate of conformity that the Registered Importer of such vehicle must provide the Administrator. In summary, the agency recognizes that importers of vehicles certified as meeting the Canadian standards but not the U.S. ones will have a less difficult time of meeting the criteria of the 1988 Act than importers of vehicles manufactured to conform to European or Asian standards.

As for whether a vehicle is "capable of being readily modified", NHTSAs proposal suggested, as the first level of decision, that many components that are visible when the vehicle is fully assembled may be considered capable of being readily modified when they may be easily replaced with parts intended as replacement for conforming parts on substantialy similar certified vehicles. For passenger cars, these components would include, but are not limited to, tires (Standard No. 109), rims (Standard No. 110), and wheel covers (Standard No. 211), glazing marking (Standard No. 205), reflecting surfaces (Standard No. 107), controls and displays (Standard No. 101), and lighting devices (Standard No. 108). Other components, not readily visible, are also easily replaced with conforming parts. These include brake hoses (Standard No. 106), and brake fluid (Standard No. 116). In this event, the petitioner could provide in its petition the part numbers of the components that would be subsituted to achieve conformance. In its comment, Mercedes-Benz observed that these components could be those with the same part numbers utilized by the original manufacturer during the same model year and on the same model.

However, this first level of decision, based upon replacement of parts, could not determine conformance with vehicle rather than equipment standards. Visual inspection would not indicate whether the steering column would need to be replaced so that the vehicle would comply with Standard No. 204, or whether the interior fabrics (other than leather) would meet the flammability resistance required by Standard No. 302, because these tests incorporate destructive demonstration procedures.

The second level of decision then rests upon the question of whether the modifications necessary for conformance are "readily" achievable. In this instance, a petitioner would be expected to submit data showing that conformance can be achieved without extensive modification, i.e., information demonstrating that compliance can be achieved without major structural modifications or destructive component testing. A major structural modification could mean, for example, strengthening of the rear frame bars in order to achieve conformance with Standard No. 301. An example of a non-major structural modification could be installation of windshield retaining clips for conformance with Standard No. 212. On the assumption that a "substantially similar" vehicle may be more likely to incorporate structural features of vehicles certified by their original manufacturer for sale in the United States, than vehicles for which there is no U.S. certified model, the Administrator may be more willing to accept data other than crash data to indicate that a vehicle is readily modifiable to achieve conformance. On the other hand, a vehicle would not appear to be capable of being readily modified if major structural modifications are required for compliance. Although each petition for substantial similarity determinations will be decided on the merits of the arguments presented, it does not appear that a vehicle without the following conforming components can be readily

modified to achieve conformance with the applicable standards: automatic restraints (Standard No. 208), seat belt anchorages (Standard No. 210), roof structure (Standard No. 216), windshield intrusion (Standard No. 219), and fuel system components (Standard No. 301).

NHTSA requested comments on its assumptions and tentative interpretations of "substantially similar" and "capable of being readily modified". In addition, NHTSA was concerned about the possibility that vehicles which appear "substantially similar" to the eye are much less so under the exterior sheetmetal. Therefore, NHTSA also requested comments on the similarity of structural components in such vehicles, such as similarity of dimensions behind the dashboard, roof rails, engine compartment, truck space, and other structural areas for vehicles that are visually similar. Further, it requested comments on the degree of similarity in the dynamic crush and crush pulse signature of the imported vehicles in front and rear end impacts. At the present time, the agency is not fully sure about the degree of the under-skin similarity of vehicles, and these factors may have to be taken into account in petitions and determinations. The agency is particularly concerned with these issues as they relate to passenger cars manufactured by Mercedes-Benz, BMW, and Jaguar during the past 10 years. On the basis of past experience, NHTSA anticipates that well over 90 percent of vehicles to be imported under the new requirements will be products of these manufacturers.

There was little response to this request. The sole substantive commenter on these points was Mercedes-Benz of North America. Mercedes concurred that NHTSA had correctly identified the standards for which a substantial similarity/readily modifiable test cannot be met. It cautioned against making a determination on arguments alone, citing the fact that a Mercedes with a European airbag does not meet the requirements of Standard No. 208. Further, it viewed as totally inappropriate NHTSA's request for an analysis of parts by an original equipment manufacturer. It commented that this would amount to a checklist for modification, and an admission that all other factors comply. The agency does not agree with the conclusion reached by Mercedes. In the present absence of any experience with making any determinations under the 1988 Act, it does not intend to be restricted as to the sources it may consult in making these determinations. Resort to OEM data in this instance assists only in a determination that a vehicle is readily capable of being modified to conform, and not an admission by the manufacturer that the vehicle does in fact conform.

Section 593.6(b) Petitions on basis of modification capability

Similar considerations apply if a vehicle is not substantially similar to any vehicles that have been or are being certified as complying with the U.S. Standards and imported into the United States. For such a vehicle, the basis of a petition would be that its safety features comply with, or are capable of being modified to comply with the safety standards to which it would have been subject at the time of its manufacture had it been originally intended for importation into the United States (paragraph 593.6(b)). Because there is no substantially similar model certified for sale in the United States, the statute does not specify that determinations be made with reference to model years. Cognizant of the fact that foreign vehicles may be produced for a number of years without major changes, the Administrator could make a determination applicable to vehicles produced within a model year, or manufactured during a stated inclusive period. Tentatively choosing a conservative approach, the agency proposed that "capability of modification" determinations also be petitioned for on a model year basis (paragraph 593.6(b)(1)). With vehicles whose features relevant to conformance capability have not changed with a model year, the agency wishes to state that a petition may request a determination for more than one model year if it is accompanied by substantiation.

With respect to the alternative basis of petitions, as with "substantially similar" vehicles, a determination "that the vehicle's safety features comply" could be made on the basis of a letter of confirmation from the vehicle's original manufacturer, or through visual inspection where appropriate. However, the 1988 Act assumes that full conformance with the safety standards may be more difficult to achieve for a non-similar vehicle than for a vehicle that is "substantially similar" to a certified one, as it states that NHTSA's determination shall be "based on destructive test data or such other evidence as the [Administrator] determines to be adequate". In this instance, it would appear that far more detailed information might be required to demonstrate capability of modification with those standards listed at the end of the prior discussion on substantially similar vehicles. Crash test data may be preferable to demonstrate that vehicles are capable of being modified to conform with those standards that incorporate barrier impact demonstration procedures (Standard Nos. 201, 204, 208, 212, 219, and 301). NHTSA contemplates that a registered importer, or a group of registered importers, planning to import a large number of a particular model might crash test one or more such vehicles in order to generate data to file with a petition. If a petitioner did not wish to conduct a crash test, then the question would arise as to the "adequacy" of alternate means of demonstration that the vehicle is capable of being modified to achieve conformance. NHTSA therefore requested specific comments as to the adequacy of computer simulations, engineering analyses, and mathematical calculations as alternative bases of demonstrating compliance with the six safety standards listed above, as well as others, such as Standard No. 105 *Hydraulic brake systems.* It called attention to the fact that, in the final rule, with respect to these standards, it may be satisfied with nothing less than crash data, or a letter from the vehicle's original manufacturer confirming compliance.

The agency also requested comments with respect to alternate types of evidence compliance, and their suitability with respect to each of the other standards with complex laboratory demonstration procedures. For example, it asked whether computer simulations or mathematical calculations are acceptable indicators of the performance of components such as door latches and hinges (Standard No. 206) or seat anchorages (Standard No. 207) to withstand certain specified minimum forces. Neither method would appear to be acceptable as a demonstration of the lack of flammability of interior materials (Standard No. 302). For demonstrations of compliance with Standard No. 302, it might be necessary to submit an analysis or the fabric, or to test fabric actually from the vehicle, for example. The Administrator would determine the adequacy of the alternative types of evidence.

Mercedes-Benz concurred with NHTSA's statements on decisions based on destructive test data. It advised that computer simulations should be used only in infrequent circumstances, and recommended that a showing be made by the petitioner that the intended simulation is considered reliable by the

vehicle testing industry, such as recognition through a standard of the SAE or ASTM. Once that test has been met, Mercedes further recommended that the petitioner should show that the variables it intends to use in the simulation are derived from actual data on the specific vehicle that is the subject of the petition. Otherwise, a petitioner should not be allowed to make assumptions about data in the absence of backup documentation. If there is no such data, NHTSA should require full scale dynamic crash testing. As the submission by each petitioner will differ, NHTSA does not deem it advisable to adopt Mercedes' comments as a regulation, but it will consider them in evaluations of relevant petitions. The reasons for NHTSA's decisions, of course, will be published in the Federal Register.

George Ziolo commented that NHTSA should allow submission of evidence of compliance with foreign standards such as those of the ECE and ISO, many of which may use U.S.-based standards for their rules. In his view, "the effect" may be the same, even if the wording differs. Submission of foreign standards, he argues, is especially relevant if NHTSA intends to allow "engineering calculations" in lieu of crash tests. In response, NHTSA wishes to make it clear that there are no restrictions on the type of data that a petitioner may submit. A petitioner may support its arguments by showing similarities between foreign and U.S. standards.

NHTSA noted in the proposal that the proposed petition requirements were drafted in somewhat general terms, so as to afford petitioners flexibility in presenting arguments and solutions of a performance, rather than of a design nature. This was in keeping with the performance orientation of the Federal motor vehicle safety standards. It further noted the possibility that, on the basis of comments, the final rule might be more detailed as to the types of data required to substantiate compliance with each of the safety standards. After considering these comments, NHTSA has adopted a non-detailed requirement in paragraph 593.6(b), which is virtually identical to the one proposed.

As a general comment, Mercedes-Benz objected to the use of the term "views and arguments" as a throwback to the old gray market program, and viewed it as an invitation for disputes. This term appears as "data, views and arguments" in paragraphs 593.6 (a)(4) and (b)(2). "Views and arguments" is a necessary complement to "data", which invariably will need interpretation and explanation. Because the agency is not requiring a demonstration of actual conformance, it has concluded that a petitioner's "views and arguments" are necessary to support its petition for a determination of conformance capability.

The procedural requirements for both types of petitions require identification of "models" and "model years". The agency did not find it necessary to propose a definition of "model". It believes that a petitioner will identify with sufficient clarity the vehicles that it wishes to import, and that comparable U.S. models will have comparable designations. For example, Mercedes and BMW use the same series designations for both U.S. and European models, though secondary nomenclature may differ in minor respects, reflecting variations in the type of engines. No comments were received on this point.

Section 108(c)(3)(A)(i)(I) allows NHTSA to define "model year" by regulation. NHTSA has not heretofore done so with respect to compliance with the Federal motor vehicle safety standards, because the standards have never applied by model year, but are effective on a date certain. In recent years, NHTSA has, with respect to major standards, designated September 1 as the effective date of new requirements, although in earlier years, the effective date was frequently January 1. As an example, the center high-mounted stop lamp provisions of Standard No. 108 were effective for passenger cars manufactured on or after September 1, 1985. While this substantially correlates to the 1986-model year, there was no legal requirement that a 1986 model manufactured before September 1, 1985, be equipped with this feature. Thus, with respect to certain "model years", different standards may be in effect. NHTSA does not view this as an especially complicating factor. However, from time to time, it may have to make determinations with respect to different periods within a model year.

NHTSA proposed that "model year" be defined as either the model year designated by the manufacturer irrespective of the calendar year in which the vehicle was actually produced, or, in the absence of the manufacturer's designation, the calendar year that begins on September 1 and ends on August 31 of the next calendar year. Mercedes-Benz commented that the model year should be that of the original manufacturer which in Europe is often determined by regulations of individual countries. It suggested that the definition state that the designation by the country of origin should control. Otherwise, it said, the agency should use the definition of the California Air Resources Board. After reviewing these comments, the agency has adopted its proposed definition, but added a designation by country of origin as an alternative to the manufacturer's designation to be considered before consideration of the final alternative of designation by the September 1–August 31 calendar year.

Section 593.7 Processing of petitions

If a petition is filed on the basis that the vehicle is "substantially similar" to a certified one, and the Administrator cannot make such a determination, that does not mean that the petition is automatically denied. In that event, the Agency will inform the petitioner that it cannot make a determination on the basis petitioned for, but is willing to proceed to a consideration on the alternative basis, and make a determination on conformance, or capability of conformance, of the vehicle's safety features, on the basis of such further supporting information as the petitioner may care to submit (paragraph 593.7(d)).

The procedural aspects of eligibility determinations are similar to other agency regulations regarding petitions and their dispositions (*see, e.g.*, 49 CFR 555.7 on temporary exemptions from safety standards). Notice of a petition (or agency initiative) will be published in the **Federal Register** and an opportunity afforded for comment (paragraph 593.7(b)). No public hearing, argument, or other formal proceeding will be held directly on the matter before a determination is made (paragraph 593.7(c)). After a decision, the agency will publish a second notice in the **Federal Register** constituting the determination whether the vehicle is eligible or ineligible for importation. If the vehicle is ineligible for importation, the notice will contain the earliest date on which the Administrator is statutorily able to consider the matter anew (paragraph 593.7(e)). If the vehicle is eligible for importation, the notice contains the reasons for the grant (paragraph 593.7(f)).

Mercedes-Benz recommended that the burden on the petitioner should be to "clearly establish" conformance capability under either basis. That company siad that this approach would increase the accuracy of NHTSA's determinations, and reduce the potential for disagreement over the quality of data needed to establish compliance. This recommendation appears to be based upon the requirement of section 108(c)(3)(C)(ii) which says that "The

Secretary shall establish by regulation (I) the information required to be provided by the petitioner to clearly show that the vehicle is capable of being brought into compliance * * *" NHTSA agrees with Mercedes that this is a burden to be met by the petitioner. In the final rule, the agency is adding the word "clearly" as a modifier of the word "demonstrate" relevant to the finding that the Administrator must make (paragraphs 596.7 (e) and (f)).

Finally, in order to demonstrate that a vehicle is capable of conformance, the agency is willing to permit a registered importer to import a nonconforming vehicle for modification and demonstration purposes under the appropriate provision of part 591, paragraph 591.5(j).

Section 593.8 Determinations on the agency's initiative

Section 108(c)(3)(C)(i)(I) of the Vehicle Safety Act also provides that the agency may make determinations on its own initiative. NHTSA will proceed with such determinations in a manner similar to those made by petition. A notice requesting public comment will appear in the **Federal Register**, specifying the basis upon which the Administrator is considering a determination (paragraph 593.8(a)). No formal proceeding will be held (paragraph 593.8(b)). A second notice containing the decision will be published in the **Federal Register**. There is no administrative reconsideration available for a decision of ineligibility (paragraph 593.8(c)).

Europa International commented that NHTSA should not make determinations on its own initiative, as it would discourage Registered Importers from developing their own compliance methods. This comment assumes that NHTSA will prescribe how each safety standard wil be met if it makes determinations of eligibility on its own initiative. NHTSA has no intention of dictating conformance methodology. Its determinations, if any, are likely to be general conclusions based upon information available to it (which may include confidential information from the original manufacturer), or technical comments regarding individual components.

Section 593.9 Effect of affirmative determinations; lists

A notice of grant is sufficient authority for the importation by persons other than the petitioner of any vehicle of the same model specified in the grant (paragraph 563.9(a)). The reason NHTSA proposed and has adopted this requirement is that its determinations cover "models" and "model years". If a vehicle of a certain model and model year is "capable" of conformance, the determination will cover all vehicles of that model and model year, and not just a single specific motor vehicle. Europa International commented that this would eliminate the incentive a petitioner has to spend money developing conformance information. This argument confuses a petitioner's demonstration of conformance capability with a registered Importer's demonstration of conformance achieved. There is no requirement that a petitioner submit its conformance methodology in support of a petition for a "capability" determination on either of the two bases. To the extent that a petitioner does, it may request confidentiality, and to the extent that it may be granted, the conformance information is protected.

The agency will publish annually in the **Federal Register** a list of vehicles for which determinations have been made (paragraph 593.9(b)). This will appear as an Appendix to Part 593, so that it may also appear in the Code of Federal Regulations. The agency intends to publish the first list before September 30, 1990, because the CFR publishes NHTSA regulations in revised form as of October 1, of each year.

Section 593.10 Availability for public inspection

The agency will make available for public inspection in the agency docket room all publicly available information relevant to a determination, regardless of whether that determination is made pursuant to a petition or on the Administrator's initiative (paragraph 593.10(a)). However, as discussed previously, the agency realizes that a petition by a registered importer may contain arguments as to capability of modification that reflect the methodology by which that petitioner intends to achieve conformance, and which may qualify as a trade secret or confidential information for which confidential treatment may be requested (paragraph 593.10(b)). In that instance, the agency may conclude that considerations of confidentiality outweigh the interests of full disclosure.

Impacts

NHTSA has considered the impacts of this rulemaking action and has determined that it is not major within the meaning of Executive Order 12291 "Federal Regulation". It implements Public Law 100–562, under which a motor vehicle not originally manufactured to conform to the Federal motor vehicle safety standards may not be imported into the United States unless NHTSA has determined that it is capable of being conformed to meet the standards. It is not significant under Department of Transportation regulatory policies and procedures. Nevertheless, a regulatory evaluation analyzing the economic impacts of this and the related final rules required by P.L. 100–562 has been prepared and is available for review in the docket, as part of the Regulatory Flexibility Analysis. The rule has no substantial impact upon a major transportation safety program, nor does it involve any substantial public interest or controversy. There is no substantial impact upon state and local governments.

NHTSA has analyzed this rule for purposes of the National Environmental Policy Act. The rule will not have a significant effect upon the environment because it is anticipated that the annual volume of noncomplying motor vehicles imported as a result of eligibility determinations will not vary significantly from that existing before promulgation of the rule.

The agency has also considered the effects of this rule in relation to the Regulatory Flexibility Act. I certify that this rule will not have a significant economic impact upon a substantial number of small entities. Although entities that currently modify nonconforming vehicles are small businesses within the meaning of the Regulatory Flexibility Act, there is no restriction prohibiting them from applying for registration as importers and continuing their activities. Further, small organizations and governmental jurisdictions will not be significantly affected as they are not generally importers and purchasers of nonconforming motor vehicles. However, a Regulatory Flexibility Analysis covering all regulations proposed to implement the 1988 Act has been prepared and placed in the public docket.

The petition procedures in this rule are considered to be information collection requirements, as that term is defined by the Office of Management and Budget (OMB) in 5 Part 1320. Accordingly, these requirements have been submitted to OMB for its approval, pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and will become effective upon their approval by OMB.

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

List of Subjects in 49 CFR Part 593

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, a new part 593, *Determinations That a Vehicle not Originally Manufactured to Conform to the Federal Motor Vehicle Safety Standards is Eligible for Importation,* is added to title 49, chapter V, to read as follows:

PART 593—DETERMINATIONS THAT A VEHICLE NOT ORIGINALLY MANUFACTURED TO CONFORM TO THE FEDERAL MOTOR VEHICLE SAFETY STANDARDS IS ELIGIBLE FOR IMPORTATION

Sec.

Authority: Public Law 100-562, 15 U.S.C. 1401, 1407; delegation of authority at 49 CFR 1.50.

§ 593.1 Scope.

This part establishes procedures under section 108(c) of the National Traffic and Motor Vehicle Safety Act, as amended (15 U.S.C. 1397(c)), for making determinations whether a vehicle that was not originally manufactured to conform with all applicable Federal motor vehicle safety standards, and is not otherwise eligible for importation under part 591 of this chapter, may be imported into the United States because it can be modified to meet the Federal standards.

§ 593.2 Purpose.

The purpose of this part is to provide content and format requirements for any Registered Importer and manufacturer who wishes to petition the Administrator for a determination that a vehicle not originally manufactured to conform to all applicable Federal motor vehicle safety standards is eligible to be imported into the United States because it can be modified to meet the standards. The purpose of this part is also to specify procedures under which the Administrator makes eligibility determinations pursuant to those petitions as well as eligibility determinations on the agency's initiative.

§ 593.3 Applicability.

This part applies to a motor vehicle that was not originally manufactured and certified by its original manufacturer to conform with all applicable Federal motor vehicle safety standards and that is offered for importation into the United States.

§ 593.4 Definitions.

All terms in this part that are defined in section 102 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1391) are used as defined therein.

Administrator means the Administrator of the National Highway Traffic Safety Administration.

Model year means the year used by a manufacturer to designate a discrete vehicle model irrespective of the calendar year in which the vehicle was actually produced, or the model year as designated by the vehicle's country of origin, or, if neither the manufacturer nor the country of origin has made such a designation, the calendar year that begins on September 1 and ends on August 31 of the next calendar year.

NHTSA means the National Highway Traffic Safety Administration.

Registered Importer means any person who has been granted registered importer status by the Administrator pursuant to paragraph 592.5(b) of this chapter, and whose registration has not been revoked.

§ 593.5 Petitions for eligibility determinations.

(a) A manufacturer or Registered Importer may petition the Administrator for a determination that a vehicle that does not comply with all applicable Federal motor vehicle safety standards is eligible for importation, either

(1) On the basis that the vehicle:

(i) Is substantially similar to a vehicle which was originally manufactured for importation into and sale in the United States and which bore a certification affixed by its manufacturer pursuant to part 567 of this chapter, and

(ii) Is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards; or

(2) On the basis that the vehicle has safety features that comply with or are capable of being modified to comply with all applicable Federal motor vehicle safety standards.

(b) Each petition filed under this part must—

(1) Be written in the English language;

(2) Be headed with the words "Petition for Import Eligibility Determination" and submitted in three copies to: Administrator, National Highway Traffic Safety Administration, Washington, DC 20590, Attn: Import Eligibility Determinations;

(3) State the full name and address of the petitioner.

(4) If the petitioner is a Registered Importer, include the Registered Importer Number assigned by NHTSA pursuant to part 592 of this chapter.

(5) Set forth the basis for the petition and the information required by § 593.6 (a) or (b), as appropriate;

(6) Specify any part of the information and data submitted which petitioner requests be withheld from public disclosure in accordance with part 512 of this chapter; and

(7) Submit a certified check payable to the Treasurer of the United States, for the amount of the vehicle eligibility petition fee established pursuant to part 594 of this chapter.

(c) The knowing and willful submission of false, fictitious or fraudulent information may subject the petitioner to the criminal penalties of 18 U.S.C. 1001.

§ 593.6 Basis for petition.

(a) If the basis for the petition is that the vehicle is substantially similar to a vehicle which was originally manufactured for importation into and sale in the United States, and which was certified by its manufacturer pursuant to part 567 of this chapter, and that it is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards, the petitioner shall provide the following information:

(1) Identification of the original manufacturer, model, and model year of the vehicle for which a determination is sought.

(2) Identification of the original manufacturer, model, and model year of the vehicle which the petitioner believes to be substantially similar to that for which a determination is sought.

(3) Substantiation that the manufacturer of the vehicle identified by the petitioner under paragraph (a)(2) of this section originally manufactured it for importation into and sale in the United States, and affixed a label to it certifying that it complied with all applicable Federal motor vehicle safety standards.

(4) Data, views and arguments demonstrating that the vehicle identified by the petitioner under paragraph (a)(1) of this section is substantially similar to the vehicle identified by the petitioner under paragraph (a)(2) of this section.

(5) With respect to each Federal motor vehicle safety standard that applied to the vehicle identified by the petitioner under paragraph (a)(2) of this section, data, views, and arguments

demonstrating that the vehicle identified by the petitioner under paragraph (a)(1) of this section either was originally manufactured to conform to such standard, or is capable of being readily modified to conform to such standard.

(b) If the basis of the petition is that the vehicle's safety features comply with or are capable of being modified to comply with all applicable Federal motor vehicle safety standards, the petitioner shall provide the following information:

(1) Identification of the model and model year of the vehicle for which a determination is sought.

(2) With respect to each Federal motor vehicle safety standard that would have applied to such vehicle had it been originally manufactured for importation into and sale in the United States, data, views, and arguments demonstrating that the vehicle has safety features that comply with or are capable of being modified to conform with such standard. The latter demonstration shall include a showing that after such modifications, the features will conform with such standard.

§ 593.7 Processing of petitions.

(a) NHTSA will review each petition for sufficiency under §§ 593.5 and 593.6. If the petition does not contain all the information required by this part, NHTSA notifies the petitioner, pointing out the areas of insufficiency, and stating that the petition will not receive further consideration until the required information is provided. If the additional information is not provided within the time specified by NHTSA in its notification, NHTSA may dismiss the petition as incomplete, and so notify the petitioner. When the petition is complete, its processing continues.

(b) NHTSA publishes in the Federal Register, affording opportunity for comment, a notice of each petition containing the information required by this part.

(c) No public hearing, argument, or other formal proceeding is held on a petition filed under this part.

(d) If the Administrator is unable to determine that the vehicle in a petition submitted under § 593.6(a) is one that is substantially similar, or (if it is substantially similar) is capable of being readily modified to meet the standards, (s)he notifies the petitioner, and offers the petitioner the opportunity to supplement the petition by providing the information required for a petition submitted under paragraph 593.6(b).

(e) If the Administrator determines that the petition does not clearly demonstrate that the vehicle model is eligible for importation, (s)he denies it and notifies the petitioner in writing. (S)he also publishes in the Federal Register a notice of denial and the reasons for it. A notice of denial also states that the Administrator will not consider a new petition covering the model that is the subject of the denial until at least 3 months from the date of the notice of denial. There is no administrative reconsideration available for petition denials.

(g) If the Administrator determines that the petition clearly demonstrates that the vehicle model is eligible for importation, (s)he grants it and notifies the petitioner. (S)he also publishes in the Federal Register a notice of grant and the reasons for it.

§ 593.8 Determinations on the agency's initiative.

(a) The Administrator may make a determination of eligibility on his or her own initiative. The agency publishes in the Federal Register, affording opportunity for comment, a notice containing the information available to the agency (other than confidential information) relevant to the basis upon which eligibility may be determined.

(b) No public hearing, argument, or other formal proceeding is held upon a notice published under this section.

(c) The Administrator publishes a second notice in the Federal Register in which (s)he announces his or her determination whether the vehicle is eligible or ineligible for importation, and states the reasons for the determination. A notice of ineligibility also announces that no further determination for the same model of motor vehicle will be made for at least 3 months following the date of publication of the notice. There is no administrative reconsideration available for a decision of ineligibility.

§ 593.9 Effect of affirmative determinations; lists.

(a) A notice of grant is sufficient authority for the importation by persons other than the petitioner of any vehicle of the same model specified in the grant.

(b) The Administrator publishes annually in the Federal Register a list of determinations made under Sec. 593.7, and Sec. 593.8.

§ 593.10 Availability for public inspection.

(a) Except as specified in paragraph (b) of this section, information relevant to a determination under this part, including a petition and supporting data, and the grant or denial of the petition or the making of a determination on the Administrator's initiative, is available for public inspection in the Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. Copies of available information may be obtained, as provided in part 7 of this chapter.

(b) Except for release of confidential information authorized under part 512 of this chapter, information made available for inspection under paragraph (a) of this section does not include information for which confidentiality has been requested and granted in accordance with part 512 of this chapter, and 5 U.S.C. 552(b). To the extent that a petition contains material relating to the methodology by which the petitioner intends to achieve conformance with a specific standard, the petitioner may request confidential treatment of such material on the grounds that it contains a trade secret or confidential information in accordance with part 512 of this chapter.

Issued on September 26, 1989.

Jeffrey R. Miller,

Acting Administrator.

[FR Doc. 89-23083 Filed 9-27-89; 10:40 am]

BILLING CODE 4910-59-M

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49 CFR Part 594

[Docket No. 89-8; Notice 2]

RIN 2127-AC98

Schedule of Fees Authorized by the National Traffic and Motor Vehicle Safety Act

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

ACTION: Final rule.

SUMMARY: The National Traffic and Motor Vehicle Safety Act, as revised by the Imported Vehicle Safety Compliance Act of 1988 (Pub. L. 100-562), provides that motor vehicles not originally manufactured to conform to Federal motor vehicle safety standards may nevertheless be imported into the United States under certain circumstances. In general, such a vehicle may be imported under bond for certification of its conformance, or exportation in the event it is not conformed, by those who have registered with NHTSA as importers, provided that NHTSA has determined that the nonconforming vehicle is capable of being conformed to meet the safety standards.

The Safety Act authorizes NHTSA to establish fees to cover its cost of administering the registration program, and of making conformance capability determinations, and to reimburse the U.S. Customs Service its costs in processing the importation bond. The purpose of this rule is to adopt the fee

schedules that will implement the statutory authorization. The agency has concluded that the initial annual fee for the registration program is $255. The fee to accompany a petition for a determination that a vehicle is eligible for importation is either $1560 or $2150, depending upon the basis of the petition. These fees are identical to those proposed. The fee required to reimburse the U.S. Customs Service for bond processing costs is $4.35 per bond. This is less than the proposed fee of $125.

DATE: The effective date of the final rule is September 30, 1989.

FOR FURTHER INFORMATION CONTACT: Taylor Vinson, Office of Chief Counsel, NHTSA, (202–366–5263).

SUPPLEMENTARY INFORMATION:

Introduction

On December 5, 1988, the National Highway Traffic Safety Administration published a notice of the amendment of section 108 of the National Traffic and Motor Vehicle Safety Act by Public Law 100–562, the Imported Vehicle Safety Compliance Act of 1988 (53 FR 49003). The effective date of the amendments is January 31, 1990. On and after that date, with the exceptions specified in the notice, motor vehicles that have not been originally manufactured to conform to the Federal motor vehicle safety standards may be imported only by persons who have registered with NHTSA as undertaking to bring the vehicle into conformance, or by persons who have contracts with registered importers to perform conformance work. In addition, such a vehicle may not be imported unless NHTSA has determined that it is capable of being conformed to the standards. The agency may make such a determination in a response to a petition by a registered importer, or on its own initiative. Each vehicle permitted entry must be accompanied by a bond given to secure performance of the conformance work, or, to ensure its exportation or abandonment to the United States in the event that the vehicle is not brought into full conformance.

Rules have been issued to implement the other provisions of the Vehicle Safety Act described above, and are being published simultaneously with this notice. They are 49 CFR part 591, *Importation of Vehicles and Equipment Subject to Federal Motor Vehicle Safety Standards;* part 592, *Registered Importers of Vehicles not Originally Manufactured To Conform to the Federal Motor Vehicle Safety Standards;* and part 593, *Determinations That a Vehicle not Originally Manufactured To Conform to the Federal Motor Vehicle Safety Standards Is Eligible for Importation.* A proposed schedule of fees (part 594) was published on April 25, 1989 (54 FR 17792).

The new provisions also specifically authorize NHTSA to impose fees to cover certain administrative costs incurred in implementation of the new importation procedures. There are two or more types of fees to cover three types of costs for which fees may be charged: an annual fee to cover the costs of administration of the importer registration program, an annual fee or fees to cover the costs of processing the bond furnished to the Customs Service, and an annual fee or fees to cover the costs of making import eligibility determinations.

The purpose of this rule is to adopt a fee schedule that appears appropriate for recovery of each cost, and to explain the rationale behind each of these fees. In identifying those agency activities that may form the cost basis of a fee authorized by the new import provisions, the agency has considered the experience of other agencies in establishing users fees under the Independent Offices Authorization Act (31 U.S.C. 9701), and the Consolidated Omnibus Budget Reconciliation Act (Pub.L. 99–272). Thus, as proposed, and as repeated in this notice, the agency will: identify each service it provides, explain why it is entitled to recover the cost of providing that service, identify each type of expenditure incurred in providing that service, explain the criteria used to include or exclude a particular expenditure, and calculate the amount of each such expenditure.

There were three substantive responses to the proposal, submitted by Auburn Motors, Inc., The Dealer Action Association, and Mercedes-Benz of North America.

1. Requirements of the Fee Regulation

Section 594.6 Annual Fee for administration of the importer registration program

Section 108(c)(3)(A)(iii) of the Vehicle Safety Act provides that registered importers must pay "such annual fee as the Secretary establishes to cover the cost of administering the registration program. . . ."

The first issue addressed by the agency in its proposal was whether the term "registration program" is inclusive of all activities under section 108(c) (except for the other activities for which a fee may be imposed), or whether it is restricted to activities relating directly to the registration process, such as reviewing registration applications and acting upon them. The agency interpreted "registration program" conservatively, and concluded that it refers only to activities connected with the development and maintenance of the registration process, including monitoring, and enforcement activities resulting in suspension or revocation of a registration. Although it could be argued that NHTSA's verification of the certification submitted by a registered importer is relevant to the maintenance by that registered importer of its status, this agency believes that Congress did not intend to include such an activity in the registration program. Specifically, section 108(c)(3)(B)(i) prohibits the application of fees collected under the Vehicle Safety Act to NHTSA's inspection of vehicles for which certifications have been filed. Thus, NHTSA proposed to exclude, from the fee structure of the registration program, activities connected with processing of certificates and compliance documentation of motor vehicles.

Mercedes-Benz and The Dealer Action Association disagreed with NHTSA's conclusions, and argued that all costs except those specifically exempted in the statute ought to be included. Each believes that the costs associated with processing certificates of conformity and monitoring compliance should also be included. They argued that Congress intended that the costs be borne in full by those who would benefit from the new legislation, and that the presence of specific exclusions in the legislation argues for an inclusive approach. Specifically, the commenters believe that two separate provisions must be read together to understand the scope of the fee structure Congress meant to establish. Section 108(c)(3)(A)(iii) requires collection from each Registered Importer of its pro rata share of administering the registration program. Section 108(c)(3)(B) then defines the scope of agency activities covered. It states in relevant part "All fees collected shall be available until expended * * * solely for use * * * in the administration of all of the requirements of this subsection * * *", other than NHTSA's periodic inspection of motor vehicles for which certificates have been furnished, and regulations governing the Registered Importer's financial ability to notify and remedy.

The commenters further argue that the legislative history also evidences Congressional intent to establish comprehensive fees. Remarks by Senator Inouye are cited in support:

> This new program will be financed through fees paid by registered importers upon registration, and annually thereafter, as

calculated by the Secretary to cover the additional costs of administering the program. We felt it was appropriate in this limited instance to require the payment of such fees because this new program is being established solely for the benefit of registered importers and will continue to permit them to stay in business.

Cong. Rec. S14734, daily ed. October 5, 1988.

The commenters believe that NHTSA should recalculate the costs it will incur and make appropriate adjustments in the fees it will require Registered Importers to pay annually.

The agency has carefully considered these comments. NHTSA notes the comment by Senator Rudman (S14375) that the fees cover the costs of administering only "certain provisions", and that "the user fees would not apply to the testing of these vehicles. . . . This is a responsibility normally assumed by the Department." NHTSA believes that it was not the intent of Congress to assess fees for activities that represent "a responsibility normally assumed by the Department", *i.e.*, a responsibility that was part of the agency's enforcement program before enactment of the 1988 Act. The registration requirements (section 108(c)(3)(D)) constitute an entirely new program, but the requirements for submission and evaluation of certification and documentation (section 108(c)(3)(E)) have a direct counterpart in the agency's present enforcement program under which a statement of conformance supplemented by documentary evidence must be provided before action is taken upon the bond. Therefore the agency has not broadened its interpretation of the elements of the registration program in section 108(c)(3)(D) to cover activities in section 108(c)(3)(E).

The second issue addressed by NHTSA, and relevant to the other authorized fees as well, was whether the agency can recover both direct and indirect costs associated with its activities. It noted that there is no modifier of the word "costs", and concluded that both direct and indirect costs may be recovered. Such costs include all costs of administering the program, including salaries and other personnel costs (retirement, insurance and leave), travel, postage, maintenance and depreciation of equipment, supplies, and a proportionate share of agency management and supervisory costs as well as accrued liabilities, which include severance pay, unemployment compensation, workers compensation, and unused leave costs. The commenters did not address this issue.

The initial annual fee attributable to the registration program contains three components. The first component is one that would cover the cost of processing an application by a person seeking to become a registered importer. It would not be refundable in the event of a denial. The second component represents the costs attributable to such inspection of an applicant's facilities as the agency may deem necessary to conduct prior to a decision on an application. The third component is intended to cover the remaining costs. The first and third components of the initial annual fee will be paid at the time that an applicant seeks to become a registered importer. The second component will be paid only if an inspection is actually conducted, and would be payable by the end of the tenth calendar day after notification by the agency. If the application is denied, the amount of the fee representing the third component will be refunded to the applicant.

Annual fees after the initial annual fee will also have three components. Instead of a component attributable to processing an application, the first component of a regular annual fee will cover the costs of processing the registered importer's annual statement (or mid-year changes) attesting that there is no material change in its condition and that it is maintaining its financial and technical ability to meet its statutory obligations. The second component will cover the cost, if any, of such inspections the agency might have conducted with respect to the registered importer during the year. The third component is again intended to cover remaining costs.

With respect to the first component of the initial annual fee, the relatively simple, discrete activities involved in processing and acting upon registration applications permit a uniform first component sum to be developed, payable by all who seek to become registered importers. Similarly, the agency tasks involved in processing and reviewing annual statements appear to permit a uniform first component sum to be developed. The direct costs that the agency will consider in this regard are the amount of time spent in reviewing applications or annual statements for form and content, analysis, and drafting of documents relating to the analysis and disposition of the application or annual statement, including direct supervisory time. Other direct costs associated, such as postage, computer time, and meetings to discuss the merits of an application or annual statement, will be included in the fee structure. However, while the application is pending, NHTSA may wish to inspect the premises of the applicant. The costs of this inspection would form the basis of the second component of the fee that must be paid before a determination is made on the merits of the application. Inspections conducted after registration (the second component of the regular annual fee) would be reflected in the next annual fee payable by the registered importer concerned.

The agency will include indirect costs as well. For example, if one-third of a staffer's time at a word processing terminal is spent in drafting documents relative to an application determination, then a third of the cost of maintaining the space and the terminal will be factored into a registration fee. Indirect general and administrative costs can be included in the fee structure as a pro rata share of the costs attributable to running the program.

Once a registration has been granted, section 108(d)(2) imposes an obligation on a registered importer to maintain evidence satisfactory to NHTSA that it continues to be financially able to meet its statutory responsibilities "relating to discovery, notification, and remedy of motor vehicle defects." Further, section 108(c)(3)(D)(ii) directs the agency to set requirements for registered importers, including at a minimum (1) requirements for record-keeping; and (2) requirements for records and facilities inspection for registered importers. Activities of the agency associated with satisfying it of financial ability and meeting other specified responsibilities may be included in the cost basis of the registration program annual fee. The initial annual fee adopted by this notice is based upon NHTSA's estimates of costs for the first fiscal year that the registration program is in effect. If the amount of the annual fee for a succeeding year is adjusted, the adjustment will take into account NHTSA's actual experience in the year preceding.

Under § 592.6(a)(7) of the regulation on Registered Importers, the agency may inspect a facility or the records which the Registered Importer must keep to fulfill its program responsibilities. There are two purposes for which such inspections may be conducted. The first is to verify that the regulatory criteria for obtaining or maintaining the status of registered importer are met. These inspections are directly related to administration of the registration program. The agency will include direct and indirect costs associated with these inspection activities in the fee structure for the program. The second purpose for which an inspection may be conducted is to verify that a certification filed by a registered importer is supported by the conformance work performed. This

activity is specifically excluded as a cost towards which fees may not be applied. Consequently, if inspecting a facility for compliance with registration requirements also involves vehicle inspection, agency staff will segregate costs to exclude those attributable to the inspection of vehicles. Only those costs directly attributable to the registration program will be included in the second component of the next regular annual fee.

As with the costs of processing an initial application or annual statement, all direct and indirect costs associated with the suspension and reinstatement of Registered Importer status are recoverable by the agency. These include costs associated with notifying a registrant that the agency is considering suspension, plus the costs of allowing it to present its opposition to suspension under § 592.7(b) of the Registered Importer regulation, and costs associated with processing a registrant's request that NHTSA reconsider a suspension under § 592.7(e). The final associated cost is that of notifying the registrant of the determination regarding its suspension.

Similarly, the costs associated with revoking a registration are recoverable. These include notifying a Registered Importer in writing that NHTSA intends to revoke registration under § 592.7(b), or that the agency has revoked a registration under § 592.7(c) because the registrant knowingly filed a false or misleading certification. Further recoverable costs are those associated with reviewing, analyzing and responding to the registrant's written opposition to a preliminary decision to revoke its registration.

The agency will include whatever activities are associated with making a determination under § 592.7(d) that the basis for a suspension no longer exists. The nature of the reinstatement process will vary depending on the reason for the suspension. For example, the process will be comparatively simple if the suspension was for failure to pay a fee.

Section 594.7 Fee for Vehicle Importation Eligibility Petitions

Section 108(c)(3)(A)(iii)(II) also requires Registered Importers to pay "such other annual fee or fees as the Secretary reasonably establishes to cover the cost of * * * making the determinations under this section." Pursuant to part 593, these determinations are whether the vehicle sought to be imported is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, and certified as meeting the Federal standards, and whether it is capable of being readily modified to meet those standards, or, alternatively, where there is no substantially similar U.S. motor vehicle, whether the safety features of the vehicle comply with or are capable of being modified to comply with the U.S. standards. These determinations are made pursuant to petitions submitted by Registered Importers or manufacturers, or pursuant to determinations made upon the Administrator's initiative.

In developing this regulation, the agency considered the type and frequency of fees that would best implement the purpose of the 1988 Act. With respect to making eligibility determinations, it considered an "annual fee", in which total costs attributable to eligibility determinations would be divided equally among all Registered Importers. Such a fee would be payable at the time of the next regular annual fee for administration of the registration program. This type of fee appeared equitable in the sense that more than one Registered Importer may benefit from an eligibility determination, and that the costs would not be borne by the petitioner alone. However, NHTSA proposed and adopted a requirement that a fee be charged for individual petitions for determinations of eligibility. The benefit of this approach is that it permits "pay-as-you-go", under which costs are more quickly recovered. This fee would be payable by a petitioner for a determination, or by the importer who first benefits from a determination made on the agency's initiative (see further discussion below).

The agency requested comments on each approach, but it proposed the second approach. Under this, a petition by a manufacturer or Registered Importer for a determination would be accompanied by the fee specified in § 594.7. The payment of this fee by the petitioner is premised upon the likelihood that the petitioner would be the immediate beneficiary of any favorable determination, and therefore, ought to pay the costs authorized by statute for consideration of its petition. The immediate beneficiary of a favorable determination made upon the Administrator's initiative would be the first Registered Importer, or other person, who imports a vehicle that is covered by the determination. Therefore, NHTSA proposed to establish a fee that would be payable by the Registered Importer who furnishes a certificate of conformity covering the first vehicle imported under a declaration filed after notice of the Administrator's initiative determination has appeared in the Federal Register. The notice would include a discussion of the fee to be paid and the basis for it. Subsequently, upon receipt of the first declaration covering the vehicle, NHTSA would notify the Registered Importer concerned that the stated fee is due at the time the certificate of conformity covering the vehicle is received. However, NHTSA is aware that such costs would remain unrecoverable until such time as (and unless) a declaration is filed on such a vehicle.

The three commenters on the proposal recommended that it would be more equitable to divide the petition fee among all Registered Importers. NHTSA gave close attention to these comments and examined various ways that this could be accomplished. Because of the requirement of section 108(c)(3)(B) that the fee applicable in any fiscal year be established before the beginning of such year, NHTSA concluded that it could not implement the suggestion it had discussed in the proposal, to establish a pro rata fee applicable to all Registered Importers at the end of a fiscal year to cover all petition determinations of that year. Collection of such a sum appeared difficult also; the agency did not appear to have leverage over manufacturers who had filed petitions without a fee, and as for Registered Importers, to defer renewal of registration until the annual petition fee was paid seemed irrelevant to maintenance of the qualifications of Registered Importers.

The agency concluded that payment by the petitioner at the time of the petition represented the most effective way to recover the costs of eligibility determinations, but within that framework it explored ways of equalizing the burden by an allocation at the end of the fiscal year. As an alternative to dividing total petition fees by the number of Registered Importers, the fee for a petition for a specific make/model could be divided by the number of only those Registered Importers who had furnished certificates of conformity for that make/model during the year. A variation of this alternative would be a formula with weights given Registered Importers according to the specific number of that specific make/model each had imported. At the end of the fiscal year, there would be a reconciliation of sums, under which certain Registered Importers could be given cash refunds or credits toward future petitions, or, if the reconciliation showed otherwise, an assessment imposed on a Registered Importer. No approach appeared to be without problems, and each, other than payment at the time of the petition,

would add costs to the general fee structure. Nevertheless, NHTSA remains interested in the concept of equalizing the burden, and on the basis of its experience in the first year of the petition program, will consider additional ways that this might be accomplished. It would be interested in having constructive comments during this period.

As NHTSA observed in the notice, the activities that may form the cost basis for petitions appear to include logging-in, notifying the petitioner of receipt, and evaluating the petition. If the agency grants a written request by the petitioner to appear to discuss a petition under § 593.7(c), it will recover the cost of processing the written request and discussing the petition. Although the 1988 Act does not require an actual demonstration of conformance, only that a vehicle is capable of conformance, a petitioner may wish to substantiate its arguments with presentation of a modified vehicle. In that event, it may be necessary for NHTSA to inspect the modified vehicle as part of its role in determining whether the vehicle is eligible for importation. The cost of that inspection would be properly recoverable. The new import provisions require publication of a notice in the **Federal Register**; thus the agency will also recover costs associated with preparing and processing **Federal Register** documents generated in connection with the petition, processing and analyzing comments submitted in connection with a **Federal Register** document; and notifying a petitioner of the agency's decision.

When NHTSA makes a determination on its own initiative, it will also publish a notice in the **Federal Register** and receive and evaluate comments on it.

The new import provisions do not require the agency to publish a second **Federal Register** notice immediately after a decision is made. Section 108(c)(3)(C)(iv), however, does require NHTSA to publish annually in the **Federal Register** a list of all vehicles determined to be eligible for import under the Act. Compiling and publishing this list is connected with making and announcing eligibility determinations, and the costs will be included in the fee structure.

Section 594.8 Fee payable for Administrator's determination

Costs to be recovered through payment of a fee also cover those attributable to determinations of import eligibility made on NHTSA's initiative. The principal issue here is how such costs are to be recovered in the absence of a petitioner. The method proposed was that it be paid by the first Registered Importer who furnishes a certificate of conformity covering such vehicle after NHTSA's determination on its own initiative. There were no specific comments on this method, though it was clearly implied by the three commenters that such costs should be shared equally by all Registered Importers. For the reasons set forth above in the discussion on allocation of fees among Registered Importers, it is impracticable to do so, and NHTSA has adopted the method proposed.

Section 594.9 Fee to Recover the Costs of Processing the Bond

Section 108(c)(3)(A)(iii)(II) also requires a registered importer to pay "such annual fee or fees as the Secretary reasonably establishes to cover the cost of processing the bond furnished to the Secretary of the Treasury" upon the importation of a nonconforming vehicle to ensure that the vehicle will be brought into compliance within a reasonable time, or if the vehicle is not brought into compliance within such time, that it is exported without cost to the United States, or abandoned to the United States.

The statute contemplates that NHTSA make a reasonable determination of the cost to the United States Customs Service of processing the bond. The agency has met with representatives of the Customs Service to obtain such information as would allow it to include the cost basis of processing the bond in the fee structure. The analysis that Customs has provided NHTSA indicates that it has followed the same guidelines as the agency does to determine whether each activity associated with processing the bond gives rise to a recoverable cost. The 1988 Act requires the bond to be furnished the Secretary of the Treasury acting on behalf of NHTSA. However, NHTSA has decided, and Customs concurs, that the bond in question is not the general importation bond which covers duties and other obligations relevant to merchandise. It is a bond given to secure performance of obligations under the Vehicle Safety Act, and will therefore be a bond of the Department of Transportation and not of the Treasury. The two Federal agencies have determined that this bond will accompany the declaration at the time of entry, and be submitted with it to NHTSA. Thus the role of Customs in "processing" the bond will be limited to two activities. At the time of importation, it will ensure that the bond is attached to the entry form (or reject the entry for lack of the bond). After bond verification, it will forward the bond and entry form to NHTSA. A third activity will be required in the event that a vehicle must be exported for failing to meet NHTSA's requirements: the supervision of export.

The first two activities will form the basis for the processing cost payable by the registered importer. The cost of the third activity will be part of the bond, so that if the vehicle must be redelivered for export, a sum covering the third activity would be payable to NHTSA on behalf of Customs. Although NHTSA will advance Customs its costs in accordance with statutory requirements, it will recover these costs on an *ad hoc* basis, requiring a registered importer to submit a bond processing fee at the time it submits conformance verification on each vehicle.

2. Calculations of the agency's costs in setting fees

To the extent possible, the agency's costs in setting fees are based upon an accounting of each discrete activity involved in the process. Thus, the fees imposed by part 594 include the agency's best direct and indirect cost estimates of the man-hours involved in each activity, on both the staff and supervisory levels, the costs of computer and word processor usage, postage costs, costs attributable to travel, salary and benefits, and maintenance of work space, to name the ones set forth in the proposed regulation.

Specifically, each fee is calculated on the basis of the direct and indirect costs associated with the activity for which the fee is paid. The direct costs include the average cost per professional staff-hour, computer and word processor time, stationery and postage, and transportation.

The average cost per professional staff-hour is calculated based upon the full costs for time spent (to the nearest quarter-hour) using the following applicable professional staff rates:

(A) Office of Vehicle Safety Compliance—

Clerical staff—$13 per hour.
Computer contract staff—$25 per hour.
Review staff—$26 per hour.
Supervisors—$41 per hour.

(B) Office of Chief Counsel—$41 per hour.

The average cost per computer-hour is calculated at the rate of $100 per hour.

The average cost for postage is calculated to be $3.00.

The indirect costs include a pro rata allocation of the average salary and benefits of persons employed in processing the applications and recommending decisions on them, and a pro rata allocation of the costs

attributable to maintaining the office space, and the computer or word processor. The staff rates above include benefits; the costs associated with office space, equipment maintenance, communications and other overhead amount to an additional $6.71 per hour.

The cost for determining the salary and benefits of persons employed is calculated based upon the time spent multiplied by the employee's hourly wage.

The cost of maintaining the computer or word processor is calculated based upon maintenance, time sharing, and staff operations.

The cost of maintaining the office space is calculated based upon standard government regulations based upon grade levels.

The cost of travel is based upon an estimated round trip air fare of $250, and a 3-day per diem of $100 a day, for a total trip cost of $550.

A. Registration Program Fee

The Registration Program Annual Fee has two and in some instances three components: a portion attributable to the registration process, a portion attributable to any inspection of an applicant that the agency deems needed to verify information submitted in an application for registration, and a portion attributable to other activities occurring in the registration program. Exclusive of the inspection portion, the agency has decided that the initial Annual Registration Program fee shall be $255.

The initial component of the Registration Program Fee is the portion of the fee attributable to processing and acting upon registration applications. The agency estimates this portion of the fee as $85.99.

In calculating the direct costs of processing registration applications, NHTSA estimates that one staff member and one supervisor will spend a total of one man-hour in processing, reviewing, and acting upon applications, that a quarter hour of computer, and computer-operator time will be required to verify that the applicant has not had a registration revoked, that a half-hour of clerical time will be required, and that postal charges will be incurred. These costs are estimated at $74.25.

In calculating the indirect costs of processing registration applications, NHTSA has estimated that these will average $6.71 per hour spent. Processing will require a total of 1.75 hours per application, thus NHTSA estimates that indirect costs will total $11.74. Thus the total direct and indirect costs of this component are $85.99.

With respect to other costs attributable to maintenance of the registration program, these consist principally of reviewing a registrant's annual statement verifying the continuing validity of information already submitted, and processing annual fees. These costs also include costs attributable to revocation or suspension of a registration.

In calculating the direct costs of administering the registration program other than costs connected with the initial application, NHTSA estimates that one staff member and one supervisor will spend a total of 1.5 man-hours in administration activities, that one-half hour of computer time, and computer operator time will be required, that 1.5 hours of clerical and recordkeeping time will be needed, and a postal charge will be incurred. The total direct charges for administering the registration program are estimated at $131.50. The total overhead costs of the 3.5 hours involved are $23.49, or a total of $154.99. These costs, of course, are exclusive of costs associated with revocation or suspension.

At this point, it appears fairest that a suspended registrant bear the costs associated with suspension and reinstatement, to be included in its next annual fee. However, it will not be feasible to recover costs from an importer whose registration has been revoked. Those costs appear best borne by each registered importer paying a pro rata share in its annual fee. Obviously, before the effective date of the 1988 Act, NHTSA has no knowledge of how many registered importers there will be or how many suspensions or revocations may occur in the first year of the program. However, for purposes of determining this portion of the registration fee, NHTSA estimates there will be 20 registered importers during the fiscal year beginning October 1, 1989, and ending September 30, 1990, and that there will be one revocation. Under Part 592, the procedures that the agency will follow in determining whether a registration should be revoked or suspended are identical. This means that the direct and indirect costs should also be identical, up to the point of an agency determination. Because a suspended registration may be reinstated, either upon expiration of the term stated in the agency's letter of suspension, or upon cure of the cause giving rise to the suspension, there will be a slight additional cost commensurate with the clerical aspects of ending the suspension.

NHTSA contemplates that its Enforcement Office will recommend suspensions or revocations to the Office of Chief Counsel, and that 1 hour of staff time, and .25 hour computer operator time will be involved in recommendations. In addition, .25 hour of computer time will be used. The Office of Chief Counsel will require 1.75 hours to review the recommendation and draft a letter to the registrant, and an additional 1.75 hours to review the registrant's reply and to draft a letter of suspension, or revocation, or declining to take further action. Postal charges will total $6.00. The total direct costs associated with this procedure are $206.75, and the overhead costs for 4.75 hours of agency time, $34.87. The sum of $238.62 divided by the 20 estimated Registered Importers gives a figure of $11.93 to be added to the portion of the annual fee representing maintenance of the registration program (For reinstatement, to be borne by the registrant, NHTSA estimates that the total direct and indirect costs will be $40.36, representing .25 hour of clerical time, .25 hour of computer time, and .25 hour of computer operator time).

Thus, the total portion attributable to maintenance of the registration program, as estimated by NHTSA, is approximately $166.92. When added to the $85.99 representing the registration application component, the cost per applicant equals $252.91. Therefore, NHTSA has determined that the initial annual registration fee, for the period October 1, 1989 through September 30, 1990, is $255. In the event that an application is denied or withdrawn, NHTSA will refund all but $86 of this amount, or $169.

B. Fee for Vehicle Eligibility Petitions

In calculating the direct costs of processing and acting upon a petition for a determination of eligibility, NHTSA estimates that the costs involved for determinations involving substantially similar vehicles will require substantially less agency time than those for non-similar vehicles. For purposes of this determination, NHTSA has chosen passenger cars and multipurpose passenger vehicles, the most frequently imported types of motor vehicles. The agency estimates the total direct and indirect costs for a determination involving a substantially similar vehicle at $1558.68, and for a non-similar vehicle at $2151.61. In this light, a fee of $1560 for substantially similar vehicle determinations, and one of $2150 for those that are not substantially similar, appears to fulfill the statutory directive.

More specifically, the following cost breakdown has been estimated for substantially similar (and non-similar)

vehicles. The process will result in personnel costs related to 2 (5) supervisory hours, 24 (35) staff hours, .25 (.25) hour computer time, .25 (2) hour(s) data entry time, .50 (2) hour(s) clerical time, and .25 (.50) hour recordkeeping time. In addition, .25 hour of computer time would be used for each. However, costs associated with preparing and publishing the two Federal Register notices, and evaluating comments to the first notice, should be identical. Each notice may require two columns of space ($125 per column), for a cost of $250 per notice, and total publication costs of $500. Following agency practice with other petitions, the notices will be prepared by the Office of Chief Counsel. It is estimated that each notice will require 1 hour of preparation time, and .50 hour of clerical time, or a total of 3 hours for both notices. The estimated total direct charges for determinations of eligibility will be $1342 ($1817.50). In calculating the indirect costs of processing and acting upon eligibility petitions, NHTSA estimates that the process, including the Federal Register preparation time, will take 30 (47.50) man hours, for a cost of $201.30 ($318.73), or a total cost of $1543.30 ($2136.23). These totals include .25 hour of computer time. To this must be added the pro rata cost of the yearly Federal Register school. It is estimated that this will require 1 hour of Office of Chief Counsel time, .50 hour clerical time, and two columns in the **Federal Register.** The total direct costs to fulfill this statutory requirement would be $297.50. The overhead costs, $10.07. The total of $307.56 divided among the estimated 20 registered importers adds $15.38 to each petition cost, or a total of $1558.68 ($2151.61). Therefore, a petition fee of $1560 ($2150) is being adopted. At this point, costs appear similar for those determinations made upon the agency's own initiative, and the same fee will be used in recovery of costs.

C. Bond Processing Costs

With respect to the costs attributable to processing the bond furnished the Secretary of the Treasury, the agency estimated and proposed $125 per bond. However, after the proposal, NHTSA determined that the role of Customs in "processing" the bond under the 1988 Act would be limited to ensuring that the bond was completed and attached to the entry form, and that both would be forwarded to NHTSA. Customs then provided NHTSA with a detailed estimate of the costs involved in its processing of the bond. These tasks would be performed by a GS 9 Step 5 employee (hourly rate $12.94). Eighteen minutes would be required to verify the content of the bond information, amount, and completeness, and to enter the information into Customs' data processing system. These tasks would cover all nonconforming vehicles imported. It is Customs practice to conduct verification inspections on approximately 15% of vehicles, verifying VINs to bonds, and this inspection would occupy 13 minutes. Finally, Customs estimates that 1% of the vehicles entered would not be brought into satisfactory conformity, requiring fulfillment of the bond condition of export. The associated tasks of supervising lading, reviewing documents, and verifying vehicle identification would require 20 minutes. Using the estimate of 2100 vehicles entered per year (the importation rate for 1989 to date), Customs' total bond processing costs are $9,140.04, or $4.352 per vehicle. NHTSA has adopted $4.35 as the bond processing fee per vehicle.

Effective Date

Section 108(c)(3)(B) requires that the fee applicable in any fiscal year shall be established by NHTSA before the beginning of each such year. Therefore, pursuant to 5 U.S.C. 553(d)(3), it is found that good cause is shown for an effective date that is earlier than 30 days after publication of the final rule. Therefore, this final rule is effective September 30, 1989, so that the fees it establishes will be applicable in Fiscal Year 1990, which begins October 1, 1989.

Impacts

After considering the impacts of this rulemaking action, NHTSA has determined that the action is not major within the meaning of Executive Order 12291 "Federal Regulation". It implements Public Law 100–562 under which fees may be established to cover the costs of administering the program for registration of importers of vehicles not originally manufactured to conform to the Federal motor vehicle safety standards, of determinations that nonconforming vehicles are capable of conformity to the standards, and of reimbursing or advancing the U.S. Customs Service its costs in processing safety standards conformance bonds. It is not significant under Department of Transportation regulatory policies and procedures. The action does not involve any substantial public interest or controversy. There is no substantial effect upon state and local governments. There is no substantial impact upon a major transportation safety program. Both the number of registered importers and vehicles for which determinations are established to be comparatively small, and the number of vehicles imported per year is estimated to be less than 3000. Nevertheless, a regulatory evaluation analyzing the economic impact of this and the related final rules required by P.L. 100–562 has been prepared, and is available for review in the docket, as part of the Regulatory Flexibility Analysis.

NHTSA has analyzed this rule for purposes of the National Environmental Policy Act. The rule will not have a significant effect upon the environment because it is anticipated that the annual volume of motor vehicles imported through registered importers will not vary significantly from that existing before promulgation of the rule even with the imposition of fees to be paid by registered importers.

The agency has also considered the effects of this rule in relation to the Regulatory Flexibility Act. I certify that this rule will not have a significant economic impact upon a substantial number of small entities. Although entities that currently modify nonconforming vehicles are small businesses within the meaning of the Regulatory Flexibility Act, the agency has no reason to believe that a substantial number of these companies could not pay the fees imposed by this regulation. However, some small businesses currently conforming vehicles may not choose to register as importers because of the fee and other requirements. Accordingly, these businesses will no longer be able to perform conformance work on vehicles imported on or after January 31, 1990. The cost to owners or purchasers of modifying nonconforming vehicles to conform with the safety standards may be expected to increase to the extent necessary to reimburse the registered importer for the fees payable to the agency for the cost of administering the registration program and to compensate Customs for its bond processing costs. Governmental jurisdictions will not be affected at all since they are generally neither importers nor purchasers of nonconforming motor vehicles.

The agency has analyzed the proposed rule in accordance with the principles and criteria contained in Executive Order 12612 "Federalism" and determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 594

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, a new part 594, *Schedule of Fees*

Authorized by the National Traffic and Motor Vehicle Safety Act, is added to Title 49, Chapter V, to read as follows:

PART 594 SCHEDULE OF FEES AUTHORIZED BY THE NATIONAL TRAFFIC AND MOTOR VEHICLE SAFETY ACT.

Sec.

Authority: Public Law 100-562, 15 U.S.C. 1401, 1407; delegation of authority at 49 CFR 1.50.

§ 594.1 Scope.

This part establishes the fees authorized by the National Traffic and Motor Vehicle Safety Act.

§ 594.2 Purpose.

The purposes of this part is to ensure that NHTSA is reimbursed for costs incurred in administering the importer registration program, in making determinations whether a nonconforming vehicle is eligible for importation into the United States, and in processing the bond furnished to the Secretary of the Treasury given to ensure that an imported vehicle not originally manufactured to conform to all applicable Federal motor vehicle safety standards is brought into compliance with the safety standards, or will be exported, or abandoned to the United States.

§ 594.3 Applicability.

This part applies to any person who applies to NHTSA to be granted the status of a Registered Importer, to any person who has been granted such status, and to manufacturers who are not Registered Importers who petition the Administrator for a determination pursuant to Part 593 of this chapter.

§ 594.4 Definitions.

All terms used in this part that are defined in section 102 of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1391) are used as defined in the Act.

"*Administrator*" means the Administrator of the National Highway Traffic Safety Administration.

"*NHTSA*" means the National Highway Traffic Safety Administration.

"*Registered Importer*" means any person who has been granted the status of registered importer under Part 592 of this Chapter, and whose registration has not been revoked.

§ 594.5 Establishment and payment of fees.

(a) The fees established by this part continue in effect until adjusted by the Administrator. The Administrator reviews the amount or rate of fees established under this part and, if appropriate, adjusts them by rule at least every 2 years.

(b) The fees applicable in any fiscal year are established before the beginning of such year. Each fee is calculated in accordance with this part, and is published in the **Federal Register** not later than September 30 of each year.

(c) An applicant for status as Registered Importer shall submit an initial annual fee with the application. A fee for a determination that a vehicle is eligible for importation shall be submitted with the petition for a determination. No application or petition will be accepted for filing or processed before payment of the full amount specified. Except as provided in § 594.6(d), a fee shall be paid irrespective of NHTSA's disposition of the application or petition, or of a withdrawal of an application or petition.

(d) A Registered Importer annual fee, other than the initial annual fee, is payable not later than October 31 of each year.

(e) A fee atrributable to a determination of eligibility made on the Administrator's initiative shall be paid by a Registered Importer in accordance with § 594.8(b).

(f) A fee for reimbursement for bond processing costs shall be filed with each certificate of conformity furnished the Administrator.

(g) Any other annual fee is payable not later than October 31 of each year. Any other fee is payable not later than 30 calendar days after the date of written notification by the Administrator.

(h) Fee payments shall be by check, draft, money order, or Electronic Funds Transfer System made payable to the Treasurer of the United States.

§ 594.6 Annual fee for administration of the registration program.

(a) Each person filing an application to be granted the status of a Registered Importer pursuant to part 592 of this chapter during the period October 1, 1989 through September 30, 1990, shall pay an initial annual fee of $225, as calculated below, based upon the direct and indirect costs attributable to:

(1) Processing and acting upon such application;

(2) Any inspection deemed required for a determination upon such application;

(3) The estimated remaining activities of administering the registration program in the fiscal year in which such application is intended to become effective.

(b) That portion of the initial annual fee attributable to the processing of the application for applications filed from October 1, 1989, through September 30, 1990, is $86. The sum of $86, representing this portion, shall not be refundable if the application is denied or withdrawn.

(c) If, in order to make a determination upon an application, NHTSA must make an inspection of the applicant's facilities, NHTSA notifies the applicant in writing after the conclusion of any such inspection, that a supplement to the initial annual fee in a stated amount is due upon receipt of such notice to recover the direct and indirect costs associated with such inspection and notification, and that no determination will be made upon the application until such sum is received. Such sum is not refundable if the application is denied or withdrawn.

(d) That portion of the initial annual fee attributable to the remaining activities of administering the registration program from October 1, 1989, through September 30, 1990, is set forth in subsection (i) of this section. This portion shall be refundable if the application is denied, or withdrawn before final action upon it.

(e) Each Registered Importer who wishes to maintain the status of Registered Importer shall pay a regular annual fee based upon the direct and indirect costs of administering the registration program, including the suspension and reinstatement, and revocation of such registration.

(f) The elements of administering the registration program that are included in the regular annual fee are:

(1) Calculating, revising, and publishing the fees to apply in the next fiscal year, including such coordination as may be required with the U.S. Customs Service.

(2) Processing and reviewing the annual statement attesting to the fact that no material change has occurred in the Registered Importer's status since filing its original application.

(3) Processing the annual fee.

(4) Processing and reviewing any amendments to an annual statement received in the course of a fiscal year.

(5) Verifying through inspection or otherwise that a Registered Importer is complying with the requirements of Sec. 592.6(b)(3) of this chapter for recordkeeping.

(6) Verifying through inspection or otherwise that a Registered Importer is able technically and financially to carry out its responsibilities pursuant to 15 U.S.C. 1411 *et seq.*

(7) Invoking procedures for suspension of registration and its reinstatement, and for revocation of registration pursuant to Sec. 592.7 of this chapter.

(g) The direct costs included in establishing the annual fee for maintaining registered importer status are the estimated costs of professional and clerical staff time, computer and computer operator time, and postage, per Registered Importer. The direct costs included in establishing the annual fee for a specific Registered Importer are costs of transportation and *per diem* attributable to inspections conducted with respect to that Registered Importer in administering the registration program, which have not been included in a previous annual fee.

(h) The indirect costs included in establishing the annual fee for maintaining Registered Importer status are a pro rata allocation of the average salary and benefits of persons employed in processing annual statements, or changes thereto, in recommending continuation of Registered Importer status, and a pro rata allocation of the costs attributable to maintaining the office space, and the computer or word processor. This cost is $6.71 per man-hour for the period October 1, 1989, through September 30, 1990.

(i) Based upon the elements, and indirect costs of paragraphs (f), (g), and (h) of this section, the component of the initial annual fee attributable to administration of the registration program, covering the period from October 1, 1989, through September 30, 1990, is $168.92. When added to the component representing the costs of registration of $85.99, as set forth in paragraph (b) of this section, the costs per applicant to be recovered through the annual fee is $252.91. The annual registration fee for the period October 1, 1989, through September 30, 1990, is $255.

§ 594.7 Fee for filing petition for a determination whether a vehicle is eligible for importation.

(a) Each manufacturer or registered importer who petitions NHTSA for a determination that—

(1) a nonconforming vehicle is substantially similar to a vehicle originally manufactured for importation into and sale in the United States and of the same model year as the model for which petition is made, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards, or

(2) a nonconforming vehicle has safety features that comply with or are capable of being modified to comply with all applicable Federal motor vehicle safety standards,

shall pay a fee based upon the direct and indirect costs of processing and acting upon such petition.

(b) The direct costs attributable to processing a petition filed pursuant to paragraph (a) of this section include the average cost per professional staff-hour, computer and computer operator time, and postage. The direct costs also include those attributable to any inspection of a vehicle requested by a petitioner in substantiation of its petition.

(c) The indirect costs attributable to processing and acting upon a petition filed pursuant to paragraph (a) of this section include a pro rata allocation of the average salary and benefits of persons employed in processing the petitions and recommending decisions on them, and a pro rata allocation of the costs attributable to maintaining the office space, and the computer or word processor.

(d) The direct costs attributable to acting upon a petition filed pursuant to paragraph (a) of this section, also include the cost of publishing a notice in the Federal Register seeking public comment, the cost of publishing a second notice with the agency's determination, and a pro rata share of the cost of publishing an annual list of nonconforming vehicles determined to be eligible for importation.

(e) The fee payable for a petition for a determination that a nonconforming vehicle is eligible for importation into the United States for petitions filed from October 1, 1989, through September 30, 1990, is $1560 if a petition is filed under paragraph (a)(1) above, and $2150 if filed under paragraph (a)(2) above, when the petitioner does not request inspection of a vehicle. When the petitioner requests an inspection of a vehicle, the sum of $550 shall be added to such fee. No portion of this fee is refundable if the petition is withdrawn or denied.

§ 594.8 Fee for importing a vehicle pursuant to a determination made on the Administrator's initiative.

(a) A fee shall be paid to cover the direct and indirect costs incurred by NHTSA in determinations made under § 593.8(a) of this chapter, pursuant to its own initiative, that a vehicle is eligible for importation into the United States. The basis of such fee is that set forth in § 594.7 (b), (c), and (d). If the basis of the determination is that a vehicle meets the criteria of § 594.7(a)(1), the fee is $1560. If the basis of the determination is that a vehicle meets the criteria of § 594.7(a)(2), the fee is $2150. These fees are applicable to each determination made from October 1, 1989, through September 30, 1990.

(b) After NHTSA has made a determination on its own initiative, the notice published in the Federal Register announcing the determination includes a fee attributable to NHTSA's direct and indirect costs incurred pursuant to such determination, and an advisory that such fee shall be payable by the Registered Importer who furnishes a certificate of conformity pursuant to § 592.6(a)(3)(vi) of this chapter, on behalf of the first person who files a declaration pursuant to § 591.5(f) of this chapter that the vehicle is eligible for importation.

(c) After receipt of the first declaration covering a vehicle eligible for importation because of a determination made pursuant to the Administrator's initiative, NHTSA informs the appropriate Registered Importer that a fee in the stated amount shall accompany the certificate of conformity that the registered importer must furnish for the vehicle. No certificate shall be accepted for filing or processing unless and until such fee has been paid. A certificate for which no remittance is received may be returned to the registered importer.

§ 594.9 Fee for reimbursement of bond processing costs.

(a) Each registered importer shall pay a fee based upon the direct and indirect costs of processing each bond furnished to the Secretary of the Treasury with respect to each vehicle for which it furnishes a certificate of conformity to the Administrator pursuant to § 591.7(e) of this chapter.

(b) The direct and indirect costs attributable to processing a bond are provided to NHTSA by the U.S. Customs Service.

(c) Based upon information from the U.S. Customs Service, the bond processing fee for each vehicle for which a certificate of conformity is furnished from October 1, 1989, through September 30, 1990, is $4.35.

Dated: September 26, 1989.

Jeffrey R. Miller,

Acting Administrator.

[FR Doc. 89-23082 Filed 9-27-89; 10:41 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB31

Endangered and Threatened Wildlife and Plants; Designation of the Ring Pink Mussel as an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The service designates a freshwater mussel, the ring pink mussel (*Obovaria retusa*), formerly referred to as the golf stick pearly mussel, as an endangered species under the Endangered Species Act of 1973, as amended (Act). This freshwater mussel historically occurred in the Ohio River and its large tributaries in Pennsylvania, West Virginia, Ohio, Indiana, Illinois, Kentucky, Tennessee, and Alabama. Presently, the ring pink mussel is known from four relic, apparently nonreproducing, populations in the States of Kentucky and Tennessee. The distribution and reproductive capacity of this species has been seriously impacted by the construction of impoundments on the large rivers it once inhabited. Determination of endangered species status implements the protection of the Act for the ring pink mussel.

EFFECTIVE DATE: October 30, 1989.

ADDRESSES: A complete file of this rule is available for public inspection, by appointment, during normal business hours at the Asheville Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801.

FOR FURTHER INFORMATION CONTACT: Mr. Richard G. Biggins at the above address (704/259-0321 or FTS 672-0321).

SUPPLEMENTARY INFORMATION:

Background

The ring pink mussel (*Obovaria retusa*), formerly referred to and proposed for listing by the Service as the golf stick pearly mussel, was described by Lamarck (1819). This freshwater species, which is characterized as a large-river species (Bates and Dennis 1985), has a medium to large shell that is ovate to subquadrate in outline (Bogan and Parmalee 1983). The shell exterior lacks rays and has a yellow-green to brown color. Older individuals are usually darker brown or black. The inside of the shell is salmon to deep purple surrounded by a white border. Like other freshwater mussels, it feeds by filtering food particles from the water. It has a complete reproductive cycle in which the mussel's larvae parasitize fish. The mussel's life span, fish species its larvae parasitize, and other aspects of its life history are unknown.

The ring pink mussel was historically widely distributed in the Ohio, Cumberland, and Tennessee River systems in Pennsylvania, West Virginia, Ohio, Illinois, Indiana, Kentucky, Tennessee, and Alabama (Bogan and Parmalee 1983, Kentucky Nature Preserves Commission 1980, Parmalee and Klippel 1982, Lauritsen 1987, Stansbery 1970). Based on personal communications with knowledgeable experts (Steven Ahlstedt and John Jenkinson, Tennessee Valley Authority, 1987; Arthur Bogan, Philadelphia Academy of Sciences, 1988; Arthur Clarke, Corpus Christi State University, 1986; Ronald Cicerello, Kentucky Nature Preserves Commission, 1988; James Sickel, Murray State University, 1987; and David Stansbery, Ohio State University, 1987) and a review of current literature (see above plus Sickel 1985), the species is known to survive in only four river reaches. The species still exists but apparently does not reproduce in the Tennessee River, Livingston, Marshall, and McCracken Counties, Kentucky; the Tennessee River in Hardin County, Tennessee; the Cumberland River, Wilson, Trousdale, and Smith Counties, Tennessee; and the Green River, Hart and Edmonson Counties, Kentucky.

The continued existence of these four populations is questionable. Unless reproducing populations can be found or methods can be developed to maintain these or create new populations, the species will become extinct in the foreseeable future. The individuals that still survive in these four river reaches are also threatened from other factors. The Green River in Kentucky has experienced water quality problems related to the impacts from oil and gas production in the watershed. The individuals still surviving in the Tennessee and Cumberland Rivers are potentially threatened by gravel dredging, channel maintenance, and commercial mussel fishing. Although the species is not commercially valuable, incidental take of the species does sometimes occur during commercial mussel fishing for other species.

The ring pink mussel was recognized by the Service in the May 22, 1984, **Federal Register** (49 FR 21664) and the January 6, 1989, **Federal Register** (54 FR 554) as a species that was being considered for possible addition to the Federal List of Endangered and Threatened Wildlife and Plants. On March 17, 1987, and October 27, 1987, the Service notified Federal, State, and local governmental agencies and interested individuals by mail that a status review was being conducted specifically on this mussel and that the species could be proposed for listing. Since that time, additional contacts with Federal and State agency personnel and the scientific community have occurred concerning the species' status and its potential for being protected under the Act.

On March 7, 1989, the Service published in the **Federal Register** (54 FR 9529) a proposal to list the golf stick pearly mussel, now referred to as the ring pink mussel, as an endangered species. That proposal provided information on the species' biology and status and threats to its continued existence. The proposal also solicited comments on the species.

Summary of Comments and Recommendations

In the March 7, 1989, proposed rule and associated notifications, all interested parties were requested to submit factual reports and information that might contribute to development of the final rule. Appropriate Federal and State agencies, county governments, scientific organizations, and interested parties were contacted and requested to comment. A legal notice was published in the following newspapers: *Hart County News*, Munfordville, Kentucky, March 23, 1989; *Lebanon Democrat*, Lebanon, Tennessee, March 24, 1989; *Paducah Sun*, Paducah, Kentucky, March 26, 1989; and *Savannah Courier*, Savannah, Tennessee, April 6, 1989.

Support for listing the ring pink mussel as an endangered species was received from the Tennessee Valley Authority, National Park Service, Kentucky Department of Fish and Wildlife Resources, Ohio Environmental Protection Agency, Ohio Department of Natural Resources, and one private individual. The U.S. Soil Conservation Service, Nashville, Tennessee, stated that they had "* * * no current of planned activities that would likely

jeopardize the continued existence of the species." Three respondents suggested that the ring pink mussel is a more accepted common name for the species. The Service has made that name change in the final rule.

The Alabama Department of Conservation and Natural Resources stated that the proposed rule does not support listing because, as the fish host is unknown and none of the presently known populations are reproducing, Federal protection could not save the species. The Service agrees that these problems plus other considerations make it doubtful that this species can ever be recovered. However, the Service references section 4 (a)(1) and (b) of the Act, which requires the Secretary of Interior to determine whether a species is an endangered or threatened species based solely on one or more of five specific factors. These five factors and their application to the ring pink mussel are presented in the "Summary of Factors Affecting the Species" section of this rule. Neither incomplete life history information, lack of reproducing populations, nor the relative likelihood of recovery is pertinent to any of the five factors considered in determining a species' Federal status.

The Alabama Department of Conservation and Natural Resources also stated that it is not reasonable to list a species that does not have a recovery plan. The Service responds that recovery plans, in accordance with section 4(f) of the Act, are developed subsequent to a species being listed. This, listing is a precursor to and facilitates the development and implementation of recovery plans.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information, the Service has determined that the ring pink mussel should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to the ring pink mussel (*Obovaria retusa*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The ring pink mussel was once widespread in the Ohio River and its large tributaries in Pennsylvania, West Virginia, Ohio, Kentucky, Indiana, Illinois, Tennessee, and Alabama (Bogan and Parmalee 1983). However, most of the historically known populations were apparently lost due to conversion of many sections of these big rivers to a series of large impoundments. This seriously reduced the availability of preferred riverine gravel/sand habitat, and it likely affects the distribution and availability of the mussel's fish host. As a result, the species' distribution has been substantially reduced.

The species was last taken in Pennsylvania in 1908 (Daniel Devlin, Pennsylvania Department of Environmental Resources, personal communication, 1987). No live or fresh-dead specimens have been taken in West Virginia in recent years (William Tolin, U.S. Fish and Wildlife Service, personal communication, 1987). According to a personal communication with Robert McCance, Jr. (Ohio Department of Natural Resources, 1987), the last Ohio collection of the ring pink mussel was made in 1938. In Indiana waters, the species has not been collected in decades (Max Henschen, Indiana Mollusk Technical Advisory Committee, personal communication, 1987). The Illinois Department of Energy and Natural Resources (Kevin Cummings, personal communication, 1987) reported that the species has not been collected from Illinois in over 30 years.

The species is presently known from only four river reaches—two in Kentucky and two in Tennessee. In Kentucky waters, the ring pink mussel has been taken in recent years only from the Tennessee River in McCracken, Livingston, and Marshall Counties, and from the Green River in Hart and Edmonson Counties (Linda Andrews, Kentucky Department of Fish and Wildlife Resources, and Ronald Cicerello, personal communication, 1987). Kentucky's Tennessee River population is represented by the collection of only two live individuals in recent years. One was taken in 1985 (Sickel 1985), and the other was collected in 1988 (C.E. Moore, U.S. Army Corps of Engineers, personal communication, 1987). In the Green River, only one fresh-dead individual was taken during a mussel survey between Munfordville, Kentucky, and Mammoth Cave, Kentucky, in 1987 (Ronald Cicerello, personal communication, 1987). The last live specimen taken from the Green River was collected in the mid-1960s (Mary Heller, Kentucky Natural Resources and Environmental Protection Cabinet, personal communication, 1987).

In Tennessee the species apparently still survives in the Cumberland River in Wilson, Trousdale, and Smith Counties, and in the Tennessee River in Hardin County. According to personal communications with knowledgeable individuals, the species is taken on rare occasions by commercial mussel fishermen from both these rivers (Paul Parmalee, University of Tennessee, personal communication, 1986; Steven Ahlstedt, personal communication, 1987; Paul Yokley, University of North Alabama, personal communication, 1987).

The four surviving populations are all threatened for impacts to their environment. The Green River population is threatened from degradation of water quality resulting from inadequate environmental controls at oil and gas exploration and production facilities, and from altered stream flows from an upstream reservoir. The other populations are potentially threatened by river channel maintenance, navigation projects, and gravel and sand dredging.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Although the species is not commercially valuable, it does exist in harvested mussel beds, and the species is therefore sometimes taken by mussel fishermen. Thus, take does pose some threat to the species. Federal protection will help to control the take of individuals.

C. *Disease or predation.* Although the ring pink mussel is undoubtedly consumed by predatory animals, there is no evidence that predation threatens the species. However, freshwater mussel die-offs have recently (early to mid-1980s) been reported throughout the Mississippi River basin, including the Tennessee River and its tributaries (Richard Neves, Virginia Polytechnic Institute and State University, personal communication, 1986). The cause of the die-offs has not been determined, but significant losses have occurred to some populations.

D. *The inadequacy of existing regulatory mechanisms.* The States of Kentucky and Tennessee prohibit taking fish and wildlife, including freshwater mussels, for scientific purposes without a State collecting permit. However, these States do not protect the species from take for other purposes. Federal listing will provide the species additional protection under the Endangered Species Act by requiring Federal permits to take the species and by requiring Federal agencies to consult with the Service when projects they fund, authorize, or carry out may affect the species.

E. *Other natural or manmade factors affecting its continued existence.* None of the four populations is known to be reproducing. Therefore, unless reproducing populations can be found or methods can be developed to maintain these or create new populations, the species will be lost in the foreseeable future. In fact, three of the populations (Cumberland and Tennessee River populations) may contain only old individuals that have passed their reproductive age.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list the ring pink mussel (*Obovaria retusa*) as an endangered species. Historical records reveal that the species was once much more widely distributed in many of the large rivers of the Ohio River system. Presently only four isolated, apparently non-reproducing, populations are known to survive. Due to the species' history of population losses and the vulnerability of the four remaining populations, threatened status does not appear appropriate for this species (see "Critical Habitat" section for a discussion of why critical habitat is not being designated for the ring pink mussel).

Critical Habitat

Section 4(a)(3) of the Act requires, to the maximum extent prudent and determinable, that the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for the ring pink mussel owing to the lack of benefits from such designation. The U.S. Army Corps of Engineers, the Tennessee Valley Authority, and the National Park Service are the three Federal agencies most involved, and they, along with the State natural resources agencies in Tennessee and Kentucky, are already aware of the location of the remaining populations that would be affected by any activities in these river reaches. These Federal agencies have conducted studies in these river basins and are knowledgeable of the fauna and of impacts that could result from their projects. No additional benefits would accrue from critical habitat designation that would not also accrue from the listing of the species. In addition, this species is so rare that taking for scientific purposes or private collections could be a threat. The publication of critical habitat maps and other information accompanying critical habitat designation, such as the location of inhabited river reaches, could increase that threat. The location of populations of this species has consequently been described only in general terms in this final rule. More precise locality data is available to appropriate Federal, State, and local governmental agencies through the Service office described in the "**ADDRESSES**" section.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibition against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. The Service has notified Federal agencies that may have programs that affect the species. Federal activities that could occur and impact the species include, but are not limited to, the carrying out or the issuance of permits for hydroelectric facility construction and operation, reservoir construction, river channel maintenance, stream alteration, wastewater facilities development, and road and bridge construction. It has been the experience of the Service, however, that nearly all Section 7 consultations have been resolved so that the species has been protected and the project objectives have been met. In fact, the areas inhabited by the ring pink mussel are also inhabited by other mussels that have been federally listed since 1976. The Service has a history of successful section 7 conflict resolutions.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes to enhance the propagation or survival of the species and/or for incidental take in connection with otherwise lawful activities.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

References Cited

Bates, J.M., and S.D. Dennis. 1985. Mussel resource survey, State of Tennessee. Tennessee Wildlife Resources Agency Technical Report No. 85-3. 125 pp.

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Lauritsen, Diane. 1987. The Nature Conservancy element stewardship abstract: *Obovaria retusa*. The Nature Conservancy, Midwest Regional Office, Minneapolis, Minnesota. Unpublished report. 4 pp.

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middle Cumberland River, Tennessee. The Nautilus 96(1):30–32.
Sickel, James B. 1985. Biological assessment of the freshwater mussels in the Kentucky Dam tailwaters of the Tennessee River. Submitted to Kentucky Division of Water, Frankfort, Kentucky. 42 pp.
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Author

The primary author of this final rule is Richard G. Biggins, U.S. Fish and Wildlife Service, Asheville Field Office, 100 Otis Street, Room 224, Asheville, North Carolina 28801 (704/259–0321 or FTS 672–0321).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1543; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under CLAMS, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Clams							
*	* * *		*				
Mussel, ring pink (=golf stick pearly)	*Obovaria retusa*	U.S.A. (AL, IL, IN, KY, OH, PA, TN, WV)	NA	E	368	NA	NA
*	* * *		*				

Dated: September 26, 1989.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 89–23069 Filed 9–28–89; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 662

[Docket No. 90775–9215]

Northern Anchovy Fishery

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

ACTION: Emergency interim rule.

SUMMARY: The Secretary of Commerce (Secretary) issues this emergency interim rule changing current regulations promulgated under the Northern Anchovy Fishery Management Plan (FMP). This action is necessary to allow a reduction fishery for northern anchovy during the 1989–1990 fishing season, which otherwise would be unnecessarily denied due to a low estimated spawning biomass resulting from atypical environmental conditions during the spawning season. Since the estimated total biomass is large, a small reduction quota (5,000 mt) is established.

EFFECTIVE DATES: The emergency rule is effective from 0001 hours Pacific Daylight Time (PDT) September 25, 1989 until 2400 hours PDT December 23, 1989.

ADDRESS: Copies of the environmental assessment may be obtained from, and comments should be addressed to, E.C. Fullerton, Director, Southwest Region, NMFS, 300 South Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: James J. Morgan, Fisheries Management and Analysis Branch, Southwest Region, NMFS, 213–514–6667.

SUPPLEMENTARY INFORMATION: The FMP provides for a reduction fishery for northern anchovy when the abundance of the resource is above the level needed to sustain adequate levels of predator fish, birds, and marine mammals. Harvest in the reduction fishery is converted into fishery products, such as fish flour, fish meal or fertilizer, that are not intended for direct human consumption. Because of the large natural fluctuations of the anchovy resource, a fixed annual harvest would be too large in some years and too small in others; therefore, annual harvest allocations are based on estimates of current spawning stock biomass (spawning biomass). Spawning biomass estimates are useful as a measure of population size of northern anchovy because they usually represent about 95 percent of the total stock biomass (total biomass), and because egg and larval surveys have been conducted for many years, resulting in a long time-series of data. Spawning biomass of the central subpopulation of northern anchovy is estimated annually; from this estimate, the optimum yield and harvest quotas are determined by formulas contained in the FMP and its implementing regulations at 50 CFR Part 662. The allocation formulas assume a close correlation between spawning biomass estimates and total stock biomass.

The annual spawning biomass of northern anchovy is determined during January-February, which is during the period of peak spawning. About 90 percent of age 0–1 fish usually are sexually mature at that time; however, maturity and spawning are greatly affected by water temperature. During 1989, the index of historical egg production indicated that egg production was very low, and environmental data showed that the mean sea surface temperatures during and preceding the spawning season were much lower than normal. At the temperatures measured during January-February, 1989, only 5 percent of 1-year old fish are expected to be sexually mature and actively spawning. Data from the fishery and surveys indicated that the 1988 year class (1-year-old fish) is large, and that this large year class is being recruited to

the 1989 population, though it contributed little to the 1989 spawning biomass. This resulted in estimates of total biomass of 1,008,000 mt and spawning biomass of only 237,000 mt. As explained above, the implementing regulations (50 CFR 662.20(b)(1)) treat spawning biomass estimates as closely representative of total biomass and state that there will be no reduction fishery when the estimated spawning biomass is less than 300,000 mt. Consequently, the U.S. reduction fishery faces a situation in which no harvest can be made even though total biomass is high. The non-reduction fishery still receives an allocation of 4,900 mt when the spawning biomass is below 300,000 mt.

Because (1) an anomalous environmental condition occurred during the 1989 spawning season, (2) anchovy abundance is high enough to satisfy all the objectives of the FMP, and (3) a prohibition of reduction landings could result in unnecessary economic losses to the industry, the Council voted (with one dissenting vote) to ask the Secretary to issue an emergency rule to permit a 5,000 mt reduction fishery during the 1989 fishing season. The Council plans to follow this emergency rule with an amendment to the FMP that would provide a minimum quota for the reduction fishery that takes into consideration total biomass, as well as spawning biomass, to avoid having to take emergency action should similar atypical environmental conditions reoccur.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this rule is necessary to respond to an emergency situation, and is consistent with the Magnuson Fishery Conservation and Management Act (Magnuson Act) and other applicable law. He has also determined that continuing the regulations now in force would result in an unnecessary reduction in domestic harvest and economic losses to the fishery.

NOAA prepared an environmental assessment for this rule and concluded that this emergency action will not have a significant impact on the quality of the human environment. You may obtain a copy of the environmental assessment (see **ADDRESSES**).

The Assistant Administrator finds that the reasons justifying promulgation of this rule on an emergency basis also make it impracticable and contrary to the public interest to provide notice and opportunity for comment, or to delay for 30 days the effective date of these emergency regulations under the provisions of section 553 (b) and (d) of the Administrative Procedure Act. The rule is intended to be in place by September 15, 1989, the beginning of the reduction fishery in the southern subarea (subarea B) of the Pacific anchovy fishery area.

This emergency rule is exempt from the normal review procedures of Executive Order 12291 as provided in section 8(a)(1) of that Order. This rule is being reported to the Director of the Office of Management and Budget with an explanation of why it is not possible to follow the regular procedures of that Order.

The Assistant Administrator has determined that this rule does not directly affect the coastal zone of any state with an approved coastal zone management program.

This action does not contain a collection-of-information requirement subject to the Paperwork Reduction Act.

This emergency action is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior public comment.

This rule does not contain policies with known federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612. The State of California is expected to implement State regulations compatible with the Federal rule.

List of Subjects in 50 CFR Part 662

Fisheries.

Dated: September 22, 1989.

James E. Douglas, Jr.,

Deputy Assistant Administrator For Fisheries, National Marine Fisheries Service

For the reasons set out in the preamble, 50 CFR Part 662 is amended as follows:

PART 662—NORTHERN ANCHOVY FISHERY

1. The authority citation for Part 662 continues to read as follows:

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

2. In § 662.20, paragraph (b)(1) is suspended from September 15, 1989 to December 13, 1989, and a new paragraph (b)(3) is added to be effective from September 15, 1989 to December 13, 1989, to read as follows:

§ 662.20 Harvest quota.

* * * * *

(b) * * *

(3) When the estimated spawning biomass is less than 300,000 mt, the reduction harvest quota will be 5,000 mt and the non-reduction allocation in the PAFA will be 4,900 mt; this quota and allocation is not subject to any reduction or reallocation under paragraph (c) of this section.

[FR Doc. 89-22979 Filed 9-25-89; 4:36 pm]

BILLING CODE 3510-22-M

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50 CFR Part 663

[Docket No. 81130-8265]

Pacific Coast Groundfish Fishery

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

ACTION: Notice of fishing restriction and request for comments.

SUMMARY: NOAA issues this notice modifying earlier restrictions to limit the levels of fishing for widow rockfish taken in the groundfish fishery off the coasts of Washington, Oregon, and California, and seeks public comment on this action. This action is authorized under regulations implementing the Pacific Coast Groundfish Fishery Management Plan (FMP) and is necessary because the likelihood of biological stress is greatly increased if landings of widow rockfish are not further restricted. This action is intended to lower fishing rates, to reduce the risk of biological stress while allowing for unavoidable incidental catches in other fisheries, and to reduce the probability of fishery closure before the end of the year.

DATES: Effective 0001 hours, local time, October 11, 1989, until modified, superseded, or rescinded. Comments will be accepted through October 16, 1989.

ADDRESSES: Send comments to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, Bldg 1, Seattle WA 98115; or E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at (206) 526-6140; or Rodney R. McInnis at (213) 514-6202.

SUPPLEMENTARY INFORMATION: At its November 1988, April 1989, and July 1989 meetings, the Pacific Fishery Management Council (Council) recommended that the Secretary of Commerce (Secretary) reduce the trip limit for the widow rockfish fishery off Washington, Oregon, and California to 3,000 pounds on the date the Council's Groundfish Management Team (GMT) projects is necessary to avoid reaching the 12,400 metric ton (mt) optimum yield (OY) quota before the end of the year.

The Secretary published a notice of fishing restrictions on May 2, 1989 (54 FR 18658), which announced concurrence with the Council's recommendations.

The current weekly trip limit for widow rockfish is 10,000 pounds, which may be taken in only one landing a week above 3,000 pounds. A biweekly trip limit option also is available. Reduction of the trip limit to 3,000 pounds with no frequency restriction is necessary to eliminate target fishing while minimizing the waste of widow rockfish caught unavoidably while fishing for other groundfish species. If the OY is reached before the end of the calendar year, further landings of widow rockfish will be prohibited and those that continue to be caught incidentally would be discarded. As a result, fishing mortality would exceed the OY and the resource would be wasted even though landings were prohibited. Catches in excess of the OY increase the likelihood of inducing biological stress on widow rockfish.

Based on observed and expected rates of landings, the best available scientific information as of August 29, 1989, indicate that the 12,400 mt OY will be reached on October 24, 1989, if landings are not slowed. The 3,000 pound trip limit must be implemented on October 11, 1989, in order to avoid reaching the OY before the end of the year. Therefore, on October 11, 1989, a 3,000 pound trip limit for widow rockfish, with no restriction on the number of landings, replaces the current weekly trip limit of 10,000 pounds and the biweekly trip limit option. All other provisions pertaining to widow rockfish at 54 FR 18658 remain in effect. Washington, Oregon, and California are implementing this action concurrently.

Secretarial Action

The Secretary concurs with the Council's recommendation, and for the reasons stated above announces: Effective at 0001 hours local time on October 11, 1989, no more than 3,000 pounds (rough weight) of widow rockfish may be taken and retained, or landed per vessel per fishing trip.

Other Fisheries

U.S. vessels operating under an experimental fishing permit issued under 50 CFR 663.10 also are subject to these restrictions unless otherwise provided in the permit.

Landings of groundfish in the pink shrimp, spot and ridgeback prawn fisheries are governed by regulations at 50 CFR 663.28. If fishing for groundfish and pink shrimp, spot or ridgeback prawns in the same fishing trip, the groundfish restrictions in this notice apply.

Classification

The determination to impose this restriction is based on the most recent data available. The aggregate data upon which the determination is based are available for public inspection at the office of the Director, Northwest Region (see Addresses) during business hours until the end of the comment period.

An Environmental Impact Statement (EIS) was prepared for the FMP in 1982 in accordance with the National Environmental Policy Act (NEPA). The alternatives and environmental impacts of this notice are not significantly different than those considered in the EIS for the FMP. Therefore this action is categorically excluded from the NEPA requirements to prepare an Environmental Assessment in accordance with paragraph 5a(3) of the NOAA Directives Manual 02-10, because the alternatives and their impacts have not changed significantly.

This action is taken under the authority of 50 CFR 663.22 and 663.23, and is in compliance with Executive Order 12291. This action is not subject to the Regulatory Flexibility Act because there is no notice and comment period preceding the effective date of this notice. The actions do not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

Section 663.23 of the groundfish regulations states that the Secretary will publish a notice of action reducing fishing levels in proposed form unless he determines that prior notice and public review are impracticable, unnecessary, or contrary to the public interest. Section 663.23 also states that any notice issued under this section will not be effective until 30 days after publication in the **Federal Register** unless the Secretary finds and publishes with the notice good cause for an earlier effective date. If landings of widow rockfish are not restricted, premature closure of this fishery will occur, resulting in discards of incidentally caught widow rockfish and disruption of the market for this species. In addition, widow rockfish will continue to be caught in fisheries for other species resulting in catches above the OY, increasing the likelihood of biological stress on the widow rockfish resource. Accordingly, further delay of this action is impracticable and contrary to the public interest, and this action is published in final form.

The public has had the opportunity to comment on this action. The public participated in Groundfish Select Group, Groundfish Management Team, and Council meetings in November 1988, April 1989, and July 1989 that generated this management action and that was endorsed by the Council and the Secretary. A public comment period followed publication of the May 2, 1989, notice (54 FR 18658) announcing the intent to take this action. Further public comments will be accepted for 15 days after the date of filing with the Office of the Federal Register.

List of Subjects in 50 CFR Part 663

Fisheries, Fishing.

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

Dated: September 25, 1989.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-22981 Filed 9-28-89; 8:45 am]

BILLING CODE 3510-22-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1002

[Ex Parte No. 246; Sub No. 7]

Regulations Governing Fees for Services Performed in Connection With Licensing and Related Services; 1989 Update; Correction

AGENCY: Interstate Commerce Commission.

ACTION: Final rules; correction.

SUMMARY: In this final rule proceeding published in the **Federal Register** on August 31, 1989 at 54 FR 36029, the Commission published a revised 1989 user fee schedule. The schedule contained several citation errors. These errors are corrected as set forth below.

DATES: Effective September 29, 1989.

FOR FURTHER INFORMATION CONTACT: Kathleen M. King, (202) 275-7429. [TDD for Hearing Impaired: (202) 275-01721.]

SUPPLEMENTARY INFORMATION:

List of Subjects in 49 CFR Part 1002

Administrative practice and procedure, Common carriers, Freedom of information, User fees.

PART 1002—FEES

1. The authority citation for part 1002 continues to read as follows:

Authority: 5 U.S.C. 552(a)(4)(A), 5 U.S.C. 553, 31 U.S.C. 9701 and 49 U.S.C. 10321.

§ 1002.2 [Corrected]

2. In § 1002.2(f), part VI, numbers 46(iv), 47(iv), 48(iv) and 49(iv) the authority citation "[49 CFR 1080.2(d)]" is revised to read: "[49 CFR 1180.2(d)]".

Noreta R. McGee,

Secretary.

[FR Doc. 89-22794 Filed 9-28-89; 8:45 am]

BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 54, No. 188
Friday, September 29, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 300 and 318

[Docket 89-132]

Hot Water Dip Treatments for Mangoes

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the Plant Protection and Quarantine regulations by: (1) Allowing a hot water dip treatment for additional varieties of mangoes from certain areas where *Anastrepha* species of fruit flies exist; (2) allowing a hot water dip treatment for mangoes from certain areas where the Mediterranean fruit fly exists; and (3) lowering slightly the required temperature of the hot water dip for "Francis"-type magoes. These treatments would be included in the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference in the regulations at 7 CFR 300.1. This proposal is based on results of research undertaken by the Agricultural Research Service, U.S. Department of Agriculture. It would provide the first approved treatment for some varieties of mangoes, and for mangoes from certain parts of the West Indies, Central America, and Mexico, since 1987, when, as a result of action taken by the Environmental Protection Agency (EPA), ethylene dibromide (EDB) fumigation was disallowed as a treatment for mangoes moved into the United States.

We are also proposing to amend the Plant Protection and Quarantine regulations by allowing mangoes treated in accordance with Plant Protection and Quarantine Treatment Manual (as revised by this proposal) to be moved from Puerto Rico and the Virgin Islands into or through Guam, Hawaii, and the continental United States. Mangoes from Puerto Rico and the Virgin Islands have not been allowed to be moved interestate into or through Guam, Hawaii, or the continental United States since 1985, when the EPA cancelled the registration of EDB as a post-harvest fumigant in the United States for mangoes and other fruits and vegetables.

DATE: Consideration will be given only to comments received on or before October 30, 1989.

ADDRESSES: To help ensure that your written comments are considered, send an origianl and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 89-132. Comments may be inspected at Room 1141 of the South Building, 14th and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays .

FOR FURTHER INFORMATION CONTACT: Mr. James F. Fons, Senior Staff Officer, Port Operations, APHIS, USDA, Room 635, Federal Building 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8646.

SUPPLEMENTARY INFORMATION:

Background

Chapter III of title 7, Code of Federal Regulations (regulations), contains the regulations of Plant Protection and Quarantine (PPQ) of the Animal and Plant Health Inspection Service. Part 200.1 of the regulations incorporates by reference the Plant Protection and Quarantine treatment manual (PPQ Treatment Manual). The PPQ Treatement Manual contains procedures and schedules for treating various regulated articles so that these articles may move into or within the United States without presenting a plant pest risk.

The PPQ Treatment Manual currently lists a hot water dip as the only appoved treatment for mangoes. However, a hot water dip is approved only against *Anastrepha* species of fruit flies and only for certain varieties of mangoes. Specifically, a hot water dip is approved for: (1) All varieties of mangoes from Mexico, except from the State of Chiapas, where the Mediterranean fruit fly, *Ceratitis capitata,* exists; and (2) the "Francis" and "Carrot" varieties of mangoes from Haiti. Approval was based on research that showed a hot water dip to be an effective treatment against *Anastrepha* spp. of fruit flies in these varieties of magoes.

Continuing research has shown that a hot water dip treatment is effective against *Anastrepha* spp. of fruit flies in additional varieties of mangoes, and that it is effective against the Mediterranean fruit fly. There are several versions of the hot water dip treatment; however, the only difference among them is the length of time the fruit must be submerged under water, since smaller and flatter fruit requires less time than larger fruit. Data also has been acquired showing that the hot water dip for the "Francis" and "Carrot" varieties of mangoes is effective at water temperatures slightly lower than the temperatures now required, that is, at temperatures between 46.1 'C. and 45.4 'C, rather than between 46.4 'C and 45.6 'C.

Based on this new information, we are proposing to revise the PPQ Treatment Manual, which is incorporated by reference in the regulations at 7 CFR 300.1. The PPQ Treatment Manual, as revised, would show the following treatment schedules for mangoes:

Hot Water Dip Treatment for Mangoes

All mangoes must be at a temperature of 21.1 'C or higher before treatment begins. The mangoes must be submerged 4 inches below the surface of water that is heated to 46.1 'C. The water temperature must be kept at 46.1 'C, except that it may fall as low as 45.4 'C for no more than 10 minutes in any treatment lasting 65 or 75 minutes, and for no more than 15 minutes in any treatment lasting 90 minutes. The water temperature must not be allowed to fall below 45.4 'C at any time during the treatment.

Type of Mango	Submersion time
"Francis" and similarly shaped mangoes (elongate, flattened types, including the "Carrot" variety) from the West Indies, including Puerto Rico and the U.S. Virgin Island.	Size 10 or smaller (no more than 570 g each),75 minutes.
.....	Size 13 or smaller (no more than 400 g each), 65 minutes.

Type of Mango	Submersion time
Other varieties of mangoes from the West indies, including Puerto Rico and the U.S. Virgin Islands.	Size 8 or smaller (no more than 700 g each), 90 minutes.
	Size 12 or smaller (no more than 500 g each), 75 minutes.
All varieties of mangoes from Mexico, and from Central America north of and including Costa Rica.	Size 8 or smaller (no more than 700 g each), 90 minutes.
	Size 12 or smaller (no more than 500 g each), 75 minutes.

Also, based on the rationale explained above for the proposed revision to the PPQ Treatment Manual, we are proposing to revise subpart 318.58 of the regulations to allow mangoes to be moved from Puerto Rico and the Virgin Islands of the United States into or through Guam, Hawaii, and the continental United States if the mangoes have been treated as prescribed in the PPQ Treatment Manual. Currently, this subpart prohibits the interstate movement of mangoes from Puerto Rico and the Virgin Islands of the United States to other areas of the United States.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it s not a "major rule." Based on information compiled by the Department, we have determined that this rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect 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 accordance with 5 U.S.C. 603, we have performed an Initial Regulatory Flexibility Analysis regarding the impact of this interim rule on small entities.

We are proposing to (1) allow a hot water dip treatment for additional varieties of mangoes from certain areas where *Anastrepha* spp. fruit flies exist; (2) allow a hot water dip treatment for mangoes from certain areas where the Mediterranean fruit fly exists; and (3) lower slightly the required temperature of the hot water dip for "Francis"-type mangoes. These treatments would be included in the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference in the regulations at 7 CFR 300.1. It would provide the first approved treatment for some varieties of mangoes, and for mangoes from certain parts of the West Indies, Central America, and Mexico, since 1987, when, as a result of action taken by the Environmental Protection Agency (EPA), ethylene dibromide (EDB) fumigation was disallowed as a treatment for mangoes moved into the United States. We are also proposing to allow mangoes treated in accordance with Plant Protection and Quarantine Treatment Manual (as revised by this proposal) to be moved from Puerto Rico and the Virgin Islands into or through Guam, Hawaii, and the continental United States. Mangoes from Puerto Rico and the Virgin Islands have not been allowed to be moved interstate into or through Guam, Hawaii, or the continental United States since 1985, when the EPA cancelled the registration of EDB as a post-harvest fumigant in the United States for mangoes and other fruits and vegetables.

In accordance with the Federal Plant Pest Act and the Plant Quarantine Act, the Secretary of Agriculture is authorized to promulgate regulations concerning the importation or interstate movement of fruits and other plant products to prevent the spread of injurious plant pests.

This proposed rule would affect domestic mango producers. Mangoes are a minor agricultural crop in the United States, which has few areas with suitable growing conditions for the fruit. In the continental United States, mango production is limited to about 2,300 acres on approximately 270 farms in Florida, all small entities. Most of these small entities do not produce mangoes as their major crop. Production of mangoes in Florida between 1985 and 1988 ranged from 30,250,000 pounds in 1987 to 19,250,000 pounds in 1988.

By comparison, imports of mangoes into the United States during that same time period ranged from 66,073,940 pounds in 1985 to 43,171,269 pounds in 1988, consistently accounting for more than two-thirds of the mangoes marketed in the continental United States.

Mangoes imported into the United States came primarily from Mexico (85 to 95 percent during 1985–1988), with Haiti providing most of the others. In 1987, the last year that mangoes treated with ethylene dibromide could be imported into the United States from Mexico, Central America, and the West Indies, countries other than Mexico and Haiti provided only about 2.2 percent of those mangoes. In 1985 and 1986, they provided between 1 and 2 percent. We anticipate that a resumption of mango imports from these countries would not result in a significant increase in the amount of mangoes imported into the United States.

In Puerto Rico, 16,623,000 pounds of mangoes were produced on approximately 2500 farms in 1987; however, as noted, no mangoes from Puerto Rico have been eligible for interstate movement into or through Guam, Hawaii, or the continental United States since 1985. Estimates from the Commonwealth of Puerto Rico indicate that about 9,000,000 pounds of mangoes would be available annually for shipment to the continental United States if our proposed rule is adopted. Significant economic benefits may accrue to some small entities in Puerto Rico as a result. We do not anticipate that these shipments would result in a decreased demand for Florida mangoes, which have a well-established market.

This proposed rule would not result in any significant increase in reporting, recordkeeping, or compliance requirements.

There do not appear to be any viable alternatives to this proposed rule.

We encourage the submission of written comments on our Initial Regulatory Flexibility Analysis. Comments should be submitted as indicated under **"DATE"** and **"ADDRESSES."** All comments received on this issue will be considered in the preparation of the Final Regulatory Analysis for this rulemaking.

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects

7 CFR Part 300

Incorporation by reference, Plant diseases, Plant pests.

7 CFR Part 318

Agricultural commodities, Fruit, Plant diseases, Plant pests, Plants (agricultural), Puerto Rico, Quarantine, Transportation, Virgin Islands.

Accordingly, we propose to amend title 7, chapter III, of the Code of Federal Regulations as follows:

PART 300—INCORPORATION BY REFERENCE

1. The authority citation for part 300 would continue to read as follows:

Authority: 7 U.S.C. 150ee, 161.

2. In § 300.1, paragraph (a) would be revised to read as follows:

§ 300.1 Materials incorporated by reference.

(a) The Plant Protection and Quarantine Treatment Manual, which was reprinted May 1985, and includes all revisions through _____, has been approved for incorporation by reference in 7 CFR chapter III by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

* * * * *

PART 318—HAWAIIAN AND TERRITORIAL QUARANTINE NOTICES

3. The authority citation for part 318 would continue to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, 164a, 167; 7 CFR 2.17, 2.51, and 371.2(c).

4. In § 318.58–2, paragraph (b)(1) would be amended by adding an item to the list of fruits and vegetables, in alphabetical order, to read as follows:

§ 318.58–2 Regulated articles.

* * * * *

(b)(1) * * *

Mangoes (*Mangifera* spp.), no larger than size 8 (no more than 700 g each), when treated as prescribed in the Plant Protection and Quarantine Treatment Manual.

* * * * *

Done in Washington, DC, this 26th day of September 1989.

James W. Glosser,

Administrator, Animal and Health Inspection Service.

[FR Doc. 89–23044 Filed 9–28–89; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 25

[Docket No. NM–41; Notice No. SC–89–4–NM

Special Conditions; Beech Aircraft Corporation Model 400A Airplane, High Altitude Operation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Beech Aircraft Corporation (Beech) Model 400A airplane. The airplane will have an unusually high operating altitude (45,000 feet) when compared to the state of technology envisioned in the airworthiness standards of part 25 of the Federal Aviation Regulations (FAR). This notice contains the additional safety standards which the Administrator considers necessary to establish a level of safety that is equivalent to that established by the airworthiness standards of part 25.

DATES: Comments must be received on or before November 13, 1989.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attn: Rules Docket (ANM–7), Docket No. NM–41, 17900 Pacific Highway South, C–68966, Seattle, Washington, 98168; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked: Docket No. NM–41. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Gary Lium, telephone (206) 431–2118, Flight Test and Systems Branch, ANM–11, Transport Airplane Directorate, Aircraft Certification Service, FAA, 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 special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on this proposal. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM–41." The postcard will be date/time stamped, and returned to the commenter.

Background

On February 22, 1988, Beech Aircraft Corporation applied for an amendment to their Type Certificate No. A16SW to include a 45,000-foot certification ceiling, and miscellaneous product improvements.

Novel or Unusual Design Feature

Operation up to 45,000 Feet

The Beech Model 400A will incorporate an unusual design feature in that it will be certified to operate up to an altitude of 45,000 feet.

The FAA policy is to apply special conditions to part 25 transports when the certified altitude exceeds the capability of the oxygen system (in this case, the passenger system). This has been the case for the early Learjet, Lockheed Jetstar, Aero Jet Commander, Cessna 650, the Israel Aircraft Industries Model 1125 Westwind Astra, and the Cessna 560. The special conditions for the Westwind Astra are considered the most applicable to the Beech Model 400A and its proposed operation. They are, therefore, used as the basis for the proposed special conditions.

Damage tolerance methods are proposed to be used to assure pressure vessel integrity while operating at the higher altitudes, in lieu of the ½ bay crack requirement used in some previous special conditions. Crack growth data is used to prescribe an inspection program which should detect cracks before an opening in the pressure vessel would allow rapid depressurization. Initial crack sizes for detection are determined under § 25.571, Amendment 25–54. The cabin altitude after failure may not exceed the cabin altitude/time curve limits shown in Figures 3 and 4.

Continuous flow passenger oxygen equipment is certificated for use up to 40,000 feet; however, for rapid decompressions above 34,000 feet, reverse diffusion leads to low oxygen partial pressures in the lungs, to the extent that a small percentage of passengers may lose useful consciousness at 35,000 feet. The percentage increases to an estimated 60 percent at 40,000 feet, even with the use of the continuous flow system. To prevent permanent physiological damage, the cabin altitude must not exceed 25,000 feet for more than 2 minutes. The maximum cabin altitude of 40,000 feet is consistent with the standards established for previous certification programs. In addition, at these altitudes the other aspects of decompression sickness have a significant, detrimental effect on pilot performance (for example, a pilot can be incapacitated by internal expanding gases).

Decompression above the 37,000-foot limit of Figure 4 approaches the physiological limits of the average person; therefore, every effort must be made to provide the pilot with adequate oxygen equipment to withstand these severe decompressions. Reducing the time interval between pressurization failure and the time the pilot receives oxygen will provide a safety margin against being incapacitated and can be accomplished by the use of mask-mounted regulators. The special condition proposed, therefore, requires pressure demand masks with mask-mounted regulators for the flightcrew. This combination of equipment will provide the best practical protection for the failures covered by the special conditions and for improbable failures not covered by the special conditions, provided the cabin altitude is limited.

Type Certification Basis

Under the provisions of § 21.101(a) of the FAR, the Beech Aircraft Corporation must show that the Beech Model 400, as changed, continues to meet the applicable provisions incorporated by reference in Type Certificate No. A16SW, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations incorporated by reference in Type Certificate No. A16SW are as follows:

Part 25 of the Federal Aviation Regulations effective February 1, 1965, as amended by Amendments 25–1 through 25–40, plus §§ 25.1351(d), 25.1353(c)(5) and 25.1450 of Amendment 25–41. Sections 25.29, 25.255 and 25.1353(c)(6) of Amendment 25–42 and § 25.361(b) of Amendment 25–46. Part 36 of the Federal Aviation Regulations effective December 1, 1969, as amended by Amendments 36–1 through the amendment effective on the date of type certification; SFAR 27 effective February 1, 1974, as amended by Amendment 27–1 through the amendment effective on the date of type certification.

Equivalent Safety Items:

(1) Out-of-trim characteristics, § 25.255.

(2) Pilot compartment view, § 25.773(b)(2).

(3) Serial Number RJ–39 and after, passenger compartment door, § 25.813(e).

Beech indicated that the passenger oxygen system will be changed to a gaseous system in order to accommodate certification to 45,000 feet. This modification to the oxygen system requires the replacement of § 25.1450 of Amendment 25–41 with § 25.1447 of Amendment 25–41 in the certification basis. The special conditions which may be developed as a result of this notice will form an additional part of the type certification basis.

Special conditions may be issued and amended, as necessary, as a part of the type certification basis if the Administrator finds that the airworthiness standards designed in accordance with § 21.101(b)(2) do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and may be part of the type certification basis in accordance with § 21.101.

Conclusion

This action affects only certain unusual or novel design features on one model series of airplanes. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Parts 21 and 25

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the Beech Aircraft Corporation Model 400A series airplane:

1. The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

2. Operation to 45,000 feet:

a. *Pressure Vessel Integrity.*

1. The maximum extent of failure and pressure vessel opening that can be demonstrated to comply with Paragraph d. (Pressurization) of this special condition must be determined. It must be demonstrated by crack propagation and damage tolerance analysis supported by testing that a larger opening or a more severe failure than demonstrated will not occur in normal operations.

2. Inspection schedules and procedures must be established to assure that cracks and normal fuselage leak rates will not deteriorate to the extent that an unsafe condition could exist during normal operation.

b. *Ventilation.* In lieu of the requirements of § 25.831(a), the ventilation system must be designed to provide a sufficient amount of uncontaminated air to enable the crewmembers to perform their duties without undue discomfort or fatigue, and to provide reasonable passenger comfort during normal operating conditions and also in the event of any probable failure of any system which could adversely affect the cabin ventilating air. For normal operations, crewmembers and passengers must be provided with at least 10 cubic feet of fresh air per minute per person, or the equivalent in filtered, recirculated air based on the volume and composition at the corresponding cabin pressure altitude of not more than 8,000 feet.

c. *Air Conditioning.* In addition to the requirements of § 25.831, paragraphs (b) through (e), the cabin cooling system must be designed to meet the following conditions during flight above 15,000 feet mean sea level (MSL):

1. After any probable failure, the cabin temperature-time history may not exceed the values shown in Figure 1.

2. After any improbable failure, the cabin temperature-time history may not exceed the values shown in Figure 2.

d. *Pressurization.* In addition to the requirements of § 25.841, the following apply:

1. The pressurization system, which includes for this purpose bleed air, air conditioning, and pressure control systems, must prevent the cabin altitude from exceeding the cabin altitude-time history shown in Figure 3 after each of the following:

(a) Any probable malfunction or failure of the pressurization system. The

existence of undetected, latent malfunctions or failures in conjunction with probable failures must be considered.

(b) Any single failure in the pressurization system combined with the occurrence of a leak produced by a complete loss of a door seal element, or a fuselage leak through an opening having an effective area 2.0 times the effective area which produces the maximum permissible fuselage leak rate approved for normal operation, whichever produces a more severe leak.

2. The cabin altitude-time history may not exceed that shown in Figure 4 after each of the following:

(a) The maximum pressure vessel opening resulting from an initially detectable crack propagating for a period encompassing four normal inspection intervals. Mid-panel cracks and cracks through skin-stringer and skin-frame combinations must be considered.

(b) The pressure vessel opening or duct failure resulting from probable damage (failure effect) while under maximum operating cabin pressure differential due to a tire burst, engine rotor burst, loss of antennas or stall warning vanes, or any probable equipment failure (bleed air, pressure control, air conditioning, electrical source(s), etc.) that affects pressurization.

(c) Complete loss of thrust from all engines.

3. In showing compliance with paragraphs 2.d.1. and 2.d.2. of these special conditions (Pressurization), it may be assumed that an emergency descent is made by approved emergency procedure. A 17-second crew recognition and reaction time must be applied between cabin altitude warning and the initiation of an emergency descent.

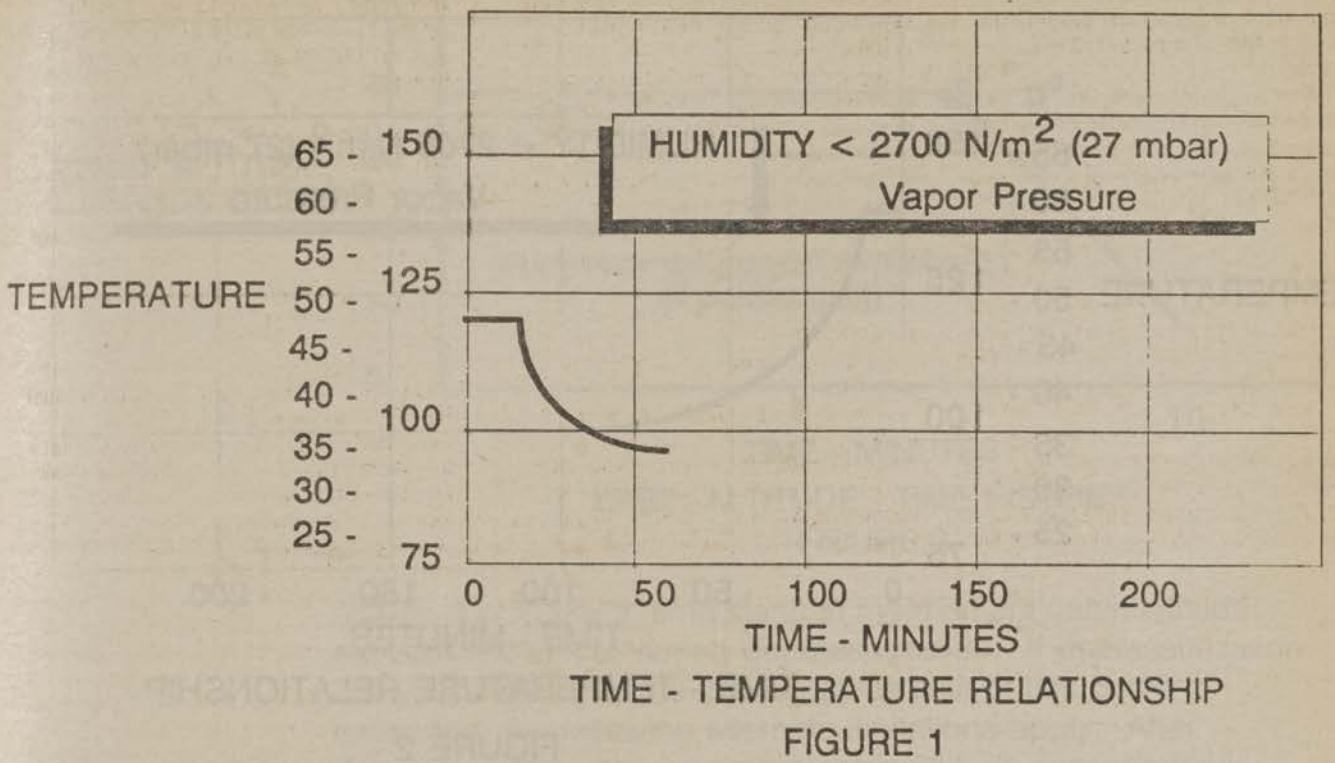
Note: For the flight evaluation of the rapid descent, the test article must have the cabin volume representative of what is expected to be normal, such that Beech must reduce the total cabin volume by that which would be occupied by the furnishings and total number of people.

e. *Oxygen Equipment and Supply.*

1. A continuous flow oxygen system must be provided for the passengers.

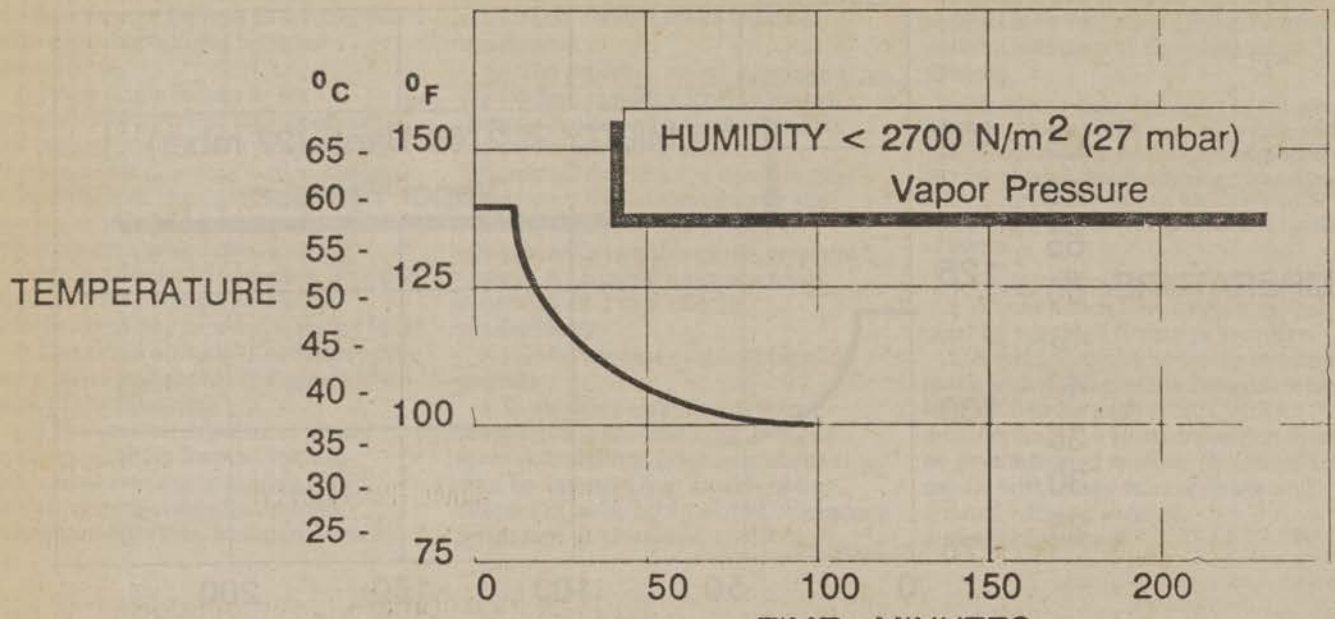
2. A quick-donning pressure demand mask with mask-mounted regulator must be provided for each pilot. Quick-donning from the stowed position must be demonstrated to show that the mask can be withdrawn from stowage and donned within 5 seconds.

BILLING CODE 4910-13-M



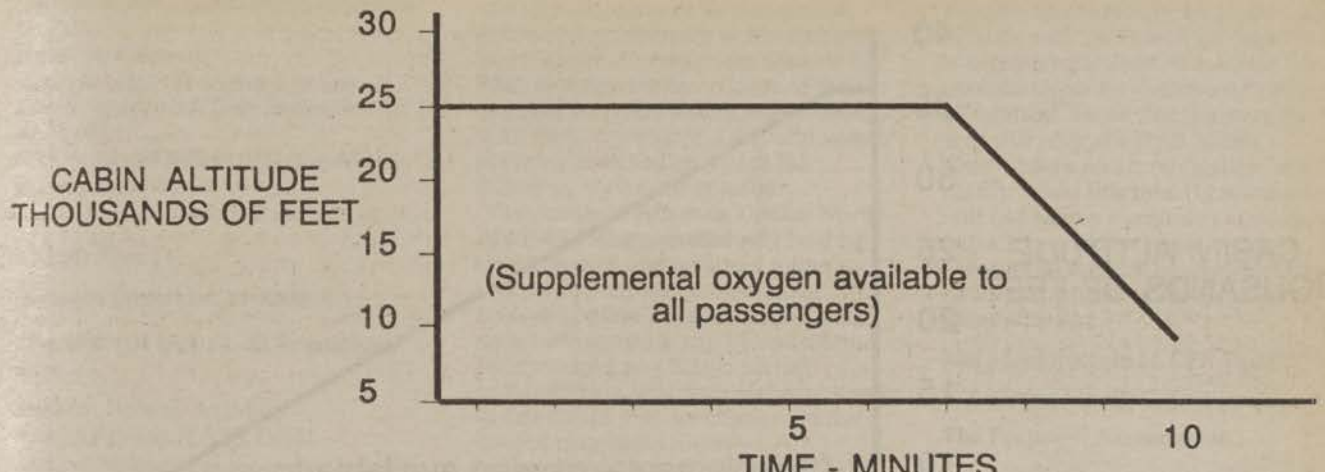
TIME - TEMPERATURE RELATIONSHIP

FIGURE 1



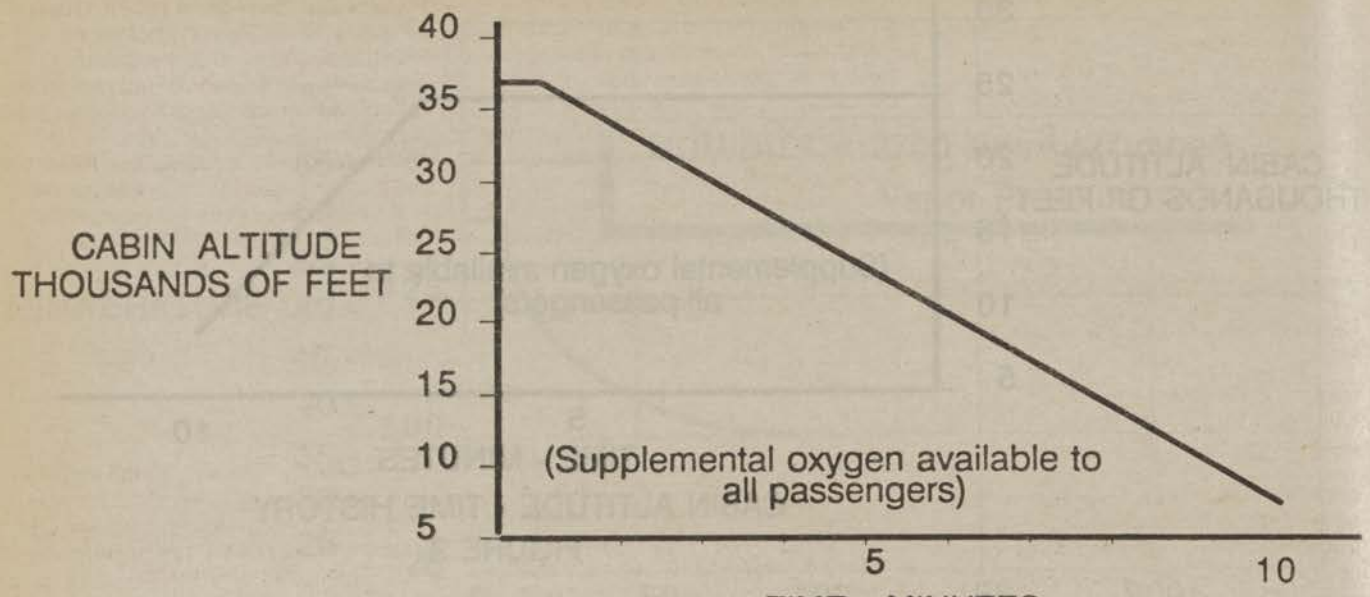
TIME - TEMPERATURE RELATIONSHIP

FIGURE 2



CABIN ALTITUDE - TIME HISTORY
FIGURE 3

NOTE: For figure 3, time starts at the moment cabin altitude exceeds 8,000 feet during depressurization. If depressurization analysis shows that the cabin altitude limit of this curve is exceeded, the following alternate limitations apply: After depressurization, the maximum cabin altitude exceedence is limited to 30,000 feet. The maximum time the cabin altitude may exceed 25,000 feet is 2 minutes; time starting when the cabin altitude exceeds 25,000 feet and ending when it returns to 25,000 feet.



CABIN ALTITUDE - TIME HISTORY

FIGURE 4

NOTE: For figure 4, time starts at the moment cabin altitude exceeds 8,000 feet during depressurization. If depressurization analysis shows that the cabin altitude limit of this curve is exceeded, the following alternate limitations apply: After depressurization, the maximum cabin altitude exceedence is limited to 40,000 feet. The maximum time the cabin altitude may exceed 25,000 feet is 2 minutes; time starting when the cabin altitude exceeds 25,000 feet and ending when it returns to 25,000 feet.

BILLING CODE 4910-13-C

Issued in Washington, DC, on September 14, 1989.

Darrell M. Pederson,

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

[FR Doc. 89-22999 Filed 9-28-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 88-ANM-12]

Alteration of McCall, ID, Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the McCall, Idaho, Transition Area to provide additional controlled airspace for aircraft executing a new instrument approach procedure to the McCall Municipal Airport. The airspace would be depicted on areonautical charts for pilot reference. This proposed alteration is intended to ensure segregation of aircraft operating under Instrument Flight Rules from aircraft operating under Visual Flight Rules.

DATES: Comments must be received on or before November 1, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace & System Management Branch, ANM-530, Federal Aviation Administration, Docket No. 88-ANM-12, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Robert Brown, ANM-535, Federal Aviation Administration, Docket No. 88-ANM-21, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, Telephone: (206) 431-2576.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-ANM-12". The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking any action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace & System Management Branch, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168. Communications must identify the Notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular 11-2A which describes the application procedure.

The Proposal

The FAA proposes an amendment to § 71.181 of part 71 of the Federal Aviation Regulations (14 CFR Part 71) to provide controlled airspace for aircraft executing a new nondirectional radio beacon (NDB) instrument approach procedure to the McCall Municipal Airport, McCall, Idaho, utilizing the McCall NDB as a navigational aid. The intended effect is to ensure segregation of aircraft operating under Instrument Flight Rules from aircraft operating under Visual Flight Rules.

Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E, dated January 1, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

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

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

McCall, Idaho [Revised]

That airspace extending upward from 700 feet above the surface within a 5-mile radius of McCall Municipal Airport (Latitude 44°53'23" N., Longitude 116° 06'00" W.,); that airspace extending upward from 1,200 feet above the surface within 6 miles west and 17 miles east of the McCall VORTAC 344 and 164 radials extending from 20 miles south to 19 miles north of the VORTAC.

Issued in Seattle, Washington, on August 3, 1989.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 89-22989 Filed 9-28-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 88-AEA-12]

Proposed Alteration of Control Zone; Newburgh, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rule; correction.

SUMMARY: An error was discovered in the notice of proposed rulemaking that was published in the Federal Register on Tuesday, August 1, 1989, Airspace Docket No. 88–AEA–12. This action corrects that error.

DATES: September 29, 1989.

ADDRESSES: Send comments on the rule in triplicate to: Edward R. Trudeau, Manager, Systems Management Branch, AEA–530, Docket No. 88–AEA–12, Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

SUPPLEMENTARY INFORMATION:

Background

Airspace Docket No. 88–AEA–12, published on Tuesday, August 1, 1989 (54 FR 31698), alters the description of the Control Zone at Newburgh, NY. An error was discovered in the legal description which gives invalid coordinates for the Stewart Airport. This location was changed by the National Flight Data Digest #244 on December 24, 1981. This action corrects that error.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, Airspace Docket No. 88–AEA–12, as published in the Federal Register on August 1, 1989, is corrected to read as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

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

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Corrected]

Newburgh, New York [Corrected]

2. Insert the following paragraph:

"By amending the Stewart Airport, Newburgh, NY coordinates to read "(lat. 41°30'14" N. long. 74°06'19" W.)."

Issued in Jamaica, New York, on September 11, 1989.

John D. Canoles,

Manager, Air Traffic Division.

[FR Doc. 89–23000 Filed 9–28–89; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 88–AEA–16]

Establish Control Zone, Wheeler Sack, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rule; correction.

SUMMARY: An error was discovered in the notice of proposed rulemaking that was published in the Federal Register on Tuesday, August 1, 1989, Airspace Docket No. 88–AEA–16. This action corrects that error.

DATES: Effective September 29, 1989.

ADDRESSES: Send comments on the rule in triplicate to: Edward R. Trudeau, Manager, Systems Management Branch, AEA–530, Docket No. 88–AEA–16, Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

SUPPLEMENTARY INFORMATION:

Background

Airspace Docket No. 88–AEA–16, published on Tuesday, August 1, 1989 (54 FR 31700), proposes to establish a new control zone at the Wheeler Sack Army Air Field. An error was discovered in the description of the airspace requirements for the control zone. This action corrects that error.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, Airspace Docket No. 88–AEA–16, as published in the Federal Register on Tuesday, August 1, 1989, is corrected to read as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

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

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Corrected]

Wheeler Sack, NY [Corrected]

2. By removing the words "from the 5 mile radius zone to 6 miles northwest of the Fort Drum RBN" and substituting "from the 5 mile radius zone to 5 miles northwest of the Fort Drum RBN".

Issued in Jamaica, New York, on September 1, 1989.

John D. Canoles,

Manager, Air Traffic Division.

[FR Doc. 89–23001 Filed 9–28–89; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Parts 71 and 73

[Airspace Docket No. 89–ASO–37]

Proposed Establishment of Restricted Area R–2937; Florida

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Restricted Area R–2937 located in the vicinity of Venice, FL. The proposed area would contain a tethered aerostat-borne radar surveillance system. This project was initiated at the request of the U.S. Customs Service (USCS) to support their drug interdiction program. This action would enhance USCS's drug interdiction program.

DATES: Comments must be received on or before November 9, 1989.

ADDRESS: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ASO–500, Docket No. 89–ASO–37, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments

are specifically invited on the overall regulatory, aeronautical, economic and energy aspects of the proposal. Send comments on environmental and land use aspects to: Department of Treasury, U.S. Customs Service, Mr. Robert O. Holliday, Director, Research and Development Divison, 1301 Constitution Avenue NW., Washington, DC 20229; (202) 566–5371. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89–ASO–37." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering amendments to parts 71 and 73 of the Federal Aviation Regulations (14 CFR parts 71 and 73) to establish Restricted Area R–2937 located in the vicinity of Venice, FL. The restricted area would provide airspace for the operation of a tethered aerostat-borne radar system. This system would provide surveillance of airspace to detect low-altitude aircraft attemptimg to penetrate U.S. airspace undetected. The restricted area encompasses a one-mile radius of geographical point, lat. 27°13'30" N., long. 82°00'44" W., from the surface up to and including 10,000 feet mean sea level (MSL). The system would increase the probability of the interception and interdiction of suspect aircraft and provide low altitude radar coverage for the Customs Service. If Restricted Area R–2937 remains at this proposed location, we would be required to reduce the west side of VOR Federal Airway V–7 between Fort Myers, FL, and Lakeland, FL, from the normal width of four statute miles on either side of the centerline to three miles. This action would be necessary to ensure that R–2937 does not penetrate the airspace of V–7. Sections 71.123 and 73.29 of parts 71 and 73 of the Federal Aviation Regulations were republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Parts 71 and 73

Aviation safety, VOR Federal airways, Restricted areas.

The Proposed Amendments

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend parts 71 and 73 of the Federal Aviation Regulations (14 CFR parts 71 and 73) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

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

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V–7 [Amended]

Between the words "Lakeland, FL;" and "Cross City, FL;" add the words "7 miles wide (3 miles west and 4 miles east of centerline);"

PART 73—SPECIAL USE AIRSPACE

3. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 73.29 [Amended]

4. Section 73.29 is amended as follows:

R–2937 Venice, FL [New]

Boundaries. A 1-mile radius centered at lat. 27°13'30" N., long. 82°00'44" W.
Designated altitudes. Surface to 10,000 feet MSL.
Time of designation. Continuous.
Controlling agency. FAA, Miami ARTCC.
Using agency. United States Customs Service.

Issued in Washington, DC, on September 20, 1989.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89–23002 Filed 9–28–89; 8:45 am]

BILLING CODE 4910–13–M

Coast Guard

33 CFR Part 165

[CGD13 89–03]

Security Zones; Puget Sound, WA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering a proposal to establish security zones in the waters immediately adjacent to the following locations:

Naval Undersea Warfare Engineering Station Keyport, WA
Naval Undersea Warfare Engineering Station Detachment Indian Island
Naval Air Station Whidbey Island, Oak Harbor, WA
Manchester Naval Fuel Depot, Manchester, WA

These security zones would not be closed to vessels or persons until directed by the Captain of the Port Puget Sound. The ability to activate these security zones readily may be necessary to safeguard U.S. Naval shore facilities and vessels from sabotage or other subversive acts, accidents, or other

incidents of a similar nature while they are moored or anchored at these locations. The security zones will provide protection to these Naval facilities by prohibiting access to the waters in their vicinity except by authorized vessels, and by providing a sufficient area in which to detect unauthorized intrusions in time to allow appropriate security measures to be taken. These security zones will be temporary in nature. The geographic descriptions proposed in this rule represent what would most likely be established. The Captain of the Port Puget Sound has the authority to adjust the boundaries of these zones to meet changing security needs. Once the Captain of the Port Puget Sound, in conjunction with the Navy, determines that these zones are no longer needed either as a group or individually, they will be deactivated and returned to inactive status.

DATES: Comments must be received on or before November 13, 1989.

ADDRESSES: Comments should be mailed to Commander (mps), Thirteenth Coast Guard District, Jackson Federal Buildings, 915 Second Avenue, Seattle, WA, 98174–1067. The comments and other materials referenced in this notice will be available for inspection and copying at this address. Normal office hours are between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays. Comments may also be hand delivered to this address.

FOR FURTHER INFORMATION CONTACT: CDR W.O. Harper, (206) 442–1711.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rule making by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD13 89–03) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self addressed postcard or envelope is enclosed. The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rule making process.

Drafting Information: The drafters of this notice are CDR W. O. Harper, Project Officer, Port Safety and Security Branch, Thirteenth Coast Guard District, and LCDR L. I. Kiern, Project Attorney, Legal Office, Thirteenth Coast Guard District.

Discussion of Proposed Regulations

After a review of the physical security at the Naval facilities named in this notice of proposed rule making, Commander, Naval Base Seattle, requested the Coast Guard establish a total of five security zones in the vicinity of the active piers and sensitive locations at these Naval facilities. Four restricted zones established by the U.S. Army Corps of Engineers at 33 CFR 334.1200, 334.1230, and 334.1270, already exist in the waters adjacent to Naval Air Station Whidbey Island, Naval Undersea Warfare Engineering Station Keyport, and their detachment at Indian Island respectively. The two zones in the vicinity of Naval Air Station Whidbey Island require vessels to comply with orders received from Naval sources pertaining to their movements while in the areas. The one zone in the vicinity of Port Orchard and the Naval Undersea Warfare Engineering Station Keyport requires vessels not to anchor or tow a drag of any kind in the area, and the zone in the vicinity of Walan Point and the Naval Undersea Warfare Engineering Station Detachment Indian Island requires permission for vessel entries into the area from the Commander, Naval Base Seattle during periods when ship loading or pier operations preclude safe entry. The proposed security zones overlap portions of the waters covered by these existing restricted areas. The Coast Guard has concluded that these security zones are vital to the national interest. These Naval facilities as well as vessels moored or anchored in the vicinity of these facilities can easily be approached from the water and are vulnerable to acts of sabotage. Regulating access to the water areas around these facilities during heightened threat conditions provides a means of countering this threat without continually and unnecessarily interfering with the public's use of the waterway.

Existing law already gives the Commanding Officers of these Naval facilities authority to restrict access and to deal with trespassers. However, activation of these security zones will permit the Coast Guard to keep unauthorized persons and vessels away from sensitive areas at these facilities and will allow early detection of unauthorized entry. Yet,they will not significantly interfere with navigation in these areas.

This proposal will exempt certain categories of vessels from some or all of the restrictions imposed by the security zones when activated. Such exemptions will be granted where the Captain of the Port and the Commanding Officer, of the Naval facility, have agreed that access does not pose a threat to the safety or security of that facility and is in the national interest. (Persons lawfully aboard exempted vessels also may enter the security zone(s) without the permission of the Captain of the Port.)

Other persons who desire to enter the security zones, once activated, will be required to request and receive authority for themselves and their vessels to enter or operate within these security zones from the Captain of the Port Puget Sound via the Security Officer of the particular Naval facility in question named in the list above.

This proposal preserves the Coast Guard's existing authority to control the movement of vessels and individuals on the waters subject to the jurisdiction of the United States, including those vessels and persons that are permitted to enter or remain within the security zones once activated, without the specific permission of the Captain of the Port. This authority is restricted by law to actions taken to prevent injury to vessels, waterfront facilities, or the waters of the United States, or to secure the observance of the rights and obligations of the United States. The reservation of this authority is necessary to ensure the Coast Guard has the ability to take prompt and adequate enforcement action within these security zones if a threat to the national security or the safety of any vessel arises. The reservation of this authority is not intended to, and should not, obstruct or hinder the ability of the Commanding Officers of these Naval facilities from conducting operations at their facilities. The authority of the Coast Guard that has been reserved by this proposal is no greater than the authority the Coast Guard has over vessels and individuals at other waterfront facilities.

The Coast Guard understands that there are commercial fishermen who may fish the waters adjacent to the Naval facilities named in this rule making. We anticipate that the Captain of the Port will grant permission for these individuals to enter the security zone(s), once activated, during those periods when they hold valid licenses to take forms of marine life from these locations, if upon review by the U.S. Navy it is determined that these individuals do not pose a security risk to the United States.

At the present, there are no intentions to require the use of Port Security Cards or other special credentials for persons authorized to operate within the security

zones, other than the certificate of exemption required for persons and vessels entering or operating within the particular security zone in question, when it is activated.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 CFR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. Portions of the areas affected by these security zones are already restricted to navigation by the restricted zones referred to above. Even in the absence of the restricted zones, the interests affected will be primarily recreational, and the loss of the use of these parts of the Puget Sound waterfront should not affect their use of other parts of the Sound for navigation or other purposes except in a very minor way.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

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

Proposed Regulations: In consideration of the foregoing, the Coast Guard proposes to amend part 165 of title 33, Code of Federal Regulations as follows:

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

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

2. Section 165.1304 is added to read as follows:

§ 165.1304 Selected Puget Sound Naval Facilities—Security Zones

(a) Locations: The following are potential security zones which may be activated by the Captain of the Port Puget Sound as indicated in § 165.1304(b):

(1) The waters of Liberty Bay immediately adjacent to the Naval Undersea Warfare Engineering Station, Keyport, WA that is encompassed by a line commencing on the north shore at the north fence line at Latitude 47°48'17" N, Longitude 122°37'17" W; thence to Latitude 47°42'25" N, Longitude 122°36'55" W; thence to Latitude 47°41'55" N, Longitude 122°36'39" W; thence to a point on shore at Latitude 47°41'43" N; Longitude 122°36'59" W; and thence northerly along the shoreline to the point of origin.

(2) The waters off of Walan Point immediately adjacent to the Naval undersea Warfare Engineering Station Detechment Indian Island that is encompassed by a line commencing on the north shore of Indian Island at Latitude 48°04'41" N, Longitude 122°44'27" W; thence to Latitude 48°04'46" N, Longitude 122°33'53" W; thence to Latitude 48°04'19" N, Longitude 122°45'05" W; thence to Latitude 48°04'15" N, Longitude 122°44'48" W; thence to a point on shore at Latitude 48°04'18" N, Longitude 122°44'48" W; and thence northerly along the shoreline to the point of origin.

(3) The waters at two locations off of Naval Air Station Whidbey Island bound by lines commencing as follows:

(i) *Ault Field Side:* On the west shore of Whidbey Island at Latitude 48°22'12" N, Longitude 122°39'54" W; thence to Latitude 48°22'12" N, Longitude 122°42'09" W; thence to Latitude 48°18'54" N, Longitude 122°42'43" W; thence to a point on shore at Latitude 48°18'43" N, Longitude 122°42'35" W; and thence northerly along the shoreline to the point of origin; and

(ii) *Seaplane Side:* On east shore of Whidbey Island at Latitude 48°16'52" N; Longitude 122°33'15" W; thence to Latitude 48°16'44" N, longitude 122°40'09" W; thence to Latitude 48°16'13" N, Longitude 122°33'00" W; thence to Latitude 48°15'54.5" N, Longitude 122°37'53" W; thence to Latitude 48°16'22.5" N, Longitude 122°38'40" W; and thence 090 degrees True to the shore and along the shoreline to the point of origin.

(4) The water off of Orchard Point and Clam Bay immediately adjacent to the Manchester Naval Fuel Depot, Manchester, WA encompassed by a line commencing at Latitude 47°33'47" N, Longitude 122°32'12" W; thence to Latitude 47°33'37" N, Longitude 122°32'00" W; thence to Latitude 47°33'53" N, Longitude 122°31'30" W; thence to a point on shore at Latitude 47°34'34" N, Longitude 122°32'35" W; and thence southerly along the shoreline to the point of origin.

(b) Special Regulations:

(1) Captain of the Port Puget Sound, Washington, will activate the security zones as a group or separately by means of locally promulgated Notices to Mariners broadcast on 2670 KHZ and/or 157.10 MHZ (VHF–FM Channel 22). The geographic descriptions of the boundaries of the security zones listed in § 165.1304(a) are what would most likely be established. However, depending on the security needs of the situation at the time of activation these boundaries may change. Mariners should carefully review the zone boundaries that are actually announced.

(2) Section 165.33 paragraphs, (a), (e), and (f), do apply to the following vessels or individuals on board these vessels:

(i) Public vessels of the United States.

(ii) Vessels that are performing work pursuant to a contract with the United States Navy which requires that presence in the security zones.

(iii) Any other vessels or class of vessels mutually agreed upon by the Captain of the Port and the Commanding Officer of the Naval facilities. Vessels operating under this exemption must obtain a copy of a certificate of exemption from the Security Office of the Naval facility permitting their operation in the security zone. This written exemption shall state the effective period and may contain any further restrictions on vessel operations within the security zone as have been previously agreed upon by the Captain of the Port and the above named Navy commands. The certificates of exemption shall be maintained on board the exempted vessel so long as the vessel is operating within the active security zones.

(3) Other vessels desiring access to these zones shall secure permission form the Captain of the Port through the Security Office of the particular naval facility in question. The request shall be forwarded in a timely manner to the Captain of the Port by the appropriate Navy official.

(c) Enforcement. The U.S. Coast Guard may be assisted in the patrolling and monitoring of these security zones by the U.S. Navy.

Dated: September 13, 1989.

R.E. Kramek,

Rear Admiral, U.S. Coast Guard Commander, 13th CG District.

[FR Doc. 89–22972 Filed 9–28–89; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-1-FRL-36528]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut; New Source Review, Stack Heights, PM_{10}, Ambient Impact Analysis Guideline, CEM, and Other Miscellaneous Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by the State of Connecticut. These revisions were made to satisfy the current federal new source review (NSR) requirements for the preconstruction permitting of new sources and modifications in both attainment and nonattainment areas. EPA is also proposing to approve revisions submitted by the State of Connecticut to satisfy the current NSR-related federal requirements for stack heights and despersion techniques, and PM_{10}. In addition, EPA is also proposing to approve nonregulatory revisions submitted by the State of Connecticut to update its *Ambient Impact Analysis Guideline*. Finally, EPA is proposing to approve revisions submitted by the State of Connecticut to satisfy the continuous emission monitoring (CEM) requirements for State plans as well as other minor miscellaneous revisions. The intended effect of this action is to propose approval of the State's request to amend its SIP to satisfy these current federal requirements. This action is being taken under section 110 of the Clean Air Act (the Act).

DATES: Comments must be received on or before October 30, 1989. Public comments on this document are requested and will be considered before taking final action on this SIP revision.

ADDRESSES: Comments may be mailed to Louis F. Gitto, Director, Air Management Division, U.S. Environmental Protection Agency, Region I, Room 2313, JFK Federal Bldg., Boston, MA 02203. Copies of the State submittal and EPA's technical support documents are available for public inspection during normal business hours at the U.S. Environmental Protection Agency, Region I, Room 2313, JFK Federal Bldg., Boston, MA, 02203 and the Air Compliance Unit, Department of Environmental Protection, State Office Building, 165 Capitol Avenue, Hartford, CT 06106.

FOR FURTHER INFORMATION CONTACT: For the New Source Review and CEM related revisions, please contact Lynne Hamjian, (617) 565-3246; FTS 835-3246, and for those revisions related to stack heights and Connecticut's *Ambient Impact Analysis Guideline*, please contact Susan Kulstad (617) 565-3225; FTS 835-3225.

SUPPLEMENTARY INFORMATION: On January 20, 1989, the Connecticut Department of Environmental Protection (DEP) submitted revisions to its State Implementation Plan (SIP). This notice discusses the proposed revisions and EPA's rationale for proposing to approve them. The notice is divided into six separate sections for clarity. Section I discusses the revisions to Connecticut's new source review (NSR) regulations including the State's newly adopted regulations for the prevention of significant deterioration (PSD). Section II discusses the revisions to Connecticut's stack height and dispersion techniques regulations. Section III discusses revisions to Connecticut's regulations which satisfy the PSD-related requirements for PM_{10}. Section IV discusses nonregulatory revisions to Connecticut's *Ambient Impact Analysis Guideline*. Section V discusses miscellaneous minor revisions to certain Connecticut SIP regulations to ensure that they remain consistent with their original intent as approved by EPA. Finally, Section VI discusses revisions which satisfy the CEM requirements for State plans.

I. New Source Review Revisions

A. Background

In 1979 and 1980, the Connecticut Department of Environmental Protection adopted NSR regulations for permitting new and modified sources in nonattainment areas to satisfy the requirements of Part D of Clean Air Act and 40 CFR 51.160 through 51.165. EPA conditionally approved these regulations on December 23, 1980. Pursuant to corrective actions taken by the State of Connecticut, EPA removed the conditions of its approval of these regulations on January 7, 1982.

On June 19, 1978, EPA promulgated the PSD regulations of 40 CFR 52.21(b) through (v) into the Connecticut SIP at 40 CFR 52.382 and federally implemented the PSD program in Connecticut. On August 7, 1980, EPA revised these regulations pursuant to a court decision. (*Alabama Power Company et al.* v. *Costle* D.C. Cir. No. 78-1006 December 14, 1979). On July 14, 1982, the Connecticut DEP requested a partial delegation of authority to implement the PSD regulations of 40 CFR 52.21. On September 29, 1982 EPA approved this partial delegation, and the Connecticut DEP began issuing PSD permits.

On December 27, 1988, the Connecticut DEP adopted revisions to its new source review regulations to make them consistent with the current requirements of Part D of the Clean Air Act and 40 CFR 51.160 through 51.165. These revisions to Connecticut's NSR rules also include newly adopted PSD regulations to satisfy part C of the Clean Air Act and the requirements of 40 CFR Part 51.166 for SIPs. Once Connecticut's PSD regulations are approved by EPA, the State will have *full* authority to implement and enforce the PSD program through its SIP, the federal implemented PSD Plan (FIP) at 40 CFR 52.382 will be removed, and the delegation agreement between EPA and the Connecticut DEP shall be terminated.

B. Summary of Connecticut's Submittal

On January 20, 1989, the Connecticut DEP submitted new and amended regulations to EPA as revisions to its SIP. The revisions include changes to section 22a-174-1, "Definitions," and section 22a-174-3, "Permits to Construct and Permits to Operate Stationary Sources of Modifications," of Connecticut's regulations. In addition, the revisions include an updated version of Connecticut's nonregulatory SIP narrative entitled, "New Source Review," which explains the process the Connecticut DEP follows in the review of new or modified stationary sources in accordance with its regulations.

These revisions also include a letter from the Connecticut DEP that certifies that the Connecticut DEP is implementing the "Top Down" approach in determining Best Available Control Technology (BACT) in accordance with EPA's December 1987 memorandum from Craig Potter entitled, "Improving New Source Review Implementation" and in accordance with the BACT document issued by the Northeast States for Coordinated Air Use Management (NESCAUM) dated October, 1988. In addition, the Connecticut DEP committed to using the "Top Down" approach in all future BACT determinations.

EPA has evaluated these proposed revisions and found that they are equivalent to or in some instances, more stringent than, the requirements of 40 CFR 51.160 through 51.166 with the exception of the provisions discussed below.

Connecticut's regulations for NSR/PSD, and EPA's evaluation are detailed in a memorandum dated May 3, 1989 entitled, "Technical Support Document—Connecticut New Source Review Revisions." Copies of that document are available, upon request,

from the EPA Regional Office listed in the **ADDRESSES** Section of this notice.

C. Amendments to Connecticut's NSR/PSD Regulations Necessary for Final Approval

Section 22a–174–1 of Connecticut's regulations does not include a definition of the term, "Begin Actual Construction." In order for EPA to take final action to approve these revisions, Connecticut must include the definition of this term found at 40 CFR 51.166(b)(11).

Subdivision 22a–174–3(k)(7) of Connecticut's regulations does not include all of the PSD monitoring provisions. In order for EPA to take final action to approve these revisions, Connecticut must amend subdivision 22a–174–3(k)(7) to make it consistent with 40 CFR 51.166(m).

Connecticut must commit to adhere to EPA's "Recommended Policy on the Control of Volatile Organic Compounds (VOC)" (42 FR 31314, July 8, 1977). The State cannot allow reductions in VOCs from existing sources to be used to offset increases of more reactive VOCs when implementing its NSR regulations. Final action by EPA to approve these revisions is contingent upon Connecticut's commitment to adhere to this policy.

D. Today's Action

Proposed Action

EPA is proposing to approve Connecticut's request to revise section 22a–174–1, "Definitions," and section 22a–174–3, "Permits to Construct and Permits to Operate Stationary Sources or Modifications," of the *Regulations of Connecticut Department of Environmental Protection Concerning the Abatement of Air Pollution.* EPA is also proposing to approve changes to Connecticut's SIP narrative entitled, "New Source Review." These revisions satisfy the current federal NSR and PSD requirements of 40 CFR 51.160 through 51.166. EPA is proposing approval with the understanding that the Connecticut DEP will make the necessary additions and revisions to its regulations and the commitment to adhere to EPA's "Recommended Policy on the Control of Volatile Organic Compounds (VOC)," as outlined in this notice, prior to final EPA approval of these revisions.

II. Stack Height Revisions

A. Background

On February 8, 1982 (47 FR 5864), EPA promulgated final regulations limiting stack height credits and other dispersion techniques as required by section 123 of the Act. These regulations were challenged in the U.S. Court of Appeals for the D.C. Circuit by the Sierra Club Legal Defense Fund, Inc., the Natural Resources Defense Council, Inc., and the Commonwealth of Pennsylvania in *Sierra Club* v. *EPA*, 710 F.2d 436 (D.C. Cir. 1983). On October 11, 1983, the court issued its decision ordering EPA to reconsider portions of the stack height regulations, reversing certain portions and upholding other portions.

On February 28, 1984, the electric power industry filed a petition for a writ of certiorari with the U.S. Supreme Court. On July 2, 1984, the Supreme Court denied the petition, 104 S.Ct. 3571 (1984), and on July 18, 1984, the Court of Appeals' mandate was formally issued, implementing the court's decision and requiring EPA to promulgate revisions to the stack height regulations within six months. The promulgation deadline was ultimately extended to June 27, 1985. Revisions to the stack height regulations were proposed on November 9, 1984 (49 FR 344878) and finalized on July 8, 1985 (50 FR 27892).

The revisions redefine a number of specific terms including "excessive concentrations," "dispersion techniques," "nearby," and other important concepts, and modified some of the bases for determining good engineering practice (GEP) stack height.

Pursuant to section 406(d)(2)(B) of the Act, all states were required to (1) review and revise, as necessary, their SIPs to include provisions that limit stack height credits and dispersion techniques in accordance with the revised regulations; and (2) review all existing emission limitations to determine whether any of these limitations have been affected by stack height credits above GEP or any other dispersion techniques. For any limitations so effected, states were to prepare revised limitations consistent with their revised SIPs. All SIP revisions and revised emission limits were to be submitted to EPA, as required by section 406. Subsequently, EPA issued detailed guidance on the performance of the required reviews.

On January 22, 1988, the U.S. Court of Appeals issued a decision in *NRDC* v. *Thomas*, 838 F.2d 1224 (D.C. CIR. 1988), regarding EPA's revised July 8, 1985 stack height regulations. Subsequent petitions for rehearing were denied. The Court remanded three provisions to EPA that may potentially bear on state actions now being taken pursuant to EPA's July 8, 1985 regulations. However, since EPA is currently in the process of reconsidering the remanded provisions and the outcome is as yet unknown, our review of Connecticut's January 20, 1989 submittal addresses its consistency with the July 8, 1985 regulations only. If EPA further revises its regulations in response to the remand at some future date, Connecticut will, at that time, be required to revise its regulations accordingly. Sources may have to have their permits amended and/or be required to submit new demonstrations that applicable ambient standards are met if affected by such revisions.

B. Summary of Connecticut's Submittal

Connecticut's January 20, 1989, SIP submittal includes revisions to section 22a–174–1, "Definitions," and section 22a–174–3, "Permits to Construct and Permits to Operate Stationary Sources or Modifications," of Connecticut's regulations which limit stack height credits and dispersion techniques. These revisions are adequate and meet the current requirements in 40 CFR 51.100 and 51.118.

EPA's evaluation of Connecticut's stack height and dispersion techniques requirements is detailed in a memorandum entitled, "Technical Support Document—Connecticut's Stack Height Regulations," dated March 14, 1989. Copies of this document are available, upon request, from the EPA Regional Office listed in the **ADDRESSES** Section of this notice.

C. Today's Action

Proposed Action

EPA proposes to approve and incorporate by reference revisions to section 22a–174–1, "Definitions," and section 22a–174–3, "Permits to Construct and Permits to Operate," of the *Regulations of Connecticut Department of Environmental Protection Concerning the Abatement of Air Pollution.* These revisions satisfy the current provisions of 40 CFR 50.1(e), 51.100, and 51.118, which specify ambient air, stack height and dispersion techniques requirements for SIPs.

III. PM_{10} Revisions

A. Background

On July 1, 1987, EPA promulgated a revised national ambient air quality standard (NAAQS) for particulate matter (52 FR 2463). EPA revised the old definition of the NAAQS from the total suspended particulate (TSP) to a new definition. The new definition applies to particulate matter with aerodynamic diameters of 10 micrometers or less.

B. Summary of Connecticut's Submittal

On January 20, 1989, the Connecticut DEP submitted amended regulations to EPA as revisions to its SIP. These revisions incorporate PSD-related PM_{10}

requirements which include changes to section 22a–174–1, "Definitions," and section 22a–174–3, "Permits to Construct and Permits to Operate Stationary Souces or Modifications," of Connecticut's regulations. These amendments include the relevant definitions and PSD provisions for PM_{10}. These amendments do not include the definitions of "particulate matter emissions" and "PM_{10} emissions," the PM_{10} National Ambient Air Quality Standards, or the provisions related to significant harm levels and emergency episode plans for PM_{10}. Future action by the State of Connecticut is required to address these definitions and provisions. The PSD revisions included in the January 20, 1989 submittal meet the current federal PSD requirements in 40 CFR 51.166 for PM_{10}.

Connecticut's PSD regulations for PM_{10}, and EPA's evaluation are detailed in a memorandum dated April 28, 1989 entitled, "Technical Support Document—Connecticut's PM_{10} Regulations." Copies of that document are available, upon request, from the EPA Regional Office listed in the **ADDRESSES** Section of this notice.

C. Today's Action

Proposed Action

EPA is proposing to approve Connecticut's PM_{10} related revisions to section 22a–174–1, "Definitions," and section 22a–174–3, "Permits to Construct and Permits to Operate Stationary Sources or Modifications" of the *Regulations of Connecticut Department of Environmental Protection Concerning the Abatement of Air Pollution.* These revisions incorporate the federal PSD PM_{10} requirements.

VI. Connecticut's Ambient Impact Analysis Revisions

A. Background

On August 28, 1981 (46 FR 43418), EPA approved Connecticut's *New Source Ambient Analysis Guideline* as a nonregulatory addition to the Connecticut SIP. This guideline was approved for demonstrating protection of the NAAQS for sulfur oxides by projecting the ambient air quality impacts of temporary increases of sulfur oxide emissions. These temporary revisions of the Connecticut's SIP's sulfur-in-fuel limits were approved for sources to develop energy conservation measures. Since the time of EPA's approval, the Connecticut DEP has expanded the scope of its modeling guideline and updated it to reflect developments and changes in EPA's modeling policies.

B. Summary of Connecticut's Submittal

Connecticut's January 20, 1989 SIP submittal includes nonregulatory revisions to its *New Source Ambient Analysis Guideline.* The revised guideline is now entitled *Ambient Impact Analysis Guideline* and is specified in the narrative portion of the SIP submittal for use in all NSR-related ambient impact analyses conducted by the Connecticut DEP. EPA has evaluated Connecticut's guideline and found that it is consistent, with the exception of the provisions discussed below, with EPA's *Guideline on Air Quality Models (Revised)* (dated July, 1986 as supplemented January, 1988) as required in 40 CFR 51.166(1).

The Connecticut DEP's approach for conducting impact analyses is described fully in its *Ambient Impact Analysis Guideline,* and EPA's review of the guideline is contained in a memorandum dated April 28, 1989 entitled, "Technical Support Document—Connecticut's Ambient Impact Analysis Guideline." Copies of that Document are available, upon request, from the EPA Regional Office listed in the **ADDRESSES** Section of this Notice.

C. Amendment's to Connecticut's Ambient Impact Analysis Guideline Necessary for Final Approval

In Section 5.2.2, "Sources," the guideline must require maximum actual short-term emission rates rather than average actual emissions based on annual actual emissions.

In Section 5.3.2, "Meteorology for Refined Modeling," the guideline must allow for consistency with EPA policy for on-site meteorological data for refined modeling, which states that onsite data (one or more years, up to 5) are always preferable to off-site data.

The guideline must specify when the source must conduct preconstruction monitoring.

Where the guideline refers to its Figures 5–1 through 5–6, use of the most recent 3 years of monitoring data available must be used by the source rather than the three years of data specifically applied for the depictions in these figures.

D. Today's Action

Proposed Action

EPA is proposing to approve the revised version of Connecticut's *Ambient Impact Analysis Guideline.* These revisions satisfy the current requirements in EPA's *Guideline on Air Quality Models (Revised)* dated July, 1986, as supplemented January, 1988, as required in 40 CFR 51.166(1). EPA is proposing approval with the understanding that the Connecticut DEP will make the necessary additions and revisions to its guideline as outlined in this notice prior to final EPA approval of these revisions.

V. Other Miscellaneous Revisions

A. Background

Many of Connecticut's current federally approved SIP regulations apply based on a stationary source's "actual emissions." EPA was able to approve these regulations because Connecticut's definition of that term (i.e., the definition currently in the SIP) was equivalent to the federal definition of the term "potential to emit." Connecticut has now adopted definitions of the terms "actual emissions" and "potential emissions" which are equivalent to the current federal definitions in 40 CFR Part 51. Connecticut's newly adopted definitions of "actual emissions" and "potential emissions" could not be approved by EPA unless all of the current SIP's regulations were also appropriately amended to incorporate these revised definitions.

B. Summary of Connecticut's Submittal

Connecticut's January 20, 1989 submittal includes revisions to sections 22a–174–1 through 22a–174–100 of Connecticut's regulations to correctly use the terms "actual emissions" and "potential emissions" as described above. These revisions do not have any substantive effect in that they do not change the scope of these regulations' applicability and they do not make these regulations more stringent or less stringent. The revisions are wording changes to ensure that the regulations in Connecticut's SIP remain consistent for applicability purposes and in intent as originally approved by EPA.

C. Today's Action

Proposed Action

EPA is proposing to approve minor revisions to sections 22a–174–1 through 22a–174–100 of the *Regulations of Connecticut Department of Environmental Protection Concerning the Abatement of Air Pollution* to appropriately use the terms "potential emissions" and "actual emissions." These revisions ensure that the regulations remain consistent for applicability purposes and in intent as originally approved by EPA.

VI. Continuous Emission Monitoring Revisions

A. Background

Forty CFR 51.214 and 40 CFR Part 51 appendix P contain continuous emission monitoring (CEM) requirements which require existing stationary sources to install, calibrate, maintain, and operate equipment for continuously monitoring and recording emissions and to provide other information as specified in 40 CFR part 51 appendix P. The CEM provisions of 40 CFR 51.214 and part 51 Appendix P apply to non-NSPS subject fossil-fuel fired steam generators, sulfuric acid plants, nitric acid plants, and fluid bed catalytic cracking unit catalyst regenerators at petroleum refineries.

B. Summary of Connecticut's Submittal

On January 20, 1989, the Connecticut DEP submitted revisions to section 22a–

174–4, "Source Monitoring, Recordkeeping, Reporting, and Authorization of Inspection of Air Pollution Sources," of Connecticut's regulations. These revisions incorporate the applicable opacity CEM requirements for fossil fuel-fired steam generators set forth in 40 CFR 51.214 and 40 CFR Part 51, Appendix P. Connecticut's revisions do not include SO_2 and NO_x CEM requirements for fossil fuel-fired steam generators, and the regulations do not include CEM requirements for sulfuric acid plants, nitric acid plants and fluid bed catalytic cracking unit catalyst regenerators at petroleum refineries.

Connecticut's CEM regulation and EPA's evaluation are detailed in a memorandum dated May 3, 1989 entitled, "Technical Support Document—Connecticut's Continuous Emission Monitoring Regulation." Copies of that document are available, upon request, from the EPA Regional Office listed in the ADDRESSES Section of this notice.

C. Amendments Necessary for Final Approval

As stated above, Connecticut's revisions only include requirements for opacity monitors at fossil fuel-fired steam generators. The Connecticut DEP has informed EPA that no other applicable sources are located in the State. Therefore, prior to final rulemaking, the Connecticut DEP must clarify the applicability and scope of its CEM regulation by certifying that there are none of the following:

1. Sulfuric acid plants of greater than 300 tons per day production capacity in the State of Connecticut,
2. Nitric acid plants of greater than 300 tons per day production capacity in the State of Connecticut,
3. Fluid bed catalytic cracking unit catalyst regenerators at petroleum refineries in the State of Connecticut,
4. Fossil fuel-fired steam generators of greater than 250 million BTU per hour heat input which have installed sulfur dioxide pollutant control equipment in the State of Connecticut, and
5. NO_x control strategy areas in the State of Connecticut.

D. Today's Action

Proposed Action

EPA is proposing to approve Connecticut's request to revise section 22a–174–4, "Source Monitoring, Recordkeeping, Reporting, and Authorization of Inspection of Air Pollution Sources" of the *Regulations of Connecticut Department of Environmetal Protection Concerning the Abatement of Air Pollution.* These revisions incorporate opacity CEM requirements in accordance with 40 CFR 51.214 and 40 CFR part 51 appendix P. EPA is proposing approval with the understanding that the Connecticut DEP will submit the certification discussed in this notice prior to final rulemaking.

In adopting the Act, Congress designated EPA as the agency primarily responsible for interpreting the statutory provisions and overseeing their implementation by the states. EPA must approve state programs that meet the requirements of 40 CFR part 51. Conversely, EPA cannot approve programs that do not meet those requirements. However, the requirements of the Act and 40 CFR part 51 for NSR including those for PSD, stack heights/dispersion techniques, and ambient impact analyses, are by nature very complex and dynamic. It would be administratively impracticable to include all statutory interpretations in the EPA regulations and the SIPS of the various states, or to amend the regulations and SIPS every time EPA interprets the statute or regulations or issues guidance regarding the proper implementation of the NSR program. Moreover, the Act does not require EPA to do so. Rather, action by EPA to approve these NSR-related regulations and narrative as part of the Connecticut SIP still have the effect of requiring the state to follow EPA's current and future interpretations of the Act's provisions and regulations, as well as EPA's operating policies and guidance (but only to the extent that such policies are intended to guide the implementation of approved state NSR programs). Similarly, EPA approval also will have the effect of superceding any interpretations or policies that the state might otherwise follow to the extent they are at variance with EPA's interpretations and applicable policies. Of course, any fundamental changes in the administration of NSR would have to be accomplished through amendments to the regulations in 40 CFR part 51 and subsequent SIP revisions.

Upon approval of these revisions to the NSR requirements of the Connecticut SIP, EPA will continue to oversee implementation of this important program by reviewing and commenting upon proposed permits as appropriate. Specifically, EPA will comment upon proposed permits that do not implement the letter of the law, as well as EPA's statutory and regulatory interpretations and applicable guidance. If a final permit is issued which still does not reflect consideration of the relevant factors, EPA may deem the permit inadequate for purposes of implementing the requirements of the Act and Connecticut's SIP, and may consider enforcement action under sections 113 and 167 of the Act to address the permit deficiency.

EPA is proposing to approve revisions to the Connecticut SIP, submitted on January 20, 1989, and is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional Office listed in the *ADDRESSES* Section of this notice.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

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

The Administrator's decision to approve or disapprove the SIP revision will be based on whether it meets the requirements of section 110(a)(2)(A)–(K) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 51.

List of Subjects in 40 CFR Part 52

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

Authority: 42 U.S.C. 7401–7642.

Dated: June 8, 1989.

Paul G. Keough,

Acting Regional Administrator, Region 1.

[FR Doc. 89–23012 Filed 9–28–89; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[FRL–3652–9]

Approval and Promulgation of State Implementation Plans; North Dakota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is today proposing to approve revisions to North Dakota's State Implementation Plan (SIP) submitted by the Governor on April 18, 1989. This proposal to approve is only for those revisions which updated and revised State rules (including PSD regulations) and control strategies to address PM10, and made minor updates to various other regulation revisions, including the revisions to the Control of Pesticides regulation. The April 18, 1989 submittal (1) established new and

revised existing New Source Performance Standards (NSPS), (2) revised existing National Emission Standards for Hazardous Air Pollutants (NESHAPs), (3) updated and revised State rules (including PSD regulations) and control strategies to address PM10, (4) made minor updates to various other State regulations, including the revisions to the Control of Pesticides regulation, and (5) added a control strategy to address visibility. The NSPS additions and revisions, NESHAPs revisions, and visibility control strategy are being addressed in separate actions..

DATES: Comments must be received on or before October 30, 1989.

ADDRESSES: Written comments should be addressed to: Chief, Air Programs Branch, Environmental Protection Agency, Region VIII Air Programs Branch, 999 18th Street, Suite 500, Denver, Colorado 80202-2405

Copies of the revision are available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday at the following offices:

Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, Suite 500, Denver, Colorado 80202-2405

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

Division of Environmental Engineering, North Dakota State Department of Health and Consolidated Laboratories, 1200 Missouri Avenue, P.O. Box 5520, Bismarck, North Dakota 58502-5520.

FOR FURTHER INFORMATION CONTACT: Laurie Ostrand, Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, Suite 500, Denver, Colorado 80202-2405, (303) 293-1814, FTS 564-1814.

SUPPLEMENTARY INFORMATION:

Summary of Rule Changes

The North Dakota Air Pollution Control Rules contain 20 chapters, 33-15-01 through 33-15-20. The following is a summary of those rules changes submitted on April 18, 1989. A review of the acceptability of the rule changes will be discussed later in the text.

1. Chapter 33-15-01—General Provisions

To this chapter, the State has added definitions for inhalable particulate matter (33-15-01-04(15)), particulate matter emissions (33-15-01-04(22)), PM10 (33-15-01-04(25)), and PM10 emissions (33-15-01-04(26)) and has revised the definition of particulate matter (33-15-01-04(21)) to make their rules consistent with the federal rules per the PM10 revisions. For clarification, the State has added terms to its list of abbreviations in 33-15-01-05.

2. Chapter 33-15-02—Ambient Air Quality Standards

To this chapter, the State has added the ambient air quality standard for PM10 and has deleted the ambient standard for total suspended particulate (TSP).

3. Chapter 33-15-04—Open Burning Restrictions

To this chapter, the State has added language to disallow open burning of rangeland and open burning to clear land that would cause adverse impact on visibility in Class I areas, except in emergencies. See 33-15-04-02(5) and (6)(h)

4. Chapter 33-15-07—Control of Organic Compounds

To this chapter, the State has added language to 33-15-07-02 which exempts some minor sources from requirements that would mandate all emission, regardless of quantities, to be flared or controlled equally effective. An example of minor sources may include obviously small spray paint booths or coating operations. Language was deleted from 33-15-07-02 regarding oil exploration, development and production because those items are now covered in 33-15-20.

5. Chapter 33-15-10—Control of Pesticides

To this chapter, the State added language to allow aerial pesticide spraying over a city in the case of "potential emergencies." Additionally, language was added to allow the burning of pesticide containers where no municipal collection and disposal service is available. Such burning is allowed provided (1) only plastics composed of carbon, hydrogen, and oxygen can be burned, (2) containers are empty and triple rinsed, (3) burning is conducted on a farm by the farmers who generated the empty containers, (4) burning is conducted in an open area away from residences, and (5) burning cannot be conducted by commercial applicators or to dispose of large stockpiles of empty containers.

6. Chapter 33-15-11—Prevention of Air Pollution Emergency Episodes

To this chapter, the State revised the air pollution alert, warning and emergency levels to reflect the changes in the PM10 standard.

7. Chapter 33-15-14—Designated Air Contaminant Sources, Permit To Construct, Permit to Operate

To this chapter, the State added the word "fossil" to 33-15-14-05(1)(b) to clarify that only fossil fuels would be considered when making exemptions.

8. Chapter 33-15-15—Prevention of Significant Deterioration of Air Quality

To this chapter, the State added a definition for "total suspended particulate (3-15-15-01(1)(cc)). The State also made revision to the definition of significant (33-15-15-01(1)(aa)), the area designation and deterioration increment (33-15-15-01(2)(a) & (b)), monitoring exemptions (33-15-15-01(4)(d)(3)(a)), and to Class I variances (33-15-15-01(4)(j)(4)(b)) to make their regulations consistent with the changes in the federal regulations that resulted from the PM10 promulgation.

Summary of PM10 Control Strategy

North Dakota is Group III for PM10 classification. For Group III areas, EPA is presuming that the existing federally approved SIP is adequate to maintain the PM10 standards. Therefore, North Dakota is not required to revise its attainment demonstrations or emissions limits in the existing SIP. North Dakota, is required to specifically identify enforceable control measures that are maintaining the existing particulate matter ambient concentration. North Dakota has indicated that the control strategy employed by the State for inhalable particulate (PM10) matter is essentially the same as that employed to control TSP matter. This consists primarily of the application of the North Dakota Air Pollution Control Rules; specifically, Chapters 33-15-03 (Restriction of Emission of Visible Air Contaminants, 33-15-04 (Open Burning Restrictions), 33-15-05 (Emissions of Particulate Matter Restricted), 33-15-17 (Restriction of Fugitive Emissions). Additional controls on particulate emissions are applied through chapter 33-15-12 (Standard of Performance of New Stationary Sources) and 33-15-15 (Prevention of Significant Deterioration of Air Quality).

Determination of Adequacy of SIP Revisions

A. Regulation Revisions

The State has adequately addressed all comments by this public and EPA with respect to changes in the following regulations. As noted below, EPA's analysis is that the regulations meet EPA requirements.

1. Chapter 33–15–01—General Provisions

In the definitions of "particulate matter emissions" and "PM10 emissions" the State omitted the following: "as measured by applicable reference methods, or an equivalent or alternative method as specified in the State Implementation plan (SIP)." EPA has determined that this is not a fatal emission for several reasons. First, the General Provisions of the State's air pollution control rules require that for the measurement of emissions of air contaminants, that all tests be made and the results calculated in accordance with test procedures approved by the department (33–15–01–12(1)). Second, most of the regulations identified in the State's PM10 control strategy specify methods of measurement. Restriction of Emissions of visible Air Contaminants indicates a method of measurement in 33–15–03–05, Open Burning Restriction does not have methods of measurement, Emissions of Particulate Matter Restricted indicates methods of measurement in 33–15–05–04, Restriction of Fugitive Emissions does not have a method of measurement, Standard of Performance of New Stationary Sources all have specified methods of measurement as appropriate, and Prevention of Significant Deterioration of Air Quality requires permits to be issued in accordance with 33–15–14, Designated Air Contaminant Sources, Permit to Construct, Permit to Operate. This latter chapter requires emissions tests or performance tests to be conducted and data reduced in accordance with the applicable procedure, limitations, standards and test methods established by the Air Pollution Control Regulations.

The State also omitted the following in the definition of PM10: "as measured by a reference method on appendix J of 40 CFR part 50 and designated in accordance with 40 CFR part 53 or by an equivalent method designated in accordance with 40 CFR part 53." EPA has determined that this is not a fatal omission because in chapter 33–15–02, Ambient Air Quality Standards, of the State's air pollution regulations, 40 CFR parts 50 and 53 are referenced as methods of measurement for the State's ambient air quality standards which includes PM10.

2. Chapter 33–15–02—Ambient Air Quality Standards

The revisions to this chapter, detailed above, are acceptable to EPA.

3. Chapter 33–15–04—Open Burning Restrictions

The revisions to this chapter, detailed above, are acceptable to EPA.

4. Chapter 33–15–07—Control of Organic Compounds

The revisions to this chapter, detailed above, are acceptable to EPA. EPA does not interpret this exemption to mean, however, that some of the minor sources exempted by the State regulation may be subject to the Federal New Source Performance Standards in 40 CFR part 60. Exemption from a State regulation does not exempt a source from 40 CFR part 60. Such interpretation was confirmed in a letter dated August 22, 1989, from Dana K. Mount, Director of the Division of Environmental Engineering, to Doug Skie, EPA. Likewise, exemption from a State regulation does not obviate a source from meeting requirements in 40 CFR part 61, National Emission Standards for Hazardous Air Pollutants.

5. Chapter 33–15–10—Control of Pesticides

The revisions to this chapter, detailed above, are acceptable to EPA. When reviewing the draft of this regulation, EPA suggested that the State add the following to this regulation: Handling of pesticide containers, including burning, must comply with the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). The State has indicated that such language is slated for inclusion in its next regulation update. EPA, however, believes that the omission of this phase is not a fatal flaw since FIFRA requires national compliance.

6. Chapter 33–15–11—Prevention of Air Pollution Emergency Episodes

The revisions to this chapter, detailed above, are acceptable to EPA.

7. Chapter 33–15–14—Designated Air Contaminant Sources, Permit to Construct, Permit to Operate

The revisions to this chapter, detailed above, are acceptable to EPA. EPA does note, however, that the State has not revisited its rules to be totally consistent with 40 CFR 51.165(b). 40 CFR 51.165(b) is a preconstruction review program for major sources or major modifications (as defined in 40 CFR 51.165(a)) that cause or contribute to a violation of any NAAQS. "Cause or contribute" is defined by significance levels in 40 CFR 51.165(b)(2). North Dakota's regulation does not define significance levels.

This is not a fatal flaw with the North Dakota regulations for several reasons. First, North Dakota does not have any nonattainment areas in the State nor do they have any areas approaching a violation of the NAAQS. Second, North Dakota does have regulations which require construction permits for various listed sources regardless of size. For sources not listed, those that are greater than 50 tons per year, 1,000 pounds per day, or 100 pounds per hour, whichever is more restrictive, are required to obtain a construction permit. Third, per a letter dated August 28, 1989, from Dana K. Mount, Director of the Division of Environmental Engineering, to Laurie Ostrand, EPA, it is the "State's current policy to issue a permit to a source if the modeling demonstrated it *did not* contribute significantly to a violation of an ambient air quality standard." A significant contribution is defined by significant levels found in Table 2–1 page 2–6 of the "North Dakota Guideline for Air Quality Modeling Analysis", December 12, 1986. This table, however, is not totally consistent with the table found in 40 CFR 51.165(b)(2). The August 28, 1989 letter, did indicate that Chapter 33–15–14 was being revised to clarify the State's policy. Further, the State has indicated, in a telefax from Terry O'Clair dated September 1, 1989, to Laurie Ostrand, EPA, the proposed revisions to chapter 33–15–14. Such revisions include a table consistent with the table found in 40 CFR 51.165(b)(2). Because there are no nonattainment areas, or areas approaching an exceedence of any NAAQS, in North Dakota and because the State is intending to include a significant levels table in chapter 33–15–14 consistent with the table found in 40 CFR 51.165(b)(2), EPA believes this chapter meets EPA requirements.

8. Chapter 33–15–15—Prevention of Significant Deterioration of Air Quality

The revisions to this chapter, detailed above, are acceptable to EPA. EPA does note, however, that the State has amended 33–15–15–01(2)(a), as suggested by EPA. This paragraph states that the provisions of this chapter (33–15–15) apply to those counties or other functionally equivalent areas that are designated as attainment or unclassifiable for any of the national ambient air quality standards. EPA interprets this to mean that this chapter applies to those areas designated attainment or unclassifiable per section 107(d)(1) (D) or (E) of the Clean Air Act as well as for all areas with respect to lead and PM10. Such interpretation was confirmed in a letter dated August 22, 1989, from Dana K. Mount, Director of the Division of Environmental Engineering, to Doug Skie, EPA.

B. Group III PM10

1. PM10 Control Strategy

The control strategy for PM10, detailed above, is considered adequate by EPA. As indicated by the State, the highest 24-hour PM10 concentration measured during the period from July 1, 1985, through December 31, 1988 was 136 μ/m^3. The highest annual arithmetic mean was 30.1 μ/m^3. The maximum values are well below the national ambient air quality standard (NAAQS) for PM10. If the State does, however, observe a violation of the PM10 NAAQS, such area will be treated as a newly discovered nonattainment area.

2. Various Regulation Revisions To Address PM10

The State has revised its ambient air quality standard to include a standard for PM10 (see 33–15–02–04) which is as stringent as the PM10 NAAQS.

The State has revised its Prevention of Significant Deterioration (PSD) regulations to address PM10 (see 33–15–15). These revisions are consistent with 40 CFR 51.166.

The State has revised its Emergency Episode Plan to address the PM10 revisions (see 33–15–11). These revisions are consistent with 40 CFR Appendix L.

3. PM10 Monitoring

The State operates six PM10 monitors at five locations.

(The State SIP submittal indicated six locations. This is apparently a typographical error.) These sites meet the requirements of 40 CFR 58.

Proposed Action

EPA is proposing to approve the SIP revision submitted by the Governor of North Dakota on April 18, 1989, with the interpretations as discussed. Such proposed approval, however, is only for that portion of the April 18, 1989 submittal which pertain to the revisions which updated and revised State rules (including PSD regulations) and control strategies to address PM10, and the minor updates to various other regulations, including the revisions to the Control of Pesticides regulation. The NSPS additions and revisions and the visibility control strategy are being addressed in separate actions.

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

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by Reference, Particulate matter.

Authority: 42 U.S.C. 7401–7642.

Dated: September 19, 1989.

Jack McGraw,

Acting Regional Administrator.

[FR Doc. 89–23020 Filed 9–28–89;8:45am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 65

[Common Carrier Docket No. 87–463]

Refinement of Procedures and Methodologies for Represcribing Interstate Rates of Return for AT&T Communications and Local Exchange Carriers

AGENCY: Federal Communications Commission (FCC).

ACTION: Proposed rule; request for comments.

SUMMARY: This action seeks comment on the interim extension or revision of the current rate of return prescription for the interstate services of local exchange carriers. This action is necessary because the current rate of return prescription expires December 31, 1989. The proposed interim extension or revision would remain in effect until a represcription proceeding is completed, or until December 31, 1990, whichever comes first.

DATES: Comments must be submitted on or before October 23, 1989. Reply comments must be submitted on or before November 10, 1989.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jane Jackson, Telephone (202) 632–7500.

SUPPLEMENTARY INFORMATION: .

It is this Commission's practice to prescribe an allowed rate of return for the interstate services of local exchange carriers (LECs). The most recent such prescription was made in 1988 and extends through December 31, 1989. *Refinement of Procedures and Methodologies for Represcribing Interstate Rates of Return for AT&T Communications and Local Exchange Carriers,* CC Docket No. 87–463, Notice of Proposed Rulemaking, 52 FR 39251 (October 21, 1987), 2 FCC Rcd 6491 (1987); Memorandum Opinion and Order, 3 FCC Rcd 1697 (1988). This Public Notice requests updated financial and economic data in order to determine whether the current prescription should be extended or revised temporarily beyond December 31, 1989.

Part 65 of the Commission's Rules, 47 CFR 65.1 *et seq.*, contains procedures and methodologies for prescription of interstate rates of return. The Commission adopted part 65 in December, 1985. *Authorized Rates of Return for the Interstate Services of AT&T Communications and Exchange Telephone Companies,* 51 FR 1796 (January 15, 1986), *modified on recon.* 104 FCC 2d 1404 (1986). At that time, the Commission contemplated that it would conduct a represcription proceeding in 1986 to determine rates of return for the period 1987–88, and that this process would be repeated biennially thereafter. See 47 CFR 65.102(c). In accordance with these rules, the Commission prescribed a 12% rate of return for the LECs for the 1987–88 period. *Authorized Rates of Return for the Interstate Services of AT&T Communications and Exchange Telephone Companies,* 51 FR 32920 (September 17, 1986), *recon. denied* 2 FCC Rcd 5636 (1987).

In October, 1987, the Commission issued a Notice of Proposed Rulemaking proposing to change several important elements of the part 65 rules before the next represcription cycle. *Refinement of Procedures and Methodologies for Represcribing Interstate Rates of Return for AT&T Communications and Local Exchange Carriers,* CC Docket No. 87–463, 52 FR 39251 (October 21, 1987), 2 FCC Rcd 6491 (1987). In partial response to comments submitted in that proceeding, the Commission decided in March, 1988, to defer the represcription cycle for one year so as to allow more time for the development of new methodologies and procedures. *Refinement of Procedures and Methodologies for Represcribing*

Interstate Rates of Return for AT&T Communications and Local Exchange Carriers, 3 FCC Rcd 1697 (1988). Under the terms of this Order, initial rate of return submissions were to have been filed January 3, 1989. The Commission found that the rate of return prescribed in 1986 was still reasonable and extended it through 1989. *Id.* at 1698.

In October, 1988, Ameritech and BellSouth separately filed petitions seeking further extensions of both the filing date for initial submissions and the prescription period. *See Public Notice*, DA 88–1604, released October 17, 1988, 4 FCC Rcd 1303 (1989). Comments supporting the petitions were filed by several LECs, AT&T, and the United States Telephone Association. The BellSouth petition was opposed by Telus Communications, an interexchange carrier offering service in several Florida cities. On December 7, 1988, the Common Carrier Bureau responded to the petitions by postponing the filing date for rate of return submissions until June 30, 1989. The Bureau stated that the request to extend the rate of return prescription period would be dealt with in a subsequent order. *Deferral of Rate of Return Represcription Filings Pursuant to Section 65.102(c) of the Rules*. AAD 8–1930, 3 FCC Rcd 7220 (1988).

On March 16, 1989, the Commission adopted an order proposing to adopt a system of price cap regulation for LECs. *See Policy and Rules Concerning Rates for Dominant Carriers*, 4 FCC Rcd 2873 (1989). On May 3, 1989, the Common Carrier Bureau further deferred the filing date for initial rate of return submissions until 90 days following the release of a Report and Order in CC Docket No. 87–463. The Bureau stated that the additional issues raised by the Commission's consideration of price cap regulation would preclude completion of the proceedings in Docket 87–463 in time for carriers to meet the previously established June 30, 1989 deadline. *Deferral of Rate of Return Represcription Filings Pursuant to Section 65.102(c)*, AAD 8–1930, 4 FCC Rcd 3920 (1989). The Bureau noted that "the continued viability of the currently authorized rate of return, the need for any extension of the current prescription period, and the possibility of prescribing revised, temporary rates of return until the Commission completes the part 65 rule modifications would be addressed in a subsequent order. 4 FCC Rcd at 3921 n.13.

It is now proposed to extend, or possibly revise, the current rate of return prescription for a period to last until December 31, 1990, or until a subsequent prescription proceeding is completed, whichever comes first. Beyond the interim steps considered here, a represcription proceeding will be undertaken under part 65 of the Commission's Rules, as they exist or may be amended. The action proposed in this Notice is undertaken pursuant to the Commission's authority under sections 4(i) and (j), 205, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and (j), 205, and 403.

Interested parties are requested to submit financial data and other comments addressed to the question whether the conditions which supported the 1986 prescription have changed so substantially as to require revision of that prescription.

Any party that would be required to file initial rate of return submissions pursuant to § 65.200(b) of the Commission's Rules is requested to include in its comments the following information: (a) Its current embedded cost of debt, with a complete explanation of the manner in which it was computed; (b) its current debt-equity ratio; and (c) the state cost of capital information specified in § 65.201(a) of the Commission's Rules. Parties also may submit cost of equity analyses using any reasonable method, provided they include all underlying assumptions, data, and calculations.

All petitions and pleadings submitted in file No. AAD 8–1930 will be transferred to CC Docket No. 87–463 and will be considered to be part of the record in this prescription proceeding.

Comments in this matter may be filed no later than October 23, 1989. Replies should be filed by November 10, 1989. All filings should refer to Docket No. 87–463.

Copies of all pleadings previously filed in AAD 8–1930 and CC Docket No. 87–463 may be obtained from International Transcription Services, 2100 M Street, NW., Washington, DC 20036, (202) 857–380. Copies are also available for public inspection and copying in the Docket Branch, Room 230, 1919 M St., NW., Washington, DC 20554.

List of Subjects in 47 CFR Part 65

Communications common carriers, Rate of return.

Federal Communications Commission.

Gerald Brock,

Chief, Common Carrier Bureau.

[FR Doc. 89–23032 Filed 9–28–89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89–407, RM–6890]

Radio Broadcasting Services; Lexington, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a document filed by Fanny T. Cothan, requesting the substitution of FM Channel 273C3 for Channel 273A at Lexington, Mississippi. Petitioner also requests modification of its construction permit for Station WDLG to specify operation on Channel 273C3. The coordinates for Channel 273C3 are 33–09–06 and 90–07–45.

DATES: Comments must be filed on or before November 16, 1989, and reply comments on or before December 1, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Leonard S. Joyce, Blair, Joyce & Silva, 1825 K Street, NW., Washington, DC 20006 (counsel for the petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–407, adopted August 24, 1989, and released September 22, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is not longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing

procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-23039 Filed 9-28-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-406; RM-6745]

Radio Broadcasting Services; Grenada and Artesia, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed jointly by Chatterbox, Inc. and WYS, Incorporated. Chatterbox, Inc. requests the substitution of FM Channel 261C2 for Channel 261A at Grenada, Mississippi, and modification of its license for Station WQXB(FM), to reflect the higher class channel. The coordinates for Channel 261C2 are 33-43-08 and 90-01-56. WYS, Incorporated proposes the substitution of Channel 260C2 for Channel 261A at Artesia, Mississippi, and modification of its construction permit for Station WZIX(FM) accordingly. The coordinates for Channel 260C2 are 33-41-00 and 88-36-48.

DATES: Comments must be filed on or before November 16, 1989, and reply comments on or before December 1, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Kevin C. Boyle, Latham & Watkins, 1001 Pennsylvania Ave., NW., Suite 1300, Washington, DC 20004 (counsel for Chatterbox, Inc. and special counsel for WYS Incorporated).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-406, adopted August 24, 1989, and released September 22, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037. Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact. For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-23040 Filed 9-28-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-404, RM-6895]

Radio Broadcasting Services; Greenwood, SC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by United Community Enterprises seeking the substitution of Channel 278C3 for Channel 278A at Greenwood, South Carolina, and the modification of its construction permit to specify operation on the higher powered channel. Channel 278C3 can be allotted to Greenwood in compliance with the Commission's minimum distance separation requirements with a stie restriction of 4.8 kilometers (3.0 miles) southeast to avoid a short-spacing to Station WRIX-FM, Honea Path, South Carolina, and to unoccupied but applied for Channel 277A at Greer, South Carolina. In accordance with § 1.420 of the Commission's Rules, we will not accept competing expressions of interest in use of the higher powered channel at Greenwood or require the petitioner to demonstrate the availability of an additional equivalent class channel for their use.

DATES: Comments must be filed on or before November 16, 1989, and reply comments on or before December 1, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Lawrence J. Bernard, Jr., Esq., Ward & Mendelsohn, P.C., 1100 17th Street, NW., Suite 900, Washington, DC 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-404, adopted August 24, 1989, and released September 22, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the publish should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-23042 Filed 9-28-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-408; RM-6838]

Radio Broadcasting Services; Branson, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Turtle Broadcasting Company of Branson, requesting the substitution of FM Channel 292C3 for Channel 292A at Branson, Missouri, and modification of the license for Station KRZK to specify the new channel. The coordinates for Channel 292C3 are 36–47–00 and 93–12–00.

DATES: Comments must be filed on or before November 16, 1989, and reply comments on or before December 1, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Roderick W. Orr, President, Orr & Earls Broadcasting, Inc., Turtle Broadcasting Co. of Branson, L.P., P.O. Box 486, Branson, Missouri 65616.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–408, adopted August 28, 1989, and released September 22, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–23036 Filed 9–28–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 87–433, RM–5994; RM–6161]

Radio Broadcasting Services; Brookville, Punxsutawney, Johnsonburg, Indiana and Barnesboro, PA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; order to show cause.

SUMMARY: The Commission requests comments from Indiana Broadcasters, Inc., licensee of Station WQMU, Channel 276A, Indiana, Pennsylvania, as to why its license should not be modified to specify Channel 233A. At the request of Strattan Broadcasting, we are proposing to allot Channel 277B1 to Brookville, Pennsylvania, as an additional equivalent class channel, by: (1) Substituting Channel 233A for Channel 276A at Indiana, PA, and modifying the license of Station WQMU, (2) substituting Channel 228A for Channel 233A at Barnesboro, PA, and modifying the construction permit of the Bland Group; and (3) substituting Channel 263A for unused but applied for Channel 277A at Johnsonburg, PA. The coordinates for Channel 263A at Johnsonburg are North Latitude 41–29–24 and West Longitude 78–40–36. The coordinates for Channel 228A at Barnesboro are North Latitude 40–40–00 and West Longitude 78–49–00. The coordinates for Channel 233A at Indiana are North Latitude 40–38–17 and West Longitude 79–08–47. The coordinates for Channel 277B1 at Brookville are North Latitude 41–02–12 and West Longitude 79–06–06. Counterproposals to this proposal will not be accepted since an opportunity for such filings has already been provided.

DATES: Comments must be filed on or before November 16, 1989, and reply comments on or before December 1, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Robert Olender, Esq., Baraff, Koerner, Olender & Hochberg, P.C., 2033 M Street, NW., Suite 203, Washington, DC 20036 (Counsel to Strattan).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Order to Show Cause, MM Docket No. 87–433, adopted August 28, 1989, and released September 22, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–23037 Filed 9–28–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 89–395; RM–6780]

Radio Broadcasting Services; Kailua-Kona, HI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Sirius Communications, Inc., requesting the substitution of Channel 230C for Channel 229C1 at Kailua-Kona, Hawaii, and modification of its construction permit for Station KLUA (FM) to specify the higher class channel. Channel 230C can be allotted to Kailua-Kona in compliance with § 73.207 of the Commission's Rules. The coordinates for this proposed allotment are North Latitude 19–38–24 and West Longitude 155–59–36. In accordance with § 1.420(g) of the Commission's Rules, we shall not

accept competing expressions of interest in the use of Channel 230C at Kailua-Kona, or require the petitioner to demonstrate the availability of an additional equivalent channel for use by such interested parties.

DATES: Comments must be filed on or before November 13, 1989, and reply comments on or before November 28, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: James M. Weitzman, Kaye, Scholer, Fierman, Hays & Handler, 901 15th Street, NW., Suite 1100, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–395, adopted August 23, 1989, and released September 21, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–23038 Filed 9–28–89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89–394, RM–6864]

Radio Broadcasting Services; North Mankato, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Minnesota Valley Broadcasting Company, requesting the substitution of FM Channel 244C3 for Channel 244A at North Mankato, Minnesota. The coordinates for Channel 244C3 are 44–05–47 and 94–01–02.

DATES: Comments must be filed on or before November 13, 1989, and reply comments on or before November 28, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: M. Scott Johnson, Catherine M. Grofer, Gardner, Carton & Douglas, 1001 Pennsylvania Ave., NW., Suite 750–N, Washington, DC 20004 (Counsel for the petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–394, adopted August 23, 1989, and released September 21, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–23033 Filed 9–28–89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89–396, RM–6783]

Television Broadcasting Services; Baxley, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Eddie Ray Upchurch, proposing the allotment of television Channel 34+ to Baxley, Georgia, as that community's first local television service. The allotment can be made in compliance with the Commission's minimum distance separation requirements without a site restriction. The coordinates for this proposed allotment are North Latitude 31–46–42 and West Longitude 82–21–00. This proposal is not affected by the freeze on television allotments, or applications therefor.

DATES: Comments must be filed on or before November 13, 1989, and reply comments on or before November 28, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Robert C. Allen, Denise B. Moline, McCabe & Allen, P.O. Box 2126, Manassas Park, Virginia 22111.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–396, adopted August 23, 1989, and released September 21, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800,

2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 46 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-23034 Filed 9-28-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-397, RM-6632]

Radio Broadcasting Services; Princeton, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by WZOE, Inc., licensee of Station WZOE(FM), Channel 252A, Princeton, Illinois, proposing the substitution of Channel 251A for Channel 252A at Princeton and modification of the station's license to specify operation on the new channel. A site restriction of 8 kilometers (5 miles) east of the city is required. The coordinates for this allotment are North Latitude 41°21'09" and West Longitude 89°22'37".

DATES: Comments must be filed on or before November 13, 1989, and reply comments on or before November 28, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: John R. Wilner, Bryan, Cave, McPheeters & McRoberts, 1015 Fifteenth Street, NW., Suite 1000, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-397, adopted August 23, 1989, and released September 21, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-23035 Filed 9-28-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-405, RM-6818]

Radio Broadcasting Services; Elizabethton, Tennessee

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Eaton P. Govan, III and Burton B. Cagle, Jr., licensee of Station WUSJ-FM, Channel 257A, Elizabethton, Tennessee, proposing the substitution of Channel 257C3 for Channel 257A at Elizabethton, Tennessee, and modification of the station's license at Elizabethton to specify operation on the higher class co-channel. A site restriction of 14.7 kilometers (9.1 miles) northeast of the city is required. The coordinates are 36-26-57 and 82-06-31.

DATES: Comments must be filed on or before November 16, 1989, and reply comments on or before December 1, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Lawrence J. Bernard, Jr., Esquire, Ward & Mendelsohn, P.C., 1100 17th Street, NW., Suite 900, Washington, DC 20036 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-405, adopted August 28, 1989, and released September 22, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-23041 Filed 9-28-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB31

Endangered and Threatened Wildlife and Plants; Proposed Reclassification of the Aleutian Canada Goose From Endangered to Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to reclassify the Aleutian Canada goose (*Branta canadensis leucopareia*) from endangered to threatened. This action is proposed due to substantial improvement in the status of this species, whose numbers have increased at least fivefold since listing in 1967. In addition to a total population size that excees the minimum recovery goal identified in the Aleutian Canada Goose Recovery Plan, this species is now knows to nest on seven separate Alaska islands. This rule is proposed under the Endangered Species Act of 1973, as amended (the Act), and is based on a thorough review of all information currently available for the species. The proposed change in classification reflects an improvement in status and will not significantly alter the protection of this species under the Act. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by November 28, 1989. Public hearing requests must be received by November 13, 1989.

ADDRESSES: Comments and materials concerning this proposal should be sent to Endangered Species Coordinator, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska, 99503 or Endangered Species Coordinator, U.S. Fish and Wildlife Service, 1002 N.E. Holladay Street, Portland, Oregon, 97232. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above addresses.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Amaral, 605 West 4th Avenue, Anchorage, Alaska, 99501, at 907/271-2888, FTS 271-2888 or Mr. James W. Teeter (see **ADDRESSES** section/Oregon) at 503/231-6158, FTS 429-6158.

SUPPLEMENTARY INFORMATION:

Background

Branta canadensis leucopareia is one of 11 currently recognized subspecies of the large and diverse *Branta canadensis* group (Bellrose 1976). It is the only subspecies of this group whose range once included both the North American and Asian continents (Amaral 1985). The Aleutian Canada goose is now known to nest only on remote islands of the Alaska Peninsula and Aleutian Island chain, Alaska. It can be distinguished from most other Canada geese by its small size (only cackling Canada geese, *B. c. minima,* are smaller) and by a ring of white feathers at the base of the neck in birds older than 6 to 8 months. Most Aleutian Canada geese migrate from their Alaska breeding grounds in September, sometimes stopping along the Oregon coast en route to the wintering grounds in California, where they begin arriving mid-October. One distinct subpopulation winters in coastal Oregon near Pacific City. Aleutian geese depart the wintering areas in April and return to Alaska to nest and rear young during May through September.

The Aleutian Canada goose was added to the U.S. Department of the Interior's list of endangered species on March 11, 1967 (32 FR 4001), and to the list of foreign endangered species (Japan) on June 2, 1970 (35 FR 8495). The decline in numbers of Aleutian Canada geese and the reduction of their breeding range is largely attributed to predation by arctic fox, which were introduced on many Aleutian islands during the period starting 1836 to about 1930. Before their wintering grounds were identified in 1975, Aleutian geese were also among waterfowl hunted recreationally and for food in the Pacific Flyway, particularly California.

At the time of listing, a reliable estimate of the total number of Aleutian Canada geese was not available. However, Kenyon (1963), speculated that only 200–300 individuals of this species remained. Nesting was believed to be restricted to a single island in the western Aleutian archipelago, Buldir, and the migratory route and wintering habits of this species were unknown. Introduced arctic fox persist on most islands throughout the Aleutian chain—islands that formerly provided nesting habitat to the once numerous Aleutian Canada goose. Surveys in the Aleutian Islands in the late 1930's indicated that geese were rare or extirpated in locations where foxes had been introduced (Murie 1959).

Even prior to listing, efforts were undertaken to eliminate introduced fox populations from Aleutian Islands formerly occupied by nesting geese. By 1965, arctic fox had been eradicated from Amchitka Island and by the late 1970's, Alaid, Nizki, and Agattu Islands were also fox free. More recently, Amukta and Rat Islands have been cleared of introduced foxes. All fox have also apparently been eliminated from Kiska, but additional surveys are needed to verify the island is fox free.

While fox control efforts in Alaska were making former breeding habitat once again suitable for nesting geese, hunting closures in key California and Oregon wintering habitat have been primarily responsible in allowing the wild population to increase from 790 birds in 1975 to about 5,800 birds in fall 1988. Annual increases in numbers of Aleutian Canada geese on the California wintering grounds have averaged 16 per cent (McNab and Springer 1988; Springer and Gregg 1988) during this 14-year period (Table 1). There has been an increase every year since accurate counts started in the spring of 1975, although the increase in 1985–86 was only 2%.

TABLE 1.—PEAK NUMBER OF ALEUTIAN CANADA GEESE WINTERING IN CALIFORNIA, 1975–1988.

Year	Peak count	Increase (%)
1975 (spring	790	—
1975–76	900	15
1976–77	1,200	33
1977–78	1,500	25
1978–79	1,590	6
1979–80	1,740	9
1980–81	2,000+	15
1981–82	2,700	35
1982–83	3,500	30
1983–84	3,800	9
1984–85	4,200	11
1985–86	4,300	2
1986–87	4,800+	12
1987–88	5,400	12
1988–89	5,800	7

The Aleutian Canada Goose Recovery Plan, dated 1977 and revised in 1982, includes the following criteria for reclassification and delisting, respectively:

After self-sustaining populations of 50 or more breeding pairs have been reestablished on each of 2 areas or a total of 100 or more pairs have been reestablished on 3 acres (with 10 pairs the minimum colony size), recommendations for reclassifying the Aleutian Canada goose to threatened status will be sent to the Director, U.S. Fish and Wildlife Service. When 50 or more breeding pairs are reestablished on each of 3 areas, recommendations for removal from the list of threatened and endangered species will be sent to the Director.

These criteria are conditional on the wild population maintaining a level of

1,200 birds or greater and the "reestablished populations" being considered additional to and not inclusive of the Buldir Island nesting colony.

Based on the best current estimates available, the Service believes that the primary breeding population on Buldir numbers 1,100–1,500 pairs; 20–22 pairs nest on Kiliktagik Island in the Semidi Islands; and 35–40 pairs nest on Agattu, Nizki and Alaid Islands, which are all in the Near Island group. The Service is less confident of the number of pairs breeding on Chagulak Island in the Islands of Four Mountains. However, based on surveys in 1982 and 1984, the total population is estimated at 250–300 birds (Deines and Hatch 1984), with 50 pairs breeding there currently (Bailey and Trapp 1984). A single breeding pair was also discovered on nearby Amukta Island in 1989.

Summary of Factors Affecting the Species

The Service proposes to reclassify the Aleutian Canada goose (*Branta canadensis leucopareia*) from endangered to threatened. The Service's listing regulations (50 CFR part 424) provide for a review of five factors when reclassifying (or listing or delisting) a species (§ 424.11). The Service has studied the relevant information available for the Aleutian Canada goose in North America and summarizes this information for each of these five factors below:

1. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range.

Historically, Aleutian Canada geese are known to have bred on most of the larger Aleutian Islands as well as the Commander and northern Kuril Islands (U.S. Fish and Wildlife Service 1982). At the time of listing, the known breeding range for the species was restricted to 4,914-acre (1,990-hectare) Buldir Island, which because of its ruggedness and small size was spared the introduction of foxes. The wintering range was thought to have included Japan and from British Columbia to California in North America (Delacour 1954). The precise wintering area(s) of the remnant population breeding at Buldir Island was unknown.

While private inholdings, military activity and the introduction of mammals (e.g., fox, cattle, voles, and ground squirrels) have disturbed some islands, most of the historical breeding range of the Aleutian Canada goose and the islands where Aleutian geese are currently known to nest are uninhabited and relatively undisturbed. Current nesting islands include Buldir, Agattu, Nizki, Chagulak and Kiliktagik. Single nesting pairs were also discovered on Alaid and Amukta Islands in 1989. All nesting locations are within the Alaska Maritime Natural Refugee.

The wintering range for this species has been the focus of study from 1974 to the present. Areas in California and Oregon essential to the winter survival of this species have been identified and partially protected. Major accomplishments in this respect include additions to the National Wildlife Refuge system in western Oregon, acquisition of Castle Rock and its inclusion in the National Wildlife Refuge system, habitat acquisition and protective easements in the San Joaquin and Sacramento Valleys, and recent approval for habitat acquisition for the new San Joaquin River National Wildlife Refuge. Other areas important to the wintering flock in Del Norte County have been acquired by the State of California and are part of the Department of Fish and Game's Wildlife Area and State Park systems. Notwithstanding, perhaps the greatest remaining threat to the future well-being of this species is the availability of sufficient wintering habitat. Some privately owned agricultural areas currently utilized by the wintering flock are being converted from row crops or pasture to other crops of little or no food value to geese or lost competively to commercial development.

2. Utilization for Commercial, Recreational, Scientific, or Educational Purposes

Historically, this species was harvested for subsistence purposes by aleuts, a native people indigenous to the Aleutian Islands eastward to Kodiak Island. Aleutian geese were also taken by market hunters in their wintering grounds. In the recent past, Aleutian Canada geese were among other waterfowl hunted recreationally and for food within the Pacific Flyway, paticularly California. Although it is generally recognized that the severe numerical decline of the species is attributable to predation on the nesting islands by introduced arctic fox, hunting in migration and wintering areas was signficiant in that it was the likely factor preventing remnant breeding populations such as those on Buldir and Chagulak Islands, from recovering. Management of the Canada goose harvest in California was complicated by three factors: (1) Specific areas important to *leucopareia* had not yet been identified; (2) may subspecies of Canada geese intermix in California during winter; and (3) most hunters cannot readily differentiate the various subspecies.

Since 1973, the area of Unimak Pass, Alaska, has been closed to the hunting of Canada geese. In the wintering grounds the distribution and movements of Aleutian Canada geese were determined by sightings and band returns of individuals that were color marked by their Buldir Island nesting grounds and at the spring staging areas near Crecent City, California. A comprehensive effort ensued to protect the wintering flock from hunting and to secure roosting and feeding habitat. Three areas in California—Del Norte and Humboldt Counties, areas near Colusa, and localities near Modesto and Los Banos—have been closed to Canada goose hunting since 1975. In Oregon, portions of Coos, Curry and Tillamook Counties have similarly been closed since 1982. More recently, Aleutian Canada geese in Washington, Oregon, and California have also benefited indirectly, from hunting closures designated to protect wintering dusky Canada geese (*B. c. occidentalis*) and cackling Canada geese.

Cooperation and support among all levels of government (federal, state, county, and municipal) and hunger and waterfowl interest groups have made the effort to protect the geese off the wintering grounds possible. The effectiveness and success of the hunting closures are clearly demonstrated in two ways: (1) Available data indicate that annual mortality to illegal hunting is usually far less than one percent of the total population; and (2) the wild population has increased from 790 birds in 1975, when the closures in California were implemented, to almost 6,000 birds in 1988 (McNab and Springer 1988). It is anticipated that key migration and wintering areas in Alaska, Oregon, and California will continue to be closed to Aleutian Canada goose hunting until this species has fully recovered and is delisted.

3. Disease or Predation

Predation by introduced artic fox in the Aleutian Island nesting grounds had a severe impact on this species. In the period from 1949 to the present, Service efforts have resulted in the removal of introduced arctic fox from Amchitka (73,024 acres; 29,552 hectares), Agattu (55,535 acres; 22,475 hectares), Alaid and Nizki (3,175 acres; 1,285 hectares), Rat (6,861 acres; 2,777 hectares), and Amukta (12,425 acres; 5,028 hectares) Islands. Fox removal efforts have also apparently succeeded on Kiska Island (69,598 acres; 28,166 hectares), although additional surveys are needed for

verification. Together with the several small islands that either escaped fox introductions or where fox populations have died out, more than 244,000 acres (98,785 hectares) are currently fox free in the Aleutians. However, this represents less than 15 percent of the habitat that was available to nesting geese prior to the era of fox introductions.

Concurrent with the fox removal program, an effort was conducted to reintroduce Aleutian geese to these former nesting islands where foxes were eliminated. Initial reintroductions were of captive raised geese. In 1979, wild family groups of geese were transplanted to release islands from the nesting population at Buldir. In 1984, the Service confirmed that a small population of nesting geese had been reestablished on Agattu Island. This marked the first nesting of wild Aleutian Canada geese on Agattu since the 1930's. Service efforts have also resulted in the return of Aleutian geese to Nizki and Alaid Islands where a small breeding population was confirmed in 1988. Although more than 450 Aleutian geese have been released on Amchitka and 116 geese were recently released on Little Kiska, nesting on these islands has not yet been confirmed.

The Service intends to continue the fox eradication effort on additional islands. Rats, which have been introduced to Amchitka, Kiska and Rat Islands, are a potential predator on goslings and eggs. No other mammalian predators occur in the breeding grounds and losses to avian predators (bald eagles, common ravens, parasitic jeagers, glaucous-winged gulls, and peregrine falcons) are not known to pose a significant threat except in the Rat Island group (Amchitka, Kiska, and Little Kiska) where the bald eagle predation is a problem following the release of either captive raised or transplanted geese. Although coyotes, peregrine, and prairie falcons may occasionally prey on Aleutian Canada geese wintering in California, predation there is not a significant mortality factor.

Low level bacterial and parasitic infestations have been detected among geese on Buldir Island, but in the breeding range, losses to these or other diseases are not known to have ever been significant. In California however, the wintering flock is often concentrated in areas of available food, water, or roosting sites and considerable mortality to disease has occurred. In 1987, approximately 50 Aleutian Canada geese succumbed during an outbreak of avian cholera that killed several hundred waterfowl in the Modesto area. Cholera is a chronic problem in the San Joaquin Valley and, while the geese can be hazed from locations where cholera is prevalent, few safe alternative roosting areas are currently available.

The threat of large losses to disease will increase as the population grows in number but remains concentrated. A Disease and Contamination Hazard Contingency Plan has been prepared by the Aleutian Canada Goose Recovery Team. The purpose of the plan is to minimize losses of geese through establishing a protocol to respond to disease or contaminant occurrences.

4. The Inadequacy of Existing Regulatory Mechanism

This species is protected by the Endangered Species Act of 1973, as amended; the Migratory Bird Treaty Act; and the Convention on International Trade in Endangered Species as an appendix I species. Captive rasied *B. c. leucopareia* are treated as if listed in appendix II. It is also currently designated as endangered by the Alaska Department of Fish and Game and recognized as endangered by the State of California, the Oregon Department of Fish and Wildlife, and the Washington Department of Wildlife. If the proposed reclassification to threatened status becomes final, no substantive change in the protection afforded this species under these regulatory mechanisms is anticipated. Existing regulatory mechanisms determined necessary to protect this species and its essential habitat will remain in effect.

5. Other Natural or Manmade Factors Affecting its Continued Existence

In 1982, the discovery of a remnant breeding population of Aleutian Canada geese on 2,082-acre (842-hectare) Chagulak Island (Bailey and Trapp 1984), which also apparently escaped the introduction of foxes, greatly benefited the recovery program. Another apparent remnant breeding population was discovered on Kiliktagik Island (230 acres, 93 hectares) south of the Alaska Peninsula in 1979 (Hatch and Hatch 1983). This location is east of what was previously considered the historical breeding range for the species (U.S. Fish and Wildlife Service 1982). Physical measurements of the birds indicated that the geese on Kiliktagik were intermediate between Aleutian Canada geese and a slightly larger mainland occurring subspecies, *B. c. taverneri* (Johnson *et al.* 1979). Shields and Wilson (1987) examined samples of mitochondrial DNA from these and other geese *(leucopareia)* from Buldir and Chagulak, and two mainland occurring subspecies, *taverneri* and *minima*. Their study demonstrated that subspecies of Canada geese have distinct mitochondrial DNA by which they can be identified. Shields and Wilson concluded that the Kiliktagik Island geese showed a clear affinity to *leucopareia* from Buldir and Chagulak and were, in fact, separable from both *taverneri* and *minima*. This information, together with morphological and behavioral similarities, and historical accounts which indicate geese were present in the Semidi Island group as early as 1970, support the conclusion that the geese on Kiliktagik are a relict population from what probably was once a continuous island occurring form that extended from the western Gulf of Alaska and Alaska Peninsula region to the Commander and Kuril Islands of the Soviet Union (Hatch and Hatch 1983).

Aleutian geese using coastal areas traditionally roost on off-shore islands as Castle Rock near Crescent City, California and on rocky islands such as Chief Kiwanda Rock near Pacific City, Oregon. The use of these sites exposes the geese to storm systems that sometimes drive the birds into the sea. Storm-related drowning accounted for the mortality of 43 Aleutian Canada geese near Crescent City in 1984, and 23 Aleutian geese near Pacific City in 1987 (Springer *et al.* in preparation; Lowe 1987). Although these occurrences are isolated events, Aleutian geese traditionally spend a large part of their annual life cycle in proximity to the marine environment, including a twice annual trans-oceanic migration, and drowning may be an important natural mortality factor. A small number of Aleutian geese have also died as a result of collisions with man-made structures such as powerlines and from lead poisoning from the ingestion of spent lead shot. Man-made structures do not currently pose a significant collision hazard for the species, and mortality from lead poisoning in the future should be negligible as the use of lead shot is phased out.

Endangered species that are reduced to very small numerical levels may sustain the added threat of reduced genetic fitness. In effect, they may lack resiliency or the ability to adapt to environmental changes or events that may jeopardize their existence (Brussard 1986). Early population estimates suggest that Aleutian Canada geese numbered from 200–800 at their lowest population level and relict populations persisted on three widely separated islands. Therefore, it is unlikely that the present population is

suffering deleterious effects from lost genetic fitness.

Summary of Status

This species has been the focus of a 20-year comprehensive recovery program since listing, and has benefited from many management and research accomplishments in both the breeding and wintering grounds. The wild population has increased an average of 16 percent annually since 1975 and now exceeds 5,000 birds. As population growth continued an upward trend, the known breeding range has also expanded. In addition to Buldir Island, Aleutian geese are now also known to breed on Chagulak and Kiliktagik Islands (remnant populations discovered since listing) and the Near Islands (Agattu, Alaid and Nizki). A single pair of nesting geese was also discovered on Amukta Island in 1989.

A method for reestablishing breeding populations extirpated by introduced foxes was developed on Agattu Island and is currently being used in the effort to return geese to Amchitka and Little Kiska Islands. The Service also plans to reintroduce geese to Kiska Island in the near future. All current nesting islands and most of the historic breeding habitat for this species in North America is within the Alaska Maritime National Wildlife Refuge.

Although arctic fox have been eradicated on six Aleutian islands, fox populations persist on many other islands that formerly supported nesting geese. The Service's logistical ability to carry out recovery programs including fox removal and reestablishing geese on fox free islands has been greatly enhanced by the acquisition of the research vessel, *Tiglax*.

In California and Oregon, efforts to acquire or protect key wintering habitat have been partially successful. Several important areas, including Castle Rock, have been acquired and are now part of the National Wildlife Refuge system. Other important wintering areas are not currently protected and are threatened with conversion from pasture or agricultural lands to other uses such as housing, highway, and commercial development. Recent authorization for a 10,300 acre (4,170 hectare) addition to the National Wildlife Refuge system west of Modesto may alleviate some of the threats to the wintering population in this region (Helvie 1987).

Chronic outbreaks of avian cholera and botulism pose additional threats to wintering waterfowl populations. Cumulatively, fewer than 100 Aleutian geese are known to have succumbed to disease since 1975. Although documented mortality to date has been low, the potential exists for catastrophic losses to occur. Hence, geese are routinely hazed from areas where cholera is prevelant which forces them to use less preferred roosting sites, travel greater distances to feeding areas and increases the potential for mortality from illegal hunting. The recent development of a Disease and Contaminant Hazard Contingency Plan (Wilbur *et al.* 1987) will quicken agency response and minimize losses to these potential threats. The Service's Madison National Wildlife Health Research Center has also developed a vaccine effective in immunizing Canada geese from avian cholera. Although no wild Aleutian Canada geese have been innoculated, the capability exists. The methodology for raising this bird in captivity is also well established. More than 140 *leucopareia* are currently being held by zoos and waterfowl propagators in the United States and Canada. This captive flock ensures a separate and secure gene pool should the wild population suffer severe losses from disease or natural calamity.

The definitions of endangered, species, and threatened at § 424.02 of this title are as follows:

(e) "Endangered species" means a species that is in danger of extinction throughout all or a significant portion of its range.

(k) "Species" includes any species or subspecies of fish, wildlife, or plant, and any distinct population segment of any vertebrate species that interbreeds when mature * * *.

(m) "Threatened species" means any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

Population increases, current nesting on seven fox free Aleutian islands, and protection of the wintering flock through hunting closures and habitat acquisition have significantly reduced the degree of threat to this species. The Service is most encouraged by the existence of additional breeding populations but acknowledges that current biogeographical and extinction theory strongly suggest that small, isolated populations are very vulnerable to extirpation from random environmental events or other factors. In reviewing the progress toward recovery that this species has made since listing, the Service concludes that the Aleutian Canada goose is no longer in danger of extinction. However, due to the small size of reestablished breeding populations, the continued presence of introduced arctic fox on many former nesting islands, and threats to the species on the wintering grounds from habitat alteration and disease, the Service finds that delisting is premature.

Based on a careful assessment of the best scientific and commercial information available regarding past, present and future threats faced by this species, the preferred action is therefore, to reclassify the Aleutian Canada goose from endangered to threatened. The Service will recommend that this species be delisted when recovery criteria as outlined in the recovery plan are reached (see **SUPPLEMENTARY INFORMATION,** Background section).

Effects of Rule

If made final, this rule would change the status of the Aleutian Canada goose at 50 CFR 17.11 from endangered to threatened. These rules would acknowledge the population of Canada geese breeding on Kiliktagik Island in the Semidi Islands and wintering in Tillamook County, Oregon as being *Branta canadensis leucopareia*. Furthermore, these rules would formally recognize the relative security of this species from no longer being in imminent danger of extinction throughout a significant portion of its range. This proposed change in classification does not significantly alter the protection fo this species under the Endangered Species Act. Anyone taking, attempting to take, or othewise possessing an Aleutian Canada goose in an illegal manner would still be subject to penalty under section 11 of the Act. There would be no difference in penalties for the illegal take of an endangered species versus a threatened species. Section 7 of the Act would also continue to protect this species from federal actions that would jeopardize the continued existence of the species.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concernig any aspect of this proposal are hereby solicited. Comments particularly are sought concerning:

(1) Biological or other relevant data concerning any threat (or lack thereof) to Aleutian Canada geese;

(2) The location of any additional populations of this species;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulation on *Branta canadensis leucopareia* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to either identified under **ADDRESSES** above.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Literature Cited

In addition to the list of references provided below, species experts, numerous other scientific papers, letters, and unpublished field and administrative reports were consulted in preparation of this proposed rule. Persons interested in examining these materials may do so at the Ecological Services Anchorage field office (see **ADDRESSES** section) by appointment during normal business hours (907/271–2888).

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U.S. Fish and Wildlife Service. 1982. Aleutian Canada goose recovery plan. Anchorage, Alaska. 42 pp.

Wilbur, S., P. Springer, F. Lee, T. Rothe, and C. Zeillemaker. 1987. Disease and contamination hazard contingency plan. Unpub. U.S. Fish and Wildlife Service report, Anchorage, Alaska. 15 pp.

Author

The primary author of this proposed rule is Mr. Michael Amaral, Endangered Species Specialist, U.S. Fish and Wildlife Service, 605 West 4th Avenue, Anchorage, Alaska 99501 (907/271–2888).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1543; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

§ 17.11 [Amended]

2. It is proposed to amend the table in § 17.11(h) under BIRDS for "Goose, Aleutian Canada" by changing the entry under "status" to read "T".

Dated: September 14, 1989.

John F. Turner,

Director, Fish and Wildlife Service.

[FR Doc. 89–23053 Filed 9–28–89; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 54, No. 188
Friday, September 29, 1989

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.

ACTION

VISTA Projects in the State of Texas; Availability of Funds

AGENCY: ACTION.

ACTION: Notice of availability of funds; VISTA projects in Texas.

ACTION Region VI announces the anticipated availability of funds for fiscal year 1990 for a new VISTA program grant authorized under title I, part A of the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113) in the State of Texas. VISTA program grants will be awarded for up to a twelve-month period.

Application packages and technical assistance on grant preparation are available from: Jerry Thompson, ACTION State Director, 611 East Sixth Street, Suite 107, Austin, Texas 78701, (512) 482–5671.

A. Background and Purpose

Volunteers in Service to America (VISTA) is authorized under title I, part A, of the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113) ("the Act"). The statutory mandate of the VISTA program is "to eliminate and alleviate poverty and poverty-related problems is the United States by encouraging and enabling persons from all walks of life, all geographical areas, and all age groups, including low-income individuals, and elderly and retired Americans, to perform meaningful and constructive volunteer service in agencies, institutions, and situations where the application of human talent and dedication may assist in the solution of poverty and poverty-related problems and secure and exploit opportunities for self-advancement by persons afflicted with such problems. In addition the objective of [VISTA] is to generate the commitment of private sector resources and to encourage volunteer service at the local level to carry out the purposes [of the program]" (42 U.S.C. 4951).

VISTA is a full-time, year-long volunteer program which encourages and enables men and women 18 years and older from all backgrounds to perform meaningful and constructive volunteer service. The Volunteers live among, and at the economic level of, the low-income people served. The VISTA program has served poor individuals most effectively by assisting low-income communities and residents to develop the facility, skills, and resources needed for achieving self-sufficiency.

VISTA carries out its legislative mandate by assigning Volunteers to sponsoring organizations to work on projects determined and defined by the sponsoring organization and by the low-income individuals to be served by the VISTA Volunteers.

The VISTA program can most effectively serve the poor by encouraging projects which enable low-income communities and individuals to develop the skills and resources necessary to survive and prosper in the private sector, and by making the private sector aware of the basic needs of low-income people. Organizations which have a demonstrable pattern of approaching people and problems in a constructive, collaborative way have the best chance of fulfilling the goals of the Act and of the particular project. VISTA project sponsors must actively elicit the support and/or participation of local public and private sector elements in order to enhance the chances of a project's success, as well as institutionalize the VISTA activities when ACTION/VISTA no longer provides Volunteers.

The VISTA Volunteer's role in addressing the problems of poverty in a particular community should be focused on mobilizing community resources and increasing the capacity of the low-income community to solve its own problems. While VISTA Volunteers may serve as important links between the project sponsor and the people being served, it is crucial to the concept of achieving self-sufficiency among the low-income community that sponsoring organizations plan for the eventual phase-out of VISTA Volunteers and for the absorption of the Volunteers' functions by other facets of the community.

(42 U.S.C. 4951; 4952)

B. Objectives

ACTION Region VI will be awarding a grant for the placement of VISTA Volunteers in Texas in the following emphasis areas:

1. *Unemployment*—Creation of opportunities for job training, job placement and job development with substantial private sector involvement. VISTA activities might include linking the low-income unemployed with job training resources; training in job-readiness and job-seeking skills; and developing and expanding support systems to enable low-income youth and parents to seek and keep employment.

Homelessness--development and/or expansion of transitional or permanent housing for low-income single adults and families and runaway youth. VISTA activities might include information and referral services for the homeless; solicitation of financial and in-kind contributions for shelters which promote independent living; counseling programs for at risk youth; and job-training services for shelter residents.

3. *Drug & Alcohol Abuse*—prevention and education programs directed primarily at low-income populations. VISTA activities might include development of low-income parent support groups; coordination of peer educational activities; and prevention/education efforts within public housing projects.

4. *Economic Development*—appropriate support functions related to neighborhood economic revitalization, housing rehabilitation and assistance in housing loan packaging; entrepreneurial development and management training for low-income individuals attempting to enter the business sector; and rural community development efforts such as establishment and expansion of agricultural production and marketing cooperatives; and development of water/wastewater systems.

5. *Literacy*—establishment and expansion of literacy programs serving at risk youth and adults. VISTA activities might include tutor recruitment and tutor training; intergenerational literacy efforts; organization of community-based literacy councils and expansion of their services; and outreach to and identification of those needing assistance including individuals seeking citizenship through the amnesty program.

6. *Infant Mortality*—outreach and education programs aimed at reducing infant mortality and morbidity. VISTA activities might include dissemination of health and nutrition information and promotion of early, continuous prenatal care.

C. Eligible Applicants

Eligible applicants for VISTA program grants are Federal, State, or local agencies, or private nonprofit organizations.

D. Scope of Grant

Each grant will support 10–15 VISTA Volunteers for one year of service. The amount of the grant includes the monthly subsistence and readjustment allowance for VISTA Volunteers. This support is commensurate with the cost-of-living of the assignment area and covers the cost of food, housing and incidentals, and a monthly stipend paid to the VISTA Volunteer upon completion of his/her service. The average Federal cost of one volunteer service year, i.e., total Federal cost divided by the total number of VISTA Volunteers, cannot exceed $8,000.

Applicants should demonstrate their commitment for matching the Federal contribution toward the operation of the VISTA grant in the areas of volunteer transportation, supervision, and/or training. This support can be achieved through cash or allowable in-kind contributions. In particular, a 50%, non-Federal match of the supervisor's salary and fringe benefits is mandatory. The supervisor of the VISTA project must serve on at least a half-time basis.

Publication of this announcement does not obligate ACTION to award a grant or to obligate the entire amount of funds available, or any part thereof, for grants under the VISTA Program.

E. General Criteria for Grant Selection

The following criteria will be employed by ACTION staff in the selection of VISTA sponsors and in the approval of a new VISTA program grant. All of the stated elements below must be found in the applicant's proposal.

The project must:

1. Be poverty-related in scope and otherwise comply with the provisions of the Domestic Volunteer Service Act of 1973, as amended (42 U.S.C. 4951, *et seq.*) applicable to VISTA and all published regulations, guidelines and ACTION policies.

2. Comply with applicable financial and fiscal requirements estalished by ACTION or other elements of the Federal Government.

3. Show that the goals, objectives, and volunteer tasks are attainable within the time frame during which the volunteers will be working on the project and will produce a measurable and verifiable result.

4. Provide for reasonable efforts to recruit and involve low-income community residents in the planning, development and implementation of the VISTA project.

5. Have evidence of local public and private sector support in the form of endorsement letters limited to those organizations, government entities, and institutions that are aware of and will be involved in supporting the VISTA project efforts.

6. Be designed to generate private sector resources and encourage local, part-time volunteer service.

7. Provide for frequent and effective supervision of the volunteers.

8. Identify resources needed and make them available to volunteers to perform their tasks.

9. Have the management and technical capability to implement the project successfully.

F. Additional Factors

ACTION staff will use the following additional tests in choosing among applicants who meet all of the minimum criteria specified above:

1. How important is the proposed project to the low-income community? Who will benefit from the project?

2. Does the project show evidence of skillful and careful planning to attain project goals?

3. Did the sponsor answer project application questions with specificity or somewhat vaguely?

4. Is there any local opposition to the proposed project from a segment of the community which could seriously hamper the project's success?

5. Are there plans for the continuation of VISTA activities in the community after the volunteers are withdrawn?

6. Sponsoring Organization.

(a) Does the sponsoring organization have adequate experience in dealing with the problem(s) identified in the project application?

(b) Are plans for volunteer supervision and sponsor-provided training adequate for the volunteer assignments?

(c) Are transportation arrangements outlined in the project application adequate for the volunteers to carry out their assignments?

(d) Are the procedures for staff accountability adequate for the VISTA project?

7. VISTA Volunteers.

(a) Is the number of volunteers being requested appropriate for project goals and objectives as stated?

(b) Are the roles of the volunteers designed to increase self-sufficiency in the low-income community?

(c) Are the volunteer skills/qualifications described in the application appropriate for the assignment(s)?

(d) Are the volunteer assignments designed to utilize the full-time volunteers' time to the maximum extent?

G. Prohibited Activities

Applicant sponsoring organizations must ensure that the following prohibitions on volunteer and sponsor activity are observed:

1. VISTA Volunteers are prohibited by law from participating in a number of activities, including, among others:

(a) Partisan and nonpartisan political activities, including voter registration activities and transporting voters to the polls.

(b) Direct or indirect attempts to influence legislation, or proposals by initiative petition.

(c) Labor and anti-labor organization and related activities.

(d) Any outside employment while in VISTA service.

H. Application Review Process

ACTION Region VI will review and evaluate all eligible applications prior to submission to the Director of VISTA and Student Community Service Programs, ACTION, for final selection. ACTION reserves the right to ask for evidence of any claims of past performance or future capability.

I. Application Submission and Deadline

One signed original and two copies of all completed applications must be submitted to Jerry Thompson, ACTION State Director, 611 East Sixth Street, Suite 107, Austin, Texas 78701. The deadline for receipt of applications is 5:00 p.m. local time November 17, 1989. Applications post-marked 5 days before the deadline date will also be accepted for consideration.

All grant applications must consist of:

a. VISTA Project Application (Form A–1421) and the VISTA Application for Federal Assistance (Form A–1421 B) with a detailed budget justification.

b. CPA certification of accounting capability.

c. Copy of recent Articles of Incorporation.

d. Proof of non-profit status or an application for non-profit status, and related documentation.

e. Current resume of potential VISTA Supervisor, if available, or the current resume of the director of the applicant agency or project.

f. Organizational chart illustrating the relationship of the VISTA project to the overall objectives of the sponsor organization.

g. A list of the Board of Director members which includes their professional affiliations.

Signed at Washington, DC this 22d day of September, 1989.

Jane A. Kenny,

Acting Director.

[FR Doc. 89-22954 Filed 9-28-89; 8:45 am]

BILLING CODE 6050-28-M

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

1989 Crop Sugar Beets and Sugarcane Price Support Loan Rates

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of determination.

SUMMARY: This notice announces the national price support loan rates established by the Secretary of Agriculture with respect to the 1989 crop of domestically grown sugar beets and sugarcane and also sets forth the levels at which price support will be made available. The national (weighted average) loan rate for raw cane sugar will be 18.00 cents per pound. The national (weighted average) loan rate for refined beet sugar will be 21.54 cents per pound. Both of these rates will be further adjusted to reflect the processing location of the sugar offered as collateral for a price support loan (i.e., location differentials). Program outlays will be reduced by 1.4 percent as mandated by the Agricultural Act of 1949.

EFFECTIVE DATE: October 2, 1989.

FOR FURTHER INFORMATION CONTACT: Lynda Moore, Price Support Branch, Cotton, Grain and Rice Price Support Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC. 20013. Phone: (202) 477-4229. Copies of the Regulatory Impact Analysis are available from Jane K. Phillips, Commodity Analysis Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013.

SUPPLEMENTARY INFORMATION:

Rulemaking Matters

This notice has been reviewed under USDA procedures established in accordance with the provisions of Departmental Regulation 1512-1 and Executive Order 12291 and has been classified as "major" since this action may have an annual effect on the economy of $100 million or more.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice of determination since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 533 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of their notice.

An Environmental Evaluation with respect to the price support loan program has been completed. It has been determied that this action will not adversely affect environmental factors such as wildlife habitat, water quality, air quality, land use, and appearance. Accordingly, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

The title and number of the Federal Assistance Program to which this notice applies are: Title—Commodity Loans and Purchases, Number 10.051, as found in the Catalog of Federal Domestic Assistance.

This notice sets forth determinations with respect to the following issues which are briefly described:

1. Loan Rates

Section 201(j) of the Agricultural Act of 1949, as amended by the Food Security Act of 1985, provides that the Secretary of Agriculture is required to support the price of the 1986 through 1990 crops of sugar beets and sugarcane through nonrecourse loans. Section 201(j) further provides that the Secretary shall support the price of domestically grown sugarcane at such level as the Secretary determines appropriate, but not less than 18.00 cents per pound, raw value, and the price of domestically grown sugar beets at such level as the Secretary determines is fair and reasonable in relation to the loan level for sugarcane.

2. Location Differentials

The application of location differentials to loan rates is common to most price support programs administered by CCC. The loan rates for sugar processed in specific regions will be based upon the transportation costs associated with moving sugar to the markets that are normal for those regions.

3. Minimum Price Support Levels

The minimum price support levels are the minimum amounts that must be paid to producers by a processor participating in the price support loan program. The minimum price support levels are set forth by regions. In general, these support levels would be reflected in contracts between individual processors and producers for the 1989 crop of sugar beets and sugarcane.

4. Outlay Reductions

Program outlays will be reduced by 1.4 percent as mandated by the Agricultural Act of 1949.

5. Determination of Average Quality or Recovery of Sugar Per Net/Gross Ton

The minimum price support levels may be adjusted for sugarcane or sugar beets of non-average quality. Accordingly, "average quality" is defined.

6. Cost Reduction Options

Section 1009(a) of the Food Security Act of 1985 provides that whenever the Secretary determines that an action authorized by that section will reduce the total of the direct and indirect costs to the Federal Government of a commodity program administered by the Secretary without adversely affecting income to small and medium-sized producers participating in such program, the Secretary shall take such action with respect to that commodity program. For the purposes of the sugar price support program, these actions include: (1) The commercial purchases of commodities by the Secretary; and (2) the settlement of nonrecourse loans at an amount less that the total of the principal loan amount and accumulated interest, but not less than the principal amount, if such action will result in: (A) Receipt of a portion rather than none of the accumulated interest, (B) avoidance of default of the loan, or (C) elimination of storage, handling, and carrying charges on the forfeited loan collateral.

These determinations are required to be made in accordance with the provisions of section 201(j) of the Agricultural Act of 1949 and section 1009 of the Food Security Act of 1985. Section 1017(b) of the Food Security Act of 1985 provides that the Secretary shall determine the rate of loans and price support levels for any of the 1986 through 1990 crops of commodities covered under the Agricultural Act of 1949 without regard to the requirements for notice and public participation in rulemaking prescribed in section 553 of

title 5, United States Code, or in any directive of the Secretary.

Determination

1. Loan Rates

The national (weighted average) loan rate for the 1989 crop (as defined in 7 CFR 1435.302(k), the 1989 crop generally consists of sugar beets and sugarcane processed during the period July 1, 1989 through June 30, 1990) shall be 21.54 cents per pound for refined beet sugar and 18.00 cents per pound for cane sugar, raw value, including the cane sugar, raw value, contained in refined cane sugar, sugarcane syrup, and edible molasses. This is the minimum statutory loan rate for cane sugar. It has been determined that the loan rate established for sugar beets is fair and reasonable in relation to the loan level for sugarcane. In the case of refined or specialty sugar made from raw cane sugar, the rate shall be the appropriate regional rate applied to the quantity of the refined or specialty sugar converted to an equivalent quantity of cane sugar, raw value.

The 1989 loan rate for refined beet sugar reflects the value of the sugar based on the relationship between the weighted average of grower returns for sugar beets and the weighted average of grower returns for sugarcane, expressed on a cents per pound basis for refined beet sugar and raw cane sugar, for the immediately preceding 10-year period. After adjustment to reflect the proper price relationship, the estimated 1989 sugar beet crop fixed marketing costs (which are incurred by beet processors regardless of the disposition of the sugar) are added to make up the basic loan rate for refined beet sugar. This is the same method that was used for the 1988 crop.

2. Location Differentials

The loan rates determined for both raw cane sugar and refined beet sugar have been adjusted to reflect the processing location of the sugar offered as collateral for a price support loan. These adjustments (i.e., location differentials) have been calculated in the same manner as they have been in previous years. The loan rates for sugar processed in specific regions have been based upon the transportation costs associated with moving that sugar to the markets that are normal for those regions.

The processing regions and applicable 1989 crop regional loan rates for refined beet sugar shall be as listed below:

Region number and description	Cents per pound of refined sugar
1. Michigan and Ohio	22.12
2. Minnesota and the eastern half of N. Dakota	21.25
3. Northeastern quarter of Colorado; Nebraska; and the southeastern quarter of Wyoming	21.24
4. Texas	21.72
5. Montana and the northwestern quarter of Wyoming and western half of N. Dakota	21.17
6. That part of Idaho east of the eastern boundary of Owyhee County and of such boundary extended northward	20.61
7. The part of Idaho west of the esstern boundary of Owyhee County and of such boundary extended northward; Oregon	20.61
8. California	21.34

Note: Fixed marketing expenses are considered in computation to insure equality with support prices for sugarcane.

The processing regions and applicable 1989 regional crop loan rates for cane sugar, raw value, shall be as listed below except that, for such sugar processed in Hawaii or Puerto Rico but placed under loan on the mainland of the United States, the applicable loan rate shall be 17.75 cents per pound:

Region	Cents per pound, raw sugar value
Florida	17.73
Louisiana	18.23
Texas	18.03
Hawaii	17.46
Puerto Rico	17.06

Note: Molasses is a by-product of sugar processing. It is not included in the calculation of the sugar loan rate.

3. Minimum Price Support Levels

Based on the established regional loan rates, the minimum price support levels for sugar beets and sugarcane of average quality processed in the indicated regions are as follows:

For 1989 crop sugar beets:

Region (same as in previous beet sugar table)	Support price per net ton
1	[1] $28.07
2	[2] 31.24
3	31.79
4	33.82
5	31.73
6	31.59
7	31.59
8	32.54

[1] If (1) the sugar extracted by a processor from the 1989 crop yields, on the average, less than 218.88 pounds per net ton of sugar beets delivered and accepted by the processor, or (2) the processor's net return on by-products per net ton of sugar beets delivered and accepted by the processor averages less than $7.08 per net ton, then the required minimum price support rate per ton of sugar beets will be adjusted. The adjusted rate will be determined by: (a) Multiplying $0.2092 (the loan rate per pound less $.0120 considered as fixed marketing expenses) by the average pounds and hundredths of pounds of sugar extracted per ton, (b) adding thereto the net return to the processor on by-products per net ton of sugar beets delivered and accepted, and (c) multiplying the result by 53.1 percent.

[2] If (1) the sugar extracted by a processor from the 1989 crop yields, on the average, less than 262.53 pounds per net ton of sugar beets delivered and accepted by the processor, or (2) the processor's net return on by-products per net ton of sugar beets delivered and accepted by the processor averages less than $6.19 per net ton, then the required minimum price support rate per ton of sugar beets will be adjusted. The adjusted rate will be determined by:

(a) Multiplying $0.2005 (the loan rate per pound less $.0120 considered as fixed marketing expenses) by the average pounds and hundredths of pounds of sugar extracted per ton, (b) adding thereto the net return to the processor on by-products per net ton of sugar beets delivered and accepted, and (c) multiplying the result by 53.1 percent.

For 1989 crop sugarcane in Florida, $25.02 per net ton.

For 1989 crop sugarcane in Louisiana, with a core sampler, $21.13 per gross ton. For 1989 crop sugarcane in Louisiana, without a core sampler, $23.18 per net ton.

For 1989 crop sugarcane in Texas, $17.40 per gross ton.

For 1989 crop sugarcane in Hawaii, $22.57 per net ton.

For 1989 crop sugarcane in Puerto Rico, $16.77 per gross ton.

The prices indicated above must be adjusted for sugar beets or sugarcane of nonaverage quality if the producer and processor have agreed upon a method for such adjustment in the terms and conditions of their marketing contract.

4. Average Quality Sugar Beets and Sugarcane

For 1989 crop sugar beets, "average quality" means sugar beets containing 15.69 percent sucrose.

For 1989 crop sugarcane processed in Florida, "average quality" means sugarcane containing 14.44 percent sucrose in normal juice.

For 1989 crop sugarcane processed in Louisiana with a core sampler, "average quality" means sugarcane which yields 186.7 pounds of raw sugar per gross ton. For 1989 crop sugarcane processed in Louisiana without a core sampler, "average quality" means sugarcane containing 13.24 percent sucrose in normal juice and 82.74 percent purity.

For 1989 crop sugarcane processed in Texas, "average quality" means sugarcane which yields 152.4 pounds of raw sugar per gross ton.

For 1989 crop sugarcane processed in Hawaii, "average quality" means sugarcane which yields 246.6 pounds of raw sugar per net ton.

For 1989 crop sugarcane processed in Puerto Rico, "average quality" means sugarcane which yields 143.5 pounds of raw sugar per gross ton.

5. Reduction in Program Outlays

Program outlays are reduced by 1.4 percent pursuant to the requirements of section 201(j)(7) of the Agricultural Act of 1949.

6. Cost Reduction Options

The decision not to implement any cost reduction options as outlined in the Supplementary Information above has been made. The Secretary reserves the right to initiate at a later date any action not previously included but authorized by section 1009 of the Food Security Act of 1985.

Signed at Washington, DC on September 13, 1989.

Clayton Yeutter,

Secretary of Agriculture.

[FR Doc. 89-23068 Filed 9-28-89; 8:45 am]

BILLING CODE 3410-05-M

Federal Grain Inspection Service

Aflatoxin Testing Service

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Federal Grain Inspection Service (FGIS) will implement the use of approved aflatoxin test kits to replace the Holaday-Velasco (HV) minicolumn method and the thin-layer chromatography (TLC) method currently used to determine the presence of aflatoxin in corn at FGIS field office service points. For an interim period and upon request, FGIS will provide testing service using the HV minicolumn and TLC testing methods for corn and other agricultural commodities at the field offices to fulfill domestic and export contract requirements. After the interim period, FGIS will discontinue the availability of the HV minicolumn and TLC testing methods for corn and other commodities at its field locations. However, HV minicolumn and TLC testing methods will continue to be available for all commodities at the FGIS Commodity and Testing Laboratory in Beltsville, Maryland.

DATES: The use of approved aflatoxin test kits at field locations is effective as of October 1, 1989. FGIS will discontinue using the HV minicolumn and TLC testing methods at field locations as of April 1, 1990.

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken Jr., USDA, FGIS, Resources Management Division, Room 0628 South Building, P.O. Box 96454, Washington, DC, 20090-6454, telephone (202) 475-3428.

SUPPLEMENTARY INFORMATION: Since 1977, FGIS has provided aflatoxin testing service for corn under the authority of the Agricultural Marketing Act of 1946. Service has been available nationwide with several FGIS field offices providing local testing service and the FGIS Commodity Testing Laboratory in Beltsville, Maryland handling all other requests.

FGIS has relied on the HV minicolumn method as a screening test, whereby a corn sample is tested against a standard of 20 parts per billion (ppb), and the TLC method for quantitative testing. The TLC method measures the actual level of aflatoxin in ppb.

In the October 17, 1988, **Federal Register** (53 FR 40483) FGIS requested that manufacturers, representatives, or distributors of aflatoxin test kits to participate in a study to evaluate tests that could potentially replace the HV minicolumn test for corn used by FGIS. Based on a comparative analysis of the commercially available aflatoxin test kits, FGIS approved six kits as meeting the testing requirements of the national inspection system for corn. The approved test kits are as follows:

Approved test kit	Manufactured by—
Afla-20-Cup Test.	International Diagnostic Systems Corp., 2614 Niles Avenue, St. Joseph, MO 49085.
Aflatest	VICAM, 29 Mystic Avenue, Sommerville, MA 02145.
Agri-Screen	Neogen Corp., 620 Lesher Place, Lansing, MI 48912.
EZ-Screen	Environmental Diagnostics, Inc., 2990 Anthony Road, Burlington, NC 27215.
OXOID	OXOID, U.S.A., Inc., 9017 Red Branch, Columbia, MD 21045.
SAM-A	Rialdon Diagnostics, 3609 E. 29th Street, Ste. A., Bryan, TX 77802.

All six kits provide comparable results to the HV minicolumn method. Further, the Aflatest method offers the additional capability of providing quantitative test results. During 1990, FGIS plans to request that manufacturers, representatives, or distributors of quantitative aflatoxin test kits to participate in a study to evaluate additional tests that could potentially be used in place of the TLC method.

Results of the completed comparative study are available from FGIS upon request. Dr. Donald E. Koeltzow, Chief of the FGIS Research and Development Branch, will present the results of the comparative study at an American Association of Cereal Chemists mycotoxin symposium. The symposium will be held in Washington, DC from October 29 through November 1, 1989.

Since the new test kits provide results comparative to the HV minicolumn method, improve the timeliness of testing, and, in several cases, reduce the use of hazardous chemicals, FGIS has decided to use one or more of the approved test kits in place of the HV minicolumn method for corn testing at FGIS field locations. The precise test kit(s) used at a testing location may vary depending on the procurement process, product availability, and testing needs. Additionally, FGIS will use the Aflatest method for quantitative testing service of corn in place of the TLC method at FGIS field locations. In the future, other test kits may also be used in place of the TLC based on the results of the 1990 quantitative test kit evaluation referenced above.

FGIS will continue to use the HV minicolumn and TLC methods for the testing of agricultural commodities other than corn because the test kits are only approved for corn. Beginning April 1, 1990, HV minicolumn and TLC methods for corn and other commodities will be available only at the FGIS Commodity Testing Laboratory in Beltsville, Maryland.

FGIS will begin using the approved test kits as replacements to the HV minicolumn and TLC methods for corn testing at FGIS field locations on October 1, 1989. Recognizing that various contracts require specific testing methodologies, FGIS will continue to test corn for aflatoxin at FGIS field locations using the HV minicolumn or the TLC methodologies upon request for a six month interim period or until April 1, 1990.

(7 U.S.C. 1621 *et. seq.*)

Dated: September 27, 1989.

W. Kirk Miller,

Administrator.

[FR Doc. 89-23165 Filed 9-28-89; 8:45 am]

BILLING CODE 3410-EN-M

Soil Conservation Service

Red Wash Watershed, CO; Intent To Prepare an Environmental Impact Statement

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is being prepared for the Red Wash Watershed in Moffat and Rio Blanco Counties, Colorado.

FOR FURTHER INFORMATION CONTACT: Mr. Sheldon G. Boone, State Conservationist, Soil Conservation Service, Room E200C, 655 Parfet Street, Lakewood, Colorado 80215–5517, telephone (303) 236–2886.

SUPPLEMENTARY INFORMATION: Congressional approval is required for this plan, therefore Sheldon G. Boone, State Conservationist, has determined that the preparation and review of an environmental impact statement are needed for this project.

The project concerns sediment control for Kenney Reservoir. Alternatives under consideration to reach this objective include an earthen dam and a system for conservation land treatment.

A draft environmental impact statement will be prepared and circulated for review by agencies and the public. The Soil Conservation Service invites participation and consultation of agencies and individuals that have special expertise, legal jurisdiction, or interest in the preparation of the draft environmental impact statement. A meeting will be held at Water User Association No. 1 in the Colorado River Water Conservation District office, 2252 East Main, Rangely, Colorado, on November 7, 1989 at 2:00 p.m. to determine the scope of the evaluation of the proposed action. Further information on the proposed action, or the scoping meeting may be obtained from Sheldon G. Boone, State Conservationist, at the above address or telephone (303) 236–2886.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: September 8, 1989.

Sheldon G. Boone,

State Conservationist.

[FR Doc. 89–23021 Filed 9–28–89; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Docket No. 90916–92161]

Short Supply Export Controls: Investigation of Unprocessed Timber Exports From All Public Lands in Oregon and Washington

AGENCY: Office of Industrial Resource Administration, Bureau of Export Administration, Commerce.

ACTION: Request for comments, domestic short supply of unprocessed timber in Oregon and Washington.

SUMMARY: The Northwest Independent Forest Manufacturers (NIFM), a trade group representing 159 independent forest product manufacturers in Oregon and Washington, filed a petition under section 7 and 3(2)(C) of the Export Administration Act of 1979 for export restrictions on unprocessed timber harvested from all public lands. The Department of Commerce is initiating an investigation to determine if there is a domestic short supply of unprocessed timber and, if so, the role that export restrictions could play in alleviating the shortage. This notice invites comments from all interested parties and announces that the Department intends to hold at least one public hearing in Oregon and/or Washington to assist in reaching the investigation.

DATE: Comments must be submitted on or before December 13, 1989.

ADDRESSES: Send written comments to Brad I. Botwin, Director, Stategic Analysis Division, Office of Industrial Resource Administration, Room 3878, Bureau of Export Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Brad I. Botwin, Director, Stategic Analysis Division, (202) 377–4060, Bernard Kritzer, Senior Policy Advisor, (202) 377–4060, or Brian H. Nilsson, Trade and Industry Analyst, (202) 377–2322.

SCOPE OF INVESTIGATION: The petition includes logs of tree species harvested from public lands in Oregon and Washington. The Schedule B community description includes logs and timber, in the rough, split, hewn, or roughly sided or squared but excluding lumber. The Schedule B commodity numbers are 200.3504 Ponderosa Pine (pinus ponderosa), 200.3506 Pine Other, 200.3508 Spruce (Picea spp.), 200.3510 Douglas-fir (Psuedotsuga Menziesii), 200.314 Western Hemlock (Tsuga Heterophylla), 200.316 Western Red Cedar (Thuja Plicata), 200.3518 Softwood Other, and 200.3536 Hardwood Other (Alder).

The subject commodities are described in the Harmonized Tariff Schedule of the United States as wood in the rough, whether or not stripped of bark or sapwood, or roughly squared, which 4403.20.00/35/0 Spruce (Picea Spp.) 4403.20.00/40/3 Douglas-fir (Pseudotsuga Menziesii), 4403.20.00/50/0 Western Hemlock (Tsugo Meterophylda), 4403.20.00/55/5 Western Red Cedar (Thuja Plicata), 4403.20.00/60/8 Logs & Timber Other, and 4403.99.00/50/6 Western Red Alder (Alnus Rubra).

In compliance with section 7(i) of the Act, the Department maintains quantitative restrictions on the export of unprocessed western red cedar logs harvested from state and Federal lands. Western red cedar logs are deemed not to be an agricultural commodity pursuant to section 7(g) of the Act. However, the commodities subject to this investigation do not fall within that statutory provision and thus will be treated as agricultural commodities. Under section 7(g), the Secretary may not exercise short supply controls with respect to any agricultural commodity without the approval of the Secretary of Agriculture.

SUPPLEMENTAL INFORMATION: Section 7 of the Act authorizes the Department to reguate the export of commodities for short supply reasons. The Department has discretion in the procedures it follows in conducting this investigation. It intends to adhere to the following procedures:

(a) Interested parties shall have a period of 75 days beginning on the date of publication of this notice in which to submit to the Secretary written data, views, or arguments. The hearing(s) will be held toward the end of this period; a notice will be published prior to the hearing data;

(b) After analyzing all data pertaining to this investigation, the Secretary, in consultation with other interested Federal agencies, shall determine whether to impose restrictions on the export of the subject merhandise in order to carry out the policy set forth in section 3(2)(C) of the Act.

(c) The Secretary shall publish a notice in the **Federal Register** detailing the reasons for the determination of whether there is a domestic short supply;

(d) If there is an affirmative determination, the Secretary, in consultation with other interested Federal agencies, shall publish a **Federal Register** notice with proposed

regulations with respect to restrictions. After the publication of this notice, and after considering any public comments received on the proposed regulations, the Secretary shall publish and implement final regulations with respect to restrictions.

The Department of Commerce is initiating this investigation. This notice is intended to provide all interested parties, especially those in the forest products industry, consumer groups, environmental groups, the maritime industry, and all other industries, groups or individuals likely to be affected by possible export restrictions on unprocessed timber harvested from all public lands in Oregon and Washington, with an opportunity to submit written comments and participate in the hearing or hearings to be scheduled on this issue.

Interested parties are invited to submit written comments, opinions, data, information or advice with respect to the investigation to the address stated above.

The period for submission of comments will close on December 13, 1989. All comments received before the close of the comment period will be considered by the Department in completing the investigation. While comments received after the end of the comment period will be considered if possible, their consideration cannot be assured.

All public comments, whenever received, will be a matter of public record and will be available for public inspection and copying.

Written comments (6 copies) are preferred, and should be sent to the address indicated above. If oral comments are received during a meeting or telephone conversation, a written summary will be prepared by the person receiving the oral comments. That written summary will also be a matter of public record and will be available for public review and copying.

Anyone submitting business confidential information should clearly identify the business confidential portion of the submission and also provide a nonconfidential submission which can be placed in the file. If this procedure is not followed, the comments and materials will be returned to the submitter and will not be considered in completing this investigation.

Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning this investigation will be maintained in the Bureau of Export Administration's Freedom of Information Records Inspection Facility, Bureau of Export Administration, U.S. Department of Commerce, Room H-4886, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Records in this facility, including written public comments, memoranda summarizing the substance of oral communications, and the transcript of hearings may be inspected and copied in accordance with regulations published in part 4 of title 15 of the Code of Federal Regulations. Information pertaining to the transcript of hearings may be inspected and copied in accordance with regulations published in part 4 of title 15 of the Code of Federal Regulations. Information pertaining to the inspection and copying of records may be obtained from Ms. Margaret Cornejo, Bureau of Export Administration's Freedom of Information Officer, at the above address or by calling (202) 377-2593.

Notice of the public hearing or hearings in Oregon and/or Washington will be published in the **Federal Register** at a later date.

John A. Richards,

Acting Deputy Assistant Secretary for Export Administration.

[FR Doc. 89-22949 Filed 9-28-89; 8:45 am]

BILLING CODE 3510-DT-M

Foreign-Trade Zones Board

[Docket 17-89]

Foreign-Trade Zone 70, Detroit, Michigan; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Detroit Foreign Trade Zone, Inc. (GDFTZ), grantee of Foreign-Trade Zone 70, requesting authority to expand its zone in the Detroit Customs port of entry area. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on September 19, 1989.

The Detroit zone was approved in July 1981 (Board Order 176, 46 FR 38941, 7/30/81), and expanded in April 1985 (Board Order 299, 50 FR 16119, 4/24/85). The zone project presently consists of five general-purpose zone sites (total area: 30 acres, including 640,000 sq. ft. of warehouse space) and 12 auto assembly plant subzones in the Detroit area. An application is currently pending for two additional sites (Doc. 10-88).

The grantee is now requesting further authority to expand two of the existing zone sites: The Airport Site, Romulus, Michigan, and the Nicholson/Riverport Site, Ecorse, Michigan, in order to accommodate the increasing demand for zone warehouse space in the Detroit area. The Airport Site involves a 26,000 sq. ft. warehouse at 6850 Middlebelt Road, Romulus, operated by W.F. Whelan & Co. It is located one mile from the Detroit Metropolitan Airport. The expansion would add 92 acres on six separate parcels adjacent to the airport and west of Wayne Road between Grant Road and the Norfolk Southern Railroad Line. The expanded site will also be operated by W.F. Whelan under agreement with Metro Airport Center Ltd.

The existing Nicholson/Riverport Site consists of 5 acres within the Nicholson Terminal and Dock Company's terminal facility, located on the Detroit River in Ecorse. The proposal calls for the expansion to include the entire 45-acre Nicholson facility.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; William L. Morandini, District Director, U.S. Customs Service, North Central Region, Patrick V. McNamara Building, 477 Michigan Avenue, Detroit, Michigan 48226-2568; and Colonel John D. Glass, District Engineer, U.S. Army Engineer District Detroit, P.O. Box 1027, Detroit, Michigan 48231-1027.

Comments concerning the proposed expansion are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before November 10, 1989.

A copy of the application is available for public inspection at each of the following locations:

U.S. Department of Commerce, District Office, 1140 McNamara Building, 477 Michigan Avenue, Detroit, Michigan 48226.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th and Pennsylvania Avenue, NW., Room 2835, Washington, DC 20230.

Dated: September 25, 1989.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 89-22952 Filed 9-28-89; 8:45 am]

BILLING CODE 3510-DS-M

[Order No. 432]

Approval for Expansion of Foreign-Trade Zone 5, Seattle, WA

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

Whereas, the Port of Seattle Commission, Grantee of Foreign-Trade Zone No. 5, has applied to the Board for authority to expand its general-purpose zone to include sites at the Seattle seaport and the Seattle-Tacoma International Airport, Kings County, Washington, within the Seattle Customs port of entry;

Whereas, the application was accepted for filing on February 9, 1988, and notice inviting public comment was given in the **Federal Register** on February 18, 1988 (Docket 9–88, 53 FR 4865);

Whereas, an examiners committe has investigated the application in accordance with the Board's regulations and recommends approval;

Whereas, the expansion is necessary to improve and expand zone services in the Seattle area; and,

Whereas, the Board has found that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby orders:

That the Grantee is authorized to expand its zone in accordance with the application filed February 9, 1988. The grant does not include authority for manufacturing operations, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing or assembly operations. The authority given in this Order is subject to settlement locally by the District Director of Customs and the District Army Engineer regarding compliance with their respective requirements relating to foreign-trade zones.

Signed at Washington, DC, this 25th day of September, 1989.

Eric I. Garfinkel,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates Foreign-Trade Zones Board.

[FR Doc. 89–23070 Filed 9–28–89; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

[A–412–602]

Certain Forged Steel Crankshafts From the United Kingdom; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by the respondent, United Engineering & Forging (UEF), the Department of Commerce (the Department) has conducted an administrative review of the antidumping duty order on certain forged steel crankshafts from the United Kingdom. The review covers UEF, the only known manufacturer and/or exporter of this merchandise to the United States, and the period May 13, 1987 through August 31, 1988. The review indicates the existence of dumping margins for the firm during the period

As a result of the review, the Department has preliminarily determined to assess dumping duties equal to the calculated differences between United States price and foreign market value.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: September 29, 1989.

FOR FURTHER INFORMATION CONTACT: J. David Dirstine or Chip Hayes, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377–1130.

SUPPLEMENTARY INFORMATION:

Background

On September 21, 1987, the Department published in the **Federal Register** (52 FR 35467) an antidumping duty order on certain forged steel crankshafts from the United Kingdom. UEF requested in accordance with § 353.53a(a) of the Commerce Regulations that we conduct an administrative review. We published the notice of initiation on December 5, 1988 (53 FR 48951). The Department has now conducted that administrativer review as required by section 751 of the Tariff Act of 1930 (the Tariff Act).

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item numbers(s).

Imports covered by this review are shipments of forged carbon or alloy steel crankshafts with a shipping weight between 40 and 750 pounds, whether machined or unmachined. During the review period, such merchandise was classifiable under items 660.6713, 660.6727, 660.6747, 660.7113, 660.7127, and 660.7147 of the *Tariff Schedules of the United States Annotated* (TSUSA). This merchandise is currently classifiable under HTS items 8483.10.10 and 8483.10.30. The HTS and TSUSA item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers UEF, the only known manufacturer and/or exporter of certain forged steel crankshafts from the United Kingdom to the United States, and the period May 13, 1987 through August 31, 1988.

United States Price

As provided in section 772(b) of the Act, we used purchase price to represent United States price since all sales were made to unrelated purchasers in the United States prior to importation. Purchase price was based on the c.i.f., packed price to unrelated purchasers in the United States. We made deductions, were appropriate, for foreign inland freight, ocean freight, marine insurance, U.S. inland freight, warehousing, and brokerage and handling. We disallowed claims for certain production tooling costs and start-up expenses which were invoiced separately and not included in the U.S. price. No other adjustments were allowed.

Foreigh Market Value

In calculating foreign market value the Department used home market price, third-country price, or constructed value, where appropriate, as defined in section 773 of the Tariff Act. Home market price was based on the packed, delivered price to unrelated purchasers in the home market. We made adjustments, where appropriate, for inland freight, rebates, and differences in the physical characteristics of the merchandise, warranty expenses, credit, and packing. Third-country price was based on the c.i.f., packed price to unrelated purchasers in France. We made adjustments, where appropriate,

for United Kingdom inland freight and insurance, ocean freight, marine insurance, brokerage and handling, differences in the physical characteristics of the merchandise, and credit. Since UEF did not receive any foreign financing during the review period, the Department accepted the respondent's credit expense for U.S. purchase price sales based on the home market interest rate. No other adjustments were allowed.

We calculated constructed value as the sum of the cost of the materials, fabrication, general expenses and packing, plus profit. The amount added for general expenses was either the actual expenses or 10 percent of materials and fabrication costs, whichever was greater. The amount added for profit was either actual profit or 8 percent of the sum of the costs of materials, fabrication and general expenses, whichever was greater.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that a margin of 2.19 percent exists for United Engineering and Forging for the period May 13, 1987 through August 31, 1988.

Interested parties may request disclosure and/or an administrative protective order within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first workday thereafter. Pre-hearing briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in these comments, may be filed not later than 37 days after the date of publication. The Department will publish the final results of the administrative review, including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Deaprtment will issue appraisement instructions directly to the Customs Service.

Further, as provided in section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margin shall be required. For any future entires of this merchandise from a new exporter not covered in this administrative review, whose first shipment occurred after August 31, 1988 and who is unrelated to the reviewed firm, a cash deposit of 2.19 percent shall be required. These cash deposit requirements are effective for all shipments of forged carbon or alloy steel crankshafts with a shipping weight between 40 and 750 pounds, whether machined or unmachined, from the United Kingdom, entered or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Commerce Regulations published at 54 FR 12742 (March 28, 1989) (to be codified at 19 CFR).

Dated: September 22, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89-23071 Filed 9-28-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-122-503]

Certain Iron Construction Castings From Canada; Termination of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Commerce.

ACTION: Notice of termination of antidumping duty administrative review.

SUMMARY: On April 28, 1989 the Department of Commerce initiated an administrative review of the andidumping duty order on certain iron construction castings from Canada. The Department has now determined to terminate that review.

Background

On April 28, 1989 the Department of Commerce published a notice of initiation of administrative review of the antidumping duty order on certain iron construction castings from Canada (54 FR 18320). That notice stated that we would review Mueller Canada, Inc. ("Mueller") for the period March 1, 1988 through February 28, 1989. Mueller subsequently withdrew its request for review on June 23, 1989. As a result, the Department has determined to terminate the review.

EFFECTIVE DATE: September 29, 1989.

FOR FURTHER INFORMATION CONTACT: Kathleen Kelleher or Maureen Flannery, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-2923.

SUPPLEMENTARY INFORMATION: This notice is in accordance with section 751(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1675(a)(1)) and § 353.22 of the Commerce Regulations published in the **Federal Register** on March 28, 1989 (54 FR 12742) (to be codified at 19 CFR 353.22).

Dated: September 20, 1989.

Richard W. Moreland,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 89-22950 Filed 9-28-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-475-401]

Certain Valves and Connections, of Brass, for Use in Fire Protection Systems From Italy; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On January 24, 1989, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on certain valves and connections, of brass, for use in fire protection systems from Italy. The review covers one manufacturer/exporter and one third-country reseller of this merchandise to the United States and the period March 1, 1986 through February 28, 1987.

We gave interested parties an opportunity to comment on our preliminary results. A public hearing was held on March 1, 1989. Based on our analysis of the comments received, we have not changed the final results from those presented in our preliminary results of review.

EFFECTIVE DATE: September 29, 1989.

FOR FURTHER INFORMATION CONTACT: G. Leon McNeill, or Maureen Flannery, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-3601/2923.

SUPPLEMENTARY INFORMATION:

Background

On January 24, 1989, the Department of Commerce ("the Department") published in the **Federal Register** (54 FR 3520) the preliminary results of its administrative review of the antidumping duty order on certain

valves and connections, of brass, for use in fire protection systems from Italy (50 FR 8354, March 1, 1985). We have now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended ("the Tariff Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by the review are shipments of certain valves and connections, of brass, suitable for use in interior fire protection systems from Italy. This merchandise consists of single and double clapper siamese fire department connections and pressure restricting valves. During the review period, such merchandise was classifiable under items 680.1420 and 680.1440 of the Tariff Schedules of the United States Annotated. The merchandise is currently classifiable under HTS item numbers 8481.80.1050 and 8481.80.1070. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers one manufacturer/exporter and one third-country reseller of this merchandise to the United States, and the period March 1, 1986 through February 28, 1987.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received comments from the respondent, Rubinetterie A. Giacomini, S.p.A. ("Giacomini"), and the importer, Potter-Roemer, Inc. ("Potter-Roemer"), and rebuttal comments only from the petitioner, Badger-Powhatan. At the request of Giacomini and Potter-Roemer, we held a public hearing on March 1, 1989. On March 6, 1989, we received a post-hearing brief from Potter-Roemer. Because it was untimely filed, it was not considered for these final results of review.

Comment 1: Giacomini contends that the Department erred in resorting to best information available because its questionnaire response was adequate to permit calculations of U.S. price and foreign market value.

DOC's Position: Giacomini's questionnaire response was deficient. Numerous opportunities were given to correct deficiencies found in the questionnaire response. However, each of Giacomini's responses to our requests for additional information contained major deficiencies. Because Giacomini failed to remedy the deficiencies, the Department deemed the response to be inadequate. See our responses to Comments 2, 3, and 4.

Comment 2: Giacomini maintains that, although it did not submit specific information regarding cost differences between the U.S. models and Canadian models, for three U.S. models the Department could have calculated cost differences from the price lists contained in its submission or made no adjustment to price. Either action would have been adverse to Giacomini. The only differences between these U.S. models and certain Canadian models sold contemporaneously are the threading of the Canadian models and the presence or absence of a swivel.

DOC's Position: We disagree. When comparing U.S. sales with sales of similar merchandise, we adjust for differences in cost resulting from physical differences in the merchandise. All physical differences between the U.S. merchandise and the similar home market or third-country merchandise must be identified, along with the corresponding cost differences attributable to each of these physical differences.

In its questionnaire response, Giacomini neither reported potential U.S./Canadian model matches, nor provided differences in material cost, direct labor cost and direct factory overhead cost. As for its suggestion that we use the price differential between the U.S. and third country products to derive cost differences, Giacomini provided no evidence documenting its contention that price differences mirror differences in cost.

The first time that Giacomini gave any indication that there were any Canadian sales of merchandise which were identical, except for the threading, to some of the U.S. sales was after the preliminary results of review. This information was submitted too late to be considered in this review. See *Rhone Poulenc, Inc.* v. *United States* 13 CIT ___, Slip Op. 89-38 (March 23, 1989).

Comment 3: Giacomini contends that the information it submitted regarding constructed value was adequate to calculate foreign market value for those models sold to the United States for which no identical or similar models were sold contemporaneously in Canada.

DOC's Position: We disagree. Giacomini's constructed value response was inadequate in that it did not provide detailed information on costs relating to materials, direct labor, factory overhead, selling, general and administrative expenses, profit, and export packing. For example, although Giacomini did eventually provide total raw materials costs for certain models, it never provided a list of all materials used in production of those models, the amount of each material used, and the purchase price and quantity of each material, as requested in the Department's constructed value questionnaire. In the absence of such information, the Department could not use constructed value as the basis for determining foreign market value.

Comment 4: Giacomini argues that, even if the best information available is used, the Department's choice of what constitutes the "best information" should reflect the fact that Giacomini has cooperated fully in the administrative review, and made a good faith effort to respond to the Department's inquiries.

DOC's Position: We disagree with Giacomini's characterization of its participation in this review. Responses to the Department's requests for information were repeatedly late and incomplete. For example, Giacomini's response to the Department's first supplemental request for information was seven days late and ignored several of the Department's requests, including its request that Giacomini identify, for each U.S. sale, the most similar merchandise sold contemporaneously to Canada, and give the reason for the selection. The Department repeated this question in its second supplemental request for information, and Giacomini's response, which was twelve days late, again ignored the question.

Comment 5: Giacomini argues that, even if use of the best information available were appropriate, the Department used the wrong rate for best information available, since Ganbrook is an independent company and not an agent of Giacomini as stated in the preliminary results of administrative review. Giacomini ships products to Ganbrook without knowledge of Ganbrooks's resale intentions. The Department's assignment to Giacomini of a rate attributed to a independent reseller in the last review is arbitrary, unfair and not in accordance with law.

Potter-Roemer agrees with Giacomini that the Department erred in using Ganbrook's rate from the last administrative review as the best information available for Giacomini. It

argues that the Department should have assigned Giacomini its rate from the prior administrative review period.

DOC's Position: We agree with Giacomini that the evidence on the record does not support the Department's statement in the preliminary results of review that Ganbrook acted as an agent of Giacomini. Information on the record indicates that Ganbrook is a reseller of the merchandise purchased from Giacomini. We do not agree, however, that the Department applied an inappropriate rate as the best information available.

It has been a longstanding practice of the Department, where questionnaire responses are inadequate, to use as best information available the company's rate from the prior administrative review or the highest rate among responding firms in the current review, whichever is higher. No firm submitted an adequate response for this review. Since the Giacomini/Ganbrook rate calculated for the prior review was based on Giacomini's prices for export to the United States, the Department deems it appropriate to use that rate as the best information available.

Furthermore, the rate from the prior review for Giacomini's sales not made through Ganbrook was zero. If the Department were to assign a rate of zero to exporters who fail to respond or respond inadequately to the Department's requests for information, such exporters could, after making no sales at less than fair value for just one year, then dump with impunity in subsequent years.

Comment 6: Potter-Roemer argues that no sale occurred between Giacomini and Ganbrook. Even if a sales transaction occurred between these companies, U.S. price cannot be derived from a purported transfer price between Giacomini and its "agent," Ganbrook. U.S. price must be the price at which the merchandise was first sold into the U.S. marketplace, to an unrelated purchaser, *i.e.*, the price paid by Potter-Roemer.

DOC's Position: Potter-Roemer's argument that no sales occurred between Giacomini and Ganbrook is not relevant, since the Department's determination is based on the best information available due to an inadequate questionnaire response.

The issue here is not the manner in which antidumping duties were calculated in the prior administrative review, but whether the rate established for Giacomini/Ganbrook in that review is appropriate for use as the best information available for Giacomini in this review. See our response to Comment 5.

Final Results of the Review

As a result of the comments received, the final results have not changed from those presented in the preliminary results of review, and we determine that the following margins exist:

Manufacturer and Exporter/Third-Country Reseller (Country)	Time Period	Margin (percent)
Rubinetterie A. Giacomini S.p.A	03/01/86–02/28/87	85.54
Giacomini/Ganbrook Limited (Great Britain)	03/01/86–02/28/87	85.54

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions for each exporter directly to the Customs Service.

Further, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required for shipments from these firms. For any future entries of this merchandise from a new exporter, whose first shipments of certain Italian valves and connections, of brass, for use in fire protection systems occurred after February 28, 1987, and who is unrelated to any reviewed firm or any previously reviewed firm, a cash deposit of 85.54 percent shall be required. These cash deposit requirements are effective for all shipments of certain Italian valves and connections, of brass, for use in first protection systems entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and will remain in effect until the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1675(a)(1)) and section 353.22 of the Commerce Department's regulations published in the **Federal Register** on March 28, 1989 (54 FR 12742) (to be codified in 19 CFR 353.22).

Dated: September 25, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89–23059 Filed 9–28–89; 8:45 am]

BILLING CODE 3510–DS–M

Information Product User Fees

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: The U.S. and Foreign Commercial Service (US&FCS), U.S. Department of Commerce, is establishing and revising user fee rates for the following information: Market Research, Foreign Traders Index (FTI) Client File, Export Contact List Service, and NIH Statistical Retrievals. The rates are as follows:

Commercial Information Management System Market Research (including Overseas Business Reports and Foreign Economic Trend Reports).	$10/article. $10,000 for entire file on computer tape.
International Market Research Reports.	$10/report for 1985–6 reports, $10/article 1987–present, $2 surcharge on diskette.
Foreign Traders Index Client File.	$500 for entire file on computer tape.
Export Contact List Service.	25¢/name for listing or labels, minimum $10.
Trade Opportunity Program Leads.	$25 Electronic Bulletin Board fee, plus on-line charge.
NIH Statistical Retrievals.	Charges determined through computation on system to include access time and personnel time.

EFFECTIVE DATE: October 1, 1989.

FOR FURTHER INFORMATION CONTACT: S. Brooks Shumway, Export Promotion Services, U.S. and Foreign Commercial Service, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230. Telephone (202) 377–8220.

SUPPLEMENTARY INFORMATION: Although the Department of Commerce is not legally required to issue this notice of fees under 15 U.S.C. 1525, this notice is being issued as a matter of general policy.

Authority: 15 U.S.C. 175 and 15 U.S.C. 1525.

Dated: September 22, 1989.

Joseph A. Vasquez, Jr.,

Deputy Assistant Secretary, U.S. & Foreign Commercial Service.

[FR Doc. 89-22953 Filed 9-28-89; 8:45 am]

BILLING CODE 3510-FP-M

Centers for Disease Control; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 88-260R.

Applicant: Centers for Disease Control, Atlanta, GA 30333.

Instrument: High Dose Rate Research Irradiator, Model Gammacell 220.

Manufacturer: Atomic Energy of Canada Ltd., Canada.

Intended Use: See notice at 53 FR 37018, September 23, 1988.

Comments: None Received.

Decision: Denied. Instruments of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, are being manufactured in the United States.

Reasons: In accordance with advice submitted by the National Institutes of Health in its memorandum dated November 1, 1988, the application was denied without prejudice to resubmission (DWOP) pursuant to 19 CFR 301.5(e) on the grounds that comparable domestic instruments were available. The DWOP asked the applicant to demonstrate that the use of domestic instruments manufactured by J.L. Shepherd and Associates, San Fernando, CA, and Neutron Products, Dickerson, MD, would preclude accomplishment of the intended purposes or otherwise prove unsuitable.

In its resubmission the applicant failed to make the requested technical comparison between the foreign and the domestic instruments and to show that the latter were not scientifically equivalent to the foreign article. The applicant stated, in fact, that it had researched the cited instruments and "was unable to determine that instruments available from these companies would be unsuitable for the Centers' objectives."

The applicant then justified its case for duty-free entry on the grounds that (1) it had "no knowledge of these possible alternatives," at the time it procured the instrument, and (2) the procurement was advertised in the *Commerce Business Daily* as a "brand name or equal acquisition," and no proposal from any domestic manufacturer was received. Public Law 89-651, however, requires a finding only as to whether "instrument or apparatus of equivalent scientific value * * * is being manufactured in the United States," not that there be an active United States bidder. Pursuant to 19 CFR 301.5(d)(2), a domestic manufacturer can be considered "unwilling" to have supplied an instrument only if it was formally requested to bid on it.

In summary, the applicant has failed to cite any technical deficiencies of the domestic instruments for its purposes and has admitted that equivalent equipment is available from domestic manufacturers. Accordingly, the application, is denied.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89-23072 Filed 9-28-89; 8:45 am]

BILLING CODE 3510-DS-M

Vanderbilt University, et al.; Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Public Law 89-651; 80 Stat. 897; 15 CFR 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 subsections 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 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 89-214.

Applicant: Vanderbilt University, 21st Avenue, Nashville, TN 37232.

Instrument: Electron Microscope, Model CM20.

Manufacturer: N.V. Philips, The Netherlands.

Intended Use: The instrument will be used in the following experiments:

(1) Characterization of the subsurface layer before and after a wear test (reciprocating cylinder on flat or pin on disk),

(2) Investigation of the ion implanted materials to help interpret Rutherford Backscattering data, electron paramagnetic resonance spectra and optical absorption spectra and

(3) Characterization of the refined microstructures resulting from these samples processed by using electromagnetic levitation.

The basic goal of these experiments is to develop a fundamental understanding of the structure and property relationships, i.e. between the atomic arrangement of the atoms and their physical properties. The instrument will also be used for educational purposes in the courses: MSE 151, Introduction to Materials Science; MSE 275, Diffraction Methods; and MSE 343, Transmission Electron Microscopy.

Application Received by Commissoner of Customs: August 23, 1989.

Docket Number: 89-215

Applicant: Case Western Reserve University, Department of Physiology and Biophysics, 2119 Abington Road, Cleveland, OH 44106.

Instrument: Rapid Kinetics Instrument, Multi-mixing, Model SF-51MX.

Manufacturer: Hi-Tech Scientific, Ltd., United Kingdom.

Intended Use: Studies of rapid reactions of hemoproteins (hemoglobin, myoglobin, cytochrome oxidase and peroxidase) with ligands such as oxygen, carbon monoxide, and hydrogen peroxide.

Application Received by Commissioner of Customs: August 23, 1989.

Docket Number: 89-216.

Applicant: U.S. Department of Agriculture, Agricultural Research Service, W-321, Turner Hall 1102 S. Goodwin, Urbana, IL 61801.

Instrument: Chlorophyll Fluorometer System, Model PAM 101.

Manufacturer: Heinz Walz, West Germany.

Intended Use: Investigation of the effects of drought on the photosynthetic performance of sunflower, canola, and soybean crops.

Application Received by Commissioner of Customs: August 23, 1989.

Docket Number: 89-217

Applicant: Cleveland Clinic Foundation, One Clinic Center, 9500 Euclid Avenue, Cleveland, OH 44195-5069.

Instrument: Electron Microscope, Model CM12.

Manufacturer: N.V. Philips, The Netherlands.

Intended Use: The instrument will be used for the following:

(1) Investigation of the mechanisms of subcellular CA^{2+} regulation in the cardiac myocyte *in situ*, and in particular to delineate the relative roles of the sarcoplasmic reticulum and mitochondria.

(2) The study of the role of adhesive proteins in the aggregation of platelets, the uptake of altered forms of the proteins by macrophages, and the bridging of cell surfaces by the proteins.

(3) Obtaining a mechanistic understanding of how receptors for Cbl-binding proteins regulate Cbl circulation through the enterohepatic system.

(4) Biochemical and morphological studies on the cellular uptake of low density liprotein by receptor mediated endocytosis addressing the questions: (a) Is initial binding of large aggregates to the LDL receptor required for phagocytosis to occur and (b) at what threshold of particle size does RME shift to phagocytosis?

(5) Examination of the subcellular organization of the hypothalamic Ang peptide system, specifically the investigation of the potential for Ang peptide in parasynaptic or synaptic input in the hypothalamus.

Application Received by Commissioner of Customs: August 28, 1989.

Docket Number: 89–218.

Applicant: Duke University, Botany Department, Durham, NC 27706.

Instrument: Chlorophyll Fluorometer System.

Manufacturer: Walz, West Germany.

Intended Use: This instrument is intended for use in studying low temperature chlorophyll fluorescence in plant leaves. Experiments will be made to investigate changes in chlorophyll fluorescence, indicative of changes in Photosystem II activity, with changes in environmental stress, including temperature, water and salinity stress. The results from such experiments will provide a valuable basis for understanding photosynthetic susceptibility to environmental stresses.

Application Received by Commissioner of Customs: August 28, 1989.

Docket Number: 89–219.

Applicant: University of Maine, Department of Zoology, Room 100, Murray Hall, Orono, ME 04469.

Instrument: Calorespirometer.

Manufacturer: Niroblitz GmbH, Austria.

Intended Use: The instrument will be used for studying the rates of metabolic heat dissipation and oxygen consumption in small aquatic organisms (bacteria, algae, invertebrates, fish eggs and embryos). Research will consist of the following topics: (a) Physiological energetics of marine invertebrates during environmental and physiological hypoxia and aerobic recovery, (b) metabolic characterization of euryoxic invertebrates and thiobiotic meiofauna, (c) microbial mineralization processes in marine sediments, and the effects on them by toxic metabolites (halophenols) excreted by invertebrates, (d) metabolism in larval invertebrates, and (e) transient involvement of anaerobic metabolism during embryogenesis of fish having different LDH-B genotypes. The instrument will also be used in the course Physiological Ecology of Marine Organisms for training graduate students majoring in various aspects of marine science to conduct original research, including the design and completion of experiments, analysis of data, preparation of a scientific paper, and oral presentation of the study.

Application Received by Commissioner of Customs: August 31, 1989.

Docket Number: 89–220.

Applicant: Presbyterian Medical Center, 51 North 39th Street, Philadelphia, PA 19104.

Instrument: Micromanipulator.

Manufacturer: De Marco Engineering, Switzerland.

Intended Use: The instrument will be used to study the partial pressure of oxygen in the retina of the cat to determine how the retinal circulation supplies oxygen to the retinal tissue and what influences this supply.

Application Received by Commissioner of Customs: August 31, 1989.

Docket Number: 89–221.

Applicant: Thomas Jefferson University, Jefferson Medical College, 804 College Building, 1025 Walnut Street, Philadelphia, PA 19107.

Instrument: Electron Microscope, Model H–7000–3.

Manufacturer: Nissei Sangyo America, Ltd.

Intended Use: Studies of biological specimens obtained from lung, blood, and intestine (cells from the lung, white blood cells from peripheral blood, and smooth muscle cells from intestine). The experiments conducted will include: (a) Use of experimental models of acute lung injury to determine the cells involved in causing damage to the lung, (b) parallel clinical studies of humans suffering from adult respiratory distress syndrome, (c) focus on environmental polluntants which attack the respiratory system, and (d) analysis of the mechanism responsible for smooth muscle function and dysfunction in the intestine. In addition the instrument will be used for teaching graduate students and post-doctoral fellows how to use an electron microscope and how to apply state-of-the-art methods to electron microscopy.

Application Received by Commissioner of Customs: August 31, 1989.

Docket Number: 89–222.

Applicant: Columbia University, Lamont-Doherty Geological Observatory, Route 9W, Palisades, NY 10964.

Instrument: Gas Mass Spectrometer, Model VG 5400.

Manufacturer: VG Isotopes, United Kingdom.

Intended Use: The instrument will be used for analysis of He and Ne concentrations and $^3He/^4He$ ratios of water samples from natural systems. In addition, the instrument will be used for training graduate students in methods of noble gas analysis.

Application Received by Commissioner of Customs: September 5, 1989.

Docket Number: 89–223.

Applicant: National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892.

Instrument: Rapid Kinetics Instrument (multi-mixing), Model QFM–5.

Manufacturer: Biologic, Co., France.

Intended Use: Studies of enzymes involved in DNA metabolism and DNA recombination reaction to determine kinetic parameters for DNA binding, binding to other co-factors, phosphodiester bond cleavages and formation of new phosphodiester bonds. Preparative quenched flow/multi-mixing experiments will be used to investigate the kinetic parameter of formation as well as disappearances of short-lived reaction intermediates.

Application Received by Commissioner of Customs: September 5, 1989.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89–23073 Filed 9–28–89; 8:45 am]

BILLING CODE 3510–DS–M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1989; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to Procurement List 1989 commodities to be produced and services to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: October 30, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: On March 17, 24 and July 10, 1989, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (54 FR 11263, 12262 and 28832) of proposed additions to Procurement List 1989, which was published on November 15, 1988 (53 FR 46018).

No comments were received in direct response to the proposed additions to the Procurement List. However, during the early development stage, the current contractor for the correction fluid claimed in a a letter to the Committee that the addition would adversely affect his firm as well as its employment levels. He also indicated that funds expended by his firm for equipment to produce the item would be of little future value due to the maturity of the correction fluid market. During the comment period, the vice-president of the firm, in a telephone conversation with the Committee staff, reiterated that the addition of the correction fluid to the Procurement List would have serious economic impact on his firm, and that he intended to submit written comments prior to the close of the comment period. However, no written comments were received from that firm.

The value of the firm's current contract for the correction fluid represents approximately 10.4 percent of its total annual sales. This is not considered to be severe adverse impact.

After consideration of the material presented to it concerning capability of qualified workshops to produce the commodities and provide the services at a fair market price and impact of the addition of the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6. I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities and services listed.

c. The actions will result in authorizing small entities to produce the commodities and provide the services procured by the Government.

Accordingly, the following commodities and services are hereby added to Procurement List 1989:

Commodities

Correction fluid, 7510–01–020–2806.
Solvent, Correction Fluid, 7510–01–013–9215.

Services

Commissary Warehousing, Little Rock Air Force Base, Arkansas.
Grounds Maintenance, Mare Island Naval Complex and Roosevelt Terrace, Vallejo, California.

Beverly L. Milkman,

Executive Director.

[FR Doc. 89–23049 Filed 9–28–89; 8:45 am]

BILLING CODE 6820–33–M

Procurement List 1989; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to Procurement List 1989 services to be provided by workshops for the blind or other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: October 30, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following services to Procurement List 1989, which was published on November 15, 1988 (53 FR 46018):

Services

Commissary Warehouse Service, Homestead Air Force Base, Florida.
Janitorial/Custodial, Federal Building, U.S. Post Office and Courthouse, Juneau, Alaska.
Janitorial/Custodial, U.S. Customhouse, New Orleans, Louisiana.
Janitorial/Custodial, JFK Federal Building (High Rise), Boston, Massachusetts.
Janitorial/Custodial Naval Air Station, Building 2740, Whidby Island, Washington.

Beverly L. Milkman,

Executive Director.

[FR Doc. 89–23050 Filed 9–28–89; 8:45 am]

BILLING CODE 6820–33–M

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; Amended Record Systems

AGENCY: Department of the Navy, DOD.

ACTION: Notice of amended systems of records subject to the Privacy Act.

SUMMARY: The Department of the Navy proposes to amend eleven systems of records in its inventory of record systems subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a).

DATES: This proposed action will be effective without further notice October 30, 1989, unless comments are received which would result in a contrary determination.

ADDRESS: Send any comments to Mrs. Gwen Aitken, Head, PA/FOIA Branch, Office of the Chief of Naval Operations (OP–09B30), Room 5E521, Department of the Navy, The Pentagon, Washington, DC 20350–2000. Telephone (202) 697–1459, Autovon: 227–1459.

SUPPLEMENTARY INFORMATION: The Department of the Navy systems of records notices inventory subject to the Privacy Act of 1974 have been published in the **Federal Register** as follows:

51 FR 12908 Apr 16, 1986
51 FR 18086 May 16, 1986 (Compilation, changes follow)
51 FR 19884 Jun 3, 1986
51 FR 30377 Aug 26, 1986
51 FR 30393 Aug 26, 1986
51 FR 45931 Dec 23, 1986
52 FR 2147 Jan 20, 1987
52 FR 2149 Jan 20, 1987
52 FR 8500 Mar 18, 1987
52 FR 15530 Apr 29, 1987
52 FR 22671 Jun 15, 1987

52 FR 45846 Dec 2, 1987
53 FR 17240 May 16, 1988
53 FR 21512 Jun 8, 1988
53 FR 22028 Jun 13, 1988
53 FR 25363 Jul 6, 1988
53 FR 39499 Oct 7, 1988
53 FR 41224 Oct 20, 1988
54 FR 8322 Feb 28, 1989
54 FR 14377 Apr 11, 1989
54 FR 32682 Aug 9, 1989

The specific changes to the record systems being amended are set forth below, followed by the system notices, as amended, published in their entirety. These notices are not within the purview of subsection (r) of the Privacy Act, 5 U.S.C. 552a, which requires the submission of altered systems reports.

Dated: September 25, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N01001-1

System name:

Roster, Naval Reserve Law Companies (51 FR 18087, May 16, 1986).

Changes:

System name:

Delete the word "Companies" and substitute with "Units".

* * * * *

Categories of individuals covered by the system:

In line two, delete the word "districts" and substitute with "Readiness Commands." In line eight, delete the word "the" and also delete the word "companies" and substitute with "units".

Categories of records in the system:

In line four, delete the word "companies" and substitute with the word "units." In line six, delete "name of spouse,".

* * * * *

Purpose(s):

In line three, delete the word "Companies" and substitute with "Units".

* * * * *

Notification procedure:

Delete the entire entry and substitute with the following "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Judge Advocate General (Code 62), Department of the Navy, 200 Stovall St., Alexandria, VA 22332-2400. The request should contain full name, address, and social security number of the individual concerned and should be signed.

Personal visits may be made to the Reserve Personnel Division, Office of the Judge Advocate General, Room 8N39, Hoffman Bldg. II, 200 Stovall St., Alexandria, VA 22332-2400. Individuals should be able to supply proper identification, such as a picture ID or driver's license."

Record access procedure:

Delete the entire entry and substitute with the following, "Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Judge Advocate General (Code 62), Navy Department, 200 Stovall St., Alexandria, VA 22332-2400."

Contesting record procedure:

Delete the entire entry and substitute with the following, "The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR Part 701, or may be obtained from the system manager."

* * * * *

N01001-1

SYSTEM NAME:

Roster, Naval Reserve Law Units.

SYSTEM LOCATION:

Office of the Judge Advocate General (Code 62), Department of the Navy, 200 Stovall St., Alexandria, VA 22332-2400.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Listing of law program officers in Naval Readiness Commands having cognizance over Reserve affairs; listing of Naval Legal Service Offices; listing of the staff of the Director, Naval Reserve Law Programs; listing of Naval Reserve Law Company commanding officers; and listing of members of law units.

CATEGORIES OF RECORDS IN THE SYSTEM:

Roster contains names and locations of personnel associated with Naval Reserve Law Programs; names of law units, social security number, rank, home and office addresses, and telephone numbers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 806.

PURPOSE(S):

To facilitate and promote liaison between Naval Reserve Law Units, law program officers, the Director, Naval Reserve Law Programs, and the Navy's legal assistance program. It is an essential publication used by legal assistance officers Navy-wide. It apprises Naval Reserve Officers of the locations of Reserve units in order that they participate in the reserve law program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM

STORAGE:

File folders.

RETRIEVABILITY:

By names of members and location of Reserve units.

SAFEGUARDS:

Records are maintained under the control of authorized personnel during working hours; the office space in which the rosters are maintained is locked outside official working hours.

RETENTION AND DISPOSAL:

Rosters are retained for approximately two years and destroyed when a new edition is published.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, VA 22332-2400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Judge Advocate General (Code 62), Department of the Navy, 200 Stovall St., Alexandria, VA 22332-2400. The request should contain full name, address, and social security number of the individual concerned and should be signed.

Personal visits may be made to the Reserve Personnel Division, Office of the Judge Advocate General, Room 8N39, Hoffman Bldg II, 200 Stovall St., Alexandria, VA 22332-2400. Individuals should be able to supply proper identification, such as a picture ID or driver's license.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this

system of records should address written inquiries to the Judge Advocate General (Code 62), Navy Department, 200 Stovall St., Alexandria, VA 22332–2400.

CONTESTING RECORD PROCEDURE:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR Part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is received from Reserve officers who participate in the Naval Reserve Law Programs.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N01500–1

System name:

Naval Education Development Records (51 FR 18109, May 16, 1986).

Changes:

* * * * *

Authority:

Add "and E.O. 9397" to the end of the entry.

* * * * *

Safeguards:

Delete entire entry and substitute with "Records are stored in locked cabinets and safes. Access to all records is under control of authorized personnel during working hours. After-hours access to the building in which the records are maintained is protected by uniformed guards requiring identification for admission. Office spaces are locked after hours."

Retention and disposal:

Delete the entire entry and substitute with the following "Destroy after completion of training, transfer, or discharge, provided the data has been recorded in the individual's service record or on the student's record card."

System manager(s) and address:

Delete the entire entry and substitute with "Chief of Naval Education and Training, Education and General Training Division, Naval Air Station, Pensacola, FL 32508–5100."

Notification procedure:

Delete the entire entry and substitute with the following "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Chief of Naval Education and Training, Education and General Training Division, Naval Air Station, Pensacola, FL 32508–5100. The request should contain name, social security number, and address of the individual concerned and should be signed."

Record access procedure:

Delete the entire entry and substitute with the following "Individuals seeking access to records about themselves should address written inquiries to the Chief of Naval Education and Training, Education and General Training Division, Naval Air Station, Pensacola, FL 32508–5100."

Contesting record procedure:

Delete the entire entry and substitute with the following "The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR Part 701; or may be obtained from the system manager."

* * * * *

NO1500–1

SYSTEM NAME:

Naval Educational Development Records.

SYSTEM LOCATION:

Chief of Naval Education and Training Naval Air Station Pensacola, FL 32508–5100.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants, participants, graduates and staff of officer acquisition professional development, Navy Youth, dependents' education (Atlantic), and Non-Traditional Education Support programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications, biographical information, student records and reports of performance, graduation, and disenrollment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397.

PURPOSE(S):

Used by Naval Educational Development staff members, selection boards, Naval Military Personnel Command, and Navy media for selection, student monitoring, and utilization of graduates.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders and punched cards.

RETRIEVABILITY:

Name and social security number.

SAFEGUARDS:

Records are stored in locked cabinets and safes. Access to all records is under control of authorized personnel during working hours. After-hours access to the building in which the records are maintained is protected by uniformed guards requiring identification for admission. Office spaces are locked after hours.

RETENTION AND DISPOSAL:

Destroy after completion of training, transfer, or discharge, provided the data has been recorded in the individual's service record or on the student's record card.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Naval Education and Training, Education and General Training Division, Naval Air Station, Pensacola, FL 32508–5100.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Chief of Naval Education and Training, Education and General Training Division, Naval Air Station, Pensacola, FL 32508–5100. The request should contain name, social security number, and address of the individual concerned and should be signed.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves should address written inquiries to the Chief of Naval Education and Training, Education and General Training Division, Naval Air Station, Pensacola, FL 32508–5100.

CONTESTING RECORD PROCEDURE:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR Part

701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual applications, selection board proceedings, transcripts, and correspondence.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NO1770-3

System name:

Naval Academy Cemetery Records (51 FR 18123, May 16, 1986).

Changes:

System name:

After the word "Cemetery" add the following "and Columbarium".

System location:

Delete the entire entry and substitute with the following "Security Department and Public Works Department, U.S. Naval Academy, Annapolis, MD 21402-5000".

Categories of individuals covered by the system:

In line three, after the word "interred" add the following "/inurned". In line four, after the word "Cemetery" add the following "/Columbarium".

Categories of records in the system:

Delete the entire entry and substitute with the following "State Burial Transit Permit, Application for Reimbursement of Headstone or Marker Expenses (VA Form 21-8834), Application for Standard Government Headstone or Marker for Installation in a Private or Local Cemetery (VA Form 40-1330), Lot Marker (NDW-USNA-DMC-1170/08), Columbarium Niche Cover Inscription Information (NDW-USNA-DMC-5370/42), U.S. Naval Academy Internment/Inurnment Record (NDW-USNA-DMC-5360/43), U.S. Naval Academy Columbarium Record (NDW-USNA-DMC-5360/45), U.S. Naval Academy Cemetery Record (NDW-USNA-DMC-1170/46), Naval Academy Foundation Order (NDW-USNA-H30-5360/09), and correspondence to and from individuals. Specifically, information contained on the forms or correspondence may be: Full name, home address, rank, service, social security number, date and place of birth, date and place of death, marital status, name of father and mother, name of next of kin and their home address, telephone number, date of birth and date of death (if applicable), date and place of burial, lot number, and other information relating to burial arrangements."

Authority for maintenance of the system:

Delete the entire entry and substitute with the following: "5 U.S.C. 301, Departmental Regulations; Title 10 sections 1481-1488; 44 U.S.C. 3101; and E.O. 9397."

Purpose(s):

Delete the entire entry and substitute with the following "To maintain official records of individuals holding gravesite reservations and/or individuals interred/inurned in the Naval Academy Cemetery or Columbarium. Records are used to respond to general inquiries from individuals holding gravesite reservations, to verify eligibility of spouses of an officer or enlisted person of the Navy or Marine Corps who is interred/inurned in the Naval Academy Cemetery or Columbarium."

Storage:

Delete period at end of sentence and add the following "and microfiche."

Retrievability:

Delete period at end of sentence and add the following "and numerically by lot number."

Safeguards:

At the end of the entry, add the following "Files are kept in locked filing cabinets during non-working hours. Microfiche records are kept in the Naval Academy Archives which is not open to general visiting and is locked during non-working hours."

Notification procedure:

Delete the entire entry and substitute with the following "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Superintendent, U.S. Naval Academy, Annapolis, MD 21402-5000. Requests should contain name and social security number of the individual concerned.

Record access procedure:

Delete the entire entry and substitute with the following "Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Superintendent, U.S. Naval Academy, Annapolis, MD 21402-5000."

Contesting record procedure:

Delete the entire entry and substitute with the following "The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR Part 701; or may be obtained from the system manager."

Record source categories:

In line two, after the word: "applies" add the following", the next of kin,".

* * * * *

NO1770-3

SYSTEM NAME:

Naval Academy Cemetery and Columbarium Records.

SYSTEM LOCATION:

Security Department and Public Works Department, U.S. Naval Academy, Annapolis, MD 21402-5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Those eligible to reserve a lot for future burial in the Naval Academy Cemetery. Deceased individuals interred/inurned in the Naval Academy Cemetery/Columbarium.

CATEGORIES OF RECORDS IN THE SYSTEM:

State Burial Transit Permit, Application for Reimbursement of Headstone or Marker Expenses (VA Form 21-8834), Application of Standard Government Headstone or Marker for Installation in a Private or Local Cemetery (VA Form 40-1330), Lot Marker (NDW-USNA-DMC-1170/08), Columbarium Niche Cover Inscription (NDW-USNA-DMC-5370/42), U.S. Naval Academy Internment/Inurnment Record (NDW-USNA-DMC-5360/43), U.S. Naval Academy Cemetery Record (NDW-USNA-DMC-1170/46), Naval Academy Foundation Order (NDW-USNA-DMC-5360/09), and correspondence to and from individuals. Specifically, information contained on the forms or correspondence may be: Full name, home address, rank, service, social security number, date and place of birth, date and place of death, marital status, name of father and mother, name of next of kin and their address, telephone number, date of birth and date of death (if applicable), date and place of burial, lot number and other information relating to burial arrangements.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; Title 10 sections 1481-1488; 44 U.S.C. 3101; and Executive Order 9397.

PURPOSE(S):

To maintain official records of individuals holding gravesite

reservations and/or individuals interred/inurned in the Naval Academy Cemetery or Columbarium. Records are used to respond to general inquiries from individuals holding gravesite reservations, to verify eligibility of spouses of an officer or enlisted person of the Navy or Marine Corps who is interred/inurned in the Naval Academy Cemetery or Columbarium.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM

STORAGE:

Paper records in file folders and microfiche.

RETRIEVABILITY:

Alphabetically by last name and numerically by lot number.

SAFEGUARDS:

Records are kept in a building not open to general visiting and are maintained in an area accessible only to authorized personnel. Building is under surveillance of security personnel during non-working hours. Microfiche records are kept in the Naval Academy Archives which is not open to general visiting and is locked during non-working hours.

RETENTION AND DISPOSAL:

Records are permanent. They are retained after the individual is deceased.

SYSTEM MANAGER(S) AND ADDRESS:

Superintendent, U.S. Naval Academy, Annapolis, MD 21402–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Superintendent, U.S. Naval Academy, Annapolis, MD 21402–5000. Requests should contain name and social security number of the individual concerned.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Superintendent, U.S. Naval Academy, Annapolis, MD 21402–5000.

CONTESTING RECORD PROCEDURE:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR Part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information in this system comes from the individual to whom it applies, the next of kin, and from the Register of the Alumni.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None

N03760–1

System name:

Naval Flight Record Subsystem (NAVFLIRS) [51 FR 19885, June 3, 1986].

Changes:

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System location:

Delete the entire entry and substitute with the following "The primary data base is maintained at the Naval Sea Logistics Center, Navy Maintenance Support Office, 540 Carlisle Pike, P.O. Box 2060, Mechanicsburg, PA 17055–0795.

Secondary data bases are maintained at the Naval Safety Center, Naval Air Station, Norfolk, VA 23511–5796 and at Commandant of the Marine Corps, Headquarters, U.S. Marine Corps, Washington, DC 20380–0001.

Local data bases are maintained on all aircraft carriers. Additional Marine Corps sites are FMFPAC ASC 06, Camp Smith, HA; RASC, Camp Pendleton, CA; RJE, Marine Corps Air Station, Cherry Point, NC; 6th FASC, Marine Corps Air Station, Iwakuni, Japan; and ASC, Marine Corps Base, Quantico, VA."

* * * * *

Authority for maintenance of the system:

Delete the entire entry and substitute with "5 U.S.C. 301, Departmental Regulations and E.O. 9397".

* * * * *

Notification procedure:

Delete the entire entry and substitute with the following "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commanding Officer, Naval Sea Logistics Center, 5450 Carlisle Pike, P.O. Box 2060, Mechanicsburg, PA 17055–0795. The request should contain full name, social security number, squadron assigned, and address of the individual concerned and should be signed. Personal visitors will be required to produce military or comparable civilian identification cards."

Record access procedure:

Delete the entire entry and substitute with "Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Commanding Officer, Naval Sea Logistics Center, 5450 Carlisle Pike, P.O. Box 2060, Mechanicsburg, PA 17055–0795."

Contesting record procedure:

Delete the entire entry and substitute with "The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR Part 701; or may be obtained from the system manager."

* * * * *

N03760–1

SYSTEM NAME:

Naval Flight Record Subsystem (NAVFLIRS).

SYSTEM LOCATION:

The primary data base is maintained at the Naval Sea Logistics Center, Navy Maintenance Support Office, 5430 Carlisle Pike, P.O. Box 2060, Mechanicsburg, PA 17055–0795.

Secondary data bases are maintained at the Naval Safety Center, Naval Air Station, Norfolk, VA 23511–5796 and at Commandant of the Marine Corps, Headquarters, U.S. Marine Corps, Washington, DC 20380–0001.

Local data bases are maintained on all aircraft carriers. Additional Marine Corps sites are FMFPAC ASC 06, Camp Smith, HA; RASC, Camp Pendleton, CA; RJE Marine Corps Air Station, Cherry Point, NC; 6th FASC, Marine Corps Air Station, Iwakuni, Japan; and ASC, Marine Corps Base, Quantico, VA.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All aeronautically designated commissioned Navy and Marine Corps Officers and enlisted members assigned as aircrew members in the operation of an aircraft in accordance with the direction of competent authority.

CATEGORIES OF RECORDS IN THE SYSTEM:

Reports of each flight submitted to the custodian of the aircraft. Records contain personal identification (name, rank, social security number), and specific technical data related to the flight of naval aircraft.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397.

PURPOSE(S):

Naval Flight Record Subsystem consolidates the collection of naval flight data into a single, locally controlled collection and correction system, and implements a standard data collection source document (the Naval Flight Record OPNAV 3710/4) throughout the Navy and Marine Corps. It further establishes a single control data base containing all naval flight data.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

To committees authorized by Congress to investigate certain phases of the Naval Aviation Program.

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tape.

RETRIEVABILITY:

Individual records are primarily retrieved by a unique document number assigned to each naval flight record. Additionally, each of the data elements such as pilots' social security number, model aircraft and squadron may be used to retrieve individual records.

SAFEGUARDS:

Magnetic tapes are stored in limited access areas and handled by personnel that are properly trained in working with automated systems of records.

RETENTION AND DISPOSAL:

The primary data base and the secondary data base at the Naval Safety Center are permanent. Records in the secondary data base at Headquarters, U.S. Marine Corps are erased from tape when the individual is removed from active flight status. Local data bases purge all magnetic tape records after six months.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Naval Air Systems Command, Washington, DC 20361–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commanding Officer, Naval Sea Logistics Center, 5450 Carlisle Pike, P.O. Box 2060, Mechanicsburg, PA 17055–0795. The request should contain full name, social security number, squadron assigned, and address of the individual concerned and should be signed. Personal visitors will be required to produce military or comparable civilian identification cards.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Commanding Officer, Naval Sea Logistics Center, 5450 Carlisle Pike, P.O. Box 2060, Mechanicsburg, PA 17055–0795.

CONTESTING RECORD PROCEDURE:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR Part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Aircraft reporting custodian, Navy and Marine Corps pilots.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NO4410–1

SYSTEM NAME:

File of Records of Acquisition, Transfer and Disposal of Privately Owned Vehicles (51 FR 18137, May 16, 1986).

CHANGES:

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SYSTEM LOCATION:

Delete the entire entry and substitute with "Naval Communication Station, United Kingdom, FPO New York, 09516–3000".

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

In lines two and three, delete the words "U.S. Naval Radio Station, FPO New York 09516" and replace with "U.S. Naval Communication Station, FPO New York 09516–3000."

* * * * *

SAFEGUARDS:

In line one, delete the word "Admin" and replace with "CMAA".

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete the entire entry and substitute with the following "Commanding Officer, Naval Communication Station, United Kingdom, FPO New York 09516–3000 is overall policy official with the Chief Master at Arms, naval Communication Station, United Kingdom, FPO New York 09516–3000 as the subordinate holder."

NOTIFICATION PROCEDURE:

Delete the entire entry and substitute with the following "Individuals seeking access to determine whether this system of records contains information about themselves should address written inquiries to the Commanding Officer, U.S. Naval Communication Station, United Kingdom, FPO New York 09516–3000. The request should contain name, social security number, and address of the individual concerned and should be signed.

Personal visits may be made to that office, but individuals must have valid military ID or, if no longer in the military, have other valid identification such as a driver's license."

RECORD ACCESS PROCEDURE:

Delete the entire entry and substitute with the following "Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Commanding Officer, U.S. Naval Communication Station, United Kingdom, FPO New York 09516–3000."

CONTESTING RECORD PROCEDURE:

Delete the entire entry and substitute with the following "The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR Part 701; or may be obtained from the system manager."

* * * * *

NO4410–1

SYSTEM NAME:

File of Records of Acquisition, Transfer and Disposal of Privately Owned Vehicles.

SYSTEM LOCATION:

U.S. Naval Communication Station, United Kingdom, FPO New York 09516–3000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

United States Naval personnel stationed at U.S. Naval Communication Station, United Kingdom, FPO New York

09516–3000 who own a concession vehicle in the United Kingdom.

CATEGORIES OF RECORDS IN THE SYSTEM:

Request for delivery of a motor vehicle without payment of duty, value added tax and car tax.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. § 301, Departmental Regulations and E.O. 9397.

PURPOSE(S):

To maintain information on type of car, engine number, license number, year, make of car, base assigned, organization, social security number, and paygrade.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Name.

SAFEGUARDS:

Locked in CMAA Office with a 24 hour security watch.

RETENTION AND DISPOSAL:

Records are maintained as long as a person owns a concession vehicle in the United Kingdom. Records are burned as soon as vehicle is either shipped out of the U.K. or destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding Officer, U.S. Naval Communication Station, United Kingdom, FPO New York 09516–3000 is overall policy official with the Chief Master At Arms Office, U.S. Naval Communication Station, United Kingdom, FPO New York 09516–3000 as the subordinate holder.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commanding Officer, U.S. Naval Communication Station, United Kingdom, FPO New York 09516–3000. The request should contain name, social security number, and address of the individual concerned and should be signed. Personal visits may be made to that office, but individuals must have valid military ID or, if no longer in the military, have other valid identification such a a driver's license.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Commanding Officer, U.S. Naval Communication Station, United Kingdom, FPO New York 09516–3000.

CONTESTING RECORD PROCEDURE:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR Part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Applicable U.S. Serviceman.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NO5300–2

System name:

Administrative Personnel Management System (51 FR 18146, May 16, 1986).

Changes:

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Categories of records in the system:

In line 19, after the word "health" add the following "/safety".

* * * * *

Authority for maintenance of the system:

Delete the entire entry and substitute with the following "5 U.S.C. 301, Departmental Regulations and E.O. 9397."

Purpose(s):

In line 17, after the word "benefits;" add the following "safety reporting/monitoring".

* * * * *

Notification procedure:

Delete the entire entry and substitute with the following "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the naval activity where currently or previously employed. The request should include full name, social security number, and address of the individual concerned and should be signed."

Record access procedure:

Delete the entire entry and substitute with the following "Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the activity where currently or previously employed."

Contesting record procedure:

Delete the entire entry and substitute with the following "The Department of the Navy rules for accessing records and contesting contents and appealing determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR Part 701; or may be obtained from the system manager."

* * * * *

N05300–2

SYSTEM NAME:

Adminstrative Personnel Management System.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy as indicated in the directory of Department of the Navy activities. Official mailing addresses are in the Navy's address directory in the appendix to the Navy Department's compilation of systems notices. Included in this notice are those records duplicated for maintenance at a site closer to where the employee works (e.g., in an administrative office or a supervisor's work area).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All civilian (including former members and applicants for civilian employment), military, and contract employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence/records concerning identification, location (assigned organization code and/or work center code); MOS; labor code; payments for training, travel advances and claims, hours assigned and worked, routine and emergency assignments, functional responsibilities, clearance, educational and experience characteristics and training histories, travel, retention group, hire/termination dates; type of appointment; leave; trade; vehicle parking; disaster control; community relations; (blood donor, etc.), employee recreation programs; grade and series or rank/rate; retirement category; awards; biographical data; property custody; personnel actions/dates; violations of rules; physical handicaps and health/safety data; veterans preference; mutual aid association memberships; union

memberships; qualifications; and, other data needed for personnel, financial, line, and security management, as appropriate.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397.

PURPOSE(S):

To manage, supervise, and administer programs for all Navy civilian and military personnel such as preparing rosters/locators; contacting appropriate personnel in emergencies; training; identifying routine and special work assignments; determining clearance for access control; controlling the budget; travel claims; manpower and grades; maintaining statistics for minorities; employment; labor costing; watch bill preparation; projection of retirement losses; verifying employment to requesting banking; rental and credit organizations; name change location; checklist prior to leaving activity; payment of mutal aid benefits; safety reporting/monitoring; and, similar adminstrative uses requiring personnel data. Arbitrators and hearing examiners in civilian personnel matters relating to civilian grievances and appeals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USERS:

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, card files, punched cards, magnetic tape, and magnetic disc.

RETRIEVABILITY:

Name, social security number, case number, organization, work center and/or job order.

SAFEGUARDS:

Password controlled system, file, and element access based on predefined need to know. Physical access to terminals, terminal rooms, buildings and activities' grounds are controlled by locked terminals and rooms, guards, personnel screening and visitor registers.

RETENTION AND DISPOSAL:

Normally retained for two years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding officer of the activity in question. Official mailing addresses are in the Navy's address directory in the appendix to the Navy Department's compilation of systems notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the naval activity where currently or previously employed. The request should include full name, social security number, and address of the individual concerned and should be signed.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the activity where currently or previously employed.

CONTESTING RECORD PROCEDURE:

The Department of the Navy rules for accessing records and contesting contents and appealing determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR Part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual, employment papers, other records of the organization, official personnel jackets, supervisors, official travel orders, educational institutions, applications, duty officer, investigations, OPM officials, and/or members of the American Red Cross.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NO5300–3

System name:

Faculty Professional Files (51 FR 18146, May 16, 1986).

Changes:

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AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete the entire entry and substitute with "5 U.S.C. 301, Departmental Regulation."

Purpose(s):

Delete entire entry and substitute with the following "Promotion/tenure case evaluation files are used by Department Chairmen, Deans, and the Superintendent to determine the ranking promotion, tenure, reappointment and evaluation of faculty personnel. Faculty professional status and accomplished files constitute the official record of employment."

* * * * *

Retention and disposal:

Delete the entire entry and substitute with the following "Faculty academic promotion/tenure case evaluation files are destroyed upon personnel action completion. Faculty professional status and accomplishment files are retained in a permanent file."

* * * * *

Notification procedure:

Delete the entire entry and substitute with the following "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Provost, Naval Postgraduate School (Code 01), Monterey, CA 93943–5100. Requests should contain full name and address of the individual concerned and should be signed."

Record access procedure:

Delete the entire entry and substitute with the following "individuals seeking access to records about themselves in this system of records should address written inquiries to the Provost, Naval Postgraduate School (Code 01) Monterey, CA 93943–5100."

Contesting record procedure:

Delete the entire entry and substitute with the following "The Dapartment of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR Part 701; or may be obtained from the system manager."

* * * * *

NO5300–3

SYSTEM NAME:

Faculty Professional Files.

SYSTEM LOCATION:

Superintendent, Naval Postgraduate School, Monterey, CA 93943–5100.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Faculty personnel employed by the Naval Postgraduate School and individuals applying for positions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Faculty academic promotion/tenure case evaluation files and faculty professional status and accomplishment file.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations.

PURPOSE(S):

Promotion/tenure case evaluation files are used by Department Chairmen, Deans, and the Superintendent to determine the ranking, promotion tenure reappointment evaluation of faculty personnel. Faculty professional status and accomplishment files constitute official record of employment.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Name.

SAFEGUARDS:

During work hours, records are secured within locked file drawers within departmental offices to which only authorized personnel have access. After working hours, records are kept within locked file drawers within secured offices located within a locked building which is part of a Naval facility to which entry is restricted.

RETENTION AND DISPOSAL:

Faculty academic promotion/tenure case evaluation files are destroyed upon personnel action completion. Faculty professional status and accomplishment files are retained in a permanent file.

SYSTEM MANAGER(S) AND ADDRESS:

Provost, Code 01, Naval Postgraduate School, Monterey, CA 93943–5100.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Provost, Naval Postgraduate School (Code 01), Monterey, CA 93943–5100. Requests should contain full name and address of the individual concerned and should be signed.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves in this system of records should address written inquiries to the Provost, Naval Postgraduate School (Code 01), Monterey, CA 93943–5100.

CONTESTING RECORD PROCEDURE:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information in this system comes from previous employers, educational background, correspondence, peer evaluations, supervisory evaluations and student evaluations of teaching.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NO5810–2

System name:

Military Justice Correspondence File (51 FR 18167, May 16, 1986)

Changes:

* * * * *

Categories of individuals covered by the system:

Delete the entire entry and substitute with "File contains copies of correspondence and background material to answer inquiries regarding Navy and Marine Corps personnel who were the subject of military justice proceedings."

* * * * *

Notification procedure:

Delete the entire entry and substitute with "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Deputy Assistant Judge Advocate General (Military Justice), Office of the Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, VA 22332–2400. The request should contain full name and address of the individual concerned and should be signed.

Personal visits may be made to the Military Justice Division, Office of the Judge Advocate General, Room 9S09, Hoffman Bldg II, 200 Stovall St., Alexandria, VA 22332–2400. Individuals making such visits should be able to provide some acceptable identification, e.g. Armed Forces' identification card, driver's license, etc."

Record access procedure:

Delete the entire entry and substitute with "Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Deputy Assistant Judge Advocate General (Military Justice), Office of the Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, VA 22332–2400."

Contesting record procedure:

Delete the entire entry and substitute with the following: "The Department of the Navy rules for accessing records and contesting contents and appealing determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR Part 701; or may be obtained from the system manager."

* * * * *

NO5810–2

SYSTEM NAME:

Military Justice Correspondence File.

SYSTEM LOCATION:

Office of the Judge Advocate General (Code 20), Department of the Navy, 200 Stovall St., Alexandria, VA 22332–2400.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty, retired, and discharged Navy and Marine Corps personnel who were the subject of military justice proceedings.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains copies of correspondence and background material to answer inquiries regarding Navy and Marine Corps personnel who were the subject of military justice proceedings.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. § 301, Departmental Regulations.

PURPOSE(S):

To provide a record of individual inquiries and JAG responses concerning military justice related matters for reference purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Correspondence is kept in alphabetical order according to the last name of the individual who is the subject of the correspondence.

SAFEGUARDS:

Files are maintained in file cabinets and other storage devices under the control of authorized personnel during working hours; the office space in which the file cabinets and storage devices are located is locked outside official working hours.

RETENTION AND DISPOSAL:

Records are maintained in office for two years and then forwarded to the Federal Records Center, Suitland, MD 20409 for storage.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Judge Advocate General (Military Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, VA 22332–2400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Deputy Assistant Judge Advocate General (Military Justice), Office of the Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, VA 22332–2400. The request should contain full name and address of the individual concerned and should be signed.

Personal visits may be made to the Military Justice Division, Office of the Judge Advocate General, Room 9S09, Hoffman Bldg II, Stovall St., Alexandria, VA 22332–2400. Individuals making such visits should be able to provide some acceptable identification, e.g. Armed Forces' identification card, driver's license, etc.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Deputy Assistant Judge Advocate General (Military Justice), Office of the Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, VA 22332–2400.

CONTESTING RECORD PROCEDURE:

The Department of the Navy rules for accessing records and contesting contents and appealing determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Records of trial and correspondence from commands and agencies involved in the matter which is the subject of the correspondence.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NO5810–3

System name:

Appellate Case Tracking System (ACTS) (51 FR 18168, May 16, 1986).

Changes:

* * * * *

System location:

Delete the entire entry and substitute with "Administrative Support Division, Navy and Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, Building 111, Washington, DC 20374–2001."

* * * * *

Categories of records in the system:

In line one, delete the word "Naval" and substitute with "Navy".

Authority for maintenance of the system:

Delete the entire entry and substitute with "10 U.S.C. 866, 867; 5 U.S.C. 301; and E.O. 9397."

* * * * *

Retrievability:

In line six, delete the words "of" and "or the".

* * * * *

System manager(s) and address:

In line one, delete "Head, Claims Defense/ADP Programs" and replace with "Assistant Judge Advocate General (Military Law),".

* * * * *

Notification procedure:

Delete the entire entry and substitute with "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Deputy Assistant Judge Advocate General, Administrative Support Division, Navy and Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, Building 111, Washington, DC 20374–2001. The request should contain full name, social security number, and address of the individual concerned and should be signed.

Personal visits may be made to the Administrative Support Division, Office of the Judge Advocate General, Washington Navy Yard, Building 111, Washington, DC 20374–2001. Individuals making such visits should be able to provide some acceptable identification, e.g. Armed Forces' ID card, driver's license, etc."

Record access procedure:

Delete the entire entry and substitute with "Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Deputy Assistant Judge Advocate General, Administrative Support Division, Navy and Marine Corps Appellate Review Authority, Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, Building 111, Washington, DC 20374–2001."

Contesting record procedure:

Delete the entire entry and substitute with "The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR Part 701; or may be obtained from the system manager."

* * * * *

NO5810–3

SYSTEM NAME:

Appellate Case Tracking System (ACTS).

SYSTEM LOCATION:

Administrative Support Division, Navy and Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, Building 111, Washington, DC 20374–2001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who have their appellate case reviewed by the Navy-Marine Corps Court of Military Review and/or the Court of Military Appeals.

CATEGORIES OF RECORDS IN THE SYSTEM:

Navy appellate case records; additional Navy appellate case information records; and historical Navy appellate case records. Files contain personal information such as name, rank, social security number, etc., and specific information with regard to the Navy appellate cases.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 866, 867; 5 U.S.C. 301, and E.O. 9397.

PURPOSE(S):

To track the status of courts-martial cases appealed to the Navy-Marine Corps Court of Military Review and Court of Military Appeals. The system

will also be used by the officials and employees of the Department of the Navy to provide management and statistical information to governmental, public, and private organizations and individuals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on magnetic disk, magnetic tape, and on hard copy forms.

RETRIEVABILITY:

ACTS users obtain information by means of a query or a request for a standard report. Data may be indexed by any data item although the primary search keys are the name, Social Security Number, or the Navy-Marine Corps Court of Military Review docket number.

SAFEGUARDS:

Access to building is protected by uniformed guards requiring positive identification for admission after hours. The system is protected by the following software features: User account number and password sign-on, data base access authority, data set authority for add and delete, and data item authority for list and update.

RETENTION AND DISPOSAL:

An individual's record is retained on disk and will be available for on-line access for twenty-five years after the close of the individual's case. The record will be purged to magnetic tape after twenty-five years and will be utilized in a batch processing mode.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Judge Advocate General (Military Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, VA 22332–2400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Deputy Assistant Judge Advocate General, Administrative Support Division, Navy and Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, Building 111, Washington, DC 20374–2001. The request should contain full name, social security number, and address of the individual concerned and should be signed.

Personal visits may be made to the Administrative Support Division, Office of the Judge Advocate General, Washington Navy Yard, Building 111, Washington, DC 20374–2001. Individuals making such visits should be able to provide some acceptable identification, e.g., Armed Forces' ID card, driver's license, etc.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Deputy Assistant Judge Advocate General, Administrative Support Division, Navy and Marine Corps Appellate Review Authority, Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, Building 111, Washington, DC 20374–2001.

CONTESTING RECORD PROCEDURE:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR Part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information in this system comes from the individual's record of trial and supporting documents.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NO5813–3

System name:

General Courts-Martial Records of Trial (51 FR 18170, May 16, 1986).

Changes:

System name:

Delete the entire entry and substitute with "Records of Trial of General Courts-Martial."

System location:

Delete the entire entry and substitute with "Navy and Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, Building 111, Washington, DC 20374–2001."

Categories of individuals covered by the system:

In line one, after the word "duty" add ", retired, and discharged".

* * * * *

Purpose(s):

Delete the entire entry and substitute with "To complete appellate review as required under 10 U.S.C. 866, 867, 869 and provide central repository accessible to the public who may request information concerning the appellate review or want copies of individual public records."

* * * * *

Safeguards:

In line one, after the word "cabinets" add "and other storage devices".

* * * * *

Notification procedure:

Delete the entire entry and substitute with "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Deputy Assistant Judge Advocate General, Navy and Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, Building 111, Washington, DC 20374–2001. The request should contain full name and address of the individual concerned and should be signed.

Personal visits may be made to the Administrative Support Division, Office of the Judge Advocate General, Washington Navy Yard, Building 111, Washington, DC 20374–2001. Individuals making such visits should be able to provide acceptable identification, e.g., Armed Forces' identification card, driver's license, etc."

Record access procedure:

Delete the entire entry and substitute with "Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Deputy Assistant Judge Advocate General, Navy and Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, Building 111, Washington, DC 20374–2001."

Contesting record procedure:

Delete the entire entry and substitute with "The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of

the Navy Instruction 5211.5; 32 CFR Part 701; or may be obtained from the system manager."

* * * * *

NO5813-3

SYSTEM NAME:

Records of Trial of General Courts-Martial.

SYSTEM LOCATION:

Navy and Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, Building 111, Washington DC 20374-2001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty Navy and Marine Corps personnel tried by general courts-martial.

CATEGORIES OF RECORDS IN THE SYSTEM:

General courts-martial records of trial.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 865 and 5 U.S.C. 301.

PURPOSE(S):

To complete appellate review as required under 10 U.S.C. 866, 867, 869 and provide central repository accessible to the public who may request information concerning the appellate review or want copies of individual public records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Files are kept by Navy courts-martial number and each case is cross-referenced by an index card which is filed in alphabetical order according to the last name of the individual concerned.

SAFEGUARDS:

Files are maintained in file cabinets under the control of authorized personnel during working hours; the office space in which the file cabinets are located is locked outside official working hours.

RETENTION AND DISPOSAL:

Records are maintained in office for three years and then forwarded to the Federal Records Center in Suitland, MD for storage.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Judge Advocate General (Military Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, VA 22332-2400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Deputy Assistant Judge Advocate General, Navy and Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, Building 111, Washington, DC 20374-2001. The request should contain full name and address of the individual concerned and should be signed.

Personal visits may be made to the Administrative Support Division, Office of the Judge Advocate General, Washington Navy Yard, Building 111, Washington, DC 20374-2001. Individuals making such visits should be able to provide acceptable identification, e.g. Armed Forces' identification card, driver's license, etc.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Deputy Assistant Judge Advocate General, Navy and Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, Building 111, Washington, DC 20374-2001.

CONTESTING RECORD PROCEDURE:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR Part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Proceedings by a general courts-martial.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NO5890-1

System name:

Automated Claims Information System (ACIS) (51 FR 18179, May 16, 1986).

Changes:

System name:

Delete entire entry and substitute with "Claims Information System".

System location:

Delete the entire entry and substitute with "Primary location: Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, Virginia 22332-2400

Secondary locations: Federal Tort Claims Files and Military Claims Files: Offices of the Commandants of the Naval Districts, Naval Legal Service Offices and Branch Offices, overseas commands with a Navy or Marine Corps judge advocate attached, and the Federal Records Center, Suitland, Maryland. Local commands, with which claims under the Federal Tort Claims Act or Military Claims Act are initially filed, typically retain copies of such claims and accompanying files.

Affirmative Claims Files: Offices of the Commandants of the Naval Distircts; Naval Legal Service Offices and Branch Offices of the Officers in Charge of U.S. Sending State Offices; overseas commands with a Navy or Marine Corps judge advocate attached; the Federal Records Center, Suitland, Maryland; and such other offices or officers as may be designated by the Judge Advocate General.

Foreign Claims Files: United States Sending State Office for Italy; United States Sending State Office for Australia; Naval Missions (including the Office of the naval section of military missions); Military Assistance Advisory groups (including the Office of the naval section of military missions); Military Assistance Advisory groups (including the Offices of Chiefs, Naval Section, Military Assistance Advisory Groups); Office of the Naval Advisory to Argentina; naval attaches; any command which has appointed a Foreign Claims Commission; and the Federal Records Center, Suitland, Maryland. Local commands, with which claims under the Foreign Claims Act are initially filed and which do not have or choose to appoint a Foreign Claims Commission, typically retain copies of such claims and accompanying files.

Nonscope Claims Files: Naval Legal Service Offices and Branch Offices, overseas commands with a Navy or Marine Corps judge advocate attached,

and the Federal Records Center, Suitland, Maryland. Local commands, with which claims under the "Nonscope" Claims Act are initially filed, typically retain copies of such claims and accompanying files.

Military and Civilian Employees' Claims Files: Naval Legal Service Offices; Offices of the Commandants of the Naval Disticts; Naval Legal Service Branch Offices; the Federal Records Center, Suitland, Maryland; naval activities where there are officers specifically designated by the Judge Advocate General to adjudicate personnel claims.

U.S. Postal Service Indemnity Claims Files: Federal Records Center, Suitland, Maryland."

Categories of individuals covered by the system:

In line 14, after the word "U.S.C." delete the rest of the entry and substitute with the following: "406, 2601. All individuals against whom the Navy has claims sounding in tort, and all individuals who are in the military or are dependents of military members and have been provided medical care by a Naval medical facility for injuries resulting from such tortious conduct. All command carriers against whom recovery has been sought by the Department of the Navy. Any medical personnel involved in medical malpractice claims against the Department of the Navy."

Categories of records in the system:

Delete the entire entry and substitute with the following "The files may contain claims filed, correspondence, investigative reports, accident reports, medical and dental records, X-rays, allied reports (such as police and U.S. Postal Service investigations), photographs, drawings, legal research and memoranda, opinions of experts and others, court documents, reports of injuries to individuals entitled to care at Navy expense, reports of damage to Navy property, statements of charges for medical and dental treatment, copies of orders, copies of insurance policies, government bills of lading, copies of powers of attorney, estimates of loss or damage, inventories, demands on carriers for reimbursement, substantiating documents".

Authority for maintenance of the system:

Delete the entire entry and substitute with the following "Federal Tort Claims Act (28 U.S.C. 1346(b), 2671–2680); 32 CFR 750.30–49; Medical Care Recovery Act (42 U.S.C. 2651–2653); Federal Claims Collection Act (31 U.S.C. 3701, 3711, 3716–3719); 32 CFR 757.1–757.21; Foreign Claims Act (10 U.S.C. 2734); Military Claims Act (10 U.S.C. 2733); 32 CFR 750.50–750.59; "Nonscope" Claims Act (10 U.S.C. 2737); 32 CFR 750.60–750.69; Military and Civilian Employees Claims Act (31 U.S.C. 3701, 3721); 32 CFR 751.0–751.3; 10 U.S.C. 1552; 39 U.S.C 406, 2601; 5 U.S.C. 301; 44 U.S.C. 3101; and 31 U.S.C. 3729.

Purpose(s):

Delete the entire entry and substitute with "To manage, evaluate, and process claims both for and against the Department of the Navy for purposes of adjudication, collection, and litigation."

Routine uses of records maintained in the system, including categories of users and the purpose of such uses:

Delete the entire entry and substitute with the following "For Federal Tort Claims Files and Military Claims Files: To the claimant or his/her authorized representative for those claims for which payment is determined proper. To third parties in those cases in which they indemnify the U.S. Government or to verify claims. To officials and employees of the Department of Treasury for those claims for which payment is determined proper.

For affirmative Claims Files: To insurance companies to support claims by documenting injuries or diseases for which treatment was provided at government expense. To civilian attorneys representing injured parties and the government's interests.

For Foreign Claims Files: The files or portions thereof may be furnished to the claimant or his/her authorized representatives. For those claims for which payment is determined proper, the files or portions thereof may be provided to the Department of the Treasury.

For Nonscope Claims Files: To officials and employees of the Department of Justice to defend unauthorized suits brought against the U.S. under the "Nonscope" Claims Act. To the claimant or his/her authorized representative.

For Military Personnel and Civilian Employees' Claims Files: To officials and employees of the Department of Justice to defend unauthorized suits brought against the U.S. under the Miltiary Personnel and Cvilian Employees' Claims Act. To the claimant or his/her authorized representative.

The "Blanket Route Uses" that appear at the beginning of the Department of the Navy's compilation of systems notices apply to this system."

Policies and practices for storing, retrieving, accessing, retaining and disposing of records in the system:

Storage:

Delete the entire entry and substitute with "Paper records in file folders stored in file cabinets or other storage devices. Some records are also maintained on magnetic disk, magnetic tape, or otherwise within a computer system."

Retrievability:

Delete the entire entry and substitute with "Filed alphabetically by name of claimant or by a locally assigned claim number. Additionally, Military Personnel and Civilian Employees' Claims Act files may be filed alphabetically by name of common carrier, warehousemen, contractors, and insurers."

Safeguards:

Delete the entire entry and substitute with the following: "Documents and computer disks are maintained in file cabinets or other storage devices under the control of authorized personnel during working hours. Password access is restricted to those personnel with a need-to-know. The office space in which the file cabinets and storage devices are located is locked and guarded outside official working hours."

Retention and disposal:

Delete the entire entry and substitute with the following: "Records are maintained permanently. Typically files located in the Office of the Judge Advocate General are transferred to the Federal Records Center, Suitland, Maryland, three years after disposition of the case."

System manager(s) and address:

Delete the entire entry and substitute with the following: "Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, VA 22332–2400."

Notification procedure:

Delete the entire entry and substitute with "Individuals seeking to determine whether this system of records contains informations about themselves should address written inquires to the Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, VA 22332–2400. The request should contain full name and address of the individual concerned and must be signed. Visitors should be able to

identify themselves by any commonly recognized evidence of identity."

Record access procedure:

Delete the entire entry and substitute with the "Individuals seeking to access to records about themselves contained in this system of records should address written inquires to the Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, VA 22332–2400."

Contesting record procedure:

Delete the entire entry and substitute with "The Department of the Navy rules for accessing rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR Part 701; or may be obtained from the system manager."

* * * * *

NO5890–1

SYSTEM NAME:

Claims Information System.

SYSTEM LOCATION:

Primary location: Office of the Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, VA 22332–2400."

Secondary locations: Federal Tort Claims Files and Military Claims Files: Offices of the Commandants of the Naval Districts, Naval Legal Service Offices and Branch Offices, overseas commands with a Navy or Marine Corps judge advocate attached, and the Federal Records Center, Suitland, MD. Local commands, with which claims under the Federal Tort Claims Act or Military Claims Act are initially filed, typically retain copies of such claims and accompanying files.

Affirmative Claims Files: Offices of the Commandants of the Naval Districts; Naval Legal Service Offices and Branch Offices of the Officers in Charge of U.S. Sending State Offices; overseas commands a Navy or Marine Corps judge advocate attached; the Federal Records Center, Suitland, MD; and such other offices or officers as may be designated by the Judge Advocate General.

Foreign Claims Files: United States Sending State Office for Italy; United States Sending Office for Australia; Naval Missions (including the office of the naval section of military missions); Military Assistance Advisory Groups (including the Office of Chiefs, Naval Section, Military Assistance Advisory Groups); Office of the Naval Advisory to Argentina; naval attaches; any command which has appointed a Foreign Claims Commission; and, the Federal Records Center, Suitland, MD. Local commands, with which claims under the Foreign Claims Act are initially filed and which do not have or choose to appoint a Foreign Claims Commission, typically retain copies of such claims and accompanying files.

Nonscope Claims Files: Naval Legal Service Offices and Branch Offices, overseas commands with a Navy or Marine Corps judge advocate attached, and the Federal Records Center, Suitland, MD. Local commands, with which claims under the "Nonscope" Claims Act are initially filed, typically retain copies of such claims and accompanying files.

Military and Civilian Employees' Claims Files: Naval Legal Service Offices; Offices of the Commandants of the Naval Districts; Naval Legal Service Branch Offices; the Federal Records Center, Suitland, MD; naval activities where there are officers specifically designated by the Judge Advocate General to adjudicate personnel claims.

U.S. Postal Service Indemnity Claims Files: Federal Records Center, Suitland, MD 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who have filed claims against the Department of the Navy under the Federal Tort Claims Act, the Foreign Claims Act, Military Claims Act, the "Nonscope" Claims Act, or Military and Civilian Employees' Claims Act. All individuals who have filed claims with the U.S. Postal Service for loss or damage to mailed matter, and which claims have been paid by the U.S. Postal Service and thereafter forwarded for reimbursement by the Department of the Navy pursuant to 39 U.S.C. 406, 2601. All individuals against whom the Navy has claims sounding in tort, and all individuals who are in the military or are dependants of military members and have been provided medical care by a Naval medical facility for injuries resulting from such tortious conduct. All command carriers against whom recovery has been sought by the Department of the Navy. Any medical personnel involved in medical malpractice claims against the Department of the Navy.

CATEGORIES OF RECORDS IN THE SYSTEM:

The files may contain claims filed, correspondence, investigative reports, medical and dental records, x-rays, allied reports (such as police and U.S. Postal Service investigations), photographs, drawings, legal research and memoranda, opinions of experts and others, court documents, reports of injuries to individuals entitled to care at Navy expense, reports of damage to Navy property, statements of charges for medical and dental treatment, copies of orders, copies of insurance policies, government bills of lading, copies of powers of attorney, estimates of loss or damage, inventories, demands on carriers for reimbursement, substantiating documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Tort Claims Act (28 U.S.C. 1346(b), 2671–2680); CFR 750.30–750.49; Medical Care Recovery Act (42 U.S.C. 2651–2653); Federal Claims Collection Act (31 U.S.C. 3701, 3711, 3716–3719); 32 CFR 757.1–757.21; Foreign Claims Act (10 U.S.C. 2734); Military Claims Act (10 U.S.C. 2733); 32 CFR 750.50–750.59; "Nonscope" Claims Act (10 U.S.C. 2737); 32 CFR 750.60–750.69; Military and Civilian Employees Claims Act (31 U.S.C. 3701, 3721); 32 CFR 751.0–751.3; 10 U.S.C. 1552; 39 U.S.C. 406, 2601; 5 U.S.C. 301; 44 U.S.C. 3101; and 31 U.S.C. 3729.

PURPOSE(S):

To manage, evaluate, and process claims both for and against the Department of the Navy for purposes of adjudication, collection and litigation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

For Federal Tort Claims Files and Military Claims Files: To the claimant or his authorized representative for those claims for which payment is determined proper. To third parties in those cases in which they indemnify the U.S. Government or to verify claims. To officials and employees of the Department of Treasury for those claims for which payment is determined proper.

For Affirmative Claims Files: To insurance companies to support claims by documenting injuries or diseases for which treatment was provided at government expense. To civilian attorneys representing injured parties and the government's interests.

For Foreign Claims Files: The files or portions thereof may be furnished to the claimant or his authorized representatives.

For those claims for which payment is determined proper, the files or portions thereof may be provided to the Department of the Treasury.

For Nonscope Claims Files: To officials and employees of the Department of Justice to defend unauthorized suits brought against the

U.S. under the Military Personnel and Civilian Employees' Claims Act.

To the claimant or his/her authorized representative.

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems notices to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders stored in file cabinets or other storage devices. Some records are also maintained on magnetic disc, magnetic tape, or otherwise within a computer system.

RETRIEVABILITY:

Filed alphabetically by name of claimant or by a locally assigned claim number. Additionally, Military Personnel and Civilian Employees' Claims Act files may be filed alphabetically by name of common carrier, warehousemen, contractors, and insurers.

SAFEGUARDS:

Documents and computer disks are maintained in file cabinets or other storage devices under the control of authorized personnel during working hours. Password access is restricted to those personnel with a need-to-know. The office space in which the file cabinets and storage devices are located is locked and guarded outside official working hours.

RETENTION AND DISPOSAL:

Records are maintained permanently. Typically files located in the Office of the Judge Advocate General are transferred to the Federal Records Center, Suitland, MD, three years after disposition of the case.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, VA 22332-2400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, VA 22332-2400. The request should contain full name and address of the individual concerned and must be signed. Visitors should be able to identify themselves by any commonly recognized evidence of identity.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Assistant Judge Advocate General (Civil Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall St., Alexandria, VA 22332-2400.

CONTESTING RECORD PROCEDURE:

The Department of the Navy rules for accessing rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR Part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The sources of information contained in the files include the following: X-rays and medical and dental records from civilian and military doctors and medical facilities; investigative reports of accidents from military and civilian police agencies; reports of circumstances of incidents from operators of Government vehicles and equipment; witnesses; correspondence from claimants, their insurance companies, state commissions, United States Attorneys, and various other Government agencies with information concerning the claim; line of duty investigations; commercial credit and asset reports; questionnaires completed by accident victims; statements of charges from civilian and military doctors and medical facilities; information provided by the claimant; investigative reports from personal property offices; investigative reports from a military member's command or an investigative agency; information contributed from commercial carriers; substantiating documents; allied reports (such as U.S. Postal Service investigative reports); legal memoranda.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 89-23061 Filed 9-28-89; 8:45 am]

BILLING CODE 3810-01

DEPARTMENT OF ENERGY

Invention Available for License

The Department of Energy hereby announces that U.S. Patent Application SN. 260,837, entitled "Fabrication of Dual Porosity Electrode Structure" and corresponding foreign patent applications are available for license, in accordance with 35 U.S.C. 207-209. For further information concerning licensing of the invention, please contact Robert J. Marchick, Office of the Assistant General Counsel for Patents, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

A copy of the specification of the U.S. patent application may be obtained, for a modest fee, from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161.

Issued in Washington, DC, on September 22, 1989.

Eric J. Fygi,

Acting General Counsel.

[FR Doc. 23066 Filed 9-28-89; 8:45 am]

BILLING CODE 6450-01-M

Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangement; Republic of Korea

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of the Republic of Korea concerning Civil Uses of Atomic Energy, as amended, and the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer: RTD/KO(EU)-3, for the retransfer of 40,200 kilograms of uranium oxide, enriched to an average of 3.35 percent in the isotope uranium-235, from France to Korea, for use in the fabrication of fuel elements for power reactors Uljin 1 and 2 of the Korea Electric Power Company.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: September 25, 1989.

Richard H. Williamson,

Deputy Assistant Secretary for International Affairs.

[FR Doc. 89-23064 Filed 9-28-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. RP89-213-002 and RP89-75-004]

Black Marlin Pipeline Co.; Filing

September 22, 1989.

Take notice that on September 15, 1989, Black Marlin Pipeline Company (Black Marlin) tendered for filing to become a part of Black Marlin's FERC Gas Tariff, Original Volume No. 1, the following tariff sheets:

Substitute 1st Revised Sheet No. 4
Substitute 3rd Revised Sheet No. 215

Black Marlin has submitted the listed tariff sheets in compliance with the Commission's August 31, 1989 Order in the referenced docket to revise the priority of service to correct a typographical error and clarify applicability of service under Rate Schedules FTS and ITS.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice & Procedure (18 CFR 385.214). All such protests should be filed on or before September 29, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter.

Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-22975 Filed 9-28-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP82-55-046]

Transcontinental Gas Pipe Line Corp.; Tariff Filing

September 22, 1989.

Take notice that Transcontinental Gas Pipe Line Corportion (Transco) tendered for filing on September 19, 1989 certain revised tariff sheets to Second Revised Volume No. 1 its FERC Gas Tariff, contained in Appendix A attached to the filing. The proposed effective dates of the revised tariff sheets are indicated in Appendix A.

The purpose of the instant filing is to supplement Transco's compliance filing of July 6, 1989 in Docket No. RP82-55-044. In the July 6 filing, Transco filed tariff sheets for periods beyond April 30, 1988 to comply with the Commission's directives in the Opinion No. 260 series of orders and to reflect the cost of service settlement approved in Docket No. RP87-7-030. The Commission accepted Transco's July 6 compliance filing by order issued September 1, 1989. Transco has made certain revisions to its rates subsequent to the July 6 filing which effectuate changes in rates as of May 1, 1989 and beyond. Therefore, the instant filing supplements Transco's July 6 compliance filing by providing revised tariff sheets to be effective May 1, May 4, July 22, August 1, September 1 and October 1, 1989.

Transco states that copies of the instant filing are being mailed to customers, State Commissions and interested parties to Docket No. RP82-55-044. In accordance with provisions of Section 154.16 of the Commission's Regulations, copies of this filing are available for public inspection, during regular business hours, in a convenient form and place at Transco's main offices at 2800 Post Oak Boulevard in Houston, Texas.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before September 29, 1989. 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-22976 Filed 9-28-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP85-178-066 and RP88-191-014]

Tennessee Gas Pipeline Co.; Filing

September 22, 1989.

Take notice that, pursuant to Ordering Paragraph (F) of the Commission's Order Granting and Denying Rehearing, Granting Summary Disposition, And Granting Clarification issued August 3, 1989 in North Penn Gas Co., *et al.* Docket No. RP88-190-002, *et al.* (August 3 Order), on September 18, 1989, Tennessee Gas Pipeline Company (Tennessee) filed the following tariff sheets to its FERC Gas Tariff Volume No. 1:

First Revised Sheet No. 39
Third Revised Sheet No. 41
Third Revised Sheet No. 43
First Revised Sheet No. 245E
First Revised Sheet No. 245F

Tennessee states that these revised tariff sheets reflect that 49% of the take-or-pay and contract reformation costs currently allocated to North Penn Gas Company (North Penn) pursuant to the direct billing procedures established in Tennessee Docket Nos. RP86-119, *et al.* have been reallocated to CNG Transmission Corporation (CNG).

Tennessee states that Sheet No. 39 also reflects the reallocation to CNG of 60% of the take-or-pay amounts that Tennessee has collected from North Penn pursuant to the Stipulation And Agreement dated July 25, 1989 in Docket Nos. RP85-178, *et al.* and approved by order issued July 31, 1987. Tennessee Gas Pipeline Co., 40 FERC ¶ 61,145 (1987). This amount is $405,498.

Further, Tennessee states that the Docket No. RP86-119 take-or-pay costs to be reallocated to CNG are subject to change pursuant to Commission order dated February 27, 1989 in Docket No. RP88-191-001 which authorizes Tennessee, subject to leave of the D.C. Circuit, to reallocate the RP86-119 take-or-pay costs among all of its sales customers to reflect a reduction by Tennessee of $5 million and adjustments for off-system sales by East Tennessee and Alabama Tennessee. Tennessee Gas Pipeline Co., 46 FERC ¶ 61,264. Furthermore, Tennessee states that the total RP86-119 take-or-pay costs to be reallocated to CNG are subject to change in the event of any future filings by Tennessee in accord with Article XXX of the General Terms and Conditions of its tariff or as a result of any future court action or Commission action on remand in *AGD* v. *FERC*, No. 88-1385 (D.C. Circuit).

Tennessee states that it indicated in its September 3, 1989 Request For Rehearing of the August 3 that in its view the reallocation of take-or-pay costs as provided by that order will not be effective until such time as the court grants leave for the Commission to enter the order. Tennessee requests that the Commission provide an effective date for these tariff sheets that coincides

with what it terms the Commission's authority to enter the August 3 Order.

Tennessee respectfully requests that the Commission grant any waivers it deems necessary for the acceptance of this filing.

Tennessee states that copies of the filing have been mailed to all parties in this proceeding, affected customers and affected state regulatory commissions and all parties in Docket Nos. RP85–178 and RP88–191.

Any person desiring to protest said filing should file a 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. All such protests should be filed on or before September 29, 1989. 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–22977 Filed 9–28–89; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[ERA Docket No. 88–70–NG]

Atlantic Richfield Co.; Order Amending a Conditional Authorization To Import Natural Gas

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of an Order Amending a Conditional Authorization To Import Natural Gas by Allowing Use of Existing Facilities.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it has issued an order amending a conditional authorization granting Atlantic Richfield Company (ARCO) blanket authorization to import natural gas from Canada. The order issued in ERA Docket No. 88–70–NG authorizes ARCO to import up to 25 Bcf per year of Canadian natural gas using existing facilities over a two-year period for use as fuel in its Cherry Point oil refinery located near Ferndale, Washington.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, 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, September 22, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89–23065 Filed 9–28–89; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3653–1]

Establishment of the International Environmental Technology Transfer Advisory Board

SUMMARY: As required by section 9(a)(2) of the Federal Advisory Committee Act, U.S.C. (App. I) 9(c), EPA gives notice of the establishment of the International Environmental Technology Transfer Advisory Board. EPA has determined that this action is in the public interest.

SUPPLEMENTARY INFORMATION: The purpose of the Advisory Board is to provide advice and counsel to the Administrator of the Environmental Protection Agency and other concerned agencies on the transfer of environmental technology and information to developing and centrally planned economies which cannot afford the science and technology involved, and may need assistance in using such environmental technology effectively. Copies of the Advisory Board charter will be filed with appropriate committees of Congress and the Library of Congress and are available upon request.

Board members will be appointed in a balanced representation from the following sectors: industry and business; academic, educational, and training institutions; government; international organizations; environmental groups; and non-profit entities. The Board will meet four times a year or as necessary as determined by the Administrator or his designee. No honoraria or salaries are contemplated in association with membership on the Advisory Council, but compensation for travel and per diem while attending meetings may be provided.

The Advisory Board's initial meeting will be held in early December, 1989.

FOR FURTHER INFORMATION CONTACT: Mark Kasman, Office of International Activities (A–106), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Dated: September 21, 1989.

Timothy B. Atkeson,

Assistant Administrator for International Activities.

[FR Doc. 89–23006 Filed 9–28–89; 8:45 am]

BILLING CODE 6360–50–M

[ER–FRL–3651–8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared September 11, 1989 through September 15, 1989 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated April 7, 1989 (54 FR 15007).

Draft EISs

ERP No. D–AFS–L61182–ID, Rating 3, Valbois Destination Resort Village, Special Permit and Land Use/Resource Management Plans Amendments, Cascade Lake, Boise National Forest, Valley County, ID.

Summary

EPA has identified potential significant adverse direct and indirect water an air quality effects from the project, which were not addressed by the draft EIS. As a result, EPA rated this document as inadequate and stated that, we do not believe the EIS meets the purposes of NEPA and should be revised and made available for public comments in a supplemental or revised draft EIS.

Final EISs

ERP No. F–AFS–L67022–ID, Lightning Peak Open Pit Mine Development, Plan of Operation Approval, Payette National Forest, Krassel Ranger District, Valley County, ID.

Summary

Review of the final EIS has been completed and the project found to be satisfactory.

Dated: September 26, 1989.

Anne N. Miller,

Director, SPAD, Office of Federal Activities.

[FR Doc. 89–23103 Filed 9–28–89; 8:45 am]

BILLING CODE 6560–50–M

[ER-FRL-3651-7]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements Filed September 18, 1989 Through September 22, 1989 Pursuant to 40 CFR 1506.9.

EIS No. 890258, Draft, EPA, MA, Massachusetts Bay Ocean Dredged Material Disposal Site, Designation, MA, Due: November 13, 1989, Contact: Kymberleer Keckler (617) 565-4432.

EIS No. 890259, Final, HUD, PR, Encantada Residental Development, Mortgage Insurance, Dos Bocas Ward, Trujillo Alto, PR, Due: October 30, 1989, Contact: Hecter R. Mercado (809) 766-6240.

EIS No. 890260, DSuppl, FHW, CA, US 101 Bypass Construction, Mae Bridge to Humboldt and Del Norte County Line, Gravel Extraction for the Completion of Stage III of the Redwood National Park Bypass Project, Funding and Section 10 and 404 Permits, Redwood National Park and Prairie Creek Redwoods State Park, Humboldt and Del Norte Counties, CA, Due: November 13, 1989, Contact: Deborah Harmon (707) 445-6416.

The Department of Transportation/ Federal Highway Administration, Department of the Interior/Bureau of Indian Affairs and National Park Service and the Corps of Engineers are Joint Lead Agencies for this project.

EIS No. 890261, Draft, IBR, WA, Columbia Basin Continued Multipurpose Project, Implementation, Grant, Adams, Lincoln, Franklin and Douglas Counties, WA, Due: December 31, 1989, Contact: Wayne Deason (303) 236-9336.

EIS No. 890262, DSuppl, COE, FL, Brevard County Beach Erosion Control Project, Updated Information, Implementation, Brevard County, FL Due: November 13, 1989, Contact: Gerald Atmar (904) 791-2615.

EIS No. 890263, Final, EPA, NY, NJ, New York and New Jersey/Long Island Inlets, Dredged Material Disposal Site, Designation, NY and NJ, Due: November 13, 1989, Contact: Mario Del Vicario (212) 264-5170.

EIS No. 890264, Final, COE, WA, North and South Puget Sound Unconfined Open-Water Disposal for Dredged Material, Phase II, Site Designation, Section 10 and 404 Permits, Whatcom, Skagit, Challam and Pierce, Counties WA, Due: October 30, 1989, Contact: Frank J. Urabech (206) 764-3708.

EIS No. 890265, DSuppl, COE, WA, Washington Aquatic Plan Management Progam Geographic and Treatment Related Program Update implementation, Lewis and Pend Oreille Counties, WA, Due: November 13, 1989, Contact: Vic Yoshino (206) 764-3624.

EIS No. 890266, DSuppl, USA, WA, Yakima Firing Center Expansion of Military Training Center, Land Acquisition, Possible Changes in the Force Structure of the 9th Infantry Division, Fort Lewis Military Installation, Yakima and Kittitas Counties, WA, Due: November 13, 1989, Contact: Gary Stedman (206) 967-5337.

Dated: September 26, 1989.

Anne N. Miller,

Director, SPAD, Office of Federal Activities.

[FR Doc. 89-23102 Filed 9-28-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL 3652-3]

Announcement of a Public Hearing on the Proposed Determination To Prohibit, Restrict or Deny the Specification, or the Use for Specification, of an Area as a Disposal Site: South Platte River, Jefferson and Douglas Counties, CO

SUMMARY: A public notice entitled "Proposed Determination to Prohibit, Restrict or Deny the Specification, or the Use for Specification, of an Area as a Disposal Site: South Platte River, Jefferson and Douglas Counties, Colorado" was published in the **Federal Register** on September 5, 1989 (54 FR 36862). [Request for a copy of that notice should be made to the person listed in the section below entitled "**FURTHER INFORMATION**".] The September 5, 1989 notice announced the Environmental Protection Agency's (EPA) Region VIII Decision Officer's proposed determination to take action under section 404(c) of the Clean Water Act (CWA) to prohibit, deny or restrict specification or use of certain South Platte waters in the area of Jefferson and Douglas Counties, Colorado, as a disposal site for dredged or fill materials in connection with construction of an impoundment for water supply (the Two Forks dam) for the Denver metropolitan area.

The waters of the United States which are subject to the proposed section 404(c) action include those which would be affected by the Two Forks dam, proposed to be constructed approximately one mile downstream from the confluence of the North Fork of the South Platte with the South Platte River. This section 404(c) action is being proposed because EPA Region VIII has reason to believe that filling and inundating the above-described waters of the United States, including wetlands, would have unacceptable adverse effect on fishery areas, wildlife and recreational areas. Furthermore, EPA Region VIII has reason to believe that less environmentally damaging alternatives are available to supply the Denver area with sufficient water to replace that which would be available should Two Forks be constructed.

The purpose of this notice is to announce the scheduling of hearings to provide the opportunity to comment on the Regional Decision Officer's proposed determination.

Public Hearings: The first public hearing will be held in Denver, Colorado as follows:

October 23, 1989, at the Hyatt Regency Hotel, 1750 Welton Street, Denver, Colorado. The afternoon session will begin at 1:00 p.m., and the evening session will begin at 7:00 p.m.

October 24, 1989, at the Hyatt Regency Hotel, 1750 Welton Street, Denver, Colorado. The morning session will begin at 9:00 a.m., the afternoon session at 1:00 p.m., and the evening session at 7:00 p.m..

The second public hearing will be held in Grand Island, Nebraska as follows:

October 27, 1989 at the Grand Island Holiday Inn, I-80 and Highway 281, Grand Island, Nebraska. The afternoon session will begin at 1:00 p.m. and the evening session will begin at 7:00 p.m..

Any person may appear at the hearing and present oral or written statements and may be represented by counsel or other representative. The Regional Hearing Officer will preside at the hearing. The Hearing Officer will establish reasonable limits on the nature and extent of the oral presentation. No cross examinations of any hearing participants will be permitted, although the Hearing Officer may make appropriate inquiries of participants.

Written comments may be submitted prior to, during, or after the hearing. The hearing record will remain open for the submittal of written comments until November 17, 1989. Participants may offer clarification or rebuttal of comments made at the public hearing through written comments submitted after the public hearings.

The hearing proceedings will be recorded and transcribed. Copies of the transcript of the proceedings may be

purchased from EPA at the close of the comment period. Copies will be available for public inspection at the EPA Region VIII office, 999 18th Street, Denver, CO, after the close of the comment period. The cost of a copy will correspond directly to the costs of photocopying the number of pages enclosed within the transcript.

All written comments as well as information offered at the hearing will constitute a part of the hearing file which will become part of the administrative record upon which the Regional Decision Officer's determination will be based.

DATES: Written comments should be submitted to the Hearing Officer at the time of the hearing, or to the person listed under "**ADDRESS**", below, no later than November 17, 1989.

ADDRESS: Comments should be sent to Mary Alice Reedy, Records Clerk, U.S. EPA, Region VIII, 8WM-SP, 999 18th Street, Denver, CO, 80202-2405.

FOR FURTHER INFORMATION CONTACT: Dr. Gene Reetz, EPA, Region VIII, 8WM-SP, 999 18th Street, Denver, CO, 80202-2405, (303) 293-1570. If you wish to receive a copy of the public notice entitled "Proposed Determination to Prohibit, Restrict or Deny the Specification, or the Use for Specification, of an Area as a Disposal Site: South Platte River, Jefferson and Douglas Counties, Colorado" publish on September 5, 1989, please contact Ms. Reedy and a copy will be mailed to you.

SUPPLEMENTARY INFORMATION: The September public notice entitled "Proposed Determination to Prohibit, Restrict or Deny the Specification, or the Use for Specification, of an Area as a Disposal Site: South Platte River, Jefferson and Douglas Counties, Colorado" reviewed the 404(c) process, provided a description of the subject action, discussed the basis for the proposed determination and solicited comments.

During the scheduled hearing, EPA would like to obtain comments on the Proposed Determination. In particular, comments on the likely adverse impacts to fish, wildlife and recreational values of the rivers, streams, and wetlands in all areas which would be affected by the construction and operation of Two Forks dam and reservoir are requested. All relevant data, studies, knowledge of studies, or informal observations are appropriate. Where comments or materials have been previously submitted to EPA, they will be included in the administrative record. If desired, participants may reference them by title and date of submission rather than re-submitting them.

While the significant loss of aquatic and recreational values and the availability of less damaging practicable alternatives serve as EPA's main bases for this proposed 404(c) determination, EPA Region VIII has additional concerns with the proposed project, including water quality impacts, threatened and endangered species, alternatives and project need. Therefore, EPA also solicits comments on the following aspects of the project:

(1) The potential for the Two Forks dam and reservoir project to violate State water quality standards, especially as related to potential channel stability alterations;

(2) Whether, based on information collected since preparation of the biological opinions, the threatened and endangered species consultation should be reinitiated for any of the species potentially affected by the Two Forks dam and reservoir project;

(3) Information on the wildlife species which would be affected by changes in the aquatic ecosystem;

(4) Information on the recreational uses which would be affected;

(5) Information on the availability of less environmentally damaging practicable alternatives to satisfy the basic project purpose of municipal and industrial water supply, taking into account cost, technology, and logistics, and including other alternatives which do not require the discharge of dredge material into the waters of the United States;

(6) Whether the discharge should be prohibited forever, allowed as proposed by the COE, or restricted in time, size or other manner; and

(7) Information on recent population projections by DRCOG, information on what criteria Denver should utilize to supply water under its charter obligation, and the affect of planning uncertainties on water supply planning.

Dated: September 21, 1989.

Lee A. DeHihns, III,

Regional Decision Officer.

[FR Doc. 89-23007 Filed 9-28-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3653-2]

Reissuance of General NPDES Permit for Seafood Processors in the State of Alaska

AGENCY: Envrionmental Protection Agency.

ACTION: Notice of the reissued general NPDES permit for Alaskan seafood processors (No. AK-G-52-0000).

SUMMARY: The Regional Administrator of Region 10 is today reissuing the general National Pollutant Discharge Elimination System (NPDES) permit for seafood processors in Alaska. The general permit establishes effluent limitations, monitoring requirements, and reporting requirements for discharges from Alaskan seafood processors. This permit will cover mobile and shore-based seafood processing facilities in all waters under U.S. jurisdiction off the coast of Alaska, other than those waters listed as excluded areas.

On May 18, 1989, Region 10 of the Environmental Protection Agency (EPA) published in the **FEDERAL REGISTER** (54 FR 21470) a notice of the draft general permit (proposed reissuance) which is being reissued as a final permit today. Today's notice includes a copy of the final permit and the Agency's response to comments.

DATES: The reissued permit is effective October 30, 1989. In order to be covered under this reissued permit, facilities must submit to EPA a "Notice of Intent to be Covered" no later than 30 days after today's reissuance date, unless this information has already been submitted for the 1989 processing year. New facilities are required to submit the Notice of Intent at least 30 days prior to commencement of operations. The required information in the Notice of Intent is described in part II.C. of the permit.

ADDRESS: Submittals related to this permit should be sent to the following address: Environmental Protection Agency, Water Permits and Compliance Branch, WD-134, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Ben Cope, Region 10, at the Seattle address above or by telephone at (206) 442-1442 or FTS 399-1442.

Dated: September 22, 1989.

Robert S. Burd,

Acting Regional Administrator, Region 10.

SUPPLEMENTARY INFORMATION:

A. State Certification and Coastal Zone Management Act

In accordance with Section 401 of the CWA, the Alaska Department of Environmental Conservation (ADEC) has conditionally certified that this reissued general permit will comply with the Alaska Water Quality standards. All of ADEC's conditions have been incorporated into the final permit.

The Alaska Division of Environmental Coordination has determined that the general permit is consistent with the

Alaska Coastal Management Program provided that the ADEC conditions are included in the permit.

B. Response to Comments

The public comment period for the General Permit for Alaskan Seafood Processors began May 18, 1989, and expired on June 16, 1989. Comment letters were received from the following parties: East Point Seafood Company, Bering Sea Fishermen's Association, Bogle and Gates, Alaska Trollers Association, State of Alaska, Department of Environmental Conservation, Douglas and Janice Latta, Clark Eaton, Donald E. Power, Walkers Alaskan Seafood, Stan Wood, Eyak Packing Company, U.S. Fish and Wildlife Service.

Significant comments received during the public comment period were reviewed by EPA and considered during finalization of the general permit. As a result, several changes have been made to the final permit. The responses to these comments are as follows:

1. *Comment:* It was requested that the permit exclude discharges to lakes.

Response: The permit has been revised in this manner, based on the extremely poor flushing characteristics of lakes.

2. *Comment:* One commenter recommended that the terms "vicinity" and "poor flushing" be defined in the permit.

Response: The term "vicinity" has been defined as one mile in the permit. "Poor flushing" is defined as "lacking currents, flows, and/or tidal forces to adequately disperse pollutants."

3. *Comment:* It was requested that the permit language regarding foam be revised to prohibit the discharge of foam in accordance with the state water quality standards.

Response: In accordance with state standards, foam is now prohibited from discharge.

4. *Comment:* It was requested that dive surveys be required for processors using fine screens, based on past water quality impacts from screened discharges.

Response: The state certification stipulates that dive surveys shall be required for processors using screens. The final permit has been changed accordingly.

5. *Comment:* It was recommended that chlorine samples be obtained during plant washdown, when chlorine-based solutions are often used to sanitize equipment. In addition, it was recommended that the permit authorize EPA and ADEC to modify the permit if chlorine samples indicate violations of state water quality standards.

Response: EPA agrees with both comments. Chlorine sampling is now required during washdown, and a permit reopener clause for chlorine has been added to the permit.

6. *Comment:* It was requested that water used to transfer seafood to the facility be routed through the wastehandling system (i.e., the outfall) in enclosed harbors, based on concerns over foam generation.

Response: The permit already requires the discharge of fish transfer water through the wastehandling system if discharges through separate conveyances are not in compliance with state standards.

7. *Comment:* It was recommended that weekly rather than monthly sampling for chlorine be required in the permit.

Response: Based on the state certification, weekly sampling (for one year) is required in the permit.

8. *Comment:* One commenter requested clarification of the sampling requirements presented in attachment 3. It was asked whether all freshwater streams are included under these scenarios. In addition, the commenter asked if additional samples would be required if waste accumulations are discovered, in order to delineate the extent of accumulation. Finally, it was noted that a diagram under part II was absent from the draft permit.

Response: Freshwater dischargers are required to conduct bottom sampling, unless a waiver is obtained based on site-specific information (most likely high flow velocities and/or sample collection problems). The permit has been revised to require freshwater facilities to follow the second sampling scenario. This will insure that the discharge point and at least one downstream location are sampled (the diagram is now included). If bottom samples reveal accumulated seafood wastes, the permit authorizes EPA and ADEC to require additional sampling (part II.B.5).

9. *Comment:* It was recommended that the permit be clarified with regard to the discharge of graywater. The commenter noted that the discharge of graywater from shore based facilities must receive the same treatment as sewage.

Response: "Graywater" is defined in the permit as a wastewater generated on a vessel. The permit therefore authorizes the discharge of graywater without treatment only from a vessel. Similar wastewaters generated in a shore-based operation are considered sanitary wastes and must meet the permit requirement for those wastes. The phrase "vessels only" has been added to the section authorizing the discharge of graywater for clarification. In addition, a definition for "sanitary wastes" has been added to the permit.

10. *Comment:* Several comments were received which pertain to EPA's proposal to extend coverage under this permit to all processors in Alaska. The expiring permit excepted from coverage processors who met the following criteria:

A. Discharge less than four tons per day of processing waste;

B. Discharge at least ½ mile off-shore from the outer coast at a depth of at least 42 feet;

C. Discharge at least 300 yards away from any other vessels so as not to cause a nuisance in general;

D. Do not discharge in bays, harbors, inlets, coves, lagoons or other protected areas along the Alaska coast; and

E. Do not cause any floating solids, visible foam in other than trace amounts or oily wastes which produce a sheen on the surface of the receiving waters.

Several commenters stated that small processors will be significantly impacted by this change to the permit. They commented that an unreasonable financial and operational burden is placed on small processors and catcher-processor vessels to meet the 0.5 inch discharge limitation. In particular, it was noted that trolling vessels may not have the physical space and generator capacity needed to operate a grinder. These vessels are highly mobile and generate less than 1000 pounds of seafood waste per day. It was also noted that the discharge of small amounts of seafood waste at sea is not causing environmental degradation.

Response: The expiring general permit for Alaskan seafood processors excluded from coverage facilities that discharged less than four tons per day of seafood waste at sea. However, the exclusion of processors from the general permit did not exempt them from the requirement to have a NPDES permit or the requirement to meet a 0.5 inch discharge limitation. The Clean Water Act requires anyone discharging pollutants to waters of the United States to obtain an NPDES permit. For remote Alaskan seafood processors, EPA regulations have required compliance with a 0.5 inch discharge limitation since their final promulgation in 1975.

EPA and the state of Alaska are concerned about the large number of medium to small discharges which have been left largely unregulated in Alaska. In addition, some environmental groups are concerned about environmental problems resulting from unregulated minor discharges. Rather than requiring individual permits for small seafood processors, EPA proposed to cover all

processors under the reissued general permit. This change would enable small processors to obtain NPDES permits without submitting lengthy application materials and completing the administrative process for reissuance of individual permits. Currently, the state uniform application for seafood processing is accepted as the "Notice of Intent to be Covered" under the general NPDES permit, and no other submittals are needed to obtain coverage. This greatly reduces the paperwork burden and time requirements for the permittee.

After reviewing the comments described above, we are now proposing changes to the permit with regard to coverage of small processors at sea. These sources are not expected to cause environmental problems. In addition, EPA acknowledges that trolling vessels may face unique problems complying with the general permit. Therefore, based on these comments, the proposed permit now excludes from coverage vessels discharging less than 1000 pounds of seafood waste per day at sea.

11. *Comment:* On commenter noted that the expiring permit contained a clause prohibiting the discharge of floating solids "in other than trace amounts." The proposed permit prohibits any discharge of floating solids. The commenter requested that the phrase "in other than trace amounts" be restored in the permit.

Response: The Alaska state standards prohibit the discharge of floating solids. There is no reference to "trace amounts" in the standard. Therefore, the permit remains unchanged.

12. *Comment:* One commenter stated that the requirement for additional bottom sampling in the Kenai River, Kasilof River and all freshwaters was not supported in the fact sheet. In addition, it was suggested that the language under this part be clarified to read "and all freshwaters not tidally influenced."

Response: The Kenai and Kasilof Rivers are now excluded from coverage, based on the state certification (see comment #17). With regard to clarification of the definition of "freshwater," the term is already defined in the permit as "water not subject to tidal influences" (part II.F).

13. *Comment:* Two commenters objected to the provision prohibiting discharges from vessels docked at or otherwise tied up to the permittee's facility. It was stated that permittees do not have control over the activities of vessels docked at a facility, since the vessels are not usually owned by the permittee. The commenters stated that EPA must regulate vessels docked at processing facilities under a sepaate permit or action. They recommend that this provision be deleted from this permit.

Response: EPA acknowledges that discharges from vessels may be more appropriately controlled by direct regulations of the vessels rather than stipulations in the processing facility's permit. Therefore, this condition has been deleted from the permit. However, it is important to note that untreated seafood accumulations near a seafood processing facility constitute a violation of the Clean Water Act, and their proximity to the processor lands strong weight to the culpability of the processor. In addition, any vessel discharging seafood water without a permit (such as dumping of "dead loss" near a processor) is subject to an enforcement action. Processors should monitor the actions of vessels docked at seafood processing facilities to insure that unlawful discharges do not occur (and are reported if they do occur).

14. *Comment:* It was stated that trade secrets will be revealed if permittees are required to submit information on processing locations and raw production of seafood. It was also commented that this information is not necessary and that daily records are not required under individual permits.

Response: In accordance with 40 CFR Part 2 (Public Information), any monitoring information submitted to EPA may be claimed as confidential by the permittee. The claim must be made at the time of submission. If a third party requests this information, EPA will require the permittee to submit an explanation of the casual relationship between disclosure of the information and any resulting harmful effect on the business competitive position. EPA will then make a determination as to whether the business information is entitled to confidentiality treatment.

Regarding the necessity of these submittals, permittees are required under the NPDES program to submit to EPA the location of each outfall (40 CFR 122.21). Since mobile facilities are covered by the permit, each discharge location must be reported. This information is also needed to determine compliance with excluded areas in the permit. Monitoring of raw product processed is necessary to determine compliance with the limitation on quality of waste discharged. Finally, individual permits do require submittal of daily production data in most cases.

15. *Comment:* One commenter stated that submittal of daily processing records will create a paperwork burden on the processor.

Response: Processing records can be summarized into a concise format that will not create an undo burden.

16. *Comment:* It was commented that the daily maximum limit on the amount of waste discharged is a limit on the production potential of a facility.

Response: The maximum production capacity of the facility is not limited to a fix level by the permit. The permit does, however, require the applicant to discharge in accordance with the application (Notice of Intent to be Covered). Any increase in production capacity anticipated by the permittee is automatically authorized, if the permittee updates the Notice of Intent with the new production information and EPA determines that the increase will not necessitate issuance of an individual permit.

17. *Comment:* The state of Alaska requested that the Kenai River, Kasilof River and Alsek River be excluded from coverage under the general permit. Both the Kenai and Kasilof Rivers are considered priority streams based on their multiple uses, including sport and subsistence fishing. The state commented that it needs to select discharge and monitoring conditions on a site-specific basis. On the Alsek River, the state has required a processor to landfill seafood wastes in order to protect a set net fishery downstream of the processor. Since grinding of seafood wastes is unacceptable in this area, the state requests that this river be excluded from coverage.

Response: Based on the state certification, the final permit excludes these rivers from coverage. Individual permits will be required for these receiving waters.

18. *Comment:* It was commented that separate general permits should be issued for shore-based and mobile processors, based on the differences in the nature of the operations and the discharge locations.

Response: EPA has determined that above mobile and shore-based facilities can be adequately covered under a single general permit. The permit conditions are designed to account for different processing scenarios, and these conditions would not change if the permit was to be divided in the manner discussed. For simplicity, both are covered in the final permit.

19. *Comment:* It was requested that the minimum depth for discharges in areas with poor flushing be increased from 42 feet to 60 feet to protect bottom-dwelling marine resources. It was also recommended that discharges be located a minimum distance of one-half mile from special concern areas.

Response: No evidence has been supplied to EPA indicating that an additional 18 feet of depth at the discharge point will measurably reduce the impacts of seafood waste discharges. Therefore, this condition remains unchanged. With regard to discharge in the vicinity of special concern areas, EPA agrees to exclude discharges within one-half mile from special concern areas. The permit has been changed accordingly.

20. *Comment:* One commenter stated that wastes from herring roe stripping operations should not be authorized for discharge; instead, EPA should require reduction of the waste to produce fish meal. Discharging of the fish carcasses was stated to be a waste of the resource.

Response: EPA cannot require any limitation more stringent than the guideline limitation (0.5 inch size limitation), unless discharges are causing a violation of state water quality standards. EPA has no authority to control the use of fishery resources. By-product recovery can only be required if reductions in the amount of waste discharged are necessary to meet state water quality standards.

21. *Comment:* One commenter suggested that surimi processors be required to obtain individual permits until adequate information regarding the characteristics of surimi wastewaters is acquired.

Response: Although detailed information on the characteristics of surimi wastewater is not available, it is expected that the contribution of nutrients from these operations is not a major component of the discharge in comparison to the ground (in most cases) seafood wastes from the filleting process. Therefore, EPA has determined that surimi operations will be covered under the general permit. It is important to note that EPA can require an individual permit for surimi plants if these discharges are causing an adverse environmental impact.

22. *Comment:* It was recommended that periodic inspection of outfalls be conducted during dive surveys to insure that breakage points are repaired.

Response: The permit already requires that the dive survey report submitted to EPA include a description of the outfall condition. Since most permittees will only perform one dive survey over the five-year term of the permit, an annual dye test of the outfall is required in order to determine if there are any breaks in the outfall in the four remaining years of the permit.

23. *Comment:* One commenter stated that violations of permit conditions have been documented by dive surveys, in which large accumulations of seafood waste in excess of 0.5 inch in size were observed. It was stated that these violations have not resulted in penalties to the responsible parties. It was recommended that these parties be fined for violations.

Response: In the past two years, EPA has fined 13 companies for violations of seafood processing permits. Most of these penalties were levied as a result of information collected during dive surveys at the facilities by EPA personnel. EPA will continue to levy administrative penalties on facilities that violate permit conditions, and the Agency encourages outside parties with documented evidence of violations to submit that information to EPA.

C. Final Permit

General Permit No.: AK–G–52–0000, United States Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101.

Authorization To Discharge Under the National Pollutant Discharge Elimination System for Alaskan Seafood Processors

In compliance with the provisions of the Clean Water Act, 33 U.S.C. 1251 *et seq.*, as amended by the Water Quality Act of 1987, Public Law 100–4, the "Act".

Owners and operators of facilities engaged in the processing of seafood, both mobile vessels and shore-based facilities, except facilities identified in part I hereof, are authorized to discharge to waters of the State of Alaska and waters of the United States adjacent to State waters. In accordance with effluent limitations, monitoring requirements, and other conditions set forth herein.

The existing (or continued under the Administrative Procedures Act) general permit is invalid as of the effective date of this reissued general permit.

A copy of this general permit must be kept at the plant or vessel where the discharges occur.

This permit shall become effective October 30, 1989.

This permit and the authorization to discharge shall expire at midnight, on October 31, 1994.

Signed this 28th day of September 1989.

Robert S. Burd,

Director, Water Division, Region 10 U.S. Environmental Protection Agency.

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I. Exclusions From This General Permit

A. *Excluded Areas.*

This permit does not authorize discharges in the following areas:

Akutan: Akutan Harbor, if the amount of waste exceeds 310,000 pounds per month

Kodiak: Gibson Cove, Near Island Channel, St. Paul Harbor, and Women's Bay
Unalaska/Dutch Harbor: Iliuliuk Bay, Iliuliuk Harbor, Dutch Harbor, and Captain's Bay; Unalaska Bay, south of the northermost point of Hog Island
Kenai Peninsula: Kenai River and Kasilof River
Yakutat: Alsek River

B. *Discharges in Areas of Concern.* This permit does not authorize discharges in the following areas:

1. *Areas with water depth less than 42 feet that are likely to have poor flushing* (including, but not limited to protected areas such as bays, harbors, inlets, coves, and lagoons). EPA and the Alaska Department of Environmental Conservation (ADEC) shall determine the adequacy of flushing on a case-by-case basis. *or*

2. *Within one-half mile of areas of special concern* (i.e., spawning areas, State Critical Habitat Areas and Game Refuges, National Wildlife Refuges, and the seaward boundaries of Wilderness Refuges, National Parks and Monuments, and wilderness classified lands).

C. *Discharges to Fresh Water in the Vicinity of Drinking Water Sources.* This permit does not authorize discharges to fresh waters within one mile (upstream) of drinking water sources.

D. *Discharges to Lakes.* This permit does not authorize discharges to lakes.

E. *Minor Discharges at Sea.* Vessels discharging less than 1000 pounds of seafood waste per day at sea are excluded from coverage under this general permit.

F. *Waivers.* A facility may request a waiver to be covered under the general permit in Unalaska Bay or Akutan Harbor. Before such a request can be considered, the permittee must, at a minimum, submit the following information to EPA and ADEC:

1. A Notice of Intent to be Covered
2. A detailed bathymetric map showing the facility location, outfall location, receiving water, and surrounding topography.
3. A detailed description of the circumstances requiring discharges to the excluded area (e.g., short-term processing) and the dates when the facility will operate in this area.
4. A demonstration that the discharges will not cause water quality degradation, including but not limited to waste pile accumulations, aesthetic impacts, and shoreline impacts. Site-specific water quality studies may be required to make this demonstration.

A waiver cannot be granted until after consultation between EPA and ADEC to determine that the discharge will meet state water quality standards.

II. Effluent Limitations, Monitoring and Reporting Requirements, and General Permit Conditions

A. *Effluent Limits.*

1. *Amount of Waste Discharged:* The amount of waste discharged per day shall not exceed that which results from processing the maximum quantity of product reported in the Notice of Intent to be Covered.

2. *Treatment of Wastes.*

a. Process Wastes: All process wastes (as defined in II.F.) except as provided for in e. below must be routed through the wastehandling system.

b. Sanitary Wastes: All sanitary wastes must be routed into the sanitary waste treatment system. Nonfunctioning and undersized systems are prohibited. Sanitary wastes must be:

i. Discharged to a shore-based septic system or a municipal treatment works, *or*

ii. Treated prior to discharge by an approved marine sanitation device that complies with pollution control standards and regulations under section 312 of the Act, *or*

iii. Treated to meet the secondary treatment effluent limitations below:

	Weekly average	Monthly average	Daily maximum
Biochemical Oxygen Demand (BOD_5).	45 mg/1	30 mg/1	60 mg/1
Total Suspended Solids (TSS).	45 mg/1	30 mg/1	60 mg/1

c. Other Wastewaters: The following wastewaters need not be discharged through the wastehandling system provided these discharges have had no contact with the process wastes, do not contain pollutants in excess of 0.5 inch in any dimension, and comply with part II.A.4. of this permit: Cooling water, boiler water, gray water (vessels only), freshwater pressure relief water, refrigeration condensate, water used to transfer seafood to the facility, and live tank water.

d. Garbage: Discharge of garbage, especially plastics, is prohibited.

e. Scuppers and Floor Drains: Incidental discharges from scuppers or floor drains must be routed to the wastehandling system or screened to 0.5 inch.

3. *Effluent Limitation: Process Wastes.*

Process wastes may be discharged only if they do not exceed 1.27 cm (0.5 inch) in any dimension.

4. *Limitations on all Wastewater Discharges:* All wastewater discharges shall meet the following limitations:

a. Environmental Effects:

i. There shall be no discharge of: (a) Oily water or oily wastes that produce a sheen on the water surface, (b) grease, (c) foam or (d) floating solids.

ii. No wastes shall accumulate on the shoreline nor float on the receiving water surface.

b. Alaska State Water Quality Standards: Discharges must not violate any Alaska State Water Quality Standards (18 AAC 70).

5. *Discharge Location.*

a. Process wastes must be discharged into a receiving water with a minimum depth of 20 feet at Mean Lower Low Water (MLLW). Within this total water depth, the point of discharge must be located as specified below:

i. For facilities at sea, process wastes must be discharged below the water surface.

ii. For facilities near shore, process wastes must be discharged at least 10 feet below the water surface at MLLW.

b. A facility may request a waiver to discharge at shallower depths than specified in (a) above. The waiver request must be submitted, with adequate justification, with the Notice of Intent to be Covered (part II.C.1.). Waivers and waiver requests shall be kept onsite and be available to inspectors.

Adequate justification must include: (i) A demonstration of the need to discharge at a shallower depth (such as physical constraints at the discharge location), (ii) bathymetric map showing the discharge location, (iii) any history of impacts from seafood wastes, (iv) maximum and average current strength (if no measurements have been made, estimates may be used) in the vicinity of the discharge, and (v) a proposed alternate discharge location to be used if the existing location results in any documented environmental effects.

c. Case-by-case adjustments of the discharge location may be required by the Director, following consultation with ADEC, to prevent benthic and shoreline accumulation of pollutants and to promote their dilution and dispersion.

d. There shall be no discharge if the outfall line is severed or fails.

B. *Monitoring Requirements.*

1. *Daily Records.* The following shall be monitored and recorded DAILY for each process waste discharge location. These records form the basis for the Annual Report. They shall be kept at the

facility and be made available to any authorized inspector:

a. For each finished product:

i. Type of product (e.g., canned salmon, Opilio crab sections, surimi, cod fillets, fish meal, oil, etc.)

ii. Pounds of raw product (including any spoiled product subsequently discharged)

iii. Pounds of finished product

b. Visual inspection of the water surface and shoreline for the presence or absence of floating solids, garbage, grease, foam, or oily wastes that produce a sheen on the water surface.

c. None of the receiving waters and specific location of the discharge on the first day at each new location.

2. *Dive Surveys:* The objective of the dive surveys is to document the extent of any seafood waste accumulation, the dispersion of the waste, and any impacts on the benthic community and water column.

a. Two dive surveys are required during the term of this permit to assess the environmental effects of any wastes and their persistence between successive processing seasons.

i. The first dive must be conducted at each discharge location in the first year the facility operates under this permit, within 15 days after the end of processing at each location, but no later than December 30 of that first year.

ii. The second dive must be conducted prior to processing in the second year the facility operates under this permit.

iii. For facilities that operate continuously (less than a two month break in processing), the second dive must be conducted in the month of December in the second year the facility operates under this permit.

b. Two dives per year are required in the following areas (on the dates prescribed in a. above *): Unalaska Bay, Akutan Harbor, Wrangell Narrows, and Orca Inlet.

c. Dive Survey Reports. Each survey shall result in a report to EPA and ADEC which includes, at a minimum, the information in attachment 1.

d. Dive surveys are NOT required for any of the following:

i. Low volume discharges (less than 500 pounds per day of seafood waste).

ii. Deep discharges (depths greater than 90 feet).

iii. Hazardous diving conditions (low visibility, treacherous currents, or other conditions that unduly compromise diver safety). A detailed explanation of local conditions must be provided with the Notice of Intent to be Covered (part II.C.1.).

iv. Low frequency discharges (less than 30 days cumulative per location per year), unless the facility operates under a waiver in an excluded area (part I.A.).

Note: When dive surveys are waived under i, ii or iii, above, bottom sampling is required (part II.B.3.).

3. *Bottom Sampling:* When dive surveys are waived under parts II.B.2.d. (i), (ii) or (iii) above, bottom samples shall be obtained and a report submitted to EPA and ADEC.

a. Two bottom samples are required during the term of this permit to assess the environmental effects of any wastes and their persistence between successive processing seasons.

i. The first sample must be collected at each discharge location in the first year the facility operates under this permit, within 15 days after the end of processing at each location, but no later than December 30 of that first year.

ii. The second sample must be collected prior to processing in the second year the facility operates under this permit.

iii. For facilities that operate continuously (less than a two month break in processing), the second sample must be collected in the month of December in the second year the facility operates under this permit.

b. Two bottom samples per year are required for all facilities discharging to fresh waters (on the dates prescribed in a. above).

c. Samples shall be collected from the bottom of the receiving water at the locations shown in attachment 3.

d. A grab sampler (dredge), core sampler, an underwater device that takes video or still photographs, or any similar device (provided it can meet the sampling objective and is approved by the Director) may be used.

e. A report shall be submitted to EPA and ADEC that includes the information in attachment 2.

f. A facility may request a waiver of the bottom sampling requirement. The waiver request must be submitted, with adequate jutification, with the Notice of Intent to be Covered (part II.C.1.). Waivers and waiver requests shall be kept onsite and be available to inspectors.

4. *Waste Pile Accumulations:* If dive surveys or bottom samples indicate the presence of a persistent (year-round) waste pile on the bottom of the receiving water, the facility shall submit a written request for a state-designated zone of deposit to EPA and Alaska Department of Environmental Conservation (ADEC). The request shall iclude the dive survey or bottom sampling report. A detailed rationale shall support the request, including a discussion of alternative disposal and treatment options along with associated cost and operational considerations. Requests shall be submitted within 30 days of the second dive survey or bottom sample.

Within six months of any ADEC decision on the above request, the facility shall be in compliance with the stipulations of that decision.

5. *Additional Dives and Bottom Samples:* Additional dives or bottom sampling may be required when any of the following occur:

a. Wastes on the bottom appear to be accumulating.

b. The facility increases the amount of waste discharged beyond the amount estimated from the information in the Notice of Intent to be Covered.

c. The facility moves to a new location.

6. *Total Residual Chlorine Monitoring* (shore-based and near-shore facilities only): Effluent samples shall be collected and analyzed for total residual chlorine once per week for one year. Samples shall be taken during washdown. This requirement may be waived if process water is not chlorinated and disinfection solutions used during washdown do not contain chlorine. Adequate justifiction for a waiver shall be submitted with the Notice of Intent to be Covered.

If discharges of chlorine from facilities covered by this permit exceed Alaska water quality standards, this permit may be reopened to include chlorine limitations, dechlorination, use of alternative sanitation chemicals, additonal monitoring and/or a mixing zone.

7. *Dye Test.* A dye test of the wastehandling system shall be conductd once per year. Test results shall be rcorded and retained on site.

If the dye test reveals leaks or bypasses in the wastehandling system, EPA and ADEC shall be notified in accordance with part III.G. of the permit. Repairs of the system shall be completed within 30 days of the test. A second test shall be conducted after repairs are completed to confirm that the system operates properly.

Facilities conducting annual dive surveys are exempted from this requirement.

8. *Sanitary Wastewater:* Facilities subject to secondary treatment limitations for sanitary wastes (part II.A.2.b.iii.) shall collect and analyze grab samples for BOD and TSS once per month to determine compliance with limitations.

*Facilities that operate continuously in these areas shall conduct dives in October and April.

C. *Reporting Requirements.*
Permittees shall submit the following reports to EPA and ADEC:

1. *Notice of Intent to be Covered.*

a. For existing dischargers, the Notice of Intent must be submitted no later than 30 days after the effective date of this general permit. For new dischargers, the Notice of Intent must be submitted 30 days prior to commencement of operations.

b. The following information must be included:

(1) NPDES permit number previously assigned (if any) State seafood processing permit number

(2) Owner: name, address, phone number

(3) Operator: name, address, phone number

(4) Facility: name, address, location, vessel registration number, previous facility and/or vessel name date of purchase/transfer, number of employees

(5) Treatment Method: method of treating seafood and sanitary wastes, method of garbage/plastics disposal, depth of discharge below the water surface, total water column depth at the discharge location, water use diagram (estimates of flows used in seafood, processing, sanitary system, freezing, etc.)

(6) Receiving Water(S): name of receiving water(s), bathymetric map of receiving water showing the, outfall location (near-shore facilities only), the velocity, depth and width of the receiving water at the outfall lcoation of the nearest spawning areas, and the distance of those areas from the outfall location (freshwater facilities only).

(7) Production Data: (for each type of raw product processed), name of raw product, type of finished product, maximum quntity processed per day, projected dates of each operating season, and projected number of processing days per season

c. Submittal (to EPA) of the State of Alaska Department of Environmental Conservation Annual Uniform Permit Application for Seafood Processors, if it includes all of the information in b., above, will also satisfy this requirement.

d. Requests for waivers of requirements for outfall depth, dive surveys, bottom sampling, and/or residual chlorine monitoring must be submitted with the Notice of Intent. Justification for these waivers Must accompany the request.

Note: The permitee may discharge to the requested depth 60 days after submittal of their request, unless EPA or ADEC disapproves this request.

2. *Annual Report.* An Annual Report shall be submitted by the end of the processing season or by January 31 of each year, whichever is sooner, and shall include the following:

a. Dive or Bottom Sampling Reports. The ADEC Dive Survey Report Form may be submitted if it includes all of the information required in attachment 1.

b. Monitoring Results required under part II.B.6. and II.B.8.

c, Dye Test Results required under part II.B.7.

d. Production Data for the previous year (a copy of the daily records will suffice) including, for EACH location: Dates of operations at each location, production data (raw and finished product for each type of product), and a map showing the bathymetry at each location (when locations are within ½ mile of shore or in less than 90 feet of total water depth).

e. Summary of Periods of Noncompliance. A summary of periods of noncompliance during the year (e.g., bypasses or breakdowns of grinders).

f. Updated Notice of Intent to be Covered. A statement of any changes to the information in the Notice of Intent to by Covered (part II.C.1.b.) for the facility.

Please note signatory requirements under part V.G. of this permit.

3. *Special Reporting Requirements in Areas of Concern.* Facilities discharging to Unalaska Bay, Akutan Harbor, Wrangell Narrows, and Orca Inlet shall submit monthly Discharge Monitoring Reports (DMRs) that include the information in 2(b) and (d) above. The remainder of the information above (a, c, and e) may be submitted in an Annual Report.

D. *General Permit Conditions.*

1. The Director may require any permittee discharging under the authority of this permit to apply for and obtain an individual NPDES permit when:

a. The discharge is a significant contributor of pollution;

b. The permittee is not in compliance with the conditions of this permit;

c. A change has occurred in the availability of the demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;

d. New effluent limitation guidelines are promulgated for point source covered by this permit;

e. A Water Quality Management Plan containing requirements applicable to a such point sources is approved; or

f. An Individual Control Strategy (ICS) is required under section 304(L) of the Clean Water Act; or

g. The point source(s) covered by this permit no longer:

(1) Involve the same or substantially similar types of operations;

(2) Discharge the same type 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 Director, are more appropriately controlled under a general permit than under individual NPDES permits.

2. The Director may require any permittee authorized by this permit to apply for an individual NPDES permit by notifying the permittee in writing that a permit application is required. After review of a Notice of Intent, ADEC may request that an individual permit be processed for that facility.

3. Any permittee covered by this permit may request to be excluded from the coverage of this general permit by applying for an individual permit. The owner or operator shall submit an application together with the reasons supporting the request to the Director no later than 90 days after the effective date of the reissued permit.

4. When an individual NPDES permit is issued to a permittee otherwise subject to this general permit, the applicability of this permit to that owner or operator is automatically terminated on the effective date of the individual permit.

5. A source excluded from a general permit solely because it aleady has an individual permit may request that the individual permit be revoked, and that it be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply to the source.

E. *Reopener Clause.*

Upon promulgation of effluent limitation guidelines applicable to the facilities covered by this permit, the permit shall be modified, if the guidelines contain limits different from those contained in the permit.

F. *Definitions.*

1. *"Accumulation"* refers to the presence of any measurable amount of seafood waste present on the bottom substrate. For purposes of this permit, measureable is defined as a thickness of one centimeter or more.

2. *"At sea"* means outside of protected areas such as bays, harbors, inlets, coves, and lagoons, and ½ mile or more from shore anywhere in the contiguous zone, territorial seas, or open ocean out to the 200 mile limit.

3. *"Bypass"* means the intentional diversion of waste streams from any portion of a treatment facility.

4. *"Contiguous zone"* means the entire zone established or to be established by the United States under article 24 of the

Convention of the Territorial Sea and the Contiguous Zone.

5. *"Daily Maximum"* means the maximum value recorded during a calendar month.

6. *"Fresh Water"* means water that is not subject to tidal influences.

7. *"Gray Water"* means wastewater generated from such sources as showers, sinks, laundry areas, and food preparation areas on a vessel.

8. *"Monthly Average"* is the arithmetic mean of samples collected during a calendar month.

9. *"Near shore"* means at the shoreline, less than ½ mile from shore, or inside protected areas such as bays, harbors, inlets, coves, and lagoons.

10. *"Ocean"* means any portion of the high seas beyond the contiguous zone.

11. *"Outfall site"* refers to the location of the discharge into a particular bay, habor, embayment or other defined area which is considered the receiving water.

12. *"Poor flushing"* means lacking currents, flows and/or tidal forces to adequately disperse pollutants.

13. *"Process wastes"* refers to wastes and waters resulting from processing seafood including, but not limited to, cleaning cutting, chopping, heading, sliming, evisceration, mincing, transfer within the facility, etc.

14. *"Relocation"* means moving the vessel or mooring or anchoring at least five (5) miles from the previous discharge site.

15. *"Sanitary wastes"* means wastewaters and human body wastes generated from such sources as toilets, showers, sinks and food preparation areas.

16. *"Shore-based"* means the facility does not move up and down with the tide.

17. *"Territorial seas"* means the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters and extending seaward a distance of three miles.

18. *"Wastehandling system"* refers to that system used to collect, transfer, treat (e.g., grind, chop, remove via screens, etc.), and dispose of process wastes. This includes, but is not limited to, flumes, pipes, screens, grinders, evaporators, centrifuges, outfalls, etc.

19. *"Waters of the State of Alaska"* means the inland waters and the territorial seas.

20. *"Weekly Average"* means the arithmetic means of samples collected during a calendar week.

III. Standard Monitoring and Reporting Requirements

A. *Representative Sampling.* Samples taken in compliance with the monitoring requirements established under part II shall be collected from the effluent stream prior to discharge into the receiving waters. Samples and measurements shall be representative of the volume and nature of the monitored discharge.

B. *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.

C. *Reporting of Monitoring Results.* Monitoring results shall be summarized in the Annual Certification of Compliance. Legible copies of these, and all other reports, shall be signed and certified in accordance with the requirements of *part V.G., Signatory Requirements*, and submitted to the Director, Water Division and the State agency at the following addresses: original to: United States Environmental Protection Agency (EPA), Region 10, 1200 Sixth Avenue, WD–135, Seattle, Washington 98101.

If you process in Southcentral Alaska (west of Icy Bay), send copy to: Alaska Department of Environmental Conservation (ADEC), Southcentral Regional Office (SCRO), 3601 "C" Street, Suite 1334, Anchorage, Alaska 99503.

If you process in Southeast Alaska (east of Icy Bay), send copy to: Alaska Department of Environmental Conservation (ADEC), Southeastern Regional Office (SERO), P.O. Box 32420, Juneau, Alaska 99803.

If you process in Northern Alaska (north of a line drawn between Cantwell and Kotlik), send copy to: Alaska Department of Environmental Conservation (ADEC), Northern Regional Office, 1001 Noble Street, Suite 350, Fairbanks, Alaska 99701.

D. *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 part 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 DMR. Such increased frequency shall also be indicated.

E. *Records Contents.* Record of monitoring information shall include:

1. The date, exact place, and time of sampling or measurements;

2. The individual(s) who performed the sampling or measurements;

3. The date(s) analyses were performed;

4. The individual(s) who performed the analyses;

5. The analytical techniques or methods used; and

6. The results of such analyses.

F. *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, correspondence concerning waivers of dive or depth requirements, and records of all data used to complete the application for this permit, for a period of at least five years from the date of the sample, measurement, report or application. This period may be extended by request of the Director or ADEC at any time. Data collected on-site, copies of Discharge Monitoring Reports, and a copy of this NPDES permit must be maintained on-site during the duration of activity at the permitted location.

G. *Notice of Noncompliance Reporting.*

1. Any noncompliance which may endanger health or the environment shall be reported within 24 hours from the time the permittee becomes aware of the circumstances.

2. The following occurrences of noncompliance shall be reported in writing to EPA and ADEC within 5 days from the time the permittee becomes aware of the circumstances:

a. Any unanticipated bypass which exceeds any effluent limitation in the permit (See *part IV.G., Bypass of Treatment Facilities.*); or

b. Any upset which exceeds any effluent limitation in the permit. (See *part IV.H., Upset Conditions.*)

3. The written submission above shall contain:

a. A description of the noncompliance and its cause;

b. The period of noncompliance, including exact dates and times;

c. The estimated time noncompliance is expected to continue if it has not been corrected; and

d. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

4. The Director may waive the written report on a case-by-case basis if an oral report has been received within 24 hours by the Water Compliance Section in Seattle, Washington, by phone, (206) 442–1213 or the Alaska Operations Office in Anchorage at (907) 271–5083.

5. Reports shall be submitted to the addresses in *part III.C., Reporting of Monitoring Results.*

H. *Other Noncompliance Reporting.* Instances of noncompliances not required to be reported within 5 days shall be reported at the time that monitoring reports for part III.C. are submitted. The reports shall contain the information listed in part III.G.3.

I. *Inspection and Entry.* The permittee shall allow the Director, ADEC, or an authorized representative (including an authorized contractor acting as a representative of the Administrator), upon the presentation of credentials and other documents as may be required by law, to:

1. 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;

2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

4. Sample or monitor at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.

IV. Compliance Responsibilities

A. *Duty to Comply.* The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application. The permittee shall give advance notice to the Director and ADEC of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

B. *Penalties for Violations of Permit Conditions.*

1. Civil Penalty. The Act provides that any person who violates a permit condition implementing section 301, 302, 306, 307, 308, 318, or 405 of the Act shall be subject to a civil penalty, not to exceed $25,000 per day for each violation.

2. Criminal Penalties:

a. Negligent Violations. The Act provides that any person who negligently violates a permit condition implementing section 301, 302, 306, 307, 308, 318, or 405 of the Act; or negligently introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substance which such person knew or reasonably should have known could cause personal injury or property damage or, other than in compliance with all applicable federal, state, or local requirements or permits, which causes such treatment works to violate any effluent limitation or condition in a permit issued to the treatment works under Section 402 of this Act; shall be punished by a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than 1 year, or by both.

b. Knowing Violations. The Act provides that any person who knowingly violates a permit condition imnplementing section 301, 302, 306, 307, 308, 318, or 405 of the Act; or knowingly introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substance which such person knew or reasonably should have known could cause personal injury or property damage or, other than in compliance with all applicable federal, state, or local requirements or permits, which causes such treatment works to violate any effluent limitation or condition in a permit issued to the treatment works under section 402 of this Act; shall be punished by a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or by both.

c. Knowingly Endangerment. The Act provides that any person who knowingly violates a permit condition implementing section 301, 302, 306, 307, 308, 318, or 405 of the Act, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than $250,000 or imprisonment of not more than 15 years, or both. A person which is an organization shall, upon conviction of violating this subparagraph, be subject to a fine of not more than $1,000,000.

d. False Statements. The Act provides that any perosn who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Act or who knowingly falsifies, tampers with or renders inaccurate any monitoring device or method required to be maintained under this Act, shall upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than 2 years, or by both.

Except as provided in permit conditions in *part IV.G., Bypass of Treatment Facilities* and *part IV.H., Upset Conditions,* nothing in this permit shall be construed to relieve the permittee of the civil or criminal penalties for noncompliance.

C. *Need to Halt or Reduce Activity not a Defense.* It shall not be a defense for 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 conditions of this permit.

D. *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.

E. *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.

F. *Removed Substances.* Collected screenings, solids, sludges, or other pollutants removed in the course of treatment or control of wastewaters shall be disposed of in a manner such as to prevent any pollutant from such materials from entering waters of the United States.

G. *Bypass of Treatment Facilities:*

1. Notice:

a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least 10 days before the date of the bypass.

b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required under *part III.G., Notice of Noncompliance Reporting.*

2. Prohibition of bypass.

a. Bypass is prohibited and the Director or ADEC may take enforcement action against a permittee for a bypass, unless:

(1) The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, 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

(3) The permittee submitted notices as required under paragraph 2 of this section.

b. The Director and ADEC may approve an anticipated bypass, after considering its adverse effects, if the Director and ADEC determine that it will meet the three conditions listed above in paragraph 2.a. of this section.

H. *Upset Conditions.*

1. Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of paragraph 2 of this section are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

2. Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

a. An upset occurred and that the permittee can identify the cause(s) of the upset;

b. The permitted facility was at the time being properly operated;

c. The permittee submitted notice of the upset as required under *part III.G., Notice of Noncompliance Reporting;* and

d. The permittee complied with any remedial measures required under *part IV.D., Duty to Mitigate.*

3. Burden of proof. In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

I. *Toxic Pollutants.* The permittee shall comply with effluent standards of prohibitions established under section 307(a) of the Act for toxic pollutants within the time provided in the regulations that establish those standards of prohibitions, even if the permit has not yet been modified to incorporate the requirement.

V. General Requirements

A. *Changes in Discharge of Toxic Substances.* Notification shall be provided to the Director and ADEC as soon as the permittee knows of, or has reason to believe:

1. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exeed the highest of the following "notification levels":

a. One hundred micrograms per liter (100 μg/l);

b. Two hundred micrograms per liter (200 μg/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 μg/l) for 2,4-dinitrophenol and for 2-methyl-4, 6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;

c. Five times the maxim concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.21(g)(7); or

d. The level established by the Director in accordance with 40 CFR 122.44(f).

2. 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 which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

a. Five hundred micrograms per liter (500 μg/l);

b. One milligram per liter (1 mg/l) for antimony;

c. Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.21(g)(7); or

d. The level established by the Director in accordance with 40 CFR 122.44(f).

B. *Planned Changes.* The permittee shall give notice to the Director and ADEC as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is requred only when:

1. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source as determined in 40 CFR 122.29(b); or

2. 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 part V.A.1.

C. *Anticipated Noncompliance.* The permittee shall also give advance notice to the Director and ADEC of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

D. *Permit Actions.* This permit may be modified, revoked and reissued, or terminated for cause. 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.

E. *Duty to Provide Information.* The permittee shall furnish to the Director and ADEC, within a reasonable time, any information which the Director or ADEC may request to determine 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 Director or ADEC, upon request, copies of records required to be kept by this permit.

F. *Other Information.* When the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or any report to the Director or ADEC, it shall promptly submit such facts or information.

G. *Signatory Requirements.* All applications, reports or information submitted to the Director and ADEC shall be signed and certified.

1. All permit applications shall be signed by either a principal executive officer or ranking elected official.

2. All reports required by the permit and other information requested by the Director or ADEC 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:

a. The authorization is made in writing by a person described above and submitted to the Director and ADEC; and

b. The authorization specified 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.)

3. Changes to authorization. If an authorization under paragraph V.G.2. is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph V.G.2. must be submitted to the Director and ADEC prior to or together with any reports, information, or applications to be signed by an authorized representative.

4. Certification. Any person signing a document under this section shall make the following certification:

I certify under penalty of law that this document and all attachments were prepared under my 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 the 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.

H. *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 Director and ADEC. As required by the Act, permit applications, permits and effluent data shall not be considered confidential.

I. *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.

J. *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.

L. *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.

M. *Transfers.* Coverage under this permit may be automatically transferred to a new permittee if:

1. The current permittee notifies the Director at least 30 days in advance of the proposed transfer date;

2. 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

3. The Director does not notify the existing permittee and the proposed new 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 2 above.

N. *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.

Attachment 1—Dive Survey Report

Background Information

—Length of period of discharge at this location prior to the dive (days, months, years).
—Production data for this location for the month prior to the dive (a copy of the daily records[part II.B.1.] for the previous month will suffice).

Dive Identification

—Facility location at the time of the dive (receiving water, longitude, latitude).
—Date of the survey.
—Name and signature of the diver.
—Recent local weather, current, and wave surge conditions which may influence the extent of long term impacts from discharged wastes.

Dive Diagram

—A scale diagram (suggested 1" = 10') showing (1) the areal extent of accumulated (1 cm or more) waste, (2) the thickness of the waste pile at sufficient locations to draw thickness contours, (3) depth of the pile (in feet) below Mean Lower Low Water (MLLW), and (4) the type of waste (e.g., fish bones, ground crab shells, etc.).

Dive Description

—A list of any observed environmental effects that could be attributed to the discharge of processing wastes, including: (1) Dead or stressed sealife such as clams, tube worms, oysters, or sea anemones, (2) scavenger fish, (3) hydrogen sulfide gas, or (4) any other effects.
—A list of the types of waste particles and an estimate of the percentage of the wastes greater than: 1 millimeter (processors using screening technology), *or* 0.5 inches (processors not using screening technology).
—Condition and estimated depth of the outfall line.

Attachment 2—Bottom Sampling Report

Background Information

—Length of period of discharge at this location prior to the sampling (days, months, years).
—Production data for this location for the month prior to the sampling (a copy of the daily records [part II.B.1.] for the previous month will suffice).

Sampling Identification

—Facility location at the time of the sampling. (receiving water, longitude, latitude)
—Sampling date.
—Name and signature of the person(s) collecting the samples.
—Recent local weather, current, and wave surge conditions which may influence the extent of long term impacts from discharged wastes.

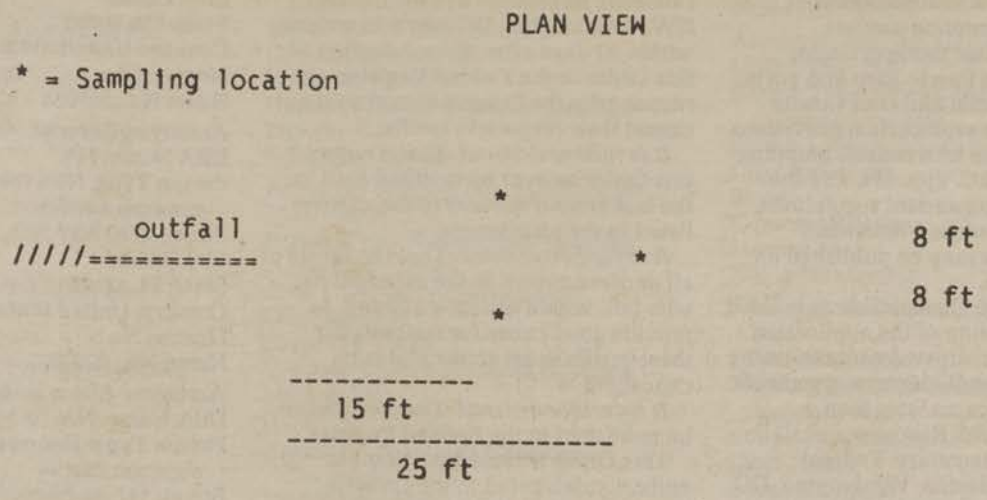
Description of Sample Contents

—A list of any observed environmental effects that could be attributed to the discharge of processing wastes, including: (1) Dead or stressed sealife such as clams, tube worms, oysters, or sea anemones, (2) scavenger fish, (3) hydrogen sulfide gas, or (4) any other effects.
—A description of: the types and amounts of wastes in the samples, the size of the waste particles, and an estimate of the percentage of the wastes greater than: 1 millimeter (processors using screening technology), *or* 0.5 inches (processors using grinding or equivalent technology).

Attachment 3—Bottom Sampling Locations

I. Outfalls located near the bottom

Facilities that discharge at a point less than 10 feet from the bottom shall collect bottom samples at the locations shown below:

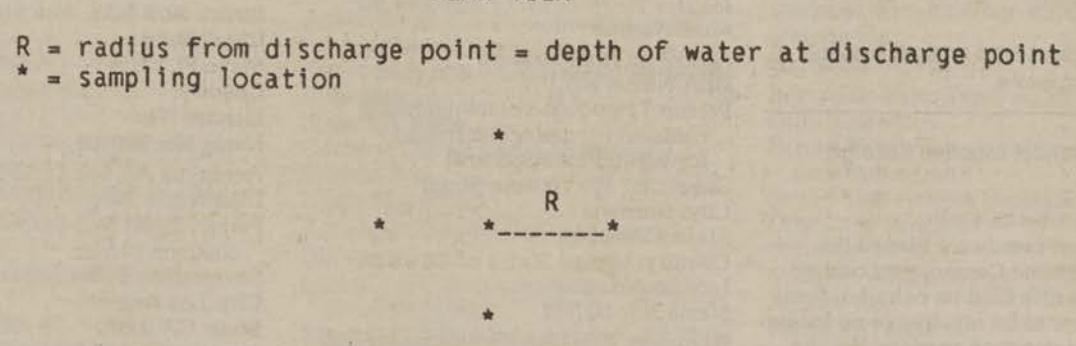


II. Outfalls greater than 10 feet from the bottom (and all freshwater outfalls)

Facilities that discharge more than 10 feet above the bottom shall collect bottom samples at the locations described below:

A. Directly beneath the discharge point; and

B. At a radius equal to the depth of the receiving water at the discharge point, in each compass direction (4 samples).



[FR Doc. 89-23097 Filed 9-28-89; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarder and Passenger Vessel Operations, Federal Maritime Commission, Washington, DC 20573.

Wisco International Forwarders Inc., 211-37 99th Ave., Jamaica, New York 11429, Officer: Angel Ithier, President.

Peter A. Holzer, One Harding Road, Red Bank, New Jersey 07701, Officer: Peter Alexander Holzer, Sole Proprietor.

Sumitrans Corporation, 1981 Marcus Ave., Lake Success, New York 11042, Officers: Yoshihiro Hatanaka, President/Director, Toshiaki Ooka, Director, Tomojiro Arita, Director, Sumitomo Corp. of America, Stockholder.

Atrade Forwarding Corp., 145-18 156th St., Jamaica, New York 11434, Officer: Raul Barbosa, President.

By the Federal Maritime Commission.

I.F.S. of Indiana, 390 Nottinghill Court, Indianapolis, Indiana 46234, Officer: Virginia A. Smith, President.

By the Federal Maritime Commission.

Dated: September 25, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-22955 Filed 9-28-89; 8:45 am]
BILLING CODE 6730-01-M

[Petition No. P5-89]

Sea-Land Service, Inc., Application for Section 35 Exemption; Filing

Notice is hereby given that Sea-Land Service, Inc. ("Sea-Land") has applied for an exemption pursuant to section 35 of the Shipping Act, 1916, 46 U.S.C. app. 833a, and Rule 69 of the Commission's Rules of Practice and Procedure, 46 CFR

502.69. Specifically, Sea-Land seeks an order from the Federal Maritime Commission exempting carriers providing all-water transportation between ports in Puerto Rico and ports on the U.S. Atlantic and Gulf Coasts from compliance with certain provisions of section 2 of the Intercoastal Shipping Act, 1933, 46 U.S.C. app. 844, and the Commission's concordant regulations, so that new or reduced individual commodity rates may be published on one day's notice.

In order for the Commission to make a thorough evaluation of the application for exemption, interested persons are requested to submit views or arguments on the application no later than November 10, 1989. Responses shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573-0001 in an original and 15 copies. Responses shall also be served on Stuart R. Breidbart, Esq., Claudia E. Stone, Esq., Sea-Land Service, Inc., P.O. Box 800, Iselin, New Jersey 08830.

Copies of the application are available for examination at the Washington, DC, Office of the Commission, 1100 L Street, NW., Room 11101.

Joseph C. Polking,

Secretary.

[FR Doc. 89-23005 Filed 9-28-89; 8:45 am]

BILLING CODE 6730-01-M

Intent To Cancel Inactive Foreign Tariffs

Served: September 25, 1989.

The foreign commerce files of the Federal Maritime Commission contain numerous tariffs filed on behalf of firms which appear to be inactive or no longer operating as common carriers. For the purpose of this notice a carrier has been deemed to be inactive or no longer operating if it has met all of the following criteria: (1) mail addressed to the carrier is returned as undeliverable by the United States Postal Service; (2) attempts to contact the carrier by telephone have been unsuccessful; (3) failure of the carrier to file an anti-rebating certificate; and (4) failure of the carrier to amend its tariffs during the preceding twelve months.

Inactive tariffs reflect inaccurate information and serve no useful purpose. Accordingly, in the absence of a showing of good cause why such action should not be taken, the Commission proposes to cancel the tariffs of the companies included on the attached list.

Now therefore, it is ordered, That the carriers included on the attached listing advise the Federal Maritime Commission's Director, Bureau of Domestic Regulation at 1100 L Street, NW., Washington, DC 20573, in writing, within 30 days after the publication of this Order in the **Federal Register,** of any reason why the Commission should not cancel their respective tariffs;

It is further ordered, That a copy of this Order be sent by certified mail to the last known address of the carriers listed in the attachment;

It is further ordered, That the tariffs of all carriers named in the attached list who fail, within the time allotted, to provide good cause for maintaining these tariffs in an active status be cancelled;

It is further ordered, That this notice be published in the **Federal Register.**

This Order is issued pursuant to authority delegated to the Director, Bureau of Domestic Regulation by section 9.04 of Commission Order No. 1 (Revised) dated November 12, 1981.

Robert G. Drew,

Director, Bureau of Domestic Regulation.

FEDERAL MARITIME COMMISSION

Bureau of Domestic Regulation, Office of Carrier Tariff and Service Contract Operations

Inactive Tariffs Listed by Acronym and Name Number

Acronym: A. K. Express
DBA Name: NA.
Person Type: Non-vessel-operating common carrier ocean freight forwarder (independent)
Street: 367 W. Victoria Street
City: Gardena
State: CA 90248
Country: United States of America
License No.: 2858
Name No.: 000152

Acronym: A/S Deep Sea Shipping Ltd.
DBA Name: D.S.S., Inc.
Person Type: Ocean common carrier (vessel operating)
Street: 90 West Street, Suite 1100
City: New York
State: NY 10006
Country: United States of America
License No.:
Name No.: 001794

Acronym: Access Cargo Services Corp.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 787 San Bruno Ave. East
City: San Bruno
State: CA 94066
Country: United States of America
License No.:
Name No.: 007931

Acronym: Aeromar Express
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 1505 E. Del Amo Boulevard
City: Carson
State: CA 90745
Country: United States of America
License No.:
Name No.: 007025

Acronym: Aeropac
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 2750 NW 79th Avenue
City: Miami
State: FL 33122
Country: United States of America
License No.:
Name No.: 007066

Acronym: Africa Box Line, Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 147-95 Farmers Boulevard
City: Jamaica
State: NY 11434
Country: United States of America
License No.:
Name No.: 000173

Acronym: AIF Services
DBA Name: Agency International Forwarding, Inc.
Person Type: Non-vessel-operating common carrier
Street: 3979 N.W. 24th Street
City: Miami
State: FL 33124
Country:
License No.:
Name No.: 008169

Acronym: Air Sea Land Cargo
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 2829½ Fletcher Drive
City: Los Angeles
State: CA 90039
Country: United States of America
License No.:
Name No.: 007029

Acronym: Air Sea Transport Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 2nd Floor No. 1, Lane 100 Sun Chiang Road
City: Taipei
State:
Country: Taiwan
License No.:
Name No.: 007075

Acronym: Airline Airfreight (JFK) Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 182-30 150th Road
City: Jamaica
State: NY 11413
Country: United States of America
License No.:

Name No.: 007831
Acronym: Alaska Outport Transportation Association Inc.
DBA Name: NA.
Person Type: Ocean common carrier (vessel operating)
Street: 659 N.E. Northlake Way
City: Seattle
State: WA 98105
Country: United States of America
License No.:
Name No.: 007327
Acronym: Albury's International Shipping, Inc.
DBA Name: NA.
Person Type: Ocean common carrier (vessel operating)
Street: P.O. Box N3456
City: Nassau
State:
Country: Bahama Islands
License No.:
Name No.: 000191
Acronym: All Americas Marine Forwarding Co.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 7001 N.W. 25th Street
City: Miami
State: FL 33122
Country:
License No.:
Name No.: 006210
Acronym: All Cargo Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 167–10 South Conduit Avenue
City: Jamaica
State: NY 11434
Country: United States of America
License No.:
Name No.: 006678
Acronym: All-Oceans Express Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: Suite 2300 No. 3 Embarcadero Center
City: San Francisco
State: CA 94111
Country: United States of America
License No.:
Name No.: 000207
Acronym: Allgreen Worldwide Express
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 1875 House Lane
City: Hanover
State: IL 60103
Country: United States of America
License No.:
Name No.: 005836
Acronym: Alto International Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 89–15 127th Street
City: Richmond Hill
State: NY 11418
Country: United States of America
License No.:
Name No.: 007074
Acronym: Always Ocean Transport
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 167–16 146th Avenue
City: Jamaica
State: NY 11434
Country: United States of America
License No.:
Name No.: 007089
Acronym: American Caribbean Transport, Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: P.O. Box 3399
City: Humble
State: TX 77347
Country: United States of America
License No.:
Name No.: 006991
Acronym: American Gulf Shipping, Inc.
DBA Name: NA.
Person Type: Ocean common carrier (vessel operating)
Street: 2420 Athania Parkway, Suite 300
City: Metairie
State: LA 70002
Country: United States of America
License No.:
Name No.: 005851
Acronym: American Shipping Lines
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 11320 South Post Oak Road, #214
City: Houston
State: TX 77035
Country: United States of America
License No.:
Name No.: 006615
Acronym: Americas Container Line Ltd.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 32 South Street
City: Baltimore
State: MD 21202
Country: United States of America
License No.:
Name No.: 006196
Acronym: Anchor Maritime Lines, Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 8003 N.W. 67th Street
City: Miami
State: FL 33166
Country: United States of America
License No.:
Name No.: 000252
Acronym: Andean Line N.V.
DBA Name: NA.
Person Type: Ocean common carrier (vessel operating)
Street: J. Kenndedy Lann 30
City: 9020 Gent
State:
Country: Belgium
License No.:
Name No.: 006312
Acronym: Anderson Shipping Company, Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: P.O. Box 1554
City: Tustin
State: CA 92680
Country: United States of America
License No.:
Name No.: 007443
Acronym: Asia Shipping Company, Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 157–159 Tonnelle Avenue
City: Jersey City
State: NJ 07306
Country: United States of America
License No.:
Name No.: 007832
Acronym: Astro Traders, Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 1246 Artesia Boulevard
City: Long Beach
State: CA 90805
Country: United States of America
License No.:
Name No.: 006675
Acronym: B.C.R. Line
DBA Name: NA.
Person Type: Ocean common carrier (vessel operating)
Street: C/O MTO–Maritime Transport Overseas GMBH AM Seestern 24
City: D–4000 Dusseldorf 11
State:
Country: German Federal Republic (West)
License No.:
Name No.: 000324
Acronym: Bahama Shipping Lines, Ltd.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: P.O. Box N–4645
City: Nassau
State:
Country: Bahama Islands
License No.:
Name No.: 000337
Acronym: Bangkok Shipping

DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 8232 Coldwater Canyon Avenue
City: North Hollywood
State: CA 91605
Country: United States of America
License No.:
Name No.: 007849

Acronym: Banks Shipping, Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 1241 Public Ledger Bldg.
City: Philadelphia
State: PA 19106
Country: United States of America
License No.:
Name No.: 000346

Acronym: Barber Transport Corp.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 1 Jacobus Avenue, Bldg. 9A
City: S. Kearny
State: NJ 07032
Country: United States of America
License No.:
Name No.: 008145

Acronym: Beaver Marine Lines
DBA Name: NA.
Person Type: Ocean Freight Forwarder (Independent) Non-vessel-operating common carrier
Street: P.O. Box 38489
City: Denver
State: CO 80236
Country: United States of America
License No.: 2531
Name No.: 000357

Acronym: Benship International, Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 145th Avenue and Hook Creek Road
City: Valley Stream
State: NY 11581
Country: United States of America
License No.:
Name No.: 007773

Acronym: Brasca Line
DBA Name: NA.
Person Type: Ocean common carrier (vessel operating)
Street: Klipperstraat, 15
City: D 2030 Antwerp
State:
Country: Belgium
License No.:
Name No.: 006083

Acronym: Bywater Shipping, Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 8320 Benjamin Street
City: Chalmette
State: LA 70043
Country: United States of America
License No.:
Name No.: 006960

Acronym: C. C. C. of Georgia, Inc.
DBA Name: NA.
Person Type: Ocean common carrier (vessel operating)
Street: P.O. Box 2317
City: Brunswick
State: GA 31521
Country: United States of America
License No.:
Name No.: 007036

Acronym: CAL International Freight Services
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 1543 East Delarno Blvd.
City: Carson
State: CA 90746
Country: United States of America
License No.:
Name No.: 007783

Acronym: Canadian Tropic Line
DBA Name: NA.
Person Type: Ocean common carrier (vessel operating)
Street: 100 Park Royal, Suite 1102
City: W. Vancouver V7T 1A2
State:
Country: Canada
License No.:
Name No.: 006316

Acronym: Canadian-American Shipping Corp.
DBA Name: CAN-AM Line
Person Type: Non-vessel-operating common carrier
Street: 157–21 Rockaway Blvd.
City: Jamaica
State: NY 11434
Country: United States of America
License No.:
Name No.: 006673

Acronym: Cancun Shipping Corp.
DBA Name: NA.
Person Type: Ocean common carrier (vessel operating)
Street: 890 South Dixie Highway
City: Coral Gables
State: FL 33146
Country: United States of America
License No.:
Name No.: 007124

Acronym: Capella Marine Service, S.A.
DBA Name: NA.
Person Type: Ocean common carrier (vessel operating)
Street: 37–74 Oficina 105, Via Espana, Edificio Rafael
City: Panama City
State:
Country: Republic of Panama
License No.:
Name No.: 006234

Acronym: Cargo King Ltd.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 1079 West Side Avenue, P.O. Box 3143
City: Jersey City
State: NJ 07303
Country: United States of America
License No.:
Name No.: 005990

Acronym: Cargo Mania Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 5088 NW 74th Avenue
City: Miami
State: FL 33166
Country: United States of America
License No.:
Name No.: 005994

Acronym: Cargo Masters International Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 8807 Pioneer Blvd., Unit E
City: Santa Fe Springs
State: CA 90670
Country: United States of America
License No.:
Name No.: 005962

Acronym: Cargo Point International Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 45 John Street, Suite 902
City: New York
State: NY 10038
Country: United States of America
License No.:
Name No.: 005995

Acronym: Cargo, S.P.A.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: Via Del Caravaggio, 6
City: 20144 Milano
State:
Country: Italy
License No.:
Name No.: 005997

Acronym: Cargolift (USA) Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 8084 Cherry Stone Avenue
City: Panorama City
State: CA 94102
Country: United States of America
License No.:
Name No.: 006349

Acronym: Caribbean Intefica Line
DBA Name: Cari Line
Person Type: Ocean common carrier (vessel operating)
Street: 4210 N.W. 2nd Street, Suite 1
City: Miami

State: FL 33126
Country: United States of America
License No.:
Name No.: 007924

Acronym: CCN
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 444 Brickell Avenue, Suite 1015
City: Miami
State: FL 33131
Country: United States of America
License No.:
Name No.: 006071

Acronym: CCS Cargo Services Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 225 Broadway, Suite 304
City: New York
State: NY 10007
Country: United States of America
License No.:
Name No.: 007641

Acronym: Cedar Star Line
DBA Name: NA.
Person Type: Ocean common carrier (vessel operating)
Street: Port Str—Bohsali Bldg. P.O. Box 90–1460 (JDEIDET EL METN)
City: Beirut, Lebanon
State:
Country: Lebanon
License No.:
Name No.: 007498

Acronym: CGM/Interline
DBA Name: Interline Connection, Inc.
Person Type: Ocean common carrier (vessel operating)
Street: 350 Calle Comercil
City: San Juan
State: PR 00905
Country: United States of America
License No.:
Name No.: 006964

Acronym: Cheetah Express Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 2260 Landsmeier Road, Unit "E"
City: Elk Grove
State: IL 60007
Country: United States of America
License No.:
Name No.: 007808

Acronym: Chiao Feng Shipping Ltd.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: Room 903, The Centre Mark 287–299 Queen's Road, Central
City: Hong Kong
State:
Country: Hong Kong
License No.:
Name No.: 007986

Acronym: Christensen Canadian African Lines
DBA Name: NA.
Person Type: Ocean common carrier (vessel operating)
Street: Ranvik
City: 3200 Sandefjord
State:
Country: Norway
License No.:
Name No.: 000754

Acronym: CMB Trutainer
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: Meir 1
City: B–2000 Antwerp
State:
Country: Belgium
License No.:
Name No.: 007513

Acronym: Coastal International Cargo and Travel Svc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 9346 Van Nuys Blvd., #2
City: Panorama City
State: CA 91492
Country: United States of America
License No.:
Name No.: 007092

Acronym: Coburn Shipping Services
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 50–58 Alco Place
City: Baltimore
State: MD 21227
Country: United States of America
License No.:
Name No.: 007602

Acronym: Compagnie Maritime Zairoise
DBA Name: CMZ Connectainer
Person Type: Controlled Carrier
Street: B.P. 9496
City: Kinshasa
State:
Country: Zaire
License No.:
Name No.: 000785

Acronym: Compagnie Marocaine De Navigation
DBA Name: Comanav
Person Type: Controlled Carrier
Street: 7, Boulevard De La Ressistance
City: Casablanca 05
State:
Country: Morocco
License No.:
Name No.: 005965

Acronym: Conrado's Cargo
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 2710 Kausman Street
City: San Diego
State: CA 92139
Country: United States of America
License No.:
Name No.: 007148

Acronym: Consolidated Cargo Services
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 42 Broadway, Suite 1545
City: New York
State: NY 10004
Country: United States of America
License No.:
Name No.: 000804

Acronym: Consolidated International Freightways
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 8213 N. Denver Avenue
City: Portland
State: OR 97217
Country: United States of America
License No.:
Name No.: 007979

Acronym: Container Express Lines Inc.
DBA Name: NA.
Person Type: Ocean common carrier (vessel operating)
Street: 725 Market Street
City: Wilmington
State: DE 19801
Country: United States of America
License No.:
Name No.: 007139

Acronym: Container Lines Ltd.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier, ocean common carrier (vessel operating)
Street: 20/21 Princess Street—Hanover Square
City: London WIR8PX
State:
Country: Great Britain
License No.:
Name No.: 000812

Acronym: Continental Movers, Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: P.O. Box 1606
City: Christiansted, St. Croix
State: VI 00820
Country: United States of America
License No.:
Name No.: 002699

Acronym: Continental Seacorp Shipping, Ltd.
DBA Name: NA.
Person Type: Ocean common carrier (vessel operating)
Street: Butterfield Plaza
City:
State:
Country: Turks and Caicos Islands
License No.:
Name No.: 007318

Acronym: Cornell Air Freight Limited
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 155–06 South Conduit Avenue
City: Jamaica
State: NY 11434
Country: United States of America
License No.:
Name No.: 001772

Acronym: Crossroads Freight Systems, Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 1801 Hunter St.
City: Los Angeles
State: CA 90021
Country: United States of America
License No.:
Name No.: 000843

Acronym: Ctn Consolidators and Distributors, Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: Elizabeth Seaport, 250 North Avenue East
City: Elizabeth
State: NJ 07020
Country: United States of America
License No.:
Name No.: 006352

Acronym: Dacher Transport of America Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 175–01 Rockaway Boulevard, Suite 301
City: Jamaica
State: NY 11434
Country: United States of America
License No.:
Name No.: 000917

Acronym: Dania Lines Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 6448 Ella Lee #2
City: Houston
State: TX 77057
Country: United States of America
License No.:
Name No.: 006077

Acronym: Danielle International
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 147–04 176 Street
City: Jamaica
State: NY 11434
Country: United States of America
License No.:
Name No.: 000911

Acronym: Diamond Freight Consolidators, Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 8432 NW 66th Street
City: Miami
State: FL 33166
Country: United States of America
License No.:
Name No.: 006756

Acronym: Domedar International Corporation
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 1111 El Segundo Blvd
City: El Segundo
State: CA 90145
Country: United States of America
License No.:
Name No.: 006778

Acronym: Dominican Consolidators
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 168–15 Willowbrook Dr.
City: North Brunswick
State: NJ 08902
Country: United States of America
License No.:
Name No.: 006936

Acronym: Dyer International, Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 1782 Clear Lake Drive
City: Milpitas
State: CA 95035
Country:
License No.:
Name No.: 008232

Acronym: Eurasia International Freight, Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 5th Floor, No. 215, Sec. 3, Nanking E. Rd. T.
City: Taipei
State:
Country: Taiwan
License No.:
Name No.: 006920

Acronym: Euro Italian Freight Systems S.R.L.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: Corso Sempione 60
City: 20154 Milano
State:
Country: Italy
License No.:
Name No.: 006101

Acronym: Excel International Freight
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 19700 Susana Road
City: Compton
State: CA 90221
Country: United States of America
License No.:
Name No.: 001264

Acronym: Export Lines Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 280 Ellsworth Avenue
City: Staten Island
State: NY 10312
Country: United States of America
License No.:
Name No.: 001265

Acronym: Far East Container Services, Ltd.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: Tsin Sha Tsui—P.O. Box 85724
City: Kowloon
State:
Country: Hong Kong
License No.:
Name No.: 001776

Acronym: Far East Freight, Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 79–11 41st Avenue
City: Elmhurst
State: NY 11373
Country: United States of America
License No.:
Name No.: 005730

Acronym: Fednav (USA) Inc.
DBA Name: Fednav Lakes Services
Person Type: ocean common carrier (vessel operating)
Street: 174 S. Clark Street
City: Detroit
State: MI 48209
Country: United States of America
License No.:
Name No.: 006134

Acronym: Finn Container Cargo Services
DBA Name: NA.
Person Type: Non-vessel-operating common carrier,ocean common carrier (vessel operating)
Street: 1921 Bolsover
City: Houston
State: TX 77005
Country: United States of America
License No.:
Name No.: 008400

Acronym: Four Stars Forwarding
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: P.O. Box 26046
City: San Diego
State: CA 92126
Country: United States of America

License No.:
Name No.: 007825
Acronym: Freeway Enterprises
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 2029 Chateau Avenue
City: Anaheim
State: CA 92804
Country: United States of America
License No.:
Name No.: 006680
Acronym: French Groupage Services
DBA Name: Interline Connection
Person Type: Non-vessel-operating common carrier
Street: 22 Lue due Beneral de Gaulle
City: St. Martin
State:
Country: French Guiana
License No.:
Name No.: 006940
Acronym: Friendship Lines, Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 159 Broad Street
City: Brooklyn
State: NY 11231
Country: United States of America
License No.:
Name No.: 006786
Acronym: Full Speed Maritime Ltd.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 709–710 Sincere Building, 173 Des Voeux Road Central
City: Hong Kong
State:
Country: Hong Kong
License No.:
Name No.: 006244
Acronym: Gemini Shipping, Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 12214 Cardston Court
City: Tomball
State: TX 77375
Country: United States of America
License No.:
Name No.: 007274
Acronym: Genebell International Freight Services
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 10855 Magnolia Blvd.
City: North Hollywood
State: CA 91601
Country: United States of America
License No.:
Name No.: 006666
Acronym: General American Transport Organization Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: P.O. Box 8453
City: Woodlands
State: TX 77387
Country: United States of America
License No.:
Name No.: 006252
Acronym: General Line, Ltd.
DBA Name: General Line
Person Type: Ocean common carrier (vessel operating)
Street: 25 Warehouse Road, P.O. Box 3660 APAPA
City: Lagos
State:
Country: Nigeria
License No.:
Name No.: 007083
Acronym: Global International U.S.A., Inc.
DBA Name: Global International
Person Type: Non-vessel-operating common carrier
Street: 13430 Northwest Freeway, Ninth Floor
City: Houston
State: TX 77040
Country: United States of America
License No.:
Name No.: 004556
Acronym: Global Seacargo Express
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 4402 West Jefferson Blvd.
City: Los Angeles
State: CA 90016
Country: United States of America
License No.:
Name No.: 007955
Acronym: Grande Monde Travel and Forwarding Corp.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 9658 Garden Grove Blvd., Suite 203
City: Garden Grove
State: CA 92644
Country: United States of America
License No.:
Name No.: 006745
Acronym: Great Western Shipping Corp.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 241 E. Redondo Beach Blvd.
City: Gardena
State: Ca 90248
Country: United States of America
License No.:
Name No,: 00633
Acrynym: GS Ocean Freight Ltd.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 106 Tam Kung Road, G/F.,
City: Kowloon
State:
Country: Hong Kong
License No.:
Name No.: 007487
Acronym: Guangdong International Shipping Co., Ltd.
DBA Name: NA.
Person Type: Controlled carrier
Street: 25/F., Yardley Commercial Building, 1–3 Connaught Road, West
City: Hong Kong
State:
Country: Hong Kong
License no.:
Name No.: 00484
Acronym: Gulf Carib Lines Ltd.
DBA Name: NA.
Person Type: Ocean common carrier (vessel operating)
Street: P.O. Box 1500
City: Tampa
State: FL 33601
Country: United States of America
License No.:
Name No.: 007710
Acronym: Haniel Transport (Taiwan) Ltd.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 9 Fl., 111, Nanking East Road, Sec. 2.
City: Taipei
State:
Country: Taiwan
License No.:
Name No.: 007648
Acronym: Hemisphere Navigation & Trading Corp.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 43 Park Street
City: New York
State: NY 10007
Country: United States of America
License No.:
Name No.: 007509
Acronym: Hemisphere Navigation Co. Inc.
DBA Name: Caribbean Project Lines
Person Type: Non-vessel-operating common carrier
Street: 43 Park Place
City: New York
State: NY 10007
Country: United States of America
License No.:
Name No.: 005852
Acronym: HI HI Santi Corp.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 136–F South Linden Ave.
City: South San Francisco

State: CA 94080
Country: United States of America
License No.:
Name No.: 007320

Acronym: Home Boys Shipping Company, The
DBA Name: NA.
Person Type: Ocean common carrier (vessel operating)
Street: P.O. Box 422, Marsh Harbour
City: Abaco
State:
Country: Bahama Islands
License No.:
Name No.: 006354

Acronym: Hong Kong Islands Line
DBA Name: NA.
Person Type: Ocean common carrier (vessel operating)
Street: 249 E. Ocean Blvd., Suite 900
City: Long Beach
State: CA 90802
Country: United States of America
License No.:
Name No.: 001447

Acronym: I.C.E. Express, Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 1819 Jackson Street, Suite 4
City: San Francisco
State: CA 94109
Country: United States of America
License No.:
Name No.: 007565

Acronym: IFS Lines, Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 8 Hook Road
City: Bayonne
State: NJ 07002
Country: United States of America
License No.:
Name No.: 006945

Acronym: Imperial Lines Corporation
DBA Name: NA.
Person Type: Ocean common carrier (vessel operating)
Street: 7000 S.W. 62 Avenue, Suite 555–A
City: Miami
State: FL 33143
Country: United States of America
License No.:
Name No.: 007649

Acronym: Integrated Caribbean Line, S.A.
DBA Name: NA.
Person Type: Ocean common carrier (vessel operating)
Street: Napoles 36—501
City: 06600 Mexico, D.F.
State:
Country: Mexico
License No.:
Name No.: 006899

Acronym: Inter Oceanic Freight, S.A.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: Ave. Romulo Betancourt #335
City: Santo Domingo
State:
Country: Dominican Republic
License No.:
Name No.: 005944

Acronym: Inter-Mart Consolidators, Co.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 8501 Wilshire Blvd., Suite 130
City: Beverly Hills
State: CA 90211
Country: United States of America
License No.:
Name No.: 007113

Acronym: Interasia Lines, Ltd.
DBA Name: NA.
Person Type: Ocean common carrier (vessel operating)
Street: 2–3 3-Chome, Marunochi, Chiyoda-Ku
City: Tokyo 100
State:
Country: Japan
License No.:
Name No.: 001335

Acronym: International Aero-Sea Forwarders, Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 184–54 149th Avenue
City: Springfield Garden
State: NY 11413
Country: United States of America
License No.:
Name No.: 007778

Acronym: International Cargo Consolidation, Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 5 FL–A, Li Fung Tower No. 1 Nanking E. Rd., Sec. 4
City: Taipei
State:
Country: Taiwan
License No.:
Name No.: 007570

Acronym: International Exhibits Transport, Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 150 Broadway—Suite 1809
City: New York
State: NY 10038
Country: United States of America
License No.:
Name No.: 001360

Acronym: International Transportation Network, Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 2340 South El Camino Real, Suite 14
City: San Clemente
State: CA 92672
Country: United States of America
License No.:
Name No.: 006748

Acronym: Intersea Shipping Company, Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 287 Syosset–Woodbury Road
City: Woodbury
State: NY 11797
Country: United States of America
License No.:
Name No.: 001376

Acronym: IPI Transport, Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 320 Pine Avenue, #400
City: Long Beach
State: CA 90802
Country: United States of America
License No.:
Name No.: 007930

Acronym: Island Shipping Lines, Ltd.
DBA Name: NA.
Person Type: Ocean common carrier (vessel operating)
Street: P.O. BOX 801
City: Red Bank
State: NJ 07701
Country: United States of America
License No.:
Name No.: 006084

Acronym: Jamaica Express Consolidators, Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 60 Kellogg Street
City: Jersey City
State: NJ 07035
Country: United States of America
License No.:
Name No.: 007338

Acronym: Japan Multimodal Transport Co., Ltd.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 19, Kanda-Nishikicho, 3-Chome Cyiyoda-Ku
City: Tokyo 101
State:
Country: Japan
License No.:
Name No.: 005674

Acronym: K/S NOSAC A/S
DBA Name: NOSAC

Person Type: Ocean common carrier (vessel operating)
Street: P.O. Box 27, Smetad
City: 0309 Oslo 3
State:
Country: Norway
License No.:
Name No.: 007034

Acronym: Kaitone Shipping Co., Ltd.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 249 Des Voeux Road C Room 1102–2, Tung Ning Bldg.
City: Hong Kong
State:
Country: Hong Kong
License No.:
Name No.: 006938

Acronym: Kawasaki Kisen Kaisha, Ltd.
DBA Name: NA.
Person Type: Ocean common carrier (vessel operating)
Street: 2P9 Nishi-Shinbashi, 1-Chome, Minato-Ku
City: Tokyo 105
State:
Country: Japan
License No.:
Name No.: 001466

Acronym: Korea Shipping Corp.
DBA Name: NA.
Person Type: Ocean common carrier (vessel operating)
Street: 188–3, 1–KA, Eulji-Ro, Choong-Ku CPO Box 1164
City: Seoul 100
State:
Country: Republic of Korea
License No.:
Name No.: 001456

Acronym: L.K. Overseas Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 555 E. Ocean Blvd. #818
City: Long Beach
State: CA 90802
Country: United States of America
License No.:
Name No.: 005911

Acronym: L.K.B. Marine
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 314 Lang Road
City: Burlingame
State: CA 94010
Country: United States of America
License No.:
Name No.: 006947

Acronym: Latinvan, Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 2100 NW 94 Ave.
City: Miami
State: FL 33172
Country: United States of America
License No.:
Name No.: 001590

Acronym: Leadway Express Co., Ltd.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 7F–1, No. 73 Fu Hsing N. Road
City: Taipei
State:
Country: Taiwan
License No.:
Name No.: 007998

Acronym: Lessco Trading Inc.
DBA Name: Lessco Shipping
Person Type: Non-vessel-operating common carrier
Street: 148 S.W. 8th Street
City: Miami
State: FL 33130
Country: United States of America
License No.:
Name No.: 007297

Acronym: Lloyd International, Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 26 Lantern Lane
City: Weymouth
State: MA 02188
Country: United States of America
License No.:
Name No.: 005921

Acronym: Low Country International, Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: P.O. Box 15173, 1235 Kenilworth Avenue, N.E.
City: Washington
State: DC 20019
Country: United States of America
License No.:
Name No.: 005919

Acronym: M.B.C. Lines
DBA Name: M.B.C. Lines
Person Type: Ocean common carrier (vessel operating)
Street:
City: Panama
State:
Country: Republic of Panama
License No.:
Name No.: 005942

Acronym: MACS Maritime Carrier Shipping GMBH & Company
DBA NAME: NA.
Person Type: Ocean common carrier (vessel operating)
Street: Vorsetzen 50
City: 2000 Hamburg 11
State:
Country: German Federal Republic (West)
License No.:
Name No.: 001639

Acronym: Maine Line Transport, Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 217 Read Street
City: Portland
State: OR 04101
Country: United States of America
License No.:
Name No.: 006592

Acronym: Majestic Freight System Corporation
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 8816 S. Sepulveda Blvd., Suite 102
City: Los Angeles
State: CA 90045
Country: United States of America
License No.:
Name No.: 007072

Acronym: Majestic International, Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 10950 S.W. 117th Place
City: Miami
State: FL 33187
Country: United States of America
License No.:
Name No.: 007502

Acronym: Manila Freight Services
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 213 E. Maude Avenue, Suite 112
City: Sunnyvale
State: CA 94086
Country: United States of America
License No.:
Name No.: 007774

Acronym: Manila International Freight Services
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 1543 E. Del Amo Blvd.
City: Carson
State: CA 90746
Country: United States of America
License No.:
Name No.: 007341

Acronym: Marcon Line Ltd.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 2410 S. Sierra Drive
City: Compton
State: CA 90220
Country: United States of America
License No.:
Name No.: 001654

Acronym: Marden Freight Systems, Inc.
DBA Name: NA.

Person Type: Non-vessel-operating common carrier
Street: 7489 N.W. 7th Street
City: Miami
State: FL 33126
Country: United States of America
License No.:
Name No.: 006847

Acronym: Marfret
DBA Name: NA.
Person Type: Ocean common carrier (vessel operating)
Street: 13, Quai De La Joliette
City: 13002 Marseille
State:
Country: France
License No.:
Name No.: 007141

Acronym: Marinvest Funds S.A.
DBA Name: Dominican Ferries
Person Type: Ocean common carrier (vessel operating)
Street: Gustavo Mejia Ricart No. 80, Ens Piantina
City: Santo Domingo
State:
Country: Dominican Republic
License No.:
Name No.: 005857

Acronym: Master Freight Ltd.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: Block "B" 15th Floor, Hong Kui Building
311 Nathab Road
City: Kowloon
State:
Country: Hong Kong
License No.:
Name No.: 007118

Acronym: Mediterranean Shipping and Transport S.A.R.L.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: P.O. Box 175324, Pasteur Street
City: Beirut
State:
Country: Lebanon
License No.:
Name No.: 007935

Acronym: Mer-Line Shipping Company
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 2700 Greens Road, Bldg. K
City: Houston
State: TX 77032
Country: United States of America
License No.:
Name No.: 007886

Acronym: Milwaukee Liner Service, Inc.
DBA Name: NA.
Person Type: Ocean common carrier (vessel operating)
Street: 500 North Harbor Drive
City: Milwaukee
State: WI 53202
Country: United States of America
License No.:
Name No.: 007070

Acronym: Mollie Limited
DBA Name: NA.
Person Type: Ocean common carrier (vessel operating)
Street: Marsh Harbour
City: Aboco, Bahamas
State:
Country: Bahama Islands
License No.:
Name No.: 006679

Acronym: Multi-Trade Lines
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: P.O. Box 504, 156 Park Avenue
City: Rutherford
State: NJ 07070
Country: United States of America
License No.:
Name No.: 006361

Acronym: Mystery Lady Trading Co., Ltd.
DBA Name: NA.
Person Type: Ocean common carrier (vessel operating)
Street: Grand Turk
City: Turks and Caico Isle
State:
Country: Turks and Caicos Islands
License No.:
Name No.: 007905

Acronym: N.T. Cargo Service
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 1390 E. Burnett Street, Suite E.
City: Signal Hill
State: CA 90806
Country: United States of America
License No.:
Name No.: 007076

Acronym: Nantai Line Co., Ltd.
DBA Name: NA.
Person Type: Ocean common carrier (vessel operating)
Street: 450 Sansome Street, Suite 400
City: San Francisco
State: CA 94111
Country: United States of America
License No.:
Name No.: 006143

Acronym: Navisan Line
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 3201 N.W. S. River Drive
City: Miami
State: FL 33142
Country: United States of America
License No.:
Name No.: 007897

Acronym: Near East Container Lines
DBA Name: NA.
Person Type: Ocean common carrier (vessel operating)
Street: Via A Vespucci 9/20
City: Naples
State:
Country: Italy
License No.:
Name No.: 006156

Acronym: Neth Box Consolidators B.V.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: Seven Dey Street, Suite 711
City: New York
State: NY 10007
Country: United States of America
License No.:
Name No.: 006344

Acronym: Network Container Line, Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 9721 Kempwood
City: Houston
State: TX 77080
Country: United States of America
License No.:
Name No.: 008028

Acronym: New Port Shipping Lines Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 2450 Delta Lane
City: Elk Grove Village
State: IL 60007
Country: United States of America
License No.:
Name No.: 007109

Acronym: New Tradewinds Int'l, Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 90 West Street, Suite 2201
City: New York
State: NY 10006
Country:
License No.:
Name No.: 006118

Acronym: Ocean Express Lines, Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 640 Mark Street
City: Elk Grove Village
State: IL 60007
Country: United States of America
License No.:
Name No.: 001282

Acronym: Ocean General Line
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: One Intercontinental Way
City: Peabody
State: WA 01960
Country: United States of America

License No.:
Name No.: 007121
Acronym: Ocean-Air International, Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 11222 La Cienega Blvd., #475
City: Inglewood
State: CA 90304
Country: United States of America
License No.:
Name No.: 001279
Acronym: Oceanide Express, Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 9000 Bellanca Ave., Suite 25 & 26
City: Los Angeles
State: CA 90045
Country: United States of America
License No.:
Name No.: 007497
Acronym: OCS–CF International
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 300 4th Street
City: San Francisco
State: CA 94107
Country: United States of America
License No.:
Name No.: 006693
Acronym: Orient Consolidation Service (Hong Kong) Ltd
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: Room 1305–8, 13th Floor, Albion Plaza, 2–6 Granville Rd.
City: Tsimshatsui, Kowloon
State:
Country: Hong Kong
License No.:
Name No.: 006988
Acronym: Orient Express
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 3824 S. Santa Fe, Unite No. 1
City: Vernon
State: CA 90058
Country: United States of America
License No.:
Name No.: 007123
Acronym: Overseas Express Line
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 7628 Weymouth Circle
City: Hanover Park
State: IL 60007
Country: United States of America
License No.:
Name No.: 007635
Acronym: Overseas Moving Specialists, Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 112 North 12th Street
City: Brooklyn
State: NY 11211
Country: United States of America
License No.:
Name No.: 001310
Acronym: Overseas Super Express, Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 366 Coral Circle
City: El Segundo
State: CA 90245
Country: United States of America
License No.:
Name No.: 002140
Acronym: Overseas Transport International Corp.
DBA Name: NA.
Person Type: Ocean common carrier (vessel operating)
Street: 30 Montgomery Street, Suite 1440
City: Jersey City
State: NJ 07302
Country: United States of America
License No.:
Name No.: 006074
Acronym: Overseas Transportation Consultants, Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 9096 Railwood
City: Houston
State: TX 77078
Country: United States of America
License No.:
Name No.: 006179
Acronym: Ozean/Stinnes Lines
DBA Name: NA.
Person Type: Foreign Joint Service—Consortium Agreement
Street: Ballindamm 8
City: 2000 Hamburg 1
State:
Country: Germany Federal Republic (West)
License No.:
Name No. : 008623
Acronym: P.T. Trikora Lloyd
DBA Name: NA.
Person Type: Ocean common carrier (vessel operating)
Street: 1 Jalan Malaka
City: Jakarta
State:
Country: Indonesia
License No.:
Name No.: 000623
Acronym: Pac-Asiatic Container Line
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 3766 Gaviota Avenue
City: Long Beach
State: CA 90807
Country: United States of America
License No.:
Name No.: 007950
Acronym: Pacific Container Lines Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 939 S. Atlantic Blvd. #207
City: Monterey Park
State: CA 91754
Country: United States of America
License No.:
Name No.: 002269
Acronym: Pacific Islands International, Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 1318 Madison Avenue, Suite 3
City: New York
State: NY 10128
Country: United States of America
License No.:
Name No.: 007776
Acronym: Pacific Rim Express Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 1525 Adrian Road
City: Burlingame
State: CA 94010
Country: United States of America
License No.:
Name No.: 007151
Acronym: Pakbox Intermodal Services
DBA Name: Paxbox B.V.
Person Type: Non-vessel-operating common carrier
Street: P.O. Box 29163
City: 3001 GD Rotterdam
State:
Country: The Netherlands
License No.:
Name No.: 006212
Acronym: Pan Universe Express (U.S.A.) Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 11976 Aviation Blvd.
City: Inglewood
State: CA 90304
Country: United States of America
License No.:
Name No.: 006799
Acronym: Papua New Guinea Shipping Corporation (PTY)
DBA Name: NA.
Person Type: Ocean common carrier (vessel operating)
Street: Corner Cuthbertson St. and Stanley ESP.
P.O. Box 543, Port Moresby
City: Papua
State:
Country: Guinea Bissau

License No.:
Name No.: 006813
Acronym: Perch Ocean Lines of Perfect Sea Freight (HK)
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: One Marine Plaza, Suite 1000
City: San Francisco
State: CA 94111
Country: United States of America
License No.:
Name No.: 006209
Acronym: Philmacor Enterprises, Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 500 North Adams Street
City: Glendale
State: CA 91206
Country: United States of America
License No.:
Name No.: 008041
Acronym: Phimco Limited
DBA Name: Magiliw Transport, Int'l
Person Type: Non-vessel-operating common carrier
Street: 706 Dillon Street
City: Los Angeles
State: CA 90026
Country: United States of America
License No.:
Name No.: 007980
Acronym: Phoenix Shipping, Inc.
DBA Name: NA.
Person Type: Ocean common carrier (vessel operating)
Street: 505 N. Belt East, #130
City: Houston
State: TX 77060
Country: United States of America
License No.:
Name No.: 001017
Acronym: Pinterex Container Co.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 1730 West 7th Street
City: Los Angeles
State: CA 90017
Country: United States of America
License No.:
Name No.: 001020
Acronym: Plantation Operating Co., Inc.
DBA Name: P.O.C. Line
Person Type: Ocean common carrier (vessel operating)
Street: 1225 North Loop West, Suite 1025
City: Houston
State: TX 77008
Country: United States of America
License No.:
Name No.: 007457
Acronym: PTC Packing & Storage, Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 8946 N.W. 61st Street
City: Miami
State: FL 33166
Country: United States of America
License No.:
Name No.: 007064
Acronym: R.A.S. Professional Cargo Service
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 808 South Vermont Avenue
City: Los Angeles
State: CA 90005
Country: United States of America
License No.:
Name No.: 007818
Acronym: Radj Inc. International
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 245 Visitacion Avenue
City: Brisbane
State: CA 94005
Country: United States of America
License No.:
Name No.: 007644
Acronym: Rank International Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 1758 N.W. 82nd Avenue
City: Miami
State: FL 33126
Country: United States of America
License No.:
Name No.: 006216
Acronym: Regency Navigation Company
DBA Name: NA.
Person Type: Ocean common carrier (vessel operating)
Street: 24 North Market Street, Suite 103
City: Charleston
State: SC 29401
Country: United States of America
License No.:
Name No.: 006681
Acronym: Revco Cargo Co., Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 3219 Beverly Blvd.
City: Los Angeles
State: CA 90057
Country: United States of America
License No.:
Name No.: 007869
Acronym: Rhein Express International Ltd.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 4849 N. Scott Street, Suite 9
City: Schiller Park
State: IL 60176
Country: United States of America
License No.:
Name No.: 006730
Acronym: Risamar International Transport Corp.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 17 Battery Place
City: New York
State: NY 10004
Country: United States of America
License No.:
Name No.: 000875
Acronym: RL Freight Services Company
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 8639 Meadow Road
City: Downey
State: CA 90242
Country: United States of America
License No.:
Name No.: 007598
Acronym: RMC Lines Ltd.
DBA Name: NA.
Person Type: Ocean common carrier (vessel operating)
Street: 436 S.W. 8th Street
City: Miami
State: FL 33130
Country: United States of America
License No.:
Name No.: 000851
Acronym: Roco Carriers PTE Ltd.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 16 Raffles Quay #24–03 Hong Leong Building
City: Singapore 0104
State:
Country: Singapore
License No.:
Name No.: 007300
Acronym: Roco Carriers, Ltd.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 32 Broadway—Suite 1600
City: New York
State: NY 10004
Country: United States of America
License No.:
Name No.: 000877
Acronym: Romanian Shipping Company Constanta (Navrom)
DBA Name: Romanian Shipping Company
Person Type: Controlled Carrier
Street: Constantza Port
City: Constantza Code 8700
State:
Country: Rumania
License No.:
Name No.: 006157
Acronym: Sae Joo Maritime
DBA Name: NA.

Person Type: Non-vessel-operating common carrier
Street: 602 Sam Won Building 112–5 So Kong-Dong, Chung-Go
City: Seoul
State:
Country: Republic of Korea
License No.:
Name No.: 007298

Acronym: Safeway Cargo Services
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 137 S. Linden Avenue
City: South San Francisco
State: CA 94080
Country: United States of America
License No.:
Name No.: 007816

Acronym: Samex Air Forwarders, Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 8621 Bellanca Avenue
City: Los Angeles
State: CA 90045
Country: United States of America
License No.:
Name No.: 006033

Acronym: Samjung Shipping Co., Ltd.
DBA Name: Seacon Lines
Person Type: Non-vessel-operating common carrier
Street: Rm 1605 Dae Yungak Center
City: CPO Box 6586, Seoul
State:
Country: Republic of Korea
License No.: 3111
Name No.: 006115

Acronym: Satex Shipping, S.A.
DBA Name: NA.
Person Type: Ocean common carrier (vessel operating)
Street: C/O Marine Transportation Services 1040 Port Boulevard
City: Miami
State: FL 33132
Country: United States of America
License No.:
Name No.: 007607

Acronym: Scanfreight Continental N.V.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 150 Broadway
City: New York
State: NY 10038
Country: United States of America
License No.:
Name No.: 001083

Acronym: Scindia Steam Navigation Co., Ltd., The
DBA NAME: NA.
Person Type: Ocean common carrier (vessel operating)
Street: Narrottam Morarjee Marg. Ballard Estate
City: Bombay 400 038
State:
Country: India
License No.:
Name No.: 005682

Acronym: Seacon Express Chicago, Ltd.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 1107 N. Ellis Street
City: Bensenville
State: IL 60106
Country: United States of America
License No.:
Name No.: 007001

Acronym: Seacon Express Los Angeles, Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 1111 Watson Center Road One
City: Carson
State: CA 90745
Country: United States of America
License No.:
Name No.: 006040

Acronym: Seacon Express N.Y. Corp.
DBA Name: Seacon Line
Person Type: Non-vessel-operating common carrier
Street: 17 Battery Place, Suite 2143
City: New York
State: NY 10004
Country: United States of America
License No.:
Name No.: 002852

Acronym: Servac Shipping Lines, Ltd.
DBA Name: NA.
Person Type: Ocean common carrier (vessel operating)
Street: Stuyvesant Plaza-Executive Park Tower
City: Albany
State: NY 12203
Country: United States of America
License No.:
Name No.: 006049

Acronym: Skaarup Shipping Corporation
DBA Name: NA.
Person Type: Ocean common carrier (vessel operating)
Street: 66 Field Point Road
City: Greenwich
State: CT 06830
Country: United States of America
License No.:
Name No.: 007014

Acronym: Skandiafallenius Spedition AB
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: Packhusplatsen 2, P.O. Box 2562
City: S–403 17 Gothenburg
State:
Country: Sweden
License No.:
Name No.: 006367

Acronym: Skyway International Corp.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 2nd. Floor, No. 21
Lane 9, Lin Shen North Road
City: Taipei
State:
Country: Taiwan
License No.:
Name No.: 006952

Acronym: South China Consolidation Ltd.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 11/F., Victoria Heights Bldg. 192–194, Nathan Road
City: Kowloon
State:
Country: Hong Kong
License No.:
Name No.: 007835

Acronym: Southern Ocean Transport, Inc.
DBA Name: NA.
Person Type: Ocean common carrier (vessel operating)
Street: 505 North Belt, Suite 140
City: Houston
State: TX 77060
Country: United States of America
License No.:
Name No.: 007071

Acronym: Star Container Lines, Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 5710 W. Manchester Blvd, Suite 103
City: Los Angeles
State: CA 90045
Country: United States of America
License No.:
Name No.: 007809

Acronym: Sterling Maritime Ltd.
DBA Name: Coast Container Line
Person Type: Non-vessel-operating common carrier
Street: 31 Broad Street
City: St. Helier Jersey, Channel Islands G.B.
State:
Country: Great Britain
License No.:
Name No.: 006238

Acronym: Strand Freight System, Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: Bldg #5, Brooklyn Navy Yard
City: Brooklyn
State: NY 11205
Country: United States of America
License No.:
Name No.: 001193

Acronym: Sudan Shipping Line Ltd.
DBA Name: NA.
Person Type: Controlled Carrier
Street: P.O. Box 426
City: Port Sudan
State:
Country: Sudan
License No.:
Name No.: 001198

Acronym: Summit Worldwide Corp.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 104 S. Central Avenue, Suite 12
City: Valley Stream
State: NY 11580
Country: United States of America
License No.:
Name No.: 008045

Acronym: Supreme Ocean Line
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 206 Ahafa Cargo Centre
12, Kai Shun Road
City: Kowloon Bay
State:
Country: Hong Kong
License No.:
Name No.: 007306

Acronym: Swing Forwarding, Ltd.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 28th Floor Bank of America Tower
12 Harcourt Road
City: Central
State:
Country: Hong Kong
License No.:
Name No.: 006578

Acronym: Synor International, Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 175–01 Rockaway Boulevard—Suite 206
City: Jamaica
State: NY 11696
Country: United States of America
License No.:
Name No.: 006107

Acronym: T.F.S. International Shipping Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 149–23 182nd Street
City: Jamaica
State: NY 11430
Country: United States of America
License No.:
Name No.: 006715

Acronym: T.M. Shipping Corp.
DBA Name: Adriatic America Line
Person Type: Ocean common carrier (vessel operating)
Street: 29 Broadway
City: New York
State: NY 10004
Country: United States of America
License No.:
Name No.: 006924

Acronym: Taurus Container Service Ltd.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 1200 Main Street, P.O. Box 9349
City: Bridgeport
State: CT 06601
Country: United States of America
License No.:
Name No.: 006588

Acronym: Thielen, George
DBA Name: GT International
Person Type: Non-vessel-operating common carrier
Street: 1402 Oneida Street
City: Denver
State: CO 80220
Country: United States of America
License No.:
Name No.: 005423

Acronym: Tian Fung Goh and Cargo Transport Service Ltd
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 268 Ma Chang Dao Tiamjin Cadre's Club Tian Fung Building
City: Tianjin
State:
Country: People's Republic of China
License No.:
Name No.: 005804

Acronym: Tiger Intermodal
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 211 East Ocean Blvd.—Suite 400
City: Long Beach
State: CA 90802
Country: United States of America
License No.:
Name No.: 000531

Acronym: Tisco Ocean Forwarding Co., Ltd.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 5 FL–A, Li Fung Tower No. 1
1 Nanking E. Rd., Sec. 4
City: Taipei
State:
Country: Taiwan
License No.:
Name No.: 006896

Acronym: Tokyo Sanyu Shipping Co., Ltd.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: Sanjyu Bldg., 4th Floor
3–2–4 Hatchobori, Chuo-Ku
City: Tokyo 104
State:
Country: Japan
License No.:
Name No.: 005806

Acronym: Traffic Systems Corp.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 302 Comercio Street, 2nd Flr
City: Old San Juan
State: PR 00901
Country: United States of America
License No.:
Name No.: 006805

Acronym: Tram Inter Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 155–06 South Conduit Avenue
City: Jamaica
State: NY 11434
Country: United States of America
License No.:
Name No.: 007511

Acronym: Trans AM—Asia Corporation
DBA Name: NA.
Person Type: Non-vessel-operating common carrier, Ocean Freight Forwarder (independent)
Street: 3030 W. 6th Street, Suite 211
City: Los Angeles
State: CA 90020
Country: United States of America
License No.: 3086
Name No.:007111

Acronym: Trans Luso Intercontinental Lines, Inc.
DBA Name: NA.
Person Type: Ocean common carrier (vessel operating)
Street: 355 Mulberry Street
City: Newark
State: NJ 07102
Country: United States of America
License No.:
Name No.: 00560

Acronym: Trans-U.S.A. Express International, Ltd.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 4448 W. Montrose Avenue
City: Chicago
State: IL 60641
Country: United States of America
License No.:
Name No.: 006290

Acronym: Trans-Union Container Line
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 11222 La Cienega Blvd. Suite 540
City: Inglewood
State: CA 90304
Country: United States of America
License No.:

Name No.: 00640
Acronym: Transcar of North America
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 274 County Road
City: Tenafly
State: NJ 07670
Country: United States of America
License No.:
Name No.: 002145

Acronym: Transconex, Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: P.O. Box 524037
City: Miami
State: FL 23152
Country: United States of America
License No.:
Name No.: 006861

Acronym: Transmar Transportation, Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 311 Oak Street
City: Oakland
State: CA 94607
Country: United States of America
License No.:
Name No.: 007285

Acronym: Transporte Caribbean S.A. (Transcaribe)
DBA Name: NA.
Person Type: Ocean common carrier (vessel operating)
Street: Apartado Postal 2329
City: Panama 9 A
State:
Country: Republic of Panama
License No.:
Name No.: 006291

Acronym: Transportes Maritimos Internacionai
DBA Name: Port Line
Person Type: Ocean common carrier (vessel operating)
Street: Rua Actor Antonio Silva 7, 11
City, 1600 Lisbon
State:
Country: Portugal
License No.:
Name No.: 005729

Acronym: Trax Cargo Lines Ltd.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 53 Park Place—Suite 208
City: New York
State: NY 10007
Country: United States of America
License No.:
Name No.: 006236

Acronym: Tricon Shipping Ltd.
DBA Name: NA.
Person Type: Ocean common carrier (vessel operating)
Street: 6223 Richmond Avenue, Suite 200
City: Houston
State: TX 77057
Country: United States of America
License No.:
Name No.: 007488

Acronym: Troy Catucci Lines Ltd.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 780 Clinton Street
City: Brooklyn
State: NY 11231
Country: United States of America
License No.:
Name No.: 005817

Acronym: U-Trust International Cargo Service
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 2059 Mission Street
City: San Francisco
State: CA 94110
Country: United States of America
License No.:
Name No.: 007314

Acronym: U.S. Great Lakes Shipping Lines, Inc.
DBA Name: NA.
Person Type: Ocean common carrier (vessel operating)
Street: 3200 North Shore Drive, Suite 2602
City: Chicago
State: IL 60657
Country: United States of America
License No.:
Name No.: 007566

Acronym: United Africa Lines (Liberia), Inc.
DBA Name: NA.
Person Type: Ocean common carrier (vessel operating)
Street: P.O. Box 1597
City: Monrovia
State:
Country: Liberia
License No.:
Name No.: 007122

Acronym: United Freight Systems, Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 7210 N.W. 77th Street
City: Miami
State: FL 33166
Country: United States of America
License No.:
Name No.: 006787

Acronym: United Overseas Supply Co.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 16403 Ishida Avenue
City: Gardena
State: CA 90248
Country: United States of America
License No.:
Name No.: 007391

Acronym: Unitrans Illinois Consolidated, Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 10400 W. Higgins
City: Rosemont
State: IL 60018
Country: United States of America
License No.:
Name No.: 007619

Acronym: Unitrans International Forwarders, Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: P.O. Box 744
City: Manila 2800
State:
Country: Phillipines
License No.:
Name No.: 007768

Acronym: Unitrans Shipping Co., Ltd.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 10400 W. Higgins
City: Rosemont
State: IL 60018
Country: United States of America
License No.:
Name No.: 007887

Acronym: Universal Cargo Management, Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 3711 Long Beach Boulevard, Suite 518
City: Long Beach
State: CA 90807
Country: United States of America
License No.:
Name No.: 007522

Acronym: Universal Lines, Inc.
DBA Name: NA.
Person Type: Ocean common carrier (vessel operating)
Street: 389 Hwy. 17 By-Pass
City: Mt. Pleasant
State: SC 29464
Country: United States of America
License No.:
Name No.: 000077

Acronym: USB Corporation
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 19 Marten Place
City: North Arlington
State: NJ 07032
Country: United States of America
License No.:
Name No.: 007577

Acronym: Valley Express, Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 925 Market Street
City: Paterson
State: NJ 07513
Country: United States of America
License No.:
Name No.: 000003

Acronym: Vangard Freight Services, Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 80 Washington Street
City: Hoboken
State: NJ 07030
Country: United States of America
License No.:
Name No.: 002163

Acronym: Venezuelan Container Line, C.A.
DBA Name: NA.
Person Type: Ocean common carrier (vessel operating)
Street: Avenida Universidad, Esquina el Chorro, Torro el Chorro
City: Piso 15, Caracas, Venezuela
State:
Country: Venezuela
License No.:
Name No.: 007292

Acronym: Victoria Marine Shipping, Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 111 S.W. 3rd Street, Suite 100
City: Miami
State: FL 33130
Country: United States of America
License No.:
Name No.: 000013

Acronym: Viking Freight System, Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 411 East Plumeria Drive
City: San Jose
State: CA 95134
Country: United States of America
License No.:
Name No.: 007793

Acronym: W.L. Shipping Co., Ltd.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 2B, Tung Cheong Commercial Bldg., 221–221A, Nathan Road
City: Kowloon
State:
Country: Hong Kong
License No.:
Name No.: 007833

Acronym: West Harbor International Services, Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 931 Harbison Avenue
City: National City
State: CA 92959
Country: United States of America
License No.:
Name No.: 007628

Acronym: Westamerica Line, Inc.
DBA Name: NA.
Person Type: Ocean common carrier (vessel operating)
Street: 2907 Bat to Bay Blvd., Suite 300
City: Tampa
State: FL 33629
Country: United States of America
License No.:
Name No.: 007093

Acronym: Westamerica Steamship Lines, Inc.
DBA Name: NA.
Person Type: Ocean common carrier (vessel operating)
Street: P.O. Box 20051
City: Tampa
State: FL 33622
Country: United States of America
License No.:
Name No.: 007275

Acronym: Westwind Africa Line
DBA Name: NA.
Person Type: Ocean common carrier (vessel operating)
Street: P.O. Box 318
City: Apapa
State:
Country: Nigeria
License No.:
Name No.: 001791

Acronym: White Navigation Co. S.A.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 5/FL., 63 Hong Chow South Road, Sec. 1
City: Taipei
State:
Country: Taiwan
License No.:
Name No.: 006590

Acronym: Wide Choice Container Line
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: Rm. 905, Far East Consortium Bldg., 204–206 Nathan Road
City: Kowloon
State:
Country: Hong Kong
License No.:
Name No.: 007595

Acronym: World Airmarine, Inc.
DBA Name: NA.
Person Type: Ocean Freight Forwarder (independent) Non-vessel-operating common carrier
Street: 290 East Grand Ave
City: So. San Francisco
State: CA 94080
Country: United States of America
License No.: 1914
Name No.: 005754

Acronym: World Express Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 55 American Legion Highway
City: Revere
State: MA 02151
Country: United States of America
License No.:
Name No.: 000745

Acronym: World Express Lines, Inc.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 1755 West Walnut Pkwy
City: Compton
State: CA 90220
Country: United States of America
License No.:
Name No.: 005538

Acronym: World Trend Shipping, Ltd.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 28/F, Yuen Long Trade Centre, 99–109 Castle Peak Road
City: Yuen Long, N.T.
State:
Country: Hong Kong
License No.:
Name No.: 007308

Acronym: Worldbond Shipping and Transportation Co Ltd
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: B1 & B2 Basement—Kowloon Air Freight Agents Terminal, 70–78 Sung Wong Toi Road
City: Kowloon
State:
Country: Hong Kong
License No.:
Name No.: 006261

Acronym: Worldbridge Asia Lines
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 8915 La Cienaga Blvd.
City: Inglewood
State: CA 90301
Country: United States of America
License No.:
Name No.: 005752

Acronym: Y.M. Lau Express Inter'l (Taiwan) Ltd.
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: Jin Ling Bldg. 460 Kuang Fu South Road 11th Floor
City: Taipei 105
State:
Country: Taiwan

License No.:
Name No.: 005757
Acronym: Zade, C.A.
DBA Name: NA.
Person Type: Ocean common carrier (vessel operating)
Street: EDF. General Paz, Piso 4, OFC. 406 P.O. Box 50288
City: Caracas
State:
Country: Venezuela
License No.:
Name No.: 007472
Acronym: Zephyr Container Line
DBA Name: NA.
Person Type: Non-vessel-operating common carrier
Street: 333 N. Marine Avenue
City: Wilmington
State: CA 90744
Country: United States of America
License No.:
Name No.: 000143

[FR Doc. 89-22956 Filed 9-28-89; 8:45 am]
BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Family Support Administration

Forms Submitted to the Office of Management and Budget for Clearance

The Family Support Administration (FSA) will publish on Fridays information collection packages submitted to the Office of Management and Budget (OMB) for clearance, in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). Following are the packages submitted to OMB since the last publication on September 15, 1989.

(Call the Reports Clearance Officer on 202-252-5604 for a copy of package)

Monthly "FLASH" Report of Selected Program Data—FSA 3645—0970-0071—The information collected is used to monitor program trends and services as advance indicators of program activity and costs. The affected public is comprised of State and local agencies administering AFDC programs. Respondents: State or local governments; Number of Respondents: 54; Frequency of Response; Monthly; Average Burden per Response: 2 hours; Estimated Annual Burden: 1296 hours.

Statistical Report on Recipients Under Public Assistance Programs—FSA 3637—0970-0008—The information collected by use of this form is needed to properly administer and monitor the Aid to Families with Dependent Children (AFDC) Program by providing information on a quarterly basis on recipients. This data is used by Congress, Federal agencies, and others. The affected public is comprised of State welfare agencies. Respondents: State or local governments; Number of Respondents: 54; Frequency of Response: Quarterly; Average Burden per Response: 30 hours; Estimated Annual Burden: 6480 hours.

OMB Desk Clearance Officer: Justin Kopca. Consideration will be given to comments and suggestions received within 60 days of publication. Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3201, 725 17th Street NW., Washington, DC 20503.

Dated: September 19, 1989.

Sylvia E. Vela,

Deputy Associate Administrator, Office of Management and Information Systems.

[FR Doc. 89-22734 Filed 9-28-89; 8:45 am]
BILLING CODE 4150-04-M

Health Care Financing Administration

[OACT-027-N]

RIN 0938-AE19

Medicare Program; Inpatient Hospital Deductible for 1990

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

ACTION: Notice.

SUMMARY: This notice announces that the inpatient hospital deductible for calendar year 1990 under Medicare's hospital insurance program (Part A) is $592. The Medicare statute specifies the formula to be used to determine this amount.

EFFECTIVE DATE: January 1, 1990.

FOR FURTHER INFORMATION CONTACT: Barbara S. Klees, (301) 966-6388.

SUPPLEMENTARY INFORMATION: .

I. Background

Section 1813 of the Social Security Act (the Act) provides for an inpatient hospital deductible to be subtracted from the amount payable by Medicare for inpatient hospital services furnished to a beneficiary. Section 1813(b)(2) of the Act requires the Secretary to determine and publish between September 1 and September 15 of each year the amount of the inpatient hospital deductible applicable for the following calendar year. Section 9301 of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99-509) amended section 1813(b) of the Act to establish for the years after 1987 the method for computing the amount of the inpatient hospital deductible. The deductible specified for 1987 was $520 and, under the formula specified in the law, the deductible for subsequent calendar years is the deductible for the preceding year multiplied by the same percentage increase (that is, the update factor) used for updating the prospective payment rates for inpatient hospital services effective October 1 of the same preceding year and adjusted to reflect real case mix. The amount so determined is rounded to the nearest multiple of $4. The deductible for 1988 calculated in this manner was $540.

Section 1813(b) of the Act was further amended by section 4002(f) of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100-203), as amended by section 411(b)(1)(H)(ii) of the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100-360), to require that, beginning with the deductible for 1989, the deductible be changed each year by the Secretary's best estimate of the payment-weighted average of the applicable percentage increases used for updating the payment rates for hospitals (according to whether they are prospective payment system hospitals in rural, large urban, or other urban areas or are hospitals excluded from the prospective payment system) and adjusted to reflect real case mix. (For discharges occurring during Federal fiscal year (FY) 1989 (that is, discharges occurring on or after October 1, 1988 and before October 1, 1989), section 1886(b)(3)(B) of the Act provides for separate percentage increases for hospitals in rural, large urban, and other urban areas as well as for hospitals excluded from the prospective payment system. Therefore, without the amendment made by Pub. L. 100-360, we would have been required to assess four different deductibles, according to the status or location of the hospital to which a beneficiary was admitted when a deductible is applicable.) The deductible for 1989 calculated in this manner was $560.

Section 1886(b)(3)(B) of the Act provides that, for FY 1990, the applicable percentage increase for hospitals in all areas and hospitals excluded from the prospective payment system shall be the market basket percentage increase which for 1990 is 5.5 percent. Thus, using the methodology required by section 1813(b)(1) of the Act, the payment-weighted average of these increases in the payment rates is also 5.5 percent.

An average case mix is calculated for each hospital that reflects the relative costliness of that hospital's mix of cases. We computed the increase in average case mix for hospitals paid under the prospective payment system in FY 1989 compared to FY 1988. (Hospitals excluded from the prospective payment system were excluded from this calculation since their payments are based on resonable costs and are affected only by real increases in case mix.) We used bills from prospective payment hospitals received in HCFA as of the end of July 1989. This is a total of about 6.2 million discharges for FY 1989. The increase in average case mix in FY 1989 is computed to be 1.91 percent.

Although average case mix has increased by 1.91 percent in FY 1989, section 1813 of the Act requires that the inpatient hospital deductible be increased only by that portion of the case-mix increase that is determined to be real. The long-term trend in real case-mix increase was determined to be approximately 0.5 percent. During the first few years of the prospective payment system, estimated real case-mix increases exceeded that level, primarily because of the shift of many lower-cost treatments out of the inpatient hospital setting. This shift out of the inpatient hospital setting resulted in declining Medicare hospital admissions. However, during 1988 and 1989, hospital admission patterns have returned to levels consistent with long-term trends. Therefore, we believe that real case-mix increase has also returned to the long-term level of 0.5 percent. As a consequence, we believe that the case-mix increase associated with coding changes totals 1.41 percent and, for purposes of determining the 1990 inpatient hospital deductible, we are estimating the real case-mix increase at 0.5 percent.

Thus, the estimate of the payment-weighted average of the applicable percentage increases used for updating the payment rates is 5.5 percent, and the case-mix adjustment factor for the deductible is 0.5 percent.

II. Inpatient Hospital Deductible for 1990

The inpatient hospital deductible for calendar year 1990 is $560 times the payment rate increase of 1.055 times the increase in average real case mix of 1.005 which equals $593.75 and is rounded to $592.

III. Cost to Beneficiaries

We estimate that in 1990 there will be 6.6 million deductibles paid at $592 each, compared to 6.4 million deductibles paid at $560 each in 1989. The estimated total increase in cost to beneficiaries is $320 million (rounded to the nearest $10 million), due to the deductible increase and the increase in the number of deductibles.

IV. Regulatory Impact Statement

This notice merely announces an amount required by legislation. This notice is not a proposed rule or a final rule issued after a proposal and does not alter any regulation or policy. Therefore, we have determined, and the Secretary certifies, that no analyses are required under Executive Order 12291, the Regulatory Flexibility Act (5 U.S.C. 601 through 612), or section 1102(b) of the Act.

(Section 1813(b)(2) of the Social Security Act (42 U.S.C. 1395e(b)(2))

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance)

Dated: September 11, 1989.

Louis B. Hays,

Acting Administrator Heath Care Financing Administration.

Approved: September 25, 1989.

Louis W. Sullivan,

Secretary.

[FR Doc. 89-23027 Filed 9-28-89; 8:45 am]

BILLING CODE 4120-01-M

Public Health Service

Health Resources and Services Administration; Section 8411 of Public Law 100-647, as Amended Hereafter, for Treatment of Certain Nursing Education Programs; Delegation of Authority

Notice is hereby given that in furtherance of the delegation of September 5, 1989, from the Assistant Secretary for Health to the Administrator, Health Resources and Services Administration, of the authority under section 8411(a) of Public Law 100-647, as amended hereafter, excluding the authority to issue regulations and to submit reports to the Congress, the Administrator, Health Resources and Services Administration, has delegated to the Director, Bureau of Health Professions, the authorities under section 8411(a) of Public Law 100-647, as amended hereafter, concerning the demonstration of joint nursing graduate education programs. The joint undergraduate education program authority under section 8411(b) will be administered by the Health Care Financing Administration.

Redelegation

This authority may be redelegated.

Effective Date

This delegation was effective on September 18, 1989.

In addition, provision was made to ratify and affirm any action taken by officials within the Bureau of Health Professions which, in effect, involved the exercise of this authority prior to the effective date of this delegation.

Dated: September 18, 1989.

John H. Kelso,

Acting Administrator.

[FR Doc. 89-22958 Filed 9-28-89; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-89-1917; FR-2606]

Underutilized and Unutilized Federal Buildings and Real Property Determined by HUD To Be Suitable for Use for Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

EFFECTIVE DATE: September 29, 1989.

ADDRESS: For further information, contact James Forsberg, Room 7228, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 755-6300; TDD number for the hearing- and speech-impaired (202) 426-0015. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88-2503-OG (D.D.C.), HUD is publishing this Notice to identify Federal buildings and real property that HUD has determined are suitable for use for facilities to assist the homeless. The properties were identified from information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such

Second, if the landholding agency declares the property excess to the agency's need, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law and the December 12, 1988 Order and December 14, 1988 Memorandum, subject to screening for other Federal use.

Finally, in lieu of declaring any particular property as excess, the landholding agency may decide to make the property available to the homeless for use on an interim basis.

Homeless assistance providers interested in any property identified as suitable in this Notice should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, Room 17A-10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit such written expressions of interest within 30 days from the date of this Notice. For complete details concerning the timing and processing of applications, the reader is encouraged to refer to HUD's **Federal Register** Notice on June 23, 1989 (54 FR 26421), as corrected on July 3, 1989 (54 FR 27975).

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Army: (Military Facilities) HQ-DA, Attn: DAEN-ZCI-P-Robert Conte; Room 1E671 Pentagon, Washington, DC 20360-2600 (202) 693-4583; (Corps of Engineers civil works projects) Bob Swieconek, HQ-US Army Corps of Engineers, Attn: CERE-MN, 20 Massachusetts Avenue NW., Washington, DC 20415-1000 (202) 272-1750; GSA: James Folliard, Federal Property Resources Services, GSA, 18th and F Streets NW., Washington, DC 20405 (202) 535-7067; U.S. Air Force: Bill Kimball, HQ-USAF/LEER, Washington, DC 20332-0500 (202) 767-4384; U.S. Navy: Andrea Wohfeld, Code 20 YAW, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332 (202) 325-7342. (These are not toll-free numbers.)

Dated: September 25, 1989.

Audrey E. Scott,

General Deputy Assistant Secretary for Community Planning and Development.

Suitable Land (by State)

(Number of Properties [ ]

Kentucky

Smithland Lock and Dam [2]
Blackburn & Givens Creek Access Site
Smithland, KY
Landholding Agency: COE
Location:
Comment: Periodic Flooding, Under Long Term Lease, No Utilities

Louisiana

Sterlington Rec Area Old Lock & Dam No 5 [1]
Broadman Avenue
Sterlington, LA
Landholding Agency: GSA
Location: GSA No. 7-D-LA-537A
Comment: 3.18 Acres, Flammable Material Unknown, No Sanitary Facilities

Nebraska

Clearwater Grain Bin Storage Site #2 [1]
Intersection of Iowa & Nebraska Sts
Clearwater, NE
Landholding Agency: GSA
Location: GSA No. 7-GR-NE-502A
Comment: 1.7 Acres, Several Concrete Slabs

Oregon

Torque Point Job Corps Center [1]
Astoria, OR
Landholding Agency: GSA
Location: Property No. 9-L-OR-508K
Comment: 89.379 Acres, Heavily Forested, Endangered Species Habitat

Pennsylvania

East Branch Clarion River Lake [1]
RD 1
Wilcox, PA
Landholding Agency: COE
Location:
Comment: 1 Acre, No Improvements

Loyalhanna Lake [1]
RD 2, Westmoreland County
Saltsburg, PA
Landholding Agency: COE
Location:
Comment: 15 Acres, Radio Antenna Site, No Utilities

Loyalhanna Lake [1]
RD #2
Saltsburg, PA
Landholding Agency: COE
Location:
Comment: 6.92 Acres Environmental Unknown, Floodway

Loyalhanna Lake [1]
RD #2
Saltsburg, PA
Landholding Agency: COE
Location:
Comment: 1 Acre, No Utilities, Periodic Flooding

Texas

Granger Lake, TX-Tract 706, 702-3 [2]
Route 1, Box 172—Williamson, County
Granger, TX
Landholding Agency: COE
Location:
Comment: Flood Control Pool, Isolated Area, Existing Lease

Suitable Building (by State)

(Number of Properties [ ])

Alabama

Gunter—Bldg. 1051 [1]
Gunter AFB
Montgomery, AL
Landholding Agency: Air Force
Location:
Comment: Structurally Unsound, Lacks Utilities, Needs Rehab

Gunter—Bldg. 1050 [1]
Gunter AFB
Montgomery, AL
Landholding Agency: Air Force
Location:
Comment: Structurally Unsound, Lacks Utilities, Needs Rehab

Arizona

Luke Bldg 27 [1]
Luke Air Force Base
Litchfield, AZ
Landholding Agency: Air Force
Location:
Comment: Secured Area, Possible Alternate Access, Minor Asbestos

Florida

Ortona Lock Reserv, Okeechobee Waterway [1]
Building No. CN8, Glades County
Jacksonville, FL
Landholding Agency: COE
Location:
Comment: Frame House, CN8; Secured Area—Requires Changing Access

Ortona Lock Reser, Okeechobee Waterway [1]
Building No. CN7, Glades County
Jacksonville FL
Landholding Agency: COE
Location:
Comment: Frame House, CN 7, Secured Area—Requires Changing Access

Georgia

AFB—Bldg. 918 [2]
347 CSG/Deer-Lowndes County
Valdosta, GA
Landholding Agency: Air Force
Location:

Comment: Two 2,400 Sq Ft Ea. Trailers; Secured Area—Must Be Relocated; Struct. Unsound

Idaho

Mountain Home AFB—Bldgs. 121, 604 [2]
Mountain Home AFB
Elmore County, ID
Landholding Agency: Air Force
Location:
Comment: 3375 Sq Ft./4951 Sq. Ft., Possible Asbestos, Structural Deficiencies.

Mountain Home AFB—Bldgs. 923, 1012, [2]
Mountain Home AFB
Elmore County, ID
Landholding Agency: Air Force
Location:
Comment: 8899 Sq Ft/1900 Sq. Ft., Structural Deficiencies, Possible Asbestos

Indiana

Grissom AFB Bldg 520 [1]
Grissom AFB
Miami, IN
Landholding Agency: Air Force
Location:
Comment: 2307 Sq Ft, Structurally Unsound, No Sanitary Fac or Water, No Env Data

Louisiana

Barksdale Radio Beacon Annex [1]
Highway C 1552, Bossier Parish
Curtis, LA
Landholding Agency: Air Force
Location:
Comment: 11.25 Acres/360 Sq Ft/ Lacks Utilities, Structural Deficiencies

Maryland

WRAMC—Bldgs 101, 104, 107, 120A [4]
Walter Reed—Forest Glen Section
Silver Spring, MD
Landholding Agency: Army
Location:
Comment: Existing Environmental and Structural Hazards, on Historic Register

North Carolina

Fort Bragg—Bldg. A–6153 [1]
Fort Bragg
Fort Bragg, NC
Landholding Agency: Army
Location:
Comment: 720 Sq Ft Trailer; Structurally-Unknown; Utilities Disconnected; No Env. D

Fort Bragg—Bldgs. 1–3543, W–1556 [2]
Fort Bragg
Fort Bragg, NC
Landholding Agency: Army
Location:
Comment: 1326 Sq Ft/14,008 Sq Ft; No Env. Data, Structural Data or Floodplain

Fort Bragg—Bldg. 8–2861 [1]
Fort Bragg
Fort Bragg, NC
Landholding Agency: Army
Location:
Comment: 9,368 Sq Ft; Utl. Disconnected, Structural Soundness Unknown, No Env. Data

Fort Bragg—Bldg. D–2038 [1]
Fort Bragg
Fort Bragg, NC
Landholding Agency: Army
Location:
Comment: 648 Sq Ft Trailer; No Utilities; Structurally-Unknown; No Env. Data

Fort Bragg—Bldgs. A2261, A2747 [2]
Fort Bragg
Fort Bragg, NC
Landholding Agency: Army
Location:
Comment: No Env Data, Struct Deficencies, Utilities Disconnected

Fort Bragg—Bldg. A2760 [1]
Fort Bragg
Fort Bragg, NC
Landholding Agency: Army
Location:
Comment: 4720 Sq Ft; Utilities Disconnected, Struct Soundness Unknown, Env Cond Unknown

Fort Bragg—Bldgs. A2256, A2260 [2]
Fort Bragg
Fort Bragg, NC
Landholding Agency: Army
Location:
Comment: Utilities Disconnected; Struct Unsound; Env Conds Unknown

Fort Bragg—Bldgs. A2551, A2556 [2]
Fort Bragg
Fort Bragg, NC
Landholding Agency: Army
Location:
Comment: 4,720 Sq Ft Ea. Utilities Disconnected, Possible Asbestos

Fort Bragg—Bldgs. M2333, M8355 [2]
Fort Bragg
Fort Bragg, NC
Landholding Agency: Army
Location:
Comment: 43 Sq Ft, 2239 Sq Ft No Utilities, Structurally-Unknown

Fort Bragg—Bldgs. M2624, M2626 [2]
Fort Bragg
Fort Bragg, NC
Landholding Agency: Army
Location:
Comment: 4720 Sf Ea; Utilities Disconnected

Fort Bragg—Bldgs. 8–2808, 8–3849 [2]
Fort Bragg
Fort Bragg, NC
Landholding Agency: Army
Location:
Comment: 10,112 & 14,303 Sq Ft; Poss Asbestos, Utilities Disc; Not Struc Sound

Fort Bragg—Bldgs. A6151, A6152 [2]
Fort Bragg
Fort Bragg, NC
Landholding Agency: Army
Location:
Comment: 720 Sq Ft Ea Trailer, Condition Unknown, No Utilities

South Carolina

Federal Buidling [1]
Main and Wylie Streets
Chester, SC
Landholding Agency: GSA
Location:
Comment: 2210/2397 Sq Ft; Two Story; Possible Asbestos

Texas

Goodfellow—Bldgs. 130, 131, 132, 142 [4]
Goodfellow AFB
San Angelo, TX
Landholding Agency: Air Force
Location:
Comment: 2,966 Sf, Requires Extensive Rehab, Lacks Sanitary/Heating Facilities

Virgin Islands

Single Family Residence [1]
114347 Estate Wintberg Street
St. Thomas, VI
Landholding Agency: GSA
Location:
Comment: 1,740 Sq Ft; Two Floors

Washington

Fairchild AFB Bldg 100 [1]
Fairchild Air Force Base
Spokane, WA
Landholding Agency: Air Force
Location:
Comment: 1,200 Sq. Ft.; One Story

Federal Reg Center—FEMA–Bds. 323, 324, 330 [3]
Fort Lewis
Bothell, WA
Landholding Agency: Army
Location:
Comment: 1,017 Sq Ft Ea., Secured Fac-Alternative Access, Possible Asbestos, No Util

Federal Reg Center—FEMA–Bds. 310, 321, 322 [3]
Fort Lewis
Bothell, WA
Landholding Agency: Army
Location:
Comment: 677 Sq Ft/1,017 Sq Ft., Secured Fac—Alternative Access, Possible Asbestos

Bldg. 1487 Halliday Cabin [1]
Olympic National Park
Port Angeles, WA
Landholding Agency: Interior
Location:
Comment: Frame Bldg, 574 Sq Ft, Must Remove From Site, No Sanitary Fac. or Utilities

Wisconsin

Forest Service Wood Frame House [1]
Laona Ranger District
Laona, WI
Landholding Agency: GSA
Location: HWY., 8W and 32 JUNCTION
Comment: 1,200 Sq Ft/Two Story, Structure Needs To Be Moved

Unsuitable Land (by State)

(Number of Properties [ ])

Arizona

Portion, Rittenhouse Auxiliary Field [1]
Pinal County
Pinal County, AZ
Landholding Agency: Air Force
Location: Approximately 45 Miles Southeast of Phoenix, Near Chandler
Reason: Within airport runway clear zone
Comment:

California

Waterline [1]
Keswick Dam Road
Redding, CA
Landholding Agency: GSA
Location: GSA NO. 9-B-CA-1302
Reason:
Comment: Property a Waterline, Land Not Federally Owned

Delaware

Assawoman Canal, Border [1]
Intercoastal Waterway, Sussex County
Bethany Beach, DE
Landholding Agency: GSA
Location:
Reason: Within 2,000 ft. from flammable or explosive material, Floodway
Comment:

Kansas

McConnell AFB [1]
McConnell AFB
Wichita, KS
Landholding Agency: Air Force
Location:
Reason: Within airport runway clear zone
Comment: Lease/Other Restrictions

Missouri

Jefferson Barracks ANG Base [1]
1 Grant Road
St. Louis, MO
Landholding Agency: Air Force
Location:
Reason: Within 2,000 feet from flammable or explosive material
Comment: Secured Facility/Alternative Access

Ohio

Hannibal L/D, Tracts 101, 102, 104, 111 [4]
P.O. Box 8
Hannibal, OH
Landholding Agency: COE
Location:
Reason: Floodway
Comment:

Virginia

Richmond IAP—Byrd Field [1]
5680 Beulah Road
Richmond, VA
Landholding Agency: Air Force
Location:
Reason: Secured area, within 2,000 ft. from flammable or explosive material
Comment: Floodway, Potential Contamination

Richmond IAP—Byrd Field [1]
5680 Beulah Road
Richmond, VA
Landholding Agency: Air Force
Location:
Reason: Within 2,000 ft. from flammable or explosive material
Comment: Floodway

Richmond IAP—Byrd Field [1]
5680 Beulah Road
Richmond, VA
Landholding Agency: Air Force
Location:
Reason: Within 2,000 ft. from flammable or explosive material
Comment: Potential Contamination, Floodplain

ANG Site Camp Pendleton [1]
Camp Pendleton
Virginia Beach, VA
Landholding Agency: Army
Location:
Reason: Secured area, within 2,000 ft. from flammable or explosive material
Comment: 3 Acres

Unsuitable Building (by State)

(Number of Properties [ ])

Alaska

Eielson Bldgs 3450, 6385 [2]
343 CSG/DEER, Eielson AFB
Eielson AFB, AK
Landholding Agency: Air Force
Location:
Reason: Secured area, contamination
Comment:

Alabama

Maxwell—Bldg. 913 [1]
Maxwell AFB
Montgomery, AL
Landholding Agency: Air Force
Location:
Reason: Contamination, within 2,000 ft. from flammable or explosive material
Comment:

Maxwell—Bldg. 831 [1]
Maxwell AFB
Montgomery, AL
Landholding Agency: Air Force
Location:
Reason: Within 2,000 ft. from flammable or explosive material
Comment: No utilities, needs roof

Maxwell AFB—Bldg. 936 [1]
Maxwell AFB
Montgomery, AL
Landholding Agency: Air Force
Location:
Reason: Within 2,000 ft. from flammable or explosive material
Comment:

Maxwell AFB—Bldgs. 927, 935 [2]
Maxwell AFB
Montgomery, AL
Landholding Agency: Air Force
Location:
Reason: Within 2,000 ft. from flammable or explosive material
Comment:

Arizona

Davis-Monthan AFB—Facility 5130, 1204 [2]
Davis-Monthan AFB
Tucson, AZ
Landholding Agency: Air Force
Location:
Reason: Within 2,000 ft. from flammable or explosive material; other environmental
Comment:

Davis-Monthan AFB—Facility 5142 [1]
Davis-Monthan AFB
Tucson, AZ
Landholding Agency: Air Force
Location:
Reason: Within 2,000 ft. from flammable or explosive material
Comment:

Luke Bldgs. 12, 121 [2]
Luke Air Force Base
Litchfield Park, AZ
Landholding Agency: Air Force
Location:
Reason: Secured area
Comment:

Luke Bldgs. 245, 246, 439 [3]
Luke Air Force Base
Litchfield Park, AZ
Landholding Agency: Air Force
Location:
Reason: Secured area; other environmental
Comment: Asbestos

Luke Bldgs. 884, 886 [2]
Luke Air Force Base
Litchfield Park, AZ
Landholding Agency: Air Force
Location:
Reason: Secured area; other environmental
Comment: Asbestos

Luke Bldgs. 195, 241, 243 [3]
Luke Air Force Base
Litchfield Park, AZ
Landholding Agency: Air Force
Location:
Reason: Secured area

Comment:
Luke Bldgs. 246, 432 [2]
Luke Air Force Base
Litchfield Park, AZ
Landholding Agency: Air Force
Location:
Reason: Secured area
Comment:

California

Mather Bldg. 3686 [1]
Mather Air Force Base
Sacramento, CA
Landholding Agency: Air Force
Location:
Reason: Secured area, other environmental
Comment: Asbestos

Travis Bldgs. 384, 392 [2]
Hospital Drive, Travis AFB
Travis AFB, CA
Landholding Agency: Air Force
Location:
Reason: Secured area, within 2000 ft. from flammable or explosive material
Comment:

Colorado

Lowry Bldgs 291, 410, 414, 417, [4]
Lowry Air Force Base
Denver, CO
Landholding Agency: Air Force
Location:
Reason: Secured area
Comment:

Florida

Homestead—Bldg. 729 [1]
Homestead AFB
Homestead, FL
Landholding Agency: Air Force
Location:
Reason: Secured area within 2000 ft. from flammable or explosive material
Comment:

Homestead—Bldg. 727 [1]
Homestead AFB
Homestead, FL
Landholding Agency: Air Force
Location:
Reason: Secured area within 2000 ft. from flammable or explosive material
Comment:

Homestead—Bldg. 645 [1]
Homestead AFB
Homestead, FL
Landholding Agency: Air Force
Location:
Reason: Secured area within 2000 ft. from flammable or explosive material
Comment:

Homestead—Bldg. 585 [1]
Homestead AFB
Homestead, FL
Landholding Agency: Air Force
Location:
Reason: Secured area within 2000 ft. from flammable or explosive material
Comment:

Homestead—Bldg. 949 [1]
Homestead AFB
Homestead, FL
Landholding Agency: Air Force
Location:
Reason: Secured area other environmental
Comment: Asbestos

Homestead—Bldg. 953 [1]
Homestead AFB
Homestead, FL
Landholding Agency: Air Force
Location:
Reason: Secured area other environmental
Comment: Asbestos

Homestead—Bldg. 954
Homestead AFB
Homestead, FL
Landholding Agency: Air Force
Location:
Reason: Secured area other environmental
Comment: Asbestos

Homestead—Bldg. 955 [1]
Homestead AFB
Homestead, FL
Landholding Agency: Air Force
Location:
Reason: Secured area other environmental
Comment: Asbestos

Homestead—Bldg. 956 [1]
Homestead AFB
Homestead, FL
Landholding Agency: Air Force
Location:
Reason: Secured area other environmental
Comment: Asbestos

Homestead—Bldg. 957
Homestead AFB
Homestead, FL
Landholding Agency: Air Force
Location:
Reason: Secured area other environmental
Comment: Asbestos

Homestead—Bldg. 958 [1]
Homestead AFB
Homestead, FL
Landholding Agency: Air Force
Location:
Reason: Secured area other environmental
Comment: Asbestos

Tyndall AFB—Bldgs. 710, 713, 716 [3]
Tyndall AFB
Bay County, FL
Landholding Agency: Air Force
Location:
Reason: Secured area within 2000 ft. from flammable or explosive material
Comment: Possible Asbestos

Tyndall AFB—Bldgs. 854, 1110, [2]
Tyndall AFB
Bay County, FL
Landholding Agency: Air Force
Location:
Reason: Secured area within 2000 ft. from flammable or explosive material
Comment: Possible Asbestos

Tyndall AFB—Bldgs. 1325, 1327 [2]
Tyndall AFB
Bay County, FL
Landholding Agency: Air Force
Location:
Reason: Secured area
Comment: Possible Asbestos

Tyndall AFB—Bldgs. 1434, 1438, 1442 [3]
Tyndall AFB
Bay County, FL
Landholding Agency: Air Force
Location:
Reason: Secured area
Comment: Possible Asbestos

MacDill AFB—Bldgs. 535, 536 [2]
MacDill AFB
Tampa, FL
Landholding Agency: Air Force
Location:
Reason: Secured area
Comment:

MacDill AFB—Bldgs. 177, 529 [2]
MacDill AFB
Tampa, FL
Landholding Agency: Air Force
Location:
Reason: Secured area
Comment:

MacDill AFB—Bldgs. 1059 [1]
MacDill AFB
Tampa, FL
Landholding Agency: Air Force
Location:
Reason: Within 2000 ft. from flammable or explosive material
Comment:

Illinois

Chanute AFB Bldg. 110 [1]
Chanute Air Force Base
Rantoul, IL
Landholding Agency: Air Force
Location:
Reason: Secured area within 2000 ft. from flammable or explosive material
Comment:

Indiana

Water Pump Station—Bldgs. 150, 152, 154 [3]
West Main
Madison, IN
Landholding Agency: Army
Location:
Reason: Within 2,000 ft. from flammable or explosive material
Comment:

Kansas

McConnell AFB—Bldgs. 803, 1095 [2]
2801 S. Rock Road

Wichita, KS
Landholding Agency: Air Force
Location:
Reason: Secured area, within 2,000 ft. from flammable or explosive material, other environmental
Comment: Friable Asbestos, 803 Occupied

McConnell AFB—Bldgs. 1098, 1604 [2]
2801 S. Rock Road
Wichita, KS
Landholding Agency: Air Force
Location:
Reason: Secured area, within 2,000 ft. from flammable or explosive material, other environmental
Comment: Friable Asbestos

McConnell AFB—Bldg. 801 [1]
2801 S. Rock Road
Wichita, KS
Landholding Agency: Air Force
Location:
Reason: Secured area, within 2,000 ft. from flammable or explosive material, other environmental
Comment:

Kentucky

Ft. Campbell—Bldgs. T–00080, T–00082 [2]
Ft. Campbell
Fort Campbell, KY
Landholding Agency: Army
Location:
Reason: Secured area
Comment: No operating sanitary facilities, no utilities

Kentucky River Lock and Dam No. 5 [5]
Anderson and Woodford Counties
See above, KY
Landholding Agency: GSA
Location: Along the Kentucky River, generally South of Lexington, Kentucky, GSA No. 4–D–KY–578
Reason: Floodway
Comment: 26.69 Acres; lease and use restrictions

Kentucky River Lock and Dam No. 6 [8]
Mercer and Woodford Counties
See above, KY
Landholding Agency: GSA
Location: Along the Kentucky River, generally South of Lexington, Kentucky, GSA No. 4–D–KY–579
Reason: Floodway
Comment: 14.90 acres; lease and use restrictions

Kentucky River Lock and Dam No. 7 [2]
Mercer and Jessamine Counties
See above, KY
Landholding Agency: GSA
Location: Along the Kentucky River, generally South of Lexington, Kentucky, 4–D–KY–580
Reason: Floodway
Comment: 19.32 acres; lease and use restrictions

Kentucky River Lock and Dam No. 8 [4]
Jessamine and Garrard Counties
See above, KY
Landholding Agency: GSA
Location: Along the Kentucky River, generally South of Lexington, Kentucky, 4–D–KY–581
Reason: Floodway
Comment: 27.07 acres; lease and use restrictions

Kentucky River Lock and Dam No. 9 [3]
Jessamine and Madison Counties
See above, KY
Landholding Agency: GSA
Location: Along the Kentucky River, generally South of Lexington, Kentucky, 4–D–KY–582
Reason: Floodway
Comment: 16.22 acres; lease and use restrictions

Kentucky River Lock and Dam No. 10 [8]
Madison and Clark Counties
See above, KY
Landholding Agency: GSA
Location: Along the Kentucky River, generally South of Lexington, Kentucky, 4–D–KY–583
Reason: Floodway
Comment: 32.92 acres; lease and use restrictions

Kentucky River Lock and Dam No. 11 [7]
Madison and Estill Counties
See above, KY
Landholding Agency: GSA
Location: Along the Kentucky River, Generally South of Lexington, Kentucky, 4–D–KY–584
Reason: Floodway
Comment: 23.43 Acres; lease and use restrictions

Kentucky River Lock and Dam No. 12 [7]
Irvine, KY
Landholding Agency: GSA
Location: Along the Kentucky River, generally South of Lexington, Kentucky, 4–D–KY–585
Reason: Floodway
Comment: 13.13 acres; lease and use restrictions

Kentucky River Lock and Dam No. 13 [9]
Lee County
See above, KY
Landholding Agency: GSA
Location: Along the Kentucky River, generally South of Lexington, Kentucky, 4–D–KY–586
Reason: Floodway
Comment: 18.88 acres; lease and use restrictions

Kentucky River Lock and Dam No. 14 [10]
Hieldberg, KY
Landholding Agency: GSA
Location: Along the Kentucky River, generally South of Lexington, Kentucky, 4–D–KY–587
Reason: Floodway
Comment: 8.41 acres; lease and use restrictions

Louisiana

England AFB—Bldg. 1000 [1]
England AFB
Rapides County, LA
Landholding Agency: Air Force
Location:
Reason: Secured area
Comment:

England AFB—Bldg. 2609 [1]
England Air Force Base
England AFB, LA
Landholding Agency: Air Force
Location:
Reason: Secured area, within 2,000 ft. from flammable or explosive material
Comment:

Missouri

Jefferson Barracks ANG Base—Bldgs. 42, 45, 46 [3]
1 Grant Road
St. Louis, MO
Landholding Agency: Air Force
Location:
Reason: Secured area, within 2,000 ft. from flammable or explosive material
Comment: Possible Asbestos

Jefferson Barracks ANG Base—Bldgs. 47, 61 [2]
1 Grant Road
St. Louis, MO
Landholding Agency: Air Force
Location:
Reason: Secured area, within 2,000 ft. from flammable or explosive material
Comment:

North Carolina

Seymour Johnson AFB—Facility 2103, 2104 [2]
Seymour Johnson AFB
Goldsboro, NC
Landholding Agency: Air Force
Location: secured area
Comment:

Seymour Johnson AFB, Blast Deflector [1]
Seymour Johnson AFB
Goldsboro, NC
Landholding Agency: Air Force
Location: Facility No. 10200
Reason: secured area
Comment:

Seymour Facility 2110, 2112 [2]
Seymour Johnson AFB
Goldsboro, NC
Landholding Agency: Air Force
Location:
Reason: secured area
Comment:

Seymour facility 2105, 4954 [2]
Seymour Johnson AFB
Goldsboro, NC
Landholding Agency: Air Force
Location:
Reason: secured area
Comment:

Fort Bragg—Bldg. W–1435 [1]
Fort Bragg
Fort Bragg, NC
Landholding Agency: Army
Location:
Reason: secured area
Comment: 648 Sq Ft trailer

Fort Bragg—Bldg. H–3703 [1]
Fort Bragg
Fort Bragg, NC
Landholding Agency: Army
Location:
Reason: Within 2000 ft. from flammable or explosive material
Comment:

New Mexico

Holloman AFB—Bldg. 132 [1]
833 CSG/DEER—Otero County
Holloman AFB, NM
Landholding Agency: Air Force
Location:
Reason: secured area within 2000 ft. from flammable or explosive material
Comment: Located near paint shop/fuels storage complex

Holloman AFB—Bldg 909 [1]
833 CSG/DEER, Otero County
Holloman AFB, NM
Landholding Agency: Air Force
Location:
Reason: secured area
Comment: trailer

Holloman AFB—Bldg. 30 [1]
833 CSG/DEER, Otero County
Holloman AFB, NM
Landholding Agency: Air Force
Location:
Reason: secured area within 2000 ft. from flammable or explosive material
Comment:

Holloman AFB Bldgs. 130, 449 [2]
833 CSG/DEER
Holloman AFB, NM
Landholding Agency: Air Force
Location:
Reason: secured area within 2000 ft. from flammable or explosive material, other environmental
Comment: asbestos

Holloman AFB Bldgs. 105, 106 [2]
833 CSG/DEER
Holloman AFB, NM
Landholding Agency: Air Force
Location:
Reason: secured area within 2000 ft. from flammable or explosive material, other environmental
Comment: asbestos

Holloman AFB Bldgs. 73, 915, 916 [3]
833 CSG/DEER
Holloman AFB, NM
Landholding Agency: Air Force
Location:
Reason: secured area within 2000 ft. from flammable or explosive material
Comment:

Nevada

Indian Springs AFAF—Bldg. 84 [1]
Indian Springs AFB
Indian Springs, NV
Landholding Agency: Air Force
Location:
Reason: secured area within airport runway clear zone
Comment: dilapidated facility

Nellis AFB—Bldg. 10209 [1]
Nellis AFB
Las Vegas, NV
Landholding Agency: Air Force
Location:
Reason: secured area, other environmental
Comment: friable asbestos, dilapidated condition, closed military installation

Ohio

Former Navaland MC Reserve Center [2]
170 Ashland Road
Mansfield, OH
Landholding Agency: Navy
Location:
Reason: asbestos
Comment: buildings on 1.7 acres leased from city; deteriorated

South Carolina

Shaw—Bldgs. 501, 928 [2]
Shaw AFB
Shaw AFB, SC
Landholding Agency: Air Force
Location:
Reason: secured area within 2000 ft. from flammable or explosive material, other environmental
Comment: Asbestos

Transient Lodging Facility [4]
Bldgs. 1111, 1112, 1113, 1114
Shaw AFB, SC
Landholding Agency: Air Force
Location:
Reason: secured area, contamination, within 2000 ft. from flammable or explosive material, other environmental
Comment: Possible asbestos

Myrtle Beach AFB—Bldg. 554 [1]
3rd Street
Myrtle Beach, SC
Landholding Agency: Air Force
Location:
Reason: secured area, other environmental
Comment: Chrysotile asbsestos

Texas

Laughlin—Bldgs. 63, 314, 400, 451 [4]
Laughlin AFB
Val Verde County, TX
Landholding Agency: Air Force
Location:
Reason: within 200 ft. from flammable or explosive material, other environmental
Comment: Asbestos, 3724 SF—environmental, no information

Kelly AFB—Bldg. 1503 [1]
Kelly AFB
San Antonio, TX
Landholding Agency: Air Force
Location:
Reason: secured area within airport runway clear zone
Comment:

Reese AFB—Bldgs. 00023, 00042 [2]
Reese AFB
Lubbock, TX
Landholding Agency: Air Force
Location:
Reason: secured area within 2000 ft. from flammable or explosive material
Comment:

Reese AFB—Bldgs. 00016, 00124, 00146 [3]
Reese AFB
Lubbock, TX
Landholding Agency: Air Force
Location:
Reason: secured area within 2000 ft. from flammable or explosive material
Comment:

Reese AFB—Bldg. 2005 [1]
Reese AFB
Lubbock, TX
Landholding Agency: Air Force
Location:
Reason: secured area
Comment: Possible asbestos

26 Duplex Bldgs. [26]
Carswell AFB
Carswell/Tarrant Co., TX
Landholding Agency: Air Force
Location:
Reason: secured area
Comment: closed military installation

Carswell AFB—Facility 1400 [10]
Carswell AFB
Tarrant County, TX
Landholding Agency: Air Force
Location:
Reason: secured area
Comment: trailer

Washington

Fort Lewis—Bldgs. TD0930, TD0938 [2]
Fort Lewis
Pierce County, WA
Landholding Agency: Army
Location:
Reason: secured area
Comment: possible asbestos

Wisconsin

Ft. McCoy—Bldg. T–2136 [1]
Ft. McCoy
Ft. McCoy, WI
Landholding Agency: Army
Location:
Reason: secured area, other environmental

Comment:

[FR Doc. 89-23004 Filed 9-28-89; 8:45 am]
BILLING CODE 4210-29-M

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. D-89-905; FR-2699]

Acting Assistant Secretary for Fair Housing and Equal Opportunity; Designations

AGENCY: Office of Fair Housing and Equal Opportunity, HUD.

ACTION: Designation.

SUMMARY: This designation revises the designation of officials who may serve as Acting Assistant Secretary for Fair Housing and Equal Opportunity.

EFFECTIVE DATE: September 25, 1989.

FOR FURTHER INFORMATION CONTACT: Charles M. Farbstein, Assistant General Counsel for Administrative Law, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 755-7137. (This is not a toll-free number).

Designation of Acting Assistant Secretary for Fair Housing and Equal Opportunity

Section A. Designation. Each of the officials listed below is designated to act as Assistant Secretary for Fair Housing and Equal Opportunity, in the case of absence or vacancy in such position. The named officials shall serve in the order set forth.

(1) General Deputy Assistant Secretary for Fair Housing and Equal Opportunity;

(2) Deputy Assistant Secretary for Operations and Management;

(3) Deputy Assistant Secretary for Enforcement and Compliance;

(4) Director, Office of Management and Field Coordination;

(5) Director, Office of Fair Housing Enforcement and section 3 Compliance;

(6) Director, Office of HUD Program Compliance;

(7) Director, Office of Voluntary Compliance; and

(8) Director, Office of Program Standards and Evaluation.

Section B. Authorization. Each head of an organizational unit of Fair Housing and Equal Opportunity is authorized to designate an employee under his or her jurisdiction to serve as acting head during the absence of the head of the unit. An official serving in an acting position under this section does not hold that position for purposes of the order of succession set forth in section A.

Section C. Functions. The official serving in an acting capacity under this designation shall have all the powers, functions, and duties assigned to such position.

Section D. Supersedure. This designation supersedes the designation effective April 24, 1981 (46 FR 25563, May 7, 1981).

Authority: Sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 25, 1989.

Thomas D. Casey,

General Deputy, Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 89-22980 Filed 9-28-89; 8:45 am]
BILLING CODE 4210-28-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM010-4333-02/GP9-0126]

Albuquerque District, NM; District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Albuquerque District Council Meeting.

SUMMARY: The BLM Albuquerque District Advisory Council will meet October 25, and 26, 1989 in the Farmington Resource Area Office located at 1235 La Plata Highway in Farmington, New Mexico. The meeting will begin at 11:00 a.m. on Thursday, the 25th with a short field trip to the Lee Acres landfill site beginning at about 3:30 p.m.

Topics on Wednesday's agenda will include the role of the Council, the San Antonio Mountain prescribed fire, the Val Verde Pipeline, the BLM existing roads policy, the Orilla Verde Recreation Area, and updates on other current issues.

On Thursday October 26th, the Council will meet at the BLM office in Farmington at 8:00 a.m. and proceed on a tour of the coal/methane gas development area, returning to the office by 2:00 p.m.

The pulbic is invited to attend all or part of the meeting, but transportation on the filed trips will not be provided.

Persons wishing to address the Council should contact Alan Hoffmeister, Public Affairs Specialist, 435 Montano NE, Albuquerque, NM 87107, (505) 761-4513.

Robert T. Dale,

District Manager.

[FR Doc. 89-22962 Filed 9-28-89; 8:45 am]
BILLING CODE 4310-FB-M

[AZ-010-09-4322-02: 1784-0100]

Arizona Strip District Grazing Advisory; Meeting

AGENCY: Bureau of Land Management, Arizona Strip District, Interior.

ACTION: Notice of Field Tour.

SUMMARY: The Arizona Strip District Grazing Advisory Board will tour the Eastern portion of the Vermillion Resource Area to view and discuss grazing management practices.

DATE: Thursday, November 30, 1989 leaving from the district office at 8 a.m. and returning about 5 p.m.

FOR FURTHER INFORMATION CONTACT: G. William Lamb, District Manager, Arizona Strip District, 390 North 3050 East, St. George, Utah 84770 (Phone 801/673-3545).

SUPPLEMENTARY INFORMATION: Interested publics may accompany the tour; however, they must provide their own transportation and food. The Board will consider written and oral statements anytime during the tour. Arrangements to comment or attend should be made at least 5 days in advance.

Dated: September 20, 1989.

G. William Lamb,

Arizona Strip District Manager.

[FR Doc. 89-22959 Filed 9-28-89; 8:45 am]
BILLING CODE 4310-32-M

[NV-010-09-4830-04]

Elko District Advisory Council Meeting

Notice is hereby given that the District Advisory Council for the Elko District, Nevada, will meet on October 27, 1989. The meeting will be held in the District Conference Room at 3900 E. Idaho, in Elko, beginning at 9:00 a.m.

September 20, 1989.

The agenda is as follows:

1. Update on the gold mining situation in the Elko Resource Area.

2. States of the resource management planning process for the district.

3. Grazing Evaluations and Decisions.

4. Proposed Marys River Land Exchange.

The meeting is open to the public, and members of the public may make statements before the Council. Persons wishing to make a statement to the Council should contact Michele Good at

the District Office at 702–738–4071 no later than October 25.

Rodney Harris,

District Manager.

[FR Doc. 89–22968 Filed 9–28–89; 8:45 am]

BILLING CODE 4310–NC–M

[NV–040–09–4370–12]

Ely District; Hearing To Discuss the Use of Helicopters and Motorized Vehicles To Gather Wild Horses

AGENCY: Bureau of Land Management, Interior.

ACTION: Public hearing to discuss the use of helicopters and motorized vehicles to gather wild horses during FY 90.

SUMMARY: In accordance with Public Law 92–195, as amended by Public Law 94–579 and Public Law 95–514, this notice sets forth the public hearing date to discuss the use of helicopters and motorized vehicles to gather wild horses from the Ely District during FY 90.

The hearing will convene at 2:00 p.m. on Tuesday, October 31, 1989, in the Conference Room of the Ely District BLM Office, Pioche Highway, Ely, Nevada.

The hearing is open to the public. Interested persons may make oral or written statements. Anyone wishing to make oral comments should contact Robert E. Brown, Ely District Wild Horse Specialist, by October 31, 1989. Written statements must be received by this date also.

DATE: October 31, 1989.

ADDRESS: Bureau of Land Management, Star Route 5, Box 1, Ely, Nevada 89301.

FOR FURTHER INFORMATION CONTACT: Robert E. Brown, (702) 289–4865.

Dated: September 15, 1989.

Kenneth G. Walker,

District Manager.

[FR Doc. 89–22964 Filed 9–28–89; 8:45 am]

BILLING CODE 4310–NC–M

[MT–060–09–4320–02]

Lewistown District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Lewistown District, Interior.

ACTION: Notice of Grazing Advisory Board Meeting.

SUMMARY: The Lewistown District Grazing Advisory Board will meet October 26, 1989. The agenda will be:.

9:00 a.m.—Introductions and Welcome
9:15 a.m.—Fiscal Year 1990 Range Improvements
11:15 a.m.—National Guard Proposal
12:00 Noon—Lunch
1:00 p.m.—Little Dam Allotment Proposed Allotment Management Plan
2:00 p.m.—Delinquent Billing Procedures
2:15 p.m.—Fiscal Year 1989 Rangeland Management Accomplishments
4:00 p.m.—Adjourn

Public comment will be sought at the end of each agenda item.

Location: Bureau of Land Management, 501 South 2nd Street East, Malta, Montana.

FOR FURTHER INFORMATION CONTACT: Wayne Zine, District Manager, Bureau of Land Management, 80 Airport Road, Lewistown, Montana 59457.

SUPPLEMENTAL INFORMATION: The Lewistown District Grazing Advisory Board is authorized under the *Federal Advisory Committee Act, 5 U.S.C., Appendix 1.* The board advises the Lewistown District Manager concerning the development of allotment management plans and the utilization of range betterment funds.

Dated: September 22, 1989.

F. Owen Billingsely,

Acting District Manager.

[FR Doc. 89–22961 Filed 9–28–89; 8:45 am]

BILLING CODE 4310–DN–M

[MT–020–09–4320–02]

Miles City District Advisory Council

AGENCY: Bureau of Land Management, Miles City District Office, Interior.

ACTION: Notice of meeting.

SUMMARY: In accordance with Public Law 92–463, a meeting of the Miles City District Advisory Council will meet Friday, October 13, at 8 a.m. The meeting will be held in the District Office Conference room on Garryowen Road. The Council will hold election of Council officers and consider resolutions to be presented.

The Council will first gather October 12, at 10 a.m. in the District Conference Room for an orientation of new members. A field tour will begin at 1 p.m. to the Cherry Creek Dam Site, the Powder River Depot and the Ten Mile Riparian Site. The tour is open to the public, but their own transportation must be provided.

The meeting on October 13 is open to the public. The public may make oral statements before the Council or file written statements for the Council to consider. Depending upon the number of persons wishing to make an oral statement, a per person time limit may be established. Summary minutes of the meeting will be maintained in the Bureau of Land Management District Office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT: District Manager, Miles City District, Bureau of Land Management, P.O. Box 940, Miles City, Montana 59301.

John S. Bown,

Acting District Manager.

[FR Doc. 89–22969 Filed 9–28–89; 8:45 am]

BILLING CODE 4310–DN–M

[MT–020–09–4320–02]

Meeting; Miles City District Grazing Advisory Board

AGENCY: Bureau of Land Management, Miles City District Office, Interior.

ACTION: Notice of meeting.

SUMMARY: In accordance with Public Law 92–463, this is notice of a meeting of the Miles City District Grazing Advisory Board, Wednesday, October 11, 1989, at 10:00 a.m. in the District Office Conference Room on Garryowen Road. The Board will discuss the FY90 range improvement program.

The meeting is open to the public. The public may make oral statements before the Grazing Advisory Board or file written statements for the Board to consider. Depending upon the number of persons wishing to make an oral statement, a per person time limit may be established. Summary minutes of the meeting will be maintained in the Bureau of Land Management District Office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT: District Manager, Miles City District, Bureau of Land Management, P.O. Box 940, Miles City, Montana 59301.

John S. Brown,

Acting District Manager.

[FR Doc. 89–22966 Filed 9–28–89; 8:45 am]

BILLING CODE 4310–DN–M

[NM 010-3110-10-9202/GP9-0121]

Realty Action: Exchange, Federal Land in Los Lunas, New Mexico, Valencia County for Private Land Within Bluewater (Cibola County), Delaware River (Eddy County), Ute Mountain (Taos County) and Jones Canyon (Sandoval County)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action on Proposed Land Exchange.

SUMMARY: The following described Federal land located in Valencia County has been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716.

New Mexico Principal Meridian

T. 6 N., R. 3 E.,
Sec. 7, Lots 3–5;
Sec. 12, Lots 2–4.
T. 6 N., R. 4 E.,
Sec. 3, All;
Sec. 4, N½, SE¼, E½ SW¼;
Sec. 5, NW¼;
Sec. 7, Lots 1–2, E½ NW¼, NE¼;
Sec. 8, Lots 3–4;
Sec. 9, Lots 1–4, N½;
Sec. 10, Lots 1–4, N½.
T. 6 N., R. 4 E.,
Sec. 11, Lots 1–4, N½;
Sec. 12, Lots 1–4, N½.
T. 7 N., R. 4 E.
Sec. 25, SE¼;
Sec. 26, Lots 1–4, S½ N½, S½;
Sec. 27, Lots 1–4, S½ N½, S½;
Sec. 28, Lots 1–3, SW¼ SW¼;
Sec. 33, All;
Sec. 35, W½ NE¼, E½ NW¼.
Containing 5,825.87.

In exchange for an equal value of some of the above Federal land, the United States has proposed to acquire the following from The Nature Conservancy. Other parcels as identified may also be included.

New Mexico Principal Meridian

Cibola County (Bluewater)

T. 12 N., R. 11 W., NMPM,
Sec. 5, portion of and also Lots 45 and 46;
Sec. 6, NE¼ SE¼, SE¼ NE¼; Block 5 of Plano Colorado Estates, Unit 2.
Containing approximately 179.00 acres more or less.

Eddy County (Delaware River)

T. 26 S., R. 28 E.;
Sec. 23, E½, S½ NW¼, NW¼ SW¼, E½ SW¼;
Sec. 24, E½ SE¼, NW¼ SE¼, W½ NE¼, N½ NW¼.
T. 26 S., R. 29 E.,
Sec. 19, E½ NW¼, SW¼ NW¼, W½ SW¼.
Containing approximately 1,000 acres more or less.

Taos County (Ute Mountain)

A certain tract of land near Costilla described as the westerly portion of the Sangre de Cristo Land Grant including:
T. 1 S., R. 73 W.,
Sec. 6, portions thereof;
Sec. 7, All;
Sec. 8, All;
T. 1 S., R. 74 W.,
Sec. 1, NW¼, S½;
Sec. 2, All;
Sec. 3, All;
Sec. 4, All;
Sec. 5, All;
Sec. 6, Portion thereof;
Sec. 7, Portion thereof;
Sec. 8, All;
Sec. 9, All;
Sec. 10, All;
Sec. 11, All;
Sec. 12, Portions thereof described as S½ NE¼, NW¼, S½;
Sec. 14, Portions thereof except for SE¼ SE¼;
Sec. 15, All;
Sec. 16, All;
Sec. 17, All;
Sec. 18, All;
Sec. 19, All.
T. 1 S., R. 74 W.,
Sec. 20, All;
Sec. 21, All;
Sec. 22, All;
Sec. 23, portions thereof;
Sec. 26, portions thereof;
Sec. 27, All;
Sec. 28, All;
Sec. 29, All;
Sec. 30, portions thereof;
Sec. 32, portions thereof;
Sec. 33, portions thereof;
Sec. 34, All;
Sec. 35, portions thereof;
T. 2 S., R. 74 W.,
Sec. 3, portions thereof;
Sec. 4, portions thereof;
T. 1 S., R. 75 W.,
Sec. 13, portions thereof;
Sec. 24, portions thereof;
Sec. 25, portions thereof;
Containing 17,134.55 acres more or less.

This tract is further described by metes and bounds of a private survey.

Jones Canyon

T. 19 N., R. 2 W.,
Sec. 26, W½SW¼;
Sec. 27, SE¼.
Containing 240 acres.

Upon completion of the final appraisal, the actual acreage exchanged will be adjusted to reflect equal values as much as possible.

The purpose of the exchange is to acquire Areas of Critical Environmental Concern (ACEC's), riparian areas, and areas of unique cultural resource values. This action is consistent with land ownership adjustments as set forth in the Record of Decision for the Rio Puerco Resource Management Plan (RMP) approved January 16, 1986.

The purpose of this Notice of Realty Action is twofold. First, this notice will provide a response period of forty-five (45) days during which public comments will be accepted regarding this exchange proposal. Secondly, this action as provided in 43 CFR 2201.1 (b), shall segregate the public lands described in this Notice, to the extent that they will not be subject to appropriation under public lands laws, including the mining and mineral leasing laws subject to prior existing rights. This segregation will terminate upon issuance of patent or 2 years from the date of publication of this Notice in the **Federal Register** or upon publication of a Notice of Termination.

FOR FURTHER INFORMATION CONTACT: Yolanda Vega at the above address or telephone (505) 761–4505 (FTS 474–4504). For a period of forty-five (45) days after publication interested parties may submit comments to the District Manager at the above address. Any comments submitted to the Roswell District Office or Taos Resource Area will be forwarded to the Albuquerque District. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any actions by the State Director, this realty action will become the final determination.

SUPPLEMENTARY INFORMATION: 1. A reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States in accordance with 43 U.S.C. 945.

2. All valid existing rights and reservations of record.

Dated: September 21, 1989.

Patricia McLean,

Associate District Manager.

[FR Doc. 89–22756 Filed 9–28–89; 8:45 am]

BILLING CODE 4310-FB-M

Realty Action, Modified Competitive Sale of Public Land, Jackson County, Oregon, OR 37196

AGENCY: Bureau of Land Management. (OR–110–89–4212–14; GP9–292), Interior.

DATE: September 20, 1989.

ACTION: Notice.

SUMMARY: The following lands are suitable for sale under Section 203 and 209 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713 and 1719, at no less than the appraised fair market value.

Serial No. and Parcel No.	Legal Description	Acreage	Minimum Bid Deposit	Bidding Procedure	Appraised Fair Market Value
OR 37196	Lot 1, Sec. 31, T.39 S., R.2 E;	9.58	30%	Sealed Bid	$33,000

The above described land is hereby segregated from appropriation under the public land laws, including the mining laws, but not from sale under the above cited statute.

The sale will be held on Wednesday, December 6, 1989 at the Bureau of Land Management, Medford District Office, 3040 Biddle Road, Medford, Oregon 97504. This isolated parcel is difficult and uneconomic to manage as part of the public lands and is not suitable for management by another Federal agency. No significant resource values will be affected by this disposal. The sale is consistent with BLM's planning for the land involved and the public interest will be served by offering this land for sale.

Bidder Qualifications

Bidders must be U.S. citizens, 18 years of age or more; a state or state instrumentality authorized to hold property; or a corporation authorized to own real estate in the state in which the land is located.

Sale Bidding

Modified bidding procedures are being used to recognize the needs and historical uses of adjoining landowners. This procedure is authorized under 43 CFR 2711.3–2. Bidding for this parcel will be restricted to the following adjoining landowners:

Lawrence I. Bonin, Edith Bonin Trustees
Denise A. VonMosher
Albert F. Gray
Ross and Susan Miles
Ben and Georgia Evans
Diane Oldaker
Douglas and Christine Hoxmeier

Sale bidding will be limited to sealed bids and must be for at least the appraised fair market value. Sealed written bids, mailed or delivered, must be received by the Bureau of Land Management, at the aforementioned address prior to 10:00 am, Wednesday, December 6, 1989.

Each written sealed bid must be accompanied by a certified check, postal money order, bank draft or cashier's check made payable to Department of the Interior—BLM not for less than 30% of the amount of the bid. The sealed envelope must be marked in the lower left hand corner. "Bid for Public Land Sale OR 37196, Jackson County Oregon, December 6, 1989." Bids will be opened and publicly declared at the sale. If two or more envelopes containing valid high bids of the same amount are received, the tied high bidders will be notified through certified mail to submit supplemental sealed bids within 30 days. The balance of the purchase price will be due within 180 days of the sale date. Failure to submit the balance of the sale price will result in forfeiture of the bid deposit, and the sale parcel will be offered to the second highest designated bidder.

Terms and Conditions of the Sale

The terms, conditions, and reservations applicable to the sale are as follows:

1. The mineral interests being offered for conveyance have moderate potential for geothermal resources and low potential for locatable, salable, and all other leasable minerals. A bid will also constitute an application for conveyance of the mineral estate, with the exception of geothermal leasable minerals, which will be reserved to the United States in accordance with Section 209 of the Federal Land Policy and Management Act 43 U.S.C. 1719. All qualified bidders must include with their bid deposit a non refundable $50.00 filing fee for the conveyance of the mineral estate.

2. Rights-of-way for ditches and canals will be reserved to the United States under 43 U.S.C. 945.

3. Patent will be issued subject to all valid existing rights and reservations of records.

4. Patent will be issued subject to the rights of prior permittees or lessees to use so much of the surface of said land as is required for oil and gas operations without compensation to the patentee for damages resulting from proper oil and gas operations for the duration of oil and gas lease OR 26959 and any authorized extension of that lease according to Section 29 of the Act of February 25, 1920, 41 Stat. 449, 30 U.S.C. 186 and the Act of March 4, 1933, 47 Stat. 1570, 30 U.S.C. 124.

5. The BLM may accept or reject any and all offers, or withdraw any land or interest in land from sale if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with the Federal Land Policy and Management Act or other applicable laws.

Comments

For a period of 45 days from the date of publication of this notice in the **Federal Register,** interested parties may submit comments to the District Manager, Bureau of Land Management, Medford District Office, 3040 Biddle Road, Medford, Oregon 97504. Objections will be reviewed by the State Director who may sustain, vacate or modify this realty action. In the absense of any objections, this realty action will become the final determination of the Department of the Interor.

FOR FURTHER INFORMATION CONTACT: Richard J. Drehobl, Medford District Office, 3040 Biddle Road, Medford, Oregon 97504, (Telephone 503–770–2310).

David A. Jones,

District Manager.

[FR Doc. 89–22963 Filed 9–28–89; 9:45 am]

BILLING CODE 4310–33–M

[CO–050–4410–08]

Availability of Draft Resource Management Plan and Draft Environmental Impact Statement (DRMP/DEIS) for the San Luis Resource Area

AGENCY: Bureau of Land Management, Interior.

ACTION: The Bureau of Land Management, Canon City District has completed the preparation of a draft resource management plan (RMP) and associated draft environmental impact statement (EIS) for the San Luis Resource Area in accordance with the Federal Land Policy and Management Act of 1976 (FLPMA) and 43 CFR part 1600. This document is now available to the public for review and comment.

SUMMARY: A draft resource management plan and environmental impact statement has been developed and is now available to the public for the San Luis Resource Area (SLRA). This draft document, when finalized, will replace and supersede the two existing land use plans and other various related environmental documents. This plan will provide the overall framework for managing and allocating BLM-administered land resources in the SLRA over the next 15 to 20 years. Located in south-central Colorado, the

SLRA encompasses 520,677 acres of Federal surface estate and a total of 621,000 acres of Federal subsurface mineral estate within Alamosa, Conejos, Costilla, Rio Grande, and Saguache Counties.

DATES: The draft San Luis Resource Management Plan/Environmental Impact Statement public review and comment period will begin on September 29, 1989, and will run through December 26, 1989. The BLM invites interested or affected parties to provide written comments on this draft document prior to the December 26 closing date. The public is also invited to attend two draft RMP/EIS public hearings to be held to obtain public testimony on November 1 in Denver and on November 2 Alamosa. Both public hearings will have two sessions each day; one from 2 p.m. until 4 p.m. and one from 7 p.m. until 9 p.m. The public is invited to come early at 1 p.m. and at 6 p.m. each day to meet informally with BLM personnel, review maps, ask questions, or sign up to give testimony on the draft RMP/EIS. The hearings will be held at the Rodeway Inn at 11595 W. 6th Avenue in Lakewood, Colorado and at the Holiday Inn at 333 Sante Fe Avenue in Alamosa, Colorado.

FOR FURTHER INFORMATION CONTACT: Interested parties may obtain a copy of the draft document by writing: RMP Project, Bureau of Land Management, P.O. Box 1171, Canon City, CO 81212; or by calling: Dave Taliaferro, Project Leader, (719) 275-0631. Copies may also be obtained from: San Luis Resource Area Office, 1921 State Street, Alamosa, CO 81101; Canon City District Office, 3170 East Main Street, Canon City, CO 81212; Colorado State Office, 2850 Youngfield Street, Lakewood, CO 80215. Interested parties who wish to make written comments are requested to send them to the following address: RMP Project, Bureau of Land Management, P.O. Box 1171, Canon City, CO 81212.

SUPPLEMENTARY INFORMATION: Some of the highlights of the San Luis Draft RMP/EIS are as follows:

1. The plan focuses on the principles of multiple use and sustained yield as mandated by section 202 of FLPMA. Decisions within the plan cover a 15- to 20-year period. The plan directs future resource condition objectives, land use allocations, and management actions on BLM-administered lands within the San Luis Resource Area.

2. The draft RMP/EIS utilizes a range of four plan alternatives for the planning/environmental analysis. These alternatives are; (a) Existing Management Alternative (No Action) (b) Natural Resource Enhancement Alternative (c) Resource Production Alternative; and (d) Preferred Alternative. The range of alternatives was limited to those considered to be reasonable and implementable.

3. The Preferred Alternative was developed and analyzed to represent the best estimate of an optimum multiple use mix of land management for these BLM administered lands. Seven of the 10 areas considered for management of special concerns are designated as areas of critical environmental concern (ACECs) in the Preferred Alternative.

4. This document also serves as the draft environmental impact statement requirement for the Wild and Scenic River Act. Within this draft RMP/EIS, is an analysis of the recommendation that an 8.8-mile stretch of the Rio Grande River be nominated to Congress as a potential addition to the National Wild and Scenic River System.

All substantive written comments and hearing testimony will be analyzed in the preparation of the proposed resource management plan (PRMP) and final environmental impact statement (FEIS). The proposed resource management plan/final environmental impact statement is tentatively scheduled to be completed during the fall of 1990.

Stuart L. Freer,

Associate District Manager.

[FR Doc. 89-22268 Filed 9-28-89; 8:45 am]

BILLING CODE 4310-JB-M

[UT-060-09-4212-21; UTU-64975]

AGENCY: Bureau of Land Management, Moab.

ACTION: Notice of Realty Action, UTU-64975; Proposed Noncompetitive Agricultural Lease of Public Land in Grand County, Utah.

SUMMARY: Notice is given that the following described parcel of public land has been examined, and through the development of land-use planning decisions (based upon public input, resource considerations, regulations, and Bureau policies) the parcel is being considered for agricultural lease under section 302 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2762; 43 U.S.C. 1732). The parcel aggregates approximately 29 acres of public land in Grand County, Utah within the following described lands:

Salt Lake Meridian, Utah

T. 23 S., R. 24 E.
Section 8, those lands in the N½SW¼ south of State Route 128.

The triangular-shaped parcel is bounded on the north (approximately 2800 feet) by State Route 128, and on the south and east by private land. A small part of the agricultural field on the private land extends onto the public land. A part of the parcel was cleared in the past for a mining-related airstrip.

Cato Bottom Ranch Inc., the adjacent property owner, has proposed a renewable 20-year agricultural lease for the parcel to resolve the agricultural trespass and to put water from the Colorado River to beneficial use. There are no other adjacent property owners. The parcel would be offered to the ranch for direct, noncompetitive lease at no less than fair market rental. The lease would be subject to all valid existing rights.

SUPPLEMENTARY INFORMATION: For a period of 30 days from publication of this notice, interested parties may submit comments to the Moab District Manager, P.O. Box 970, Moab, Utah 84532. Objections 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 Interior.

FOR FURTHER INFORMATION CONTACT: Mary von Koch, Realty Specialist, Grand Resource Area Office, Sand Flats Road, P.O. Box M, Moab, Utah 84532, (801) 259-8193, or Brad Groesbeck, District Realty Specialist, Moab District Office, 82 East Dogwood, P.O. Box 970, Moab, Utah 84532, (801) 259-6111.

Dated: September 22, 1989.

Kenneth V. Rhea,

Acting District Manager.

[FR Doc. 89-22960 Filed 9-28-89; 8:45 am]

BILLING CODE 4310-DQ-M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731-TA-446 and 447 (Preliminary)]

Polychloroprene From France and the Federal Republic of Germany

AGENCY: United States International Trade Commission.

ACTION: Institution of preliminary antidumping investigations and scheduling of a conference to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigations Nos. 731-TA-446 and 447 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is

materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from France and the Federal Republic of Germany of polychloroprene, provided for in subheadings 4002.41.00 and 4002.49.00 of the Harmonized Tariff Schedule of the United States (previously reported under item 446.15 of the former Tariff Schedules of the United States), that are alleged to be sold in the United States at less than fair value.[1] As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by November 6, 1989.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR part 207), as amended 53 FR 33034 (August 29, 1988) and 54 FR 5220 (February 2, 1989), and part 201, subparts A through E (19 CFR part 201).

EFFECTIVE DATE: September 22, 1989.

FOR FURTHER INFORMATION CONTACT: Diane Mazur (202–252–1184), Office of Investigations, U.S. 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 the Commission's TDD terminal on 202–252–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–252–1000.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to a petition filed on September 22, 1989, by E.I. du Pont de Nemours & Company, Inc., Wilmington, DE.

Participation in the Investigations.

Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register.** Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Public Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each public document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the public service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Limited Disclosure of Business Proprietary Information Under a Protective Order and Business Proprietary Information Service List

Pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)), the Secretary will make available business proprietary information gathered in these preliminary investigations to authorized applicants under a protective order, provided that the application be made not later than seven (7) days after the publication of this notice in the **Federal Register.** A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that it has been served on all the parties that are authorized to receive such information under a protective order.

Conference

The Director of Operations of the Commission has scheduled a conference in connection with these investigations for 9:30 a.m. on October 13, 1989, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Diane Mazur (202–252–1184) not later than October 10, 1989, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written Submissions

Any person may submit to the Commission on or before October 17, 1989, a written brief containing information and arguments pertinent to the subject matter of the investigations, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submissin must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7).

Parties which obtain disclosure of business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)) may comment on such information in their written brief, and may also file additional written comments on such information no later than October 20, 1989. Such additional comments must be limited to comments on business proprietary information received in or after the written briefs.

Authority

These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

By order of the Commission.

Issued: September 26, 1989.

Lisbeth K. Godley,

Acting Secretary.

[FR Doc. 89–23104 Filed 9–28–89; 8:45 am]

BILLING CODE 7020–02–M

[1] Polychloroprene (also known as neoprene), a polymer of chloroprene (2-chloro-1,3-butadiene), is a synthetic elastomer available in two different forms: dry polymers and aqueous latex grade polymers.

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31364]

CSX Transportation, Inc.; Acquisition Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission, under 49 U.S.C. 10505, exempts from the requirements of 49 U.S.C. 11343, *et seq.*, the purchase from the Central of Georgia Railroad Company (CG) by CSX Transportation, Inc. (CSXT) of a 59-mile of line located to the west of Savannah, GA, between Meldrim, GA (Milepost 513.0; Seller's Survey Station 877+50) and Lyons, GA (Milepost 572.0; Seller's Survey Station 3938+31). The exemption is granted subject to standard labor protective conditions.

DATES: This exemption is effective on October 31, 1989. Petitions for stay must be filed by October 16, 1989. Petitions for reconsideration must be filed by October 26, 1989.

ADDRESSES: Send pleadings referring to Finance Docket No. 31364 to:

Office of the Secretary, Case Control Branch, Att'n: Finance Docket No. 31364, Interstate Commerce Commission, Washington, DC 20423

Patricia Vail, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202

R. Allan Wimbish, Central of Georgia Railroad Company, 3 Commercial Place, Norfolk, VA 23510–2191

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245 [TDD for hearing impaired: (202) 275–1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD service (202) 275–1721.]

Decided: September 21, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89–23003 Filed 9–28–89; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume cause procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3504, Washington, DC 20210.

New General Wage Determinations

Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume State and page number(s).

Volume I

Massachusetts, MA89–5 ..... p. 410c, pp. 410d–410e

Virginia, VA89–68 ..... p. 1188zzz–11, p. 1188zzz–12

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified:

Volume I

Alabama, AL89–27 (Jan. 6, 1989). p. 55, p. 56

Massachusetts:

MA89–3 (Jan. 6, 1989)..... p. 401, pp. 402–404

MA89–5 (Sept. 29, 1989).... p. 410C, pp. 410D–410E

Maryland, MD89–1 (Jan. 6, 1989). p. 411, p. 411

Rhode Island, RI89–1 (Jan. 6, 1989). p. 1023, pp. 1024–1026, pp. 1028–1029

Virginia, VA89–68 (Sept. 29, 1989). p. 1188zzz–11, p. 1188zzz–12

Volume II

Missouri:
MO89-1 (Jan. 6, 1989)..... p. 627, pp. 628-629, 631, pp. 634, 640, 646
MO89-2 (Jan. 6, 1989)..... p. 647, pp. 648-652
MO89-5 (Jan. 6, 1989)..... p. 669, p. 669
MO89-8 (Jan. 6, 1989)..... p. 689, p. 690
MO89-9 (Jan. 6, 1989)..... p. 693, pp. 694-696
New Mexico, NM89-1 (Jan. 6, 1989). p. 743, pp. 749, 755-756
Texas, TX89-10 (Jan. 6, 1989). p. 1009, p. 1010

Volume III

California, CA89-1 (Jan. 6, 1989). p. 33, pp. 37, 42
Montana, MT89-1 (Jan. 6, 1989). p. 171, pp. 181-184
Washington, WA89-1 (Jan. 6, 1989). p. 363, pp. 368-369

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 22nd Day of September 1989.

Robert V. Setera,

Acting Director, Division of Wage Determinations.

[FR Doc. 89-22886 Filed 9-28-89; 8:45 am]

BILLING CODE 4510-27

NATIONAL SCIENCE FOUNDATION

Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Public Law 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice of permits issued.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers, Permit Office, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

SUPPLEMENTARY INFORMATION: On August 18, 1989, the National Science Foundation published a notice in the Federal Register of permit applications received. A permit was issued to the following individual on September 20, 1989:

Richard Rivkin.

Charles E. Myers,

Permit Office, Division of Polar Programs.

[FR Doc. 89-23051 Filed 9-28-89; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Issuance and Availability Final Resolution of Unresolved Safety Issue (USI) A-40; Seismic Design Criteria

The U.S. Nuclear Regulatory Commission (NRC) is issuing the final resolution for Unresolved Safety Issue (USI) A-40, "Seismic Design Criteria." The following documents are included in the final resolution: (1) Revision 2 to sections 2.5.2 (Vibratory Ground Motion), 3.7.1 (Seismic Design Parameters), 3.7.2 (Seismic System Analysis), and 3.7.3 (Seismic Subsystem Analysis) of NUREG-0800, Standard Review Plan (SRP); (2) NUREG-1233, "Regulatory Analysis for USI A-40, Seismic Design Criteria"; and (3) NUREG/CR-5347, "Recommendations for Resolution of Public Comments on USI A-40, Seismic Design Criteria."

USI A-40 was initiated in 1977 with the following objectives: (1) To investigate selected areas of the seismic design sequence and quantify margins, if any, in the design process; and (2) to modify criteria in the SRP if changes were found to be justified. Early activities for USI A-40 consisted of specific technical studies which concentrated on improvements in seismic design criteria. A technical overview and specific recommendations for changes to seismic design criteria are documented in NUREG/CR-1161. Value/Impact assessment for the proposed changes is documented in NUREG/CR-3480. Based on the recommendations made in NUREG/CR-1161, NUREG/CR-3480, additional staff work discussed in NUREG-1233, and resolution of public comments (NUREG/CR-5347), the staff decided to issue Revisions to the SRP sections 2.5.2, 3.7.1, 3.7.2, and 3.7.3. These Revisions to SRP sections will be used in review of new construction permit (CP), preliminary design approval (PDA), final design approval (FDA) and combined license (CP/OL) applications under 10 CFR part 52. In addition to the SRP revisions, the staff has also proposed review of large, above-ground vertical tanks at six operating nuclear plants. Discussion for selection of the plants is included in NUREG-1233. These plants are being handled on a plant-specific basis by issuing a request for information letter.

Copies of the documents included in the final resolution for USI A-40 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013-7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is also available for public inspection and/or copying at the NRC Public Document Room, 2120 L Street, NW., Lower Level, Washington, DC.

Dated at Rockville, Maryland, this 26 day of September 1989.

For the Nuclear Regulatory Commission

R. Wayne Houston,

Director, Division of Safety Issue Resolution, Office of Nuclear Regulatory Research.

[FR Doc. 89-23048 Filed 9-28-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-440]

Cleveland Electric Illuminating Co., et al.; Denial of Amendment to Facilitate Operating License and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied in part a request by the licensees for amendment to Facility Operating License No. NPF-58, issued to Cleveland Electric Illuminating Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company and Toledo Edison Company (the licensees), for operating of the Perry Nuclear Power Plant, Unit No. 1 (the facility) located in Lake County, Ohio.

The amendment, as proposed by the licensees, would consist of the following changes to the Technical Specifications (Appendix A to Facility Operating License No. NPF-58):

(1) Technical Specification (TS) 3.3.7.7 describes Limiting Conditions for Operation (LCO) of the Traversing In-Core Probe (TIP) System. The licensees proposed to modify TS 3.3.7.7 to allow one or more TIP measurement locations to be inoperable with data replaced by that location's symmetric counterpart if that location is operable and provided the reactor core is operating in type A control rod pattern and the total core uncertainty for the present cycle has been determined to be less than 8.7 percent (standard deviation).

(2) There are also minor changes combining current paragraphs a. and b. and adding the footnote of applicability paragraph b. to paragraph a.

(3) The corresponding bases page has also been changed.

The licensees' applications for the amendment was dated August 23, 1989. Notice of consideration of issuance of the amendment was published in the **Federal Register** on August 30, 1989 (54 FR 35955).

The portion of the application which proposed unlimited substitution of data for inoperable TIP locations was denied. The staff determined that although no significant loss of accuracy would likely be involved by the licensees' proposed TS change, inoperable channels would decrease the information supplied by the measurement system and if abnormal power distributions developed, excessive substitution might make them difficult to recognize. Unrestricted substitution would allow as much as 44 percent of the TIP information to be missing. This would be undesirable to a maximum of 10 of the 41 TIP channels.

The licensees were notified of the Commission's denial of this request by letter dated September 22, 1989. All other changes requested by the licensees' application have been approved by Amendment No. 25. Notice of Issuance of Amendment No. 25 will be published in the Commission's regular biweekly **Federal Register** notice.

By October 30, 1988, the licensees may demand a hearing with respect to the denial described above and any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for a hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Document Room, Gelman Building, 2120 L Street, NW., Washington, DC, by the above date.

A copy of the petition should also be sent to the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensees.

For further details with respect to this action, see (1) the application for amendment dated August 23, 1989, and (2) the Commission's Safety Evaluation issued with Amendment No. 25 to NPF-58 dated September 22, 1989 which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Perry Public Library, 3753 Main Street, Perry, Ohio 44081. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC, 20555, Attention: Division of Reactor Projects—III, IV, V & Special Projects.

Dated at Rockville, Maryland, this 22nd day of September, 1989.

For the Nuclear Regulatory Commission.

Warren H. Swenson,

Project Manager, Project Directorate III-3, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-23023 Filed 9-28-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-302]

Florida Power Corp.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-72, issued to Florida Power Corporation (the licensee), for operation of Crystal River Unit 3 Nuclear Generating Plant located in Citrus County, Florida.

The proposed amendment would permit a one-time delay of the 18-month diesel generator full-load test until the next refueling outage, currently scheduled for the spring of 1990. It would also delete an unnecesary footnote.

The staff is issuing this notice under exigent circumstances. The present Technical Specification requirement is such that a portion of the test must be performed within the 30-minute rating. Time of operation within that rating is cumulative. The surveillance was intended to be performed once during the last refueling outage. At the next outage, the system is scheduled to be modified so that the test load can be reduced to below the 30-minute rating. However, because of the length of a recent maintenance outage, the surveillance interval runs out on October 21, 1989, before the next refueling outage. The amendment would eliminate the need to test the diesel generator in the 30-minute rating. Testing the diesel generator in the 30-minute rating would reduce the available operating time the diesels could carry the maximum engineered safeguards load during certain postulated accidents.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the request for amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee evaluated the proposed changes in light of the above three criteria. In regard to the first criterion, the licensee determined that the proposed changes would not involve a significant increase in the probability or consequences of an accident previously analyzed since the diesel generator run time and loadings have been low. Therefore, the diesel generators are expected to be able to perform their intended function for the remainder of the fuel cycle.

In regard to the second criterion, the licensee determined that the proposed changes would not create the possibility of a new or different kind of accident from any accident previously evaluated. This is because the proposed change introduces no new mode of plant operation, nor does it require any physical modification to the plant.

In regard to the third criterion, the licensee determined that the proposed change does not involve a significant reduction in a margin of safety. The licensee maintains that any reduction will be insignificant since, based on inspections and testing, the diesels are expected to be able to carry their engineered safeguards loads.

The staff has performed a preliminary review of the licensee's proposed change and agrees that the criteria of 10 CFR 50.92 are met.

Accordingly, the Commission proposes to determine that this change does not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 15 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 30, 1989, 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 petition for leave to intervene. Request 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. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at the Crystal River Public Library, 668 NW. First Avenue, Crystal River, Florida 32629. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intevene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the Administration to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to invervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of 30 days, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the request for amendment involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If a final determination is that the amendment involves significant hazards considerations, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 15-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Herbert N. Berkow: (petitioner's name and telephone number), (date petition

was mailed), (plant name), and (publication date and page number of this Federal Register notice). 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 A. H. Stephens, General Counsel, Florida Power Corporation, MAC-A5D, P.O. Box 14042, St.Petersburg, Florida 33733, attorney for the license.

Nontimely filings of petitions for leave to intervene, amended petitions, suppplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated August 9, 1989, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at the Cyrstal River Public Library, 668 N.W. First Avenue, Crystal River, Florida 32629.

Dated at Rockville, Maryland, this 25th day of September.

For the Nuclear Regulatory Commission.

Harley Silver,

Project Manager, Project Directorate II-2, Division of Reactor Projects-I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89-232024 Filed 9-28-89; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[File No. 270-197]

Forms Under Review by Office of Management and Budget; Revision; Rule 15c3-1

Agency Clearance Officer: Kenneth A. Fogash, Deputy Executive Director, (202) 272-2142.

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, 450 5th Street, NW., Washington, DC 20549.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for OMB approval a revision of Rule 15c3-1 under the Securities Exchange Act of 1934 (15 U.S.C. 78(a) *et seq.*), which would: raise the absolute minimum net capital required under the rule; standardize the deductions in arriving at net capital for equity securities positions; establish a haircut for zero coupon government bonds; and, relieve certain aggregate indebtedness charges. Each of the 1,150 respondents will incur an estimated average of one burden hour to comply with this requirement.

The estimated average burden hours are made solely for the purpose of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the cost of SEC rules and forms.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, 450 5th Street NW., Washington, DC, 20549-6004, and Gary Waxman, Clearance Officer, Office of Management and Budget, Paperwork Reduction Project (3235-0200), Room 3208, New Executive Office Building, Washington, DC 20543.

Dated: September 20, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-23016 Filed 9-28-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-27270; File No. SR-MSE-89-8]

Self-Regulatory Organizations; Proposed Rule Change by the Midwest Stock Exchange, Incorporated Relating to an Increase in the Number of Shares Subject to the Guaranteed Pricing Parameters of the BEST System From 1099 to 2099 Shares

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on September 6, 1989, the Midwest Stock Exchange Incorporated, ("MSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSE proposes to amend Article XX, Rule 34 ("BEST Rule").[1] The text of this amendment is at the MSE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange's Article XX, Rule 34, the BEST Rule, currently requires that all agency orders (i.e. orders for the accounts of non-broker/dealers) from 100 shares up to and including 1099 shares be filled within certain guaranteed pricing parameters. (Generally, market orders are guaranteed execution at the best bid or offer and limit orders are guaranteed execution based on trading in the primary market.) The proposed will increase the number of shares subject to the guaranteed pricing parameters from 1099 to 2099 shares. The number of shares on orders eligible for mandatory automatic execution over the MSE's Automated Execution System ("MAX"), however, will remain at 1099. The Exchange believes that the larger size guarantees will make the Exchange more competitive by attracting more order flow.

The purposed rule change is consistent with section 6(b) of the Act, as amended, in that it is designed to facilitate transactions in securities and remove impediments to the mechanism of a free and open market, while protecting the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Midwest Stock Exchange, Incorporated does not believe that any burden will be placed on competition as a result of the proposed rule change.

[1] Rule 34 provides that the MSE Guaranteed Execution System (the BEST System) will be available to Exchange members and, where applicable, to members of a participating exchange who send orders to the Exchange Floor through a foreign exchange linkage established pursuant to Rule 39, in all issues in the MSE specialist system that are traded in the Dual Traded System and NASDAQ/NMS securities.

C. Self-Regulatory Organization's Statements on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC, 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC, 20549. Copies of such filing will also be available for inspection and copying at the principal office of the MSE. All submissions should refer to File No. SR-MSE-89-8 and should be submitted by October 20, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 20, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-23013 Filed 9-28-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-27286; File No. SR-NASD-88-55]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to the Imposition of an Assessment on Annual Gross Income from Transactions in U.S. Government Securities on Certain NASD Members

On December 29, 1988, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change [1] pursuant to section 19(b) of the Securities Exchange Act of 1934 [2] ("Act") and Rule 19b-4 [3] thereunder to amend section 1(b) of Schedule A to the NASD By-Laws to impose an assessment of 0.25% on the annual gross income derived from transactions in U.S. Government securities on members whose books, records, and financial operations regarding transactions in U.S. Government securities will be examined by the NASD pursuant to the Government Securities Act of 1986 ("GSA").[4] Pursuant to section 1(d) of Schedule A to the NASD By-laws, filed on September 22, 1988, for immediate effectiveness, the fee is subject to a 50% credit for fiscal year 1988. Thus, the effective rate of assessment on members doing business in government securities will be .125%.

Notice of the proposal together with the terms of substance of the proposal was provided by the issuance of a Commission release (Securities Exchange Act Release No. 26469, January 18, 1989) and publication in the **Federal Register** (54 FR 3709, January 25, 1989).

The Commission received two comment letters objecting to the proposed rule change, response letters from the NASD,[5] and follow-up letters from the adverse commentators.[6]

Although the commentators recognized the need to establish and impose appropriate fees to defray the costs of implementing the GSA requirements for examination of government securities broker/dealers ("GSBDs") who engage only in government securities activities,[7] they objected to the method of determining the assessment and the amount of the assessment.[8] Specifically, the commentators assert that the fee is disproportionately high. They argue that the .125% assessment, itself, would generate more revenue than necessary to cover the cost of discharging the NASD's additional responsibilities under the GSA.[9] In addition, they assert that the nature of the government securities market [10] and the limited regulatory scheme applicable to that market make it easier for the NASD to regulate them and hence, less costly.

With regard to the nature of the government securities market, the commentators note that the market is essentially a wholesale market dominated by institutional investors, with a large amount of income derived from a small number of transactions; as opposed to the over-the-counter ("OTC") market that is essentially a retail market with a larger number of transactions that represent a smaller dollar amount. The commentators infer from the respective natures of these markets that the government securities market is inherently less subject to abuse and hence, easier to regulate. They also assert that the regulatory regime applicable to government securities imposed by the GSA is less comprehensive, thus the expenditures

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[1] The NASD originally submitted the terms of the proposed rule change pursuant to section 19(b)(3)(A)(ii) of the Act. *See* File No. SR-NASD-88-41, Securities Exchange Act Release No. 26118 (October 6, 1988), 53 FR 39392. In response to comments received, the NASD withdrew the relevant portion of the proposed rule change and resubmitted it pursuant to section 19(b)(2) of the Act.

[2] 15 U.S.C. 78s(b)(1) (1982).

[3] 17 CFR 240.19b-4 (1988).

[4] 15 U.S.C. 78o-5 (1986).

[5] *See* letters from Frank J. Wilson, Executive Vice President and General Counsel, NASD to Brandon Becker, Associate Director, Division of Market Regulation ("Division"), SEC dated March 7, and to Richard G. Ketchum, Director, Division, SEC, dated June 27, 1989.

[6] *See* letters from Lawrence I. Fox, Counsel, Government Securities Brokers Association ("Association") to Jonathan G. Katz, Secretary, SEC, dated February 14, and July 25, 1989; and letters from Aubrey G. Lanston & Co., Inc., *et al.* ("Lanston") to Jonathan G. Katz, dated February 15, and July 19, 1989.

[7] Integrated firms (*i.e.*, firms doing a general securities business as well as a government securities business) are presently subject to a .125% assessment (*i.e.*, .25% with a 50% credit) on gross income, which includes income realized from transactions in U.S. Government securities. *See* NASD By-Laws, Schedule A, section 1(b)(ii) and section 5, *NASD Manual*, paragraphs 1752 and 1756.

[8] The commentators also assert that the NASD has not provided sufficient documentation of the assessment to enable the commentators a meaningful opportunity to comment.

[9] The commentators argue that the 50% credit for fiscal year 1988 demonstrates in and of itself that the assessment is too high. The Commission, however, believes that the assessment should be evaluated in conjunction with the 50% credit which results in the effective assessment rate of .125%

[10] The Association further asserts that, because its members' activities are even more limited (brokers do not take positions in securities, they do not make markets, and they deal only with approximately 60 accounts, all of which are NASD members), they should be subject to a lower assessment.

for examination of records pertaining to the same should be less than those for OTC or municipal securities. Furthermore, they assert that the NASD's estimates understate the likely revenues that will be generated from a .125% assessment on the gross income derived from transactions in U.S. Government securities. Consequently, the commentators argue that the proposal is not an equitable allocation of reasonable dues, fees, and other charges pursuant to section 15A(b)(5) of the Act.[11]

The NASD repsonse letters provide additional information regarding the assessment.[12] With respect to the argument that the fee is too high, the NASD states, and the adverse commentators do not dispute, that the .125% assessment will not cover its actual cost of regulation of GSBDs for fiscal year ("FY") 1989.[13] The NASD asserts that its cost of regulating GSBDs was approximately $2.4 million for FY 1988 and that it has not experienced a significant drop to date in the resources necessary to oversee the activities of the GSBDs. Because the FY 1989 assessment rate was based upon the NASD's initial cost projections for FY 1988, and not the higher actual costs,[14] the NASD anticipates the proposed assessment will generate approximately $1.5 million, resulting in a shortfall of almost $1 million for FY 1989.[15]

Furthermore, regarding the assertion of the Association that the nature of the market is such that the NASD's regulatory responsibilities are less burdensome, the NASD asserts that regulation of the GSBDs has uncovered problems that are not materially different from the problems experienced with other member firms.[16] The NASD also notes that the involvement of other regulatory authorities such as the Federal Reserve Board and the Department of the Treasury makes responding to problems experienced by GSBDs more complex.[17]

The commentators submitted follow-up letters that reiterate the concerns stated in their earlier letters and dispute the method used by the NASD to allocate nonassessment revenue streams.[18]

The Commission has reviewed the NASD's proposal as well as the arguments raised by the adverse commentators, and has concluded that the proposal is consistent with the Act. The proposed rule as submitted by the NASD is cognizant of the regulatory regime imposed on members transacting business in U.S. Government securities. The assessment levied by the NASD reflects the scope of the activities that the NASD monitors vis-a-vis transactions in U.S. Government securities, and is identical to the fee imposed on the government securities revenue of broker/dealers who do not conduct their government securities activities through a separate subsidiary.

Furthermore, the FY 1988 costs to the NASD for GSBD activities actually were greater than the NASD's original projections, and having based the FY 1989 assessment upon the FY 1988 projection, a shortfall for FY 1989 is anticipated. Moreover, the NASD has committed to review during FY 1990 the costs entailed in its government securities examination program to determine whether the present level of the fee remains appropriate. Nor does the Commission find that the NASD's use of an end of year credit is inconsistent with the Act. The Commission notes that the NASD employs end of year credits for all its revenue based fees. The NASD has employed this methodology because of the substantial variability of securities industry revenue. Moreover, the fact that the NASD annually reconsiders the assessment credit mitigates against any potential for the NASD to accumulate excessive surplus revenues. The NASD consistently has provided for rebates of the annual assessment. Such rebates must be submitted pursuant to section 19(b), thus providing opportunity for notice and comment. The percentage of the rebate has varied from 20% to 52.5% during the past six years.[19]

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[11] 15 U.S.C. 78o-3 (1982).

[12] Specifically, the NASD stated that even if the cost estimates did not include the cost to support certain departments and activities of the NASD unrelated to the regulation of GSBDs, namely qualifications examinations, the Corporate Financing Department, the Uniform Practice Department, the Arbitration Department, and 99% of the Advertising Department, the assessment derived would remain unchanged. Concomitantly, the Commission concurs with the position held by a commentator that had the NASD chosen not to include in the assessment the cost of supporting certain activities unrelated to GSBD regulation, any future losses incurred by the NASD from these non-government securities activites should then be charged against the over-the-counter assessment (and the related credit) and not against the government securities assessment (and related credit). *See* letter from Giovanni P. Prezioso, counsel, Lanston, to Richard G. Ketchum, Director, Division of Market Regulation, SEC, dated August 29, 1989.

[13] At the time of the original filing the NASD had estimated the cost of regulation for FY 1989 at $1.7 million. This estimate was based on projected costs for FY 1988. Since the time of the original filing, the NASD has calculated the actual costs, which indicate that the NASD underestimated the expense of regulating the GSBDs during FY 1988.

[14] The NASD states that it will not recover the $2.4 million incurred in FY 1988 for regulating GSBDs or the development costs for the new regulatory enterprise.

[15] The current assessment does not preclude the NASD from subsequent revisions of the fee. The NASD will continue to evaluate the fairness of the assessment, and adjust it appropriately as the NASD develops additional information and experience vis-a-vis GDBD oversight. *See* letter from Frank J. Wilson, Executive Vice President and General Counsel, NASD to Richard G. Ketchum, Director, Market Regulation, SEC, dated August 29, 1989.

[16] Specifically, with respect to government securities brokers (interdealer brokers), the NASD notes that three such firms lost their special status, *e.g.*, the NASD found that RMJ Securities Corporation conducted a business in registered Collateralized Mortgage Obligations outside of the scope of its section 15C registration (dealing in non-government securities). Other GSBDs had been conducting a business in corporate and municipal bonds. *See* letter from Frank J. Wilson, dated June 27, 1989.

[17] Under the terms of the GSA, regulatory responsibility for government securities firms is shared by the SEC and the Department of the Treasury. The Federal Reserve Board must be consulted regarding the promulgation of rules.

[18] In addition, the commentators contend that the supplemental correspondence submitted by the NASD should be published for comment in the same manner as the original filing. They assert that the requirements of section 19(b)(1) are analogous to those imposed by the Administrative Procedure Act ("APA"), 5 U.S.C. 553(b)(3) (1982) and relying upon *United Church Bd for World Ministries* v. *S.E.C.*, ("United") 617 F. Supp. 837 (D.D.C. 1985), assert that the supplemental correspondence submitted by the NASD contains significant new data and theories, and, therefore should be published for comment. The Commission, however, believes the Release provided the notice required by section 19(b)(1) of the terms and substance of the proposed rule change. The legislative history of the Securities Acts Amendments of 1975 states that the standards for publication under section 19(b) are intended to be the same as those in section 553 of the APA with regard to agency rulemaking. Senate Committee on Banking, Housing, and Urban Affairs, *Securities Act Amendments of 1975*, S. Rep. No. 75, 94th Congress, 1st Session 129 (1975). The APA requires and "exchange of views, information, and criticism between interested persons and the Agency." *Home Box Office, Inc.* v. *Federal Communications Commission*, 567 F.2d 9, 35 (D.C. Cir.), *cert. denied*, 434 U.S. 829 (1977). The objective of the APA notice has been interpreted to serve three basic requirements. First, the notice-and-comment period improves the quality of agency rulemaking by testing proposed rules through exposure to public comments. Second, the notice requirement provides an opportunity to be heard, which is fundamental to basic fairness. Third, notice and comments allow affected parties to develop a record of objection for judicial review. *United* at 839. The Commission believes that these requirements have been met. The letters submitted by the NASD responded to the commentators' letters concerning the internal allocation of NASD revenue. They do not, however, alter the terms or rationale of the proposed rule change. Furthermore, the commentators received actual notice of the NASD letters and did comment on them. The comment process, including the responses to comments from the NASD and the subsequent letters from commentators, is evidence that the necessary exchange of views has occurred. *See* File No. SR-NASD-88-55.

[19] *See* Securities Exchange Act Release Nos. 20306 (October 19, 1983), 48 FR 49568; 21293 (September 6, 1984), 49 FR 36041; 22407 (September 13, 1985), 50 FR 38238; 23516 (August 7, 1986), 51 FR 29175; 24745 (August 20, 1987), 52 FR 31459; 26118

Continued

Section 15A(b)(5) of the Act requires that the rules of the NASD provide for the equitable allocation of reasonable dues, fees and other charges among members. The Commission believes that the basis for the proposed assessment adheres to the standard in section 15A(b) (5).

The actual cost to the NASD for regulating GSBD activities during FY 1988 was greater than the NASD's original estimation, and higher actual regulatory costs for FY 1989 are anticipated. The fact that the NASD, under the proposed assessment, expects to collect less than the actual cost of regulating GSBD activities during FY 1989 is alone a strong indication that the assessment is reasonable. Moreover, the Commission does not agree with the commentators' assertion that the fees imposed on GSBDs are inequitable vis-a-vis other categories of member firms because they recover a greater percentage of the NASD's costs than do the fees imposed on other NASD members. The commentators reach this conclusion based on a simplistic analysis in which they have segregated costs of several programs not relevant to the regulation of government securities dealers. Yet in reaching this conclusion, the commentators ignore the fact that revenues obtained from NASDAQ terminal charges and issuer revenue charges are in no way attributable to government securities activities. We agree with the conclusion of the NASD that in analyzing the fairness of the proposed fee it would be reasonable to segregate out both the costs and revenues attributable to government securities dealers.[20] When analyzed in this light, the proposed fee will actually reimburse the NASD for a smaller percentage of its regulatory costs resulting from the oversight of GSBDs than from fees obtained from its other members.[21]

The Commission believes that this allocation of costs reflects an equitable imposition of fees as well as assurance that the NASD is not, in contravention of section 15A(b) (9) of the Act, imposing any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A and the rules and regulations pursuant to the same.

It is therefore ordered, pursuant to section 19(b) (2) of the Act,[22] that the proposed rule change be, and hereby is, approved.

Dated: September 21, 1989.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-23014 Filed 9-28-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-27274; File No. SR-NYSE-89-25]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange, Inc. Relating to Rate Increases Affecting Listing Fees

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 8, 1989, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is instituting a restructured original listing fee for all non-U.S. companies which bases the lising fee on the number of ADRs or shares issued and outstanding in the United States. The restructured fee also establishes a minimum listing fee applicable to non-U.S. companies.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this change is to relate the initial listing fee paid by non-U.S. companies strictly to their usage of the NYSE's market as measured by the number of shares or ADRs in the U.S. The proposed fee schedule replaces the existing fee schedules for (1) Canadian companies and (2) all other non-U.S. companies. Currently the initial fee for foreign companies is $36,800 plus an additional fee based on the greater of American Depository Receipts ("ADRs") or shares issued in the U.S. or 10% of the worldwide ADR equivalent. The new fee will base the additional charge on the number of ADRs or issued shares in the U.S. only. The new fee also sets a minimum initial listing fee of $100,000 for foreign companies.

The basid under the Act for the propsoed rule change is section 6(b)(4) permitting the rules of an Exchange to provide for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received from Members, Participants or Others.

The Exchange has not solicited comments regarding the proposed rule change, and no unsolicited comments have been received.

(September 26, 1988), 53 FR 39392. The first time a discount was available to member firms was in 1966 (43%); there were no discounts during the years 1967 through fiscal year 1983.

[20] Members who transact business in municipal securities pay a pre-credit amount equal to .21% of annual gross income from such transactions. The NASD has indicated that this slightly lower rate is imposed on municipal securities broker/dealers because they are the only NASD members who are required to pay assessments to the Municipal Securities Rulemaking Board ("MSRB") as well as the NASD. *See* letter from Frank J. Wilson, dated August 29, 1989. *See also* § 15B(b) (2) (J) of the Act, and *MSRB Manual*, Rules A-12, A-13, A-14. Unlike GSBDs, municipal securities dealers contribute to NASD revenues via fees for qualification examinations.

[21] *See* letter from Frank J. Wilson, dated June 27, 1989, page 4 and Exhibit 4.

[22] 15 U.S.C. 78s(b) (1982).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of the Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. The persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to file No. SR–NYSE–89–25 and should be submitted by October 20, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 20, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–23015 Filed 9–28–89; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–17147; 811–3127]

Colonial Equity Income Trust; Application for Deregistration

September 22, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: Colonial Equity Income Trust ("Applicant").

RELEVANT 1940 ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company under the 1940 Act.

FILING DATES: The application on Form N–8F was filed on July 20, 1989.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 18, 1989, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, One Financial Center, Boston, Massachusetts 02111.

FOR FURTHER INFORMATION CONTACT: Patricia Copeland, Legal Technician, (202) 272–3009, or Karen L. Skidmore, Branch Chief, (202) 272–3023 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Applicant is an open-end diversified management company organized as a Massachusetts business trust and in good standing with the Commonwealth of Massachusetts. Applicant registered as an investment company under the 1940 Act under the name of Colonial Option Growth Trust and filed a registration statement under the Securities Act of 1933 on December 29, 1980. Applicant's registration statement became effective on May 1, 1981.

2. On October 7, 1988, Applicant's Board of Trustees unanimously approved the terms of the Agreement and Plan of Reorganization, authorizing the merger of Applicant into The Colonial Fund. Applicant filed The Colonial Fund prospectus, notice of special meeting of shareholders, and proxy statement contained in The Colonial Fund registration statement (2–15392). Applicant's proxy statement (2–70422) was filed on March 13, 1989 under Rule 14A–6 under the Securities Exchange Act of 1934. On April 14, 1989, Applicant's shareholders approved the merger by a majority vote. In connection with such shareholder vote, the Applicant distributed proxies to shareholders.

3. The Trustees recommended the merger after concluding that the merger would permit Applicant's shareholders to pursue substantially the same investment goals in a larger fund which might result in a reduced expense ratio due to the spreading of fixed costs over a larger asset base.

4. The combination of Applicant with The Colonial Fund is expected to be a taxable transaction under the Internal Revenue Act of 1986, as amended. As of March 31, 1989, Applicant's total assets were $13,833,752.97 of which $13,035,380.00 were investments ($12,706,380.00) and cash equivalents ($329,000.00). As of April 21, 1989, Applicant had $11,781,951.99 of receivables as a result of investments sold on the open market and through Rule 17a–7 under the 1940 Act transactions. The latter accounted for $10,064,968.68 of investments sold. The total brokerage commission paid in connection with the combination for the period March 31, 1989 through April 21, 1989, was $1,066.00. The reason for such sales of portfolio security investments was that such securities did not meet the investment criteria of The Colonial Fund. The remaining portfolio securities and the assets of Applicant were transferred to The Colonial Fund.

5. As of April 21, 1989, Applicant had outstanding 869,899.270 shares of beneficial interest and the aggregate net asset value and net asset value per share were $13,165,309.83 and $15.13 respectively. For purposes of the combination, the exchange net asset value was the closing net asset value for each trust as of Friday, April 21, 1989. The values per share for Applicant and The Colonial Fund were $15.13 and $19.64, respectively. As of April 24, 1989, Applicant conveyed, transferred and delivered all of its assets held on such date at the rate of .77037 shares of The Colonial Fund for each share of the Applicant, based on their respective net asset values per share as of the Valuation Date.

6. Colonial Management Associates, Inc., the investment adviser, assumed all of the Applicant's expenses ($51,819) in connection with the merger. Such

expenses for legal, auditing, printing and mailing services.

7. As of the time of filing the application, Applicant had no shareholders, assets or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not engaged, nor does it propose to engage in any business activities other than those necessary to wind up its affairs. Applicant intends to file the appropriate Certificate of Dissolution or similar document in accordance with State law after the relief requested has been granted.

8. Applicant is or will be current on its required filings, including its N–SAR filing and will make all final filings required by the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–23017 Filed 9–28–89; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 35–24955]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

September 22, 1989.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by October 16, 1989 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case or an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Allegheny Power System Inc. (70–7310)

Allegheny Power System, Inc. ("APS"), 320 Park Avenue, New York, New York 10022, a registered holding company, has filed pursuant to sections 9 of 10 of the Act and Rule 42 thereunder a post-effective amendment to its declaration previously filed pursuant to sections 6(a) and 7 of the Act and Rule 50(a)(5) thereunder.

By prior Commission order in this matter, APS was authorized to issue and sell from time to time not more than 2.5 million shares and .5 million shares of its authorized and unissued common stock, par value $2.50 per share ("Additional Common Stock"), pursuant to its Dividend Reinvestment and Stock Purchase Plan ("Dividend Plan") and its Employee Stock Ownership and Savings Plan, respectively (HCAR No. 24344, March 17, 1987). APS now proposes to fund the Dividend Plan to the same extent as previously authorized, less any shares previously issued pursuant to the Dividend Plan, but by causing the purchase of shares of its common stock on the open market to be used for this purpose in addition to issuing Additional Common Stock.

Appalachian Power Company (70–7694)

Appalachian Power Company ("APCo"), 40 Franklin Road SW., Roanoke, Virginia 24011, a wholly owned electric public-utility subsidiary company of American Electric Power Company, Inc., a registered holding company, has filed a declaration under sections 6(a) and 7 of the Act and Rules 59 and 50(a)(5) promulgated thereunder.

APCo proposes to issue and sell, in one or more series from time-to-time through December 31, 1990, up to $100 million aggregate principal amount of its First Mortgage Bonds ("Bonds"). The Bonds, which shall be offered from time-to-time in one or more new series, will have maturities ranging from five years to thirty years, and will subject to certain redemption provisions. APCo proposes to issue the Bond by competitive bidding in accordance with the requirements of Rule 50 under the Act, or under the alternative competitive bidding procedures in accordance with the Commission's Statement of Policy set forth in HCAR No. 22623 (September 1, 1980). In the event that market conditions do not favor a sale of the Bonds on a competitive bidding basis, APCo proposes, subject to further Commission authorization, either to place the Bonds privately with institutional investors or to negotiate with underwriters for the sale of the Bonds. If APCo determines to issue the Bonds in more than one series, it may wish to sell one or more series on a competitive bid basis and one or more series on a negotiated basis.

APCo states that the proceeds of the sale of the Bonds, together with any other funds which may become available to APCo, will be used to refund APCo's 12⅞% Series First Mortgage Bonds due 2013, prior to their maturity (or to retire short-term debt issued for such purpose), to repay other short-term debt at or prior to maturity, to reimburse APCo's treasury for expenditures incurred in connection with its construction program and for other corporate purposes.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–23018 Filed 9–28–89; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice CM–8/1311]

The U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT), Study Group C; Meeting

The Department of State announces that Study Group C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet October 27, 1989 at the Holiday Inn North near the Newark Airport. The meeting will begin at 9:30 a.m. and will continue till 4:00 p.m. The agenda will include discussion of contributions dealing with study Group XV work on fiber optics. Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise Ms. Cindy Perfumo, telephone (201) 234–4047.

Dated: September 19, 1989.

Earl S. Barbely,

Office of Telecommunications and Information Standards; Chairman, U.S. CCITT National Committee.

[FR Doc. 89–23052 Filed 9–28–89; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Privacy Act of 1974

The Department of Transportation (DOT) herewith publishes a proposal to establish a system of records. The system does not duplicate any existing system.

Any person or agency may submit written comments on the proposed system to the U.S. Coast Guard (G–K–1), ATTN: CWO Jon Kempfer, 2100 Second Street, SW, Washington, DC 20593–0001. Comments must be received within 30 days to be considered.

If no comments are received, the proposed changes will become effective 30 days from the date of issuance. If comments are received, the comments will be considered and where adopted, the document will be republished with the changes.

Issued in Washington, DC September 20, 1989.

Jon H. Seymour,

Assistant Secretary for Administration.

Narrative Statement, Department of Transportation, Office of the Secretary on Behalf of the United States Coast Guard for Establishment of the Non-Federal Invoice Processing System

The Office of the Secretary, on behalf of the Coast Guard, proposes to establish the Non-Federal Invoice Processing System (NIPS), DOT/CG 576, to cover all records on non-Federal health care invoices paid for Coast Guard beneficiaries.

The purpose of this notice is to establish a system of records to collect the data and records needed to pay and audit non-Federal health care bills. All records collected will contain health care information, payment information and identifying data necessary to accurately pay bills for preauthorized and emergency health care. The data will be used for the purpose described under the appropriate headings in the attached copy of the system notice prepared for publication in the **Federal Register.**

Although this notice establishes a new system of records, the probable effects on the privacy interests of the general public will be minimal. Information will be limited to the minimum information necessary to properly pay the bill, i.e. identifying information, symptoms leading to treatment, the provider's listing of diagnosis and treatment given, and cost information. This information is comparable to information sought on claims forms used by private insurance companies. Disclosure of the information will be limited to those individuals who are directly involved in the payment and audit of bills.

A description of the steps taken to safeguard these records is given under the appropriate heading of the attached Federal Register system of records notice.

The information collected will allow the Coast Guard to pay the bills for beneficiaries' health care, and to process and audit these non-Federal invoices as necessary.

Authority: 10 U.S.C. 1091, 14 U.S.C. 93.

The purpose of the report is to comply with Office of Management and Budget Circular, A–130, Appendix I, dated December 24, 1985.

DOT/CG 576

SYSTEM NAME:

USCG Non-Federal Invoice Processing System (NIPS)

SYSTEM LOCATION:

Office of Health and Safety, U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593–0001.

Commander, Maintenance and Logistics Command Atlantic, Health Services Division, Governor's Island, Building 400, New York, NY 10004–5100.

Commander, Maintenance and Logistics Command Pacific, Health Services Division, Coast Guard Island, Alameda, CA 94501–5100.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty, reserve, and retired members of the uniformed services and their eligible dependents, and non-Federal health care providers that have rendered services to eligible beneficiaries.

CATEGORIES OF RECORDS IN THE SYSTEM:

a. Records containing correspondence, memoranda, and related documents concerning potential and actual health care invoices for processing by NIPS.

b. Copies of medical and dental treatment records provided to the individual that are the subject of an invoice for non-Federal health care provided to an eligible beneficiary.

c. Automated data processing (ADP) records containing identifying data on individuals including: Units of assignment and address, home address, and information necessary to process and monitor bills for payment.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

a. Records may be disclosed to health care professionals, auditing, utilization, and peer review organizations for review of cost data and appropriateness of care.

b. Medical information, including records of health care and medical invoices may be disclosed to health care professionals, auditing, utilization and peer review organizations to support a government claim.

c. See Prefatory Statement of General routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Storage of individual files are in folders. Portions of records are extracted in an ADP data base. ADP data will be maintained in hard disk and magnetic tape storage.

RETRIEVABILITY:

a. Name or Social Security Number of member or dependents sponsor.

b. Name of Member's Unit.

c. Name or tax identification number of non-Federal health care providers.

SAFEGUARDS:

Room and cabinets in which records are located are locked when unattended. There are roving guard patrols during nonduty hours. Access to records is limited to those directly involved in managing claims. Records in the ADP data base are retrievable only by those with authorized access to ADP equipment and the data base is protected by standard ADP security measures including the use of passwords.

RETENTION AND DISPOSAL:

Records are retained at Maintenance and Logistics Commands (MLCs) for 1 year; transferred to a Federal Record Storage Facility and retained for an additional 5 years 3 months for a total of 6 years 3 months and destroyed thereafter.

SYSTEM MANAGER AND ADDRESS:

SYSTEM MANAGER:

Office of Health and Safety, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001.

NOTIFICATION PROCEDURE:

Send a written request with patient's name, sponsor's name and social security number, to the System Location for the MLC where care was rendered. The request must be signed by the individual, or if a minor dependent, by the parent or guardian.

Commander, Maintenance and Logistics Command Atlantic, Health

Services Division, Governor's Island, New York, NY 10004–5100

Commander, Maintenance and Logistics Command Pacific, Health Services Division, Coast Guard Island, Alameda, CA 94501–5100

RECORD ACCESS PROCEDURE:

Write or visit the appropriate Commander, MLC at the address given in "Notification Procedure" responsible for where the care was received.

CONTESTING RECORD PROCEDURES:

Same as "Record Access Procedure".

RECORD SOURCE CATEGORIES:

a. From the individual, individual's spouse, parent or guardian.

b. Medical facilities (U.S. Coast Guard, Department of Defense, Uniformed Services Treatment Facility, or non-Federal provider) where beneficiaries are treated.

c. For Active Duty personnel—the Official Officer Service Records System (DOT/CG 626), and the Enlisted Personnel Record System; (DOT/CG 629).

d. For Reserve personnel—the Official Coast Guard Reserve Service Record System (DOT/CG 676).

e. Investigations resulting from illness or injury.

[FR Doc. 89–22971 Filed 9–28–89; 8:45 am]

BILLING CODE 4910–62–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Delegation Order No. 156 (Rev. 11); Chief Counsel Directives Manual (30)330]

Delegation of Authority

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: This delegation order has been revised to authorize additional Internal Revenue Service officials to disclose tax information and to reflect organizational title changes.

EFFECTIVE DATE: September 27, 1989.

FOR FURTHER INFORMATION CONTACT: Carman L. Gannotti, EX:D, Rm 1603, 1111 Constitution Avenue, NW., Washington, DC 20224. Telephone: (202) 566–4263 (not a toll-free telephone number).

Authority to Permit Disclosure of Tax Information and to Permit Testimony or the Production of Documents

Pursuant to the authority vested in the Commissioner of Internal Revenue by Treasury Order 150–10 and in the Chief Counsel by General Counsel Order No. 4 and by Treasury Order 101–05, authority to act in matters officially before their respective functions is hereby delegated.

The authority to disclose returns and/or return information under certain provisions of the IR Code, such as IRC 6103(h)(1) and (k)(6) is not delegated herein as the language of these provisions themselves permits officers and employees of the Internal Revenue Service and the Office of the Chief Counsel to disclose such information. The authority to disclose returns and return information under IRC 6103(k)(4) is also not delegated herein as Delegation Order 114 (as revised) governs these disclosures.

(1) Deputy Assistant Commissioners; Division Directors (or equivalent level position); Assistant Chief Counsels; Regional Commissioners; Regional Inspectors; District Counsels; District and Service Center Directors; Director, Martinsburg Computing Center; and Director, Detroit Computing Center are authorized:

(a) To disclose or, in specific instances, authorize the disclosure of returns or return information to such persons as the taxpayer may designate in a written request, subject to the conditions prescribed in IRC 6103(c) and the Treasury Regulations thereunder. The authority to withhold return information upon a determination that such disclosure would seriously impair Federal tax administration is also delegated. These authorities are also delegated to the Taxpayer Ombudsman. The authority delegated in this paragraph to disclose returns or return information may be redelegated to Internal Revenue Service employees and employees of the Office of Chief Counsel to the extent necessary within the exercise of their official duties. The authority delegated in this paragraph to withhold return information may be redelegated not lower than Chiefs, Special Procedures function; Group Managers (or their equivalent); Chiefs, Appeals Offices; Chiefs, Criminal Investigation Branch; Problem Resolution Officers; and Disclosure Officers.

(b) To disclose or, in specific instances, authorize the disclosure of returns, upon the written request of an individual taxpayer, partner, corporate officer, shareholder, administrator, executor, trustee, or other person having a material interest subject to the conditions prescribed in IRC 6103(e). The authority to disclose or, in specific instances, authorize the disclosure of return information to such persons, upon a determination that disclosure would not seriously impair Federal tax administration, as prescribed in IRC 6103(e)(7), is also delegated. The authority to withhold return information upon a determination that disclosure would seriously impair Federal tax administration is also delegated. These authorities are also delegated to the Taxpayer Ombudsman. The authority delegated in this paragraph to disclose or authorize the disclosure of returns or return information may be redelegated to Internal Revenue Service employees and employees of the Office of Chief Counsel to the extent necessary within the exercise of their official duties. In the event a disclosure of return information would seriously impair Federal tax administration, the decision to withhold such return information will be referred to officials not lower than Chiefs, Special Procedures function; Group Managers (or their equivalent); Chiefs, Appeals Offices; Chiefs, Criminal Investigation Branch; Problem Resolution Officers; and Disclosure Officers.

(c) To disclose or, in specific instances, authorize the disclosure of returns or return information to officers and employees of the Department of Justice including United States attorneys, in a matter involving tax administration, subject to the conditions prescribed in IRC 6103(h)(2), the Treasury Regulations thereunder, and (h)(3)(A). The authority delegated in this paragraph may be redelegated not lower than Chiefs, Special Procedures function; and Group Managers (or their equivalent including Disclosure Officers). The authority delegated in this paragraph to Chief Counsel employees may be redelegated not lower than Chiefs, Appeals Offices; and to attorneys of the Office of Chief Counsel directly involved in such matters. (See paragraph (17) below).

(d) To disclose or, in specific instances, authorize the disclosure of returns or return information to officers and employees of the Department of Treasury, as specified in IRC 6103(l)(4)(B) or, upon written request, to employees and other persons specified in IRC 6103(l)(4)(A) for use in personnel or claimant representative matters, and to make relevancy and materiality determinations as provided in section 6103(l)(4)(A), subject to the conditions prescribed in IRC 6103(l)(4). The authority delegated in this paragraph may be redelegated only to Assistant Division Directors (or equivalent level position); Assistant Regional Commissioners; Regional Directors of Appeals; Assistant Regional Inspectors; Regional Chiefs, Personnel Branch; Assistant District and Service Center

Directors; Division Chiefs; National Office Branch Chiefs, Internal Security Division; Staff Assistants to Regional Counsels; and to attorneys of the Office of Chief Counsel and Inspectors directly involved in such matters. (See paragraph 13(e).)

(e) To disclose or, in specific instances, authorize the disclosure of returns or return information to the extent necessary in connection with contractual procurement by the Service or Office of the Chief Counsel of equipment or other property or services, subject to the conditions prescribed in IRC 6103(n) and the Treasury Regulations thereunder. The authority delegated in this paragraph may be redelegated only to Assistant Division Directors (or equivalent level position); Assistant Regional Commissioners; Regional Directors of Appeals; Assistant Regional Inspectors; Assistant District and Service Center Directors; Division Chiefs; Deputy Assistant Chief Counsels; Assistant Regional Counsels; and Disclosure Officers.

(f) To disclose, or in specific instances, authorize the disclosure of return information (other than taxpayer return information) which may constitute evidence of a violation of any Federal criminal law (not involving tax administration) or to disclose return information under circumstances involving a threat or other imminent danger of death or other physical injury, which is directed against the President or other government official, to the U.S. Secret Service, subject to the conditions prescribed in IRC 6103(i)(3). The authority delegated in this paragraph is also delegated to Assistant District and Service Center Directors. This does not limit the authority granted in paragraph 6(d) of this order.

(g) To determine whether a disclosure of standards used or to be used for selection of returns for examination, or data used or to be used for determining such standards will seriously impair assessment, collection or enforcement under the internal revenue laws pursuant to IRC 6103(b)(2). The authority delegated in this paragraph may be redelegated to Disclosure Officers.

(2) Deputy Assistant Commissioners; Division Directors (or equivalent level position); Regional Commissioners; Regional Inspectors; District and Service Center Directors; Director, Martinsburg Computing Center; and Director, Detroit Computing Center are authorized to determine whether a disclosure of returns or return information in a Federal or State judicial or administrative proceeding pertaining to tax administration would indentify a confidential informant or seriously impair a civil or criminal tax investigation, subject to the conditions prescribed in IRC 6103(h)(4). The authority delegated in this paragraph may not be redelegated.

(3) Director, Office of Disclosure; Regional Commissioners; Assistant Commissioner (International); and District and Service Center Directors are authorized:

(a) To furnish an affirmative or negative response to a written inquiry from an attorney of the Department of Justice (including a United States Attorney) involved in a judicial proceeding pertaining to tax administration, or any person (or his/her legal representative) who is a party to such proceeding, as to whether a prospective juror has or has not been the subject of any audit or other tax investigation by the Internal Revenue Service, subject to the conditions prescribed in IRC 6103(h)(5). The authority delegated in this paragraph may be redelegated only to Assistant District and Service Center Directors; Division Chiefs; and Disclosure Officers.

(b) To disclose or, in specific instances, authorize the disclosure of:

(i) Accepted offers-in-compromise to members of the general public, subject to the conditions prescribed in IRC 6103(k)(1).

(ii) The amount of an outstanding obligation secured by a lien, notice of which has been filed pursuant to section 6323(f), to any person who furnishes satisfactory written evidence establishing a right in or intent to obtain a right in property subject to such lien, subject to the conditions prescribed in IRC 6103(k)(2). The authority to disclose or, in specific instances, authorize the disclosure of the amount of such outstanding obligation is also delegated to the Deputy Assistant Commissioner (Collection).

(iii) Taxpayer identity information with respect to any income tax return preparer and information as to whether any penalty has been assessed against such preparer to officers and employees of any agency charged under State or local law with the regulation of such preparers, upon written request and subject to the conditions prescribed in IRC 6103(k)(5).

(iv) Returns or return information with respect to taxes imposed by IRC chapters 2, 21, and 24 to the Social Security Administration, upon written request and subject to the conditions prescribed in IRC 6103(l)(1)(A).

(v) Returns or return information with respect to taxes imposed by IRC chapters 22 to the Railroad Retirement Board, upon written request and subject to the conditions prescribed in IRC 6103(l)(1)(C).

(vi) Returns or return information with respect to taxes imposed by IRC subtitle E (relating to taxes on alcohol, tobacco and firearms) to officers and employees of the Bureau of Alcohol, Tobacco and Firearms, upon written request and pursuant to IRC 6103(o)(1).

The authority delegated in subparagraphs (iv) and (v) is also delegated to the Associate Chief Counsel (Technical). The authority delegated in this paragraph may be redelegated only to Assistant District and Service Center Directors; Division Chiefs; and Disclosure Officers. In addition, the authority delegated in subparagraph (i) may also be redelegated only to Chiefs, Special Procedures function; Special Procedures function Advisor Reviewers; and Group Managers (or their equivalent). The authority delegated in subparagraph (ii) may also be redelegated only to Chiefs, Special Procedures function; Special Procedures function Advisor Reviewers; Group Managers (or their equivalent); and Revenue Officers. The authority delegated in subparagraph (iv) may be redelegated not lower than Branch Chief.

(4) Regional Commissioners; Assistant Commissioner (International); Director, Office of Disclosure; District and Service Center Directors are authorized to disclose or, in specific instances, authorize the disclosure of returns or return information to designated State tax officials, upon written request by the head of a State tax agency, for the purpose of and to the extent necessary in the administration of State tax laws, pursuant to the provisions of IRC 6103(d) and subject to the conditions prescribed in IRC 6103 (h)(4) and (p)(8). The authority to withhold return information pursuant to IRC 6103(d) and (h)(4) upon a determination that such disclosure would identify a confidential informant or seriously impair any civil or criminal tax investigation is also delegated. The authority delegated in this paragraph does not extend to the entry into Federal/State Agreements on the Coordination of Tax Administration. The authority delegated in this paragraph may be redelegated to any supervisory level deemed appropriate, but such redelegation shall not extend to the authority to withhold return information.

(5) The Regional Commissioners; Assistant Commissioner (International); District and Service Center Directors; and Director, Martinsburg Computing Center are authorized to disclose or, in specific instances, authorize the

disclosure, of returns or return information pursuant to Federal/State Agreements on the Coordination of Tax Administration entered into between the head of any State tax agency and the Commissioner of Internal Revenue, pursuant to the provisions of IRC 6103(d) and subject to the conditions prescribed in IRC 6103(h)(4) and (p)(8). The authority to withhold return information pursuant to IRC 6103(d) and (h)(4) upon a determination that such disclosure would identify a confidential informant or seriously impair any civil or criminal tax investigation is also delegated. The authority delegated in this paragraph may be redelegated to any supervisory level deemed appropriate, but such redelegation shall not extend to the authority to withhold return information.

(6) The Director, Office of Disclosure, is authorized:

(a) To disclose or, in specific instances, authorize the disclosure of returns and return information to Congressional committees and other persons, upon written request and subject to the conditions prescribed in IRC 6103(f). The authority delegated in this paragraph is also delegated to the Assistant to the Commissioner (Legislative Liaison), Taxpayer Ombudsman, and Assistant Commissioner (International). The authority delegated in this paragraph may not be redelegated.

(b) To disclose or, in specific instances, authorize the disclosure of returns or return information to officers and employees of a Federal agency pursuant to an *ex parte* order by a Federal District Court judge or magistrate when needed for use in the enforcement of a Federal criminal statute (not involving tax administration), or to locate a fugitive from justice subject to the conditions prescribed in IRC 6103(i)(1) or (i)(5) and the Treasury Regulations thereunder. The authority to withhold any return or return information, pursuant to IRC 6103(i)(6), upon a determination that such disclosure would identify a confidential informant or seriously impair any civil or criminal tax investigation is also delegated. The authority delegated in this paragraph is also delegated to Assistant Commissioner (International); Regional Commissioners; and Assistant District and Service Center Directors. This authority may not be redelegated.

(c) To disclose or, in specific instances, authorize the disclosure of return information (other than taxpayer return information) to officers and employees of a Federal agency upon written request by the head of such agency or the Inspector General thereof, or in the case of the Department of Justice, the Attorney General, the Deputy Attorney General, the Associate Attorney General, any Assistant Attorney General, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, any United States attorney, any special prosecutor appointed under section 593 of title 28, United States Code, or any attorney in charge of a criminal division organized crime strike force established pursuant to section 510 of title 28, United States Code, when needed for use in the enforcement of a Federal criminal statute (not involving tax administration), subject to the conditions prescribed in IRC 6103(i)(2). The authority to withold return information (other than taxpayer return information), pursuant to IRC 6103(i)(6), upon a determination that such disclosure would identify a confidential informant or seriously impair any civil or criminal tax investigation is also delegated. The authority delegated in this paragraph is also delegated to Regional Commissioners; and Assistant District and Service Center Directors and Asistant Commissioner (International). This authority may not be redelegated.

(d) To disclose or, in specific instances, authorize the disclosure of:

(i) Return information (other than taxpayer return information) which may constitute evidence of a violation of Federal criminal law (not involving tax administration) to the extent necessary to apprise the head of the appropriate Federal agency pursuant to IRC 6103(i)(3)(A);

(ii) Return information to the extent necessary to apprise appropriate officers or employees of a Federal or State law enforcement agency of circumstances involving an imminent danger of death or physical injury to any individual pursuant to IRC 6103(i)(3)(B)(i);

(iii) return information to the extent necessary to apprise appropriate officers or employees of a Federal law enforcement agency of circumstances involving the imminent flight of an individual from Federal prosecution pursuant to IRC 6103(i)(3)(B)(ii);

With respect to subparagraph (i), the authority to withhold any return information pursuant to IRC 6103(i)(6) upon a determination that such disclosure would identify a confidential informant or seriously impair a civil or criminal tax investigation is also delegated.

With respect to subparagraph (ii), the authority is also delegated to Special Agents and Internal Security Inspectors. The authority delegated in this paragraph is also delegated to Assistant Commissioner (International); Regional Commissioners; and Assistant District and Service Center Directors. This authority is in addition to the authority previously delegated in paragraph (1)(f).

(e) To notify the Attorney General or his delegate or the head of a Federal agency that certain returns or return information obtained pursuant to IRC 6103(i)(1), (2) or (3)(A) shall not be admitted into evidence under IRC 6103(i)(4)(A)(i) or (B), upon a determination, in accordance with IRC 6103(i)(4)(C), that such admission would identify a confidential informant or seriously impair a civil or criminal tax investigation. The authority delegated in this paragraph is also delegated to Regional Commissioners; Assistant Commissioner (International); and Assistant District and Service Center Directors. This authority may not be redelegated.

(f) To disclose or, in specific instances, authorize the disclosure of returns or return information to officers and employees of the General Accounting Office, upon written request by the Comptroller General of the United States and subject to the conditions prescribed in IRC 6103(i)(7). The authority to withhold any return or return information, pursuant to IRC 6103(i)(6), upon a determination that such disclosure would impair any civil or criminal tax investigation or reveal the identity of a confidential informant is also delegated. The authority delegated in this paragraph may not be redelegated.

(g) To disclose or, in specific instances, authorize the disclosure of:

(i) The mailing address of taxpayer to officers and employees of an agency when needed in connection with a Federal claim against such taxpayer, upon written request and subject to the conditions prescribed in IRC 6103(m)(2). The authority delegated in this paragraph is also delegated to Regional Commissioners; Assistant Commissioner (International); and Assistant District and Service Center Directors. Upon approval of a contractual agreement for such disclosure, the authority delegated in this paragraph is also delegated to the Deputy Assistant Commissioner (Returns Processing); Director, Returns Processing and Accounting Division; Deputy Assistant Commissioner (Computer Services) and Director, Martinsburg Computing Center. The authority delegated in this paragraph may be redelegated only as set forth below. The authority delegated to the

Regional Commissioners; Director, Martinsburg Computing Center; and Assistant District and Service Center Directors may be redelegated to the disclosure Officer, Martinsburg Computing Center and Regional, District and Service Center Disclosure Officers. The authority delegated in this order does not include authority to enter into a contractual agreement, which is contained in Delegation Order No. 100, as revised.

(ii) Whether or not an applicant for a loan under an included Federal loan program has a tax delinquent account to the head of the Federal agency administering such program, upon written request and subject to the conditions prescribed in IRC 6103(l)(3). The authority delegated in this paragraph is also delegated to Regional Commissioners; Assistant Commisioner (International); and Assistant District and Service Center Directors. Upon approval of a contractual agreement for such disclosures, the authority delegated in this paragraph is also delegated to the Deputy Assistant Commissioner (Returns Processing); Director, Returns Processing and Accounting Division; Deputy Assistant Commissioner (Computer Services) and Director, Martinsburg Computing Center. The authority delegated in this paragraph may be redelegated only as set forth below. The authority delegated to the Regional Commissioners; Director, Martinsburg Computing Center; and Assistant District and Service Center Directors may be redelegated only to the Disclosure Officer, Martinsburg Computing Center, and Regional, District and Service Center Disclosure Officers. The authority delegated in this order does not include authority to enter into a contractual agreement, which is contained in Delegation Order No. 100, as revised.

(h) To disclose or, in specific instances, authorize the disclosure of the mailing address of taxpayers to officers and employes of the National Institute for Occupational Safety and Health, upon written request and subject to the conditions prescribed in IRC 6103(m)(3). Upon approval by the Director, Office of Disclosure, or his/her delegate of a contractual agreement for such disclosures, the authority delegated in this paragraph is also delegated to the Deputy Assistant Commissioner (Computer Services); Director, Tax Systems Division; Director, Martinsburg Computing Center; and Service Center Directors. The authority delegated to the Deputy Assistant Commissioner (Computer Services); Director, Tax Systems Division; Director, Martinsburg Computing Center, and Service Center Directors may not be redelegated. The authority delegated in this paragraph does not include authority to enter into a contractual agreement, which is contained in Delegation Order No. 100, as revised.

(i) To disclose, or in specific instances, authorize the disclosure of the mailing address of any taxpayer who has defaulted on a loan:

(i) Made from the student loan fund established under part B or E of title IV of the Higher Education Act of 1965 or a loan made to a student at an institute of higher education pursuant to section 3(a)(1) of the Migration and Refugee Assistance Act of 1962, to the Secretary of Education upon written request and subject to the conditions prescribed in IRC 6103(m)(4).

(ii) Made under part C of title VII of the Public Health Service Act or under subpart II of part B of title VIII of such Act to the Secretary of Health and Human Services upon written request and subject to the conditions prescribed in IRC 6103(m)(5).

Upon approval by the Director, Office of Disclosure or his/her delegate of a contractual agreement for such disclosures, the authority delegated in subparagraphs (i) and (ii) is also delegated to the following officials: Deputy Assistant Commissioner (Computer Services); Director, Tax Systems Division; Director, Martinsburg Computing Center; and Service Center Directors. This authority may not be redelegated. The authority delegated in this paragraph does not include a authority to enter into a contractual agreement, which is contained in Delegation Order No. 100, as revised.

(j) To disclose or, in specific instances, authorize the disclosure, upon written request, of returns filed in accordance with IRC 60501, to officers and employees of any Federal agency whose official duties require such disclosure to administer Federal criminal statutes not related to tax administration, pursuant to the provisions of IRC 6103(i)(8). The authority delegated in this paragraph also is delegated to the Assistant Commissioner (Criminal Investigation); District Directors and Assistants; Special Assistant for Financial Enforcement, Detroit Computing Center; and Chiefs, Criminal Investigation Division. This authority may not be redelegated, and shall expire November 17, 1990, the expiration of the disclosure authority under IRC 6103(i)(8).

(7) The Assistant Commissioner (Returns Processing) is authorized:

(a) To disclose or, in specific instances, authorize the disclosure of returns or return information for statistical use to officers and employees of the Department of Commerce, Bureau of Census, upon the written request of the Secretary of Commerce or to officers and employees of the Department of the Treasury, subject to the conditions prescribed in IRC 6103(j)(1)(A) and the Treasury regulations thereunder and (j)(3). The authority delegated in this paragraph may be redelegated only to the Director, Statistics of Income Division.

(b) To disclose or, in specific instances, authorize the disclosure of return information for statistical use to officers and employees of the Department of Commerce, Bureau of Economic Analysis, upon the written request of the Secretary of Commerce, or to officers and employees of the Federal Trade Commission, upon written request of the Chairman, subject to the conditions prescribed in IRC 6103(j)(1)(B) and (j)(2) and the Treasury regulations thereunder. The authority delegated in this paragraph may be redelegated only to the Director, Statistics of Income Division.

(8) The Assistant Director, Public Affairs Division; Regional Commissioners; Assistant Commissioner (International); and District Directors are authorized to disclose or, in specific instances, authorize the disclosure of taxpayers' names and the city, state and zip code of their mailing addresses to the press and other media for purposes of notifying persons entitled to underlivered tax refunds, subject to the conditions prescribed in IRC 6103(m)(1). The authority delegated in this paragraph may be redelegated to Assistant District Directors and Public Affairs Officers.

(9) The Assistant Commissioner (Examination) is authorized:

(a) Upon written request of the President, to disclose, or in specific instances, authorize the disclosure of return information (other than return information that is adverse to the taxpayer) of an individual who is under consideration for appointment to a position in the executive or judicial branch of the Federal Government to the authorized representative of the Executive Office of the President or to the Federal Bureau of Investigation on behalf of the President, subject to the conditions prescribed in IRC 6103(g)(2) and (g)(4). Authority is also delegated to disclose or, in specific instances, authorize the disclosure of return information with respect to the categories of individuals discussed

above to the heads of Federal agencies upon written request, or the Federal agencies upon written request, or the Federal Bureau of Investigation on behalf of and upon the written request of such agency heads, subject to the conditions described in IRC 6103(g)(2) and (g)(4). Upon receipt of any request for return information under IRC 6103(g)(2), authority to notify the individuals with respect to whom the request has been made is also delegated. The authority delegated in this paragraph may be redelegated but not lower than:

(i) Deputy Assistant Commissioner (Examination), in the case of requests by or on behalf of the President where the return information to be disclosed is not adverse to the taxpayer;

(ii) Director, Office of Disclosure, in the case of requests by or on behalf of the heads of Federal agencies where the return information to be disclosed is adverse to the taxpayer;

(iii) Director, Office of Disclosure, in the case of requests by or on behalf of the heads of Federal agencies where the return information to be disclosed is not adverse to the taxpayer; and

(iv) Director, Office of Disclosure, concerning the notification of individuals with respect to whom a request has been made.

(b) To make the determination that an agency, body or commission or the General Accounting Office has failed to or does not meet the requirements of IRC 6103(p)(4). Subject to the administrative review applicable to State tax agencies described in IRC 6103(p)(7), authority to withhold returns and return information from any agency, body or commission or the General Accounting Office until a determination is made that the requirements of IRC 6103(p)(4) have been or will be met is also delegated. The authority delegated in this paragraph may not be redelegated.

(10) The Deputy Assistant Commissioner (Employee Plans and Exemp Organizations); Director, Office of Disclosure; Regional Commissioners; District Directors of Key Districts for Employee Plans and Exempt Organizations matters; Service Center Directors; Director, Martinsburg Computing Center; and Director; Detroit Computing Center are authorized to disclose, or in specific instances, authorize the disclosure of:

(a) Statements, notifications, reports, or other return information described in IRC 6057(d) to officers and employees of the Social Security Administration for the administration of section 1131 of the Social Security Act, upon written request and subject to the conditions prescribed in IRC 6103(l)(1)(B). The authority delegated in this paragraph to the Deputy Assistant Commissioner (Employee Plans and Exempt Organizations) may be redelegated, but not lower than Branch Chiefs, Employee Plans Technical and Actuarial Division. The authority delegated in this paragraph to Regional Commissioners may be redelegated not lower than Assistant Regional Commissioner. The authority delegated in this paragraph to the District Directors of Key Districts may be redelegated, but not below Chiefs, Technical Review Staffs, Employee Plans and Exempt Organizations Division. The authority delegated in this paragraph to Service Center Directors may be redelegated, but not lower than Section Chiefs (or their equivalent). The authority delegated in this paragraph to the Director, Martinsburg Computing Center and Director, Detroit Computing Center may be redelegated, but not lower than Branch Chiefs (or their equivalent).

(b) Returns or return information, including compensation information, to officers and employees of the Department of Labor and Pension Benefit Guaranty Corporation for the administration of Titles I and IV of the Employees Retirement Income Security Act of 1974, upon written request and subject to the conditions prescribed in IRC 6103(1)(2) and the Treasury regulations thereunder. The returns or return information which may be disclosed under this paragraph include:

(i) Upon specific written request, the information specified in 26 CFR 301.6103(l)(2)–1(a), 2(a) 3(b)(1), and 3(b)(2);

(ii) Upon receipt by the Commissioner of Internal Revenue of an annual written request, the information specified in 26 CFR 301.6103(l)(2)–3(a);

(iii) Upon receipt by the Commissioner of Internal Revenue of a general written request, information specified in 26 CFR 301.6103(l)(2)–3(d). The authority delegated in this paragraph to the Deputy Assistant Commissioner (Employee Plans, and Exempt Organizations) may be redelegated, but not lower than Branch Chiefs, Employees Plans Technical and Actuarial Division. The authority delegated in this paragraph to Regional Commissioners may be redelegated not lower than Assistant Regional Commissioner. The authority delegated in this paragraph to District Directors of the Key Districts may be redelegated, but not lower than Employee Plans Specialist. The authority delegated in this paragraph to Service Center Directors may be redelegated, but not lower than Section Chiefs (or their equivalent). The authority delegated in this paragraph to the Director, Martinsburg Computing Center and Director, Detroit Computing Center may be redelegated, but not lower than Branch Chiefs (or their equivalent). The authority delegated in this paragraph is also delegated to the National Director of Appeals; Regional Director of Appeals; Chief, Appeals Office; and Associate Chief, Appeals Office and may not be redelegated.

(11) The Deputy Assistant Commissioner (Employee Plans and Exempt Organizations) is authorized to disclose or, in specific instances, authorize the disclosure of drafts of proposed exemptions or of proposed denials of exemption requests, denial letters, and copies of information submitted by taxpayers requesting exemptions to the proper officers of the Department of Labor for consultation and coordination as required by IRC 4975(c)(2). The authority delegated in this paragraph may be redelegated not lower than Branch Chiefs, Employee Plans Technical and Actuarial Division.

(12) Disclosure of information to appropriate Federal, State or local law enforcement officials may be made by Internal Revenue Service employees, and employees of the Office of Chief Counsel, concerning nontax crimes which do not involve return information or the income or other financial information of an individual or entity, in accordance with the provisions of Chapter (35)00 of the Disclosure of Official Information Handbook, IRM 1272. In situations where there is a question as to whether the information to be disclosed is or is not return information, such as those described in IRM 1272, the Director, Office of Disclosure, Regional Commissioners; Assistant Commissioner (International); and Assistant District and Service Center Directors are authorized to approve or deny such requests for disclosure. The Director, Office of Disclosure, should act in all such matters only after coordination with the office of the Assistant Chief Counsel (Disclosure Litigation). Regional Commissioners; Assistant Commissioner (International); and Assistant District and Serivce Center Directors should act in all such matters only after coordination with the Associate Chief Counsel (International), Office of Regional or District Counsel, as appropriate. The authority delegated in this paragraph may not be redelegated.

(13) The authority vested in the Commissioner of Internal Revenue by 26 CFR 301.9000–1 is delegated by this

Order to the Senior Deputy Commissioner. It is also delegated to the following officials to the extent described below. [No authorization is needed in cases referred to the Department of Justice which are discussed in paragraph (1)(c) where the testimony or disclosure is made on behalf of the government.]

(a) Regional Commissioners are authorized to determine whether officers and employees of the Internal Revenue Service assigned to their regions, including employees of the Office of the Regional Counsel, but not including employees of the Regional Inspector, will be permitted to testify or produce Service records because of a request or demand for the disclosure of such records or information. The Regional Commissioners should act in all such matters only after coordination with the Office of Regional Counsel. However, the personal testimony of a Regional Commissioner shall require authorization in accordance with (b) below. The authority delegated in this paragraph may not be redelegated. (See (d) and (e) below.) The authority delegated in this paragraph shall not extend to the disclosure of Internal Revenue Service records and information in response to a subpoena or request or other order of the Tax Court. (See General Counsel Order No. 4 which provides the authority for disclosure of Internal Revenue Service records and information in tax court proceedings.)

(b) The Deputy Assistant Commissioner (Examination) is authorized to determine whether Regional Commissioners, officers and employees of the Internal Revenue Service assigned to the National Office, including employees of the Office of Chief Counsel, and employees assigned to Regional Inspectors will be permitted to testify or produce Service records because of a request or demand for the disclosure of such records or information. The Deputy Assistant Commissioner (Examination) should act in all such matters only after coordination with the office of the Assistant Chief Counsel (Disclosure Litigation). The authority delegated in this pargraph may not be redelegated. (See (d) and (e) below.) The authority delegated in this paragraph shall not extend to the disclosure of Internal Revenue Service records and information in response to a subpoena or request or other order of the Tax Court. (See General Counsel Order No. 4.)

(c) The Assistant Commissioner (International), District Directors and Service Center Directors are authorized to determine whether officers and employees of the Internal Revenue Service assigned to their office, district or service center (including regional appeals employees located in the district) will be permitted to testify or produce Service records because of a request or demand for disclosure of such records or information. For purposes of this paragraph, employees of the Office of the District Counsel come under the authority of the District Director. Employees of the Regional Inspector are covered under paragraph (b), above. The District and Service Center Directors should act in all such matters only after coordination with the Office of the District Counsel. The Assistant Commissioner (International) should act in all such matters only after coordination with the Associate Chief Counsel (International). However, the personal testimony of a District Director or Service Center Director shall require authorization in accordance with (a) above. The authority in this paragraph may not be redelegated. (See (d) and (e) below.) The authority delegated in this paragraph shall not extend to the disclosure of Internal Revenue Service records and information in response to a subpoena or request or other order of the Tax Court. (See General Counsel Order No. 4.)

(d) The authority delegated in paragraphs (a), (b) and (c) shall not extend to testimony or the production of Service records because of a request or demand for the disclosure of such records or information:

(i) By a Congressional Committee;

(ii) Involving a disclosure to correct a misstatement of fact pursuant to IRC 6103(k)(3).

(e) The Assistant Chief Counsel (General Legal Services) and Assistant Regional Counsel (GLS), with the concurrence of the Assistant Chief Counsel (General Legal Services), are authorized to determine whether officers and employees of the Internal Revenue Service, including employees of the Office of Chief Counsel, will be permitted to testify or produce Internal Revenue records or information because of a request or demand for the disclosure of such records or information, if the request or demand is made in connection with personnel or claimant representative matters under the jurisdiction of the Office of the Assistant Chief Counsel (General Legal Services) for which they have been delegated authority to disclose returns or return information as described in paragraph 1(d). The authority delegated above in this paragraph to the Assistant Chief Counsel (General Legal Services), may be redelegated only to the Deputy Assistant Chief Counsel (General Legal Services) and to Branch Chiefs and attorneys of the Office of Chief Counsel directly involved in such matters. This paragraph does not limit the authority granted in (a), (b), or (c) above.

(f) The authority delegated to Regional Commissioners and District and Service Center Directors in paragraphs (a) and (c) shall not extend to testimony or the production of Service records because of a request or demand for the disclosure of such records or information which may require a disclosure to a competent authority under a tax convention, whether or not such records or information were previously disclosed pursuant to such convention. The Deputy Assistant Commissioner (Examination) should act in all such matters only after authorization by the appropriate United States competent authority. (See Delegation Order 114, as revised).

(g) In addition to paragraphs (a), (b), (c) and (e) above, authority is further delegated to Assistant Regional Commissioners (Resources Management); Regional Inspectors; Regional and District Counsel; District and Service Center Directors; and Director, Detroit Computing Center, to release or, in specific instances, authorize the release of information from the leave and payroll records of employees under their jurisdiction, and to the Director, National Office Resources Management Division, to release or, in specific instances, authorize the release of information from the leave and payroll records of all employees of the National Office, when such information is requested or subpoenaed in connection with private litigation, upon determination that release of the information would not be detrimental to the Internal Revenue Service. This delegation does not include authority to release or authorize the release of information contained in official personnel folders, which is covered by IRM 0293. When any uncertainty exists as to the availability of furnishing leave and pay information in a particular case, the matter should be referred to the National Office, Attention: HR. N:H, with a complete report of the circumstances. The authority delegated in this paragraph may not be redelegated.

The provisions of this paragraph (13(a)-(g)) are limited to the authorization of testimony or the production of documents pursuant to a request or demand as referred to in paragraphs (d)(1)(i) and (ii) of 26 CFR

301.9000–1 and do not extend to or affect other disclosure authority previously delegated in paragraphs (6) and (9) of this order. Furthermore, in instances where it is anticipated that the testimony or production of Service records by a Chief Counsel attorney will involve matters which may fall within the attorney-client privilege, the determination of whether to waive the privilege, as well as the authority to authorize the testimony or production shall lie with the Deputy Assistant Commissioner (Examination) who will act in these matters only after coordination with the office of the Assistant Chief Counsel (Disclosure Litigation). In instances involving Regional or District Counsel attorneys and the attorney-client privilege, authority shall lie with the Regional Commissioner, who will act in these matters only after coordination with the Regional Counsel.

(14) The Deputy Assistant Commissioner (Computer Services); Regional Commssioners; Assistant Commissioner (International); Director, Tax Systems Division; Director, Martinsburg Computing Center; and Service Center Directors are authorized to disclose or, in special instances, authorize the disclosure of individual master file information to the head of a Federal, State or local child support enforcement agency or an authorized supervisory official under a contractual agreement entered into pursuant to Delegation Order 100, as revised, Revenue Procedure 78–10, and subject to the conditions prescribed in IRC 6103(l)(6)(A)(i). Such contractual agreement should be entered into only after coordination with the Director, Office of Disclosure. The authority delegated in this paragraph may be redelegated to any supervisory level deemed appropriate.

(15) The Deputy Assistant Commissioner (Examination); Regional Commissioners; Assistant Commissioner (International); and Service Center Directors are authorized to disclose or, in specific instances, authorized the disclosure of return information to the head of a Federal, State or local child support enforcement agency or an authorized supervisory official under a contractual agreement entered into pursuant to Delegation Order 100, as revised, Revenue Procedure 78–10, and subject to the conditions prescribed in IRC 6103(l)(6)(A)(ii). Such contractual agreement should be entered into only after coordination with the Director, Office of Disclosure. The authority delegated in this paragraph may be redelegated to any supervisory level deemed appropriate.

(16) The Deputy Assistant Commissioner (Examination); Regional Commissioners; Service Center Directors; Director, Martinsburg Computing Center; and Director, Detroit Computing Center are authorized to disclose or, in specific instances, authorize the disclosure of information returns filed pursuant to part III of subchapter A of IRC chapter 61 to designated personnel of the Social Security Administration for the purpose of carrying out an effective return processing program in accordance with section 232 of the Social Security Act and pursuant to IRC 6103(l)(5). The authority delegated in this paragraph may not be redelegated.

(17) The Senior Deputy Commissioner, Associate Chief Counsel (international), and Associate Chief Counsel (Litigation) are authorized to disclose or, in specific instances, authorize the disclosure of returns and return information to the designated officers and employees of the Department of Justice pursuant to a written request from the Attorney General, the Deputy Attorney General, or an Assistant Attorney General in a matter involving tax administration, subject to the conditions prescribed in IRC 6103(h)(3)(B). The authority delegated in this paragraph may not be redelegated.

(18) The Assistant Commissioner (Computer Services); Assistant Commissioner Returns Processing); Director, Office of Disclosure; Service Center Directors and Director, Martinsburg Computing Center are authorized upon written request to disclose, or in specific instances, authorize the disclosure of return information pursuant to IRC 6103(h)(6) with respect to the address and status of an individual as a nonresident alien, citizen or resident of the United States to the Social Security Administration or the Railroad Retirement Board for purposes of carrying out responsibilities for withholding tax from social security benefits under IRC 1441.

(19) At the request of the Commissioner of Internal Revenue and with the approval of the Joint Committee on Taxation, the following officials may disclose information with respect to a specific taxpayer pursuant to IRC 6103(k)(3): Regional Commissioners; Assistant Commissioner (International); District and Service Center Directors; Assistant Commissioner (Collection); Assistant Commissioner (Criminal Investigation); Assistant Commissioner (Employee Plans and Exempt Organizations); Director, Office of Disclosure; any individual who is specifically designated by the Commissioner of Internal Revenue. The authority delegated in this paragraph may not be redelegated.

(20) Director, Martinsburg Computing Center; and Director, Office of Disclosure, are authorized to disclose or, in specific instances, to authorize the disclosure of return infomation from the Information Returns Master File under a contractual agreement entered into pursuant to Delegation Order No. 100, as revised, and the applicable Revenue Procedure to Federal, State, and local agencies administering certain welfare programs, subject to the conditions of IRC 6103(1)(7). Such contractual agreements may be entered into only after coordination with the Office of Disclosure. The authority in this paragraph may be redelegated to any supervisory level deemed appropriate, but only by the officials named above.

(21) Delegation Order No. 156 Rev. 10 and Chief Counsel Directives Manual (30)330, effective June 2, 1989 are superseded.

Dated: August 23, 1989.

Michael J. Murphy,

Senior Deputy Commissioner.

[FR Doc. 89–22957 Filed 9–28–89; 8:45 am]

BILLING CODE 4830–01–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Expressionism and Modern German Painting From the Thyssen-Bornemisza Collection" (see list [1]) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the National

[1] A copy of this list may be obtained by contacting Mr. R. Wallace Stuart of the Office of the General Counsel of USIA. The telephone number is 202/485–7978, and the address is Room 700, U.S. Information Agency, 301 Fourth Street SW., Washington, DC 20547.

Gallery of Art in Washington, DC, beginning on or about November 19, 1989 to on or about January 14, 1990, and at the Kimbell Art Museum, Fort Worth, Texas, from January 26, 1990 to March 25, 1990, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: September 25, 1989.

Alberto J. Mora,

General Counsel.

[FR Doc. 89–23075 Filed 9–28–89; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Former Prisoners of War; Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463, section 19(a)(2) that a meeting of the Advisory Committee on Former Prisoners of War will be held in the Omar Bradley Conference Room, 10th Floor, at VA Central Office, 810 Vermont Avenue, NW., Washington, DC, 20420, from November 15, 1989, through November 17, 1989. The meeting will convene at 9:00 a.m. each day and will be open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the administration of benefits under title 38, United States Code, for veterans who are former prisoners of war, and to make recommendations on the need of such veterans for compensation, health care and rehabilitation.

Following opening remarks by Department officials and the Committee Chairman, various issues affecting health care and benefits delivery will be discussed, with a focus on preparation of the Committee's 1989 biennial report. Since most of the Committee members are newly appointed, much time will be devoted to orientations and briefings on VA programs in general and benfits for former POWs in particular.

Members of the public may direct questions or submit prepared statements for review by the Committee in advance of the meeting, in writing only, to Mr. J. Gary Hickman, Director, Compensation and Pension Service (21), Room 275, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Submitted material must be received at least five days prior to the meeting. Members of the public may be asked to clarify submitted material prior to consideration by the Committee.

A report of the meeting and a roster of Committee members may be obtained from Mr. Hickman.

Dated: September 13, 1989.

By Direction of the Secretary.

Sylvia Chavez Long,

Committee Management Officer.

[FR Doc. 89–23062 Filed 9–28–89; 8:45 am]

BILLING CODE 8320–01–M

Advisory Committee on Women Veterans; Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 that a meeting of the Advisory Committee on Women Veterans will be held October 23 through October 26, 1989, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC. The purpose of the Advisory Committee on Women Veterans is to advise the Secretary regarding the needs of women veterans with respect to health care, rehabilitation, compensation, outreach and other programs administered by the Department of Veterans Affairs, and the activities of the Department of Veterans Affairs designed to meet such needs. The Committee will make recommendations to the Secretary regarding such activities.

The session will convene on October 23, 1989, in Room 817 of the Central Office Building at 1:30 p.m. and adjourn at 5 p.m. The Committee will divide into three Subcommitttees and meet from 9 a.m. on October 24, 1989, through 12 noon on October 25, 1989. The Subcommitttees will address such issues as health, outreach and legislation in preparation for producing the 1990 Report. The full Committee will reconvene at 1:15 p.m. on October 25, 1989, in Room 1010, the Omar Bradley Conference Room, of the Central Office Building. The Executive Committee will meet on October 26, 1989, 8:30 a.m. adjourning at 4 p.m.

All sessions will be open to the public up to the seating capacity of the room. Because this capacity is limited, it will be necessary for those wishing to attend to contact Mrs. Barbara Brandau, Committee Coordinator, Department of Veterans Affairs Central Office (phone 202/233–2621) prior to October 13, 1989.

Dated: September 20, 1989.

By direction of the Secretary.

Sylvia C. Long,

Committee Management Officer.

[FR Doc. 89–23063 Filed 9–28–89; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 188
Friday, September 29, 1989

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).

U.S. COMMISSION ON CIVIL RIGHTS

PLACE: Telephonic meeting to participants in different locales. Some participants will be present at the Commission's Offices at 1121 Vermont Avenue, NW., Washington, DC 20425.

TIME AND DATE: Friday, October 6, 1989, 8:00 a.m.–9:30 a.m. e.d.t.

STATUS: Closed to the public.

MATTER TO BE CONSIDERED: Consideration of the civil action filed by John Eastman against the Commission.

CONTACT PERSON FOR MORE INFORMATION: Barbara Brooks, Press and Communications Division, (202) 376–8312.

Jeffrey P. O'Connell,

Acting Solicitor.

(202) 376–8514.

[FR Doc. 23236 Filed 9–27–89; 4:29 pm]

BILLING CODE 6335-01-M

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [54 FR 38322 September 15, 1989].

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Monday, September 11, 1989.

CHANGES IN THE MEETING: Deletion/ additional meeting.

The following item was not considered at a closed meeting on Tuesday, September 12, 1989, at 2:30 p.m.

Litigation matter.

The following items were considered at a closed meeting on Thursday, September 14, 1989, at 4:00 p.m.

Institution of injunctive action.
Settlement of injunctive action.
Institution of administrative proceedings of an enforcement nature.
Setlement of administrative proceeding of an enforcement nature.
Opinion.
Litigation matter.

Commissioner Schapiro, as duty officer, determined that Commission business reuired the above changes.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: David Underhill at (202) 272–2000.

Jonathan G. Katz,

Secretary.

September 26, 1989.

[FR Doc. 89–23167 Filed 9–27–89; 1:24 pm]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting.

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 97–409, that the Securities and Exchange Commission will hold the following meeting during the week of October 2, 1989.

A closed meeting will be held on Tuesday, October 3, 1989, at 2:30 p.m.

The Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Schapiro, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, October 3, 1989, at 2:30 p.m., will be:

Settlement of injunctive actions.
Institution of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceedings of an enforcement nature.
Regulatory matter regarding a financial institution.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Karen Burgess at (202) 272–2000.

Jonathan G. Katz,

Secretary.

September 26, 1989.

[FR Doc. 89–23168 Filed 9–27–89; 1:24 pm]

BILLING CODE 8010-01-M

UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

Meeting Notice

TIME AND DATE: 8:00 a.m., October 16, 1989.

PLACE: Uniformed Services University of the Health Sciences, Room D3–001, 4301 Jones Bridge Road, Bethesda, Maryland 20814–4799.

STATUS: Open—under "Government in the Sunshine Act" (5 U.S.C. 552b(e)(3)).

MATTERS TO BE CONSIDERED:

8:00 a.m. Meeting—Board of Regents

(1) Approval of Minutes—July 10, 1989; (2) Faculty Matters; (3) Report—Admissions; (4) Report—Associate Dean for Operations; (5) Report—Dean, Military Medical Education Institute; (6) Report—President, USUHS; (7) Comments—Members, Board of Regents; (8) Comments—Chairman, Board of Regents

New Business

SCHEDULED MEETINGS: January 29, 1990.

CONTACT PERSON FOR MORE INFORMATION: Charles R. Mannix, Executive Secretary of the Board of Regents, 202/295–3028.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

September 26, 1989.

[FR Doc. 89–23119 Filed 9–27–89; 9:09 am]

BILLING CODE 3810-01-M

Corrections

Federal Register
Vol. 54, No. 188
Friday, September 29, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF EDUCATION

Office of the Secretary

Regional Strategy Meetings on Choice in Education

Correction

In notice document 89-22062 appearing on page 38550 in the issue of Tuesday, September 19, 1989, make the following correction:

In the first column, under *Meeting information*, in the first date entry, "October 15-16" should read "October 16-17".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TQ90-1-1-000]

Alabama-Tennessee Natural Gas Co.; Proposed PGA Rate Adjustment

Correction

In notice document 89-21690 appearing on page 38271 in the issue of Friday, September 15, 1989, make the following correction:

On page 38271, in the first column, in the document heading, the docket number should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TQ90-1-37-000]

Northwest Pipeline Corp.; Proposed Change in Sales Rates Pursuant to Purchased Gas Cost Adjustment

Correction

In notice document 89-21691 beginning on page 38274 in the issue of Friday, September 15, 1989, make the following correction:

On page 38274, in the first column, in the document heading, the docket number should read as set forth above.

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW-FRL-3623-1]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

Correction

In rule document 89-17919 beginning on page 31675 in the issue of Tuesday, August 1, 1989, make the following corrections:

1. On page 31679, in the second column, in the 11th line, "DBAT" should read "BDAT".

2. On the same page, in the same column, in the first complete paragraph, in the 10th line, "does not believe that it is" should read "does believe that it is".

3. On the same page, in the same column, in the second complete paragraph, in the 21st line, "the" should read "are".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

National Park Service

Concession Contract Negotiation; Bushkill Gulf Service Station

Correction

In notice document 89-20401 beginning on page 35944 in the issue of Wednesday, August 30, 1989, make the following correction:

On page 35944, in the third column, under **EFFECTIVE DATE**, "September 29, 1989" should read "October 30, 1989".

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 204

[INS No. 1049-89]

Petition to Classify Alien as Immediate Relative of a United States Citizen, or as a Preference Immigrant

Correction

In rule document 89-20722 beginning on page 36753 in the issue of Tuesday, September 5, 1989, make the following correction:

§ 204.2 [Corrected]

In § 204.2(c)(3), on page 36754, in the third column, in the 24th line, "petition" should read "petitioner".

BILLING CODE 1505-01-D

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 102

Procedural Rules

Correction

In rule document 89-22162 beginning on page 38515 in the issue of Tuesday, September 19, 1989, make the following correction:

On page 38516, in the first column, in the fourth complete paragraph, in the first line "The" should read "In".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89-ASW-19]

Proposed Alteration of VOR Federal Airways; Texas

Correction

In proposed rule document 89-20852 beginning on page 36997 in the issue of

Wednesday, September 6, 1989, make the following correction:

On page 36998, in the second column, "**V-575 [Amended]**" should read "**V-574 [Amended]**".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 69

[CGD 87-015b]
RIN 2115-AC67

Tonnage Measurement of Vessels

Correction

In rule document 89-21233 beginning on page 37652 in the issue of Tuesday, September 12, 1989, make the following corrections:

§ 69.109 [Corrected]

1. On page 37666, in the first column, in § 69.109(f)(3), in the seventh line, "an done-half" should read "and one-half".

§ 69.117 [Corrected]

2. On page 37669, in the first column, in § 69.117(e)(2)(ii), in the first line, "openings" should read "opening".

§ 69.119 [Corrected]

3. On page 37670, in the third column, in § 69.119(o)(1) and (2), in the first line of each, "space" should read "spaces".

§ 69.121 [Corrected]

4. On page 37671, in the third column, in § 69.121(c)(7), in the eighth line, "half-length" should read "half-height".

§ 69.203 [Corrected]

5. On page 37681, in the first column, in § 69.203, in the definition of "*Overall length*", the third line should read "the foremost part"; and in the definition of "*Registered length*", in paragraph (b), in the fourth line, "stern" should read "stem".

BILLING CODE 1505-01-D

federal register

Friday
September 29, 1989

Part II

Department of Commerce

National Telecommunications and Information Administration

Public Telecommunications Facilities Program; Closing Date for Application; Notice

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Public Telecommunications Facilities Program; Closing Date for Applications

AGENCY: National Telecommunications and Information Administration, Commerce.

ACTION: Public Telecommunications Facilities Program: Notice of closing date for applications.

SUMMARY: The National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce, announces that applications are available for planning and construction grants for public telecommunications facilities under the Public Telecommunications Facilities Program administered by NTIA.

Applicants for grants under the PTFP must file their applications on or before January 17, 1990. Congress has not completed action on the appropriation for this program, if funds are available for the program for the fiscal year, NTIA anticipates making grant awards in mid-summer 1990.

Final Rules for the Public Telecommunications Facilities Program were published on August 20, 1987 (52 FR 31496–31505, No. 161). Those rules will be the ones in effect for 1990 applications.

FOR FURTHER INFORMATION CONTACT: Dennis R. Connors, Director, PTFP/NTIA/DOC, Room 4625, Washington, DC 20230. Telephone (202) 377–5802.

SUPPLEMENTARY INFORMATION:

I. Eligibility

A. To be eligible to apply for or receive a construction grant under the PTFP, an applicant must be:

(1) A public or noncommercial educational broadcast station;

(2) A noncommercial telecommunications entity;

(3) A system of public telecommunications entities;

(4) A nonprofit foundation, corporation, institution, or association organized primarily for educational or cultural purposes;

(5) a State or local government or agency or a political or special purpose subdivision of a State.

B. To be eligible to apply for and receive a PTFP Planning Grant, an applicant must be:

(1) Any of the organizations described in the preceding paragraph; or,

(2) A nonprofit foundation, corporation, institution, or association organized for any purpose except primarily religious.

II. Closing Date

Pursuant to sec. 2301.5(c) of the PTFP Final Rules (52 FR 31496; 31501, (Aug. 20, 1987)), the Administrator of NTIA hereby establishes the closing date for the filing of applications for grants under the PTFP. The closing date selected for the submission of applications for 1990 is January 17, 1990.

III. Program Goals and Priorities

The Goals of this program, as stated in Section 390 of the Communications Act are:

To assist through matching grants, in the planning and construction of public telecommunications facilities in order to achieve the following objectives:

(1) Extend delivery of public telecommunications services to as many citizens of the United States as possible by the most efficient and economical means, including the use of broadcast and nonbroadcast technologies;

(2) Increase public telecommunications services and facilities available to, operated by, and owned by minorities and women; and

(3) Strengthen the capability of existing public television and radio stations to provide public telecommunications services to the public.

The Agency has established the following Priorities for the PTFP:

Priority I—Provision of Public Telecommunications Facilities for First Radio and Television Signals to a Geographic Area

There are two subcategories:

A. *Projects which include local origination capacity.* This subcategory includes the planning or construction of new facilities which can provide a full range of radio and/or television programs including material that is locally produced. Eligible projects include new radio or television broadcast stations, new cable systems, or first public telecommunications service to existing cable systems, provided that such projects include local origination capacity.

B. *Projects which do not include local origination capacity.* This subcategory includes projects such as increases in tower height and/or power of existing stations and construction of translators, cable networks and repeater transmitters which will result in providing public telecommunications services to previously unserved areas.

Priority I and its subcategories only apply to grant applicants proposing to plan or construct new facilities to bring public telecommunications services to geographic areas which are presently unserved—i.e., areas which do not reveive any public telecommunications services whatsoever. An applicant proposing to plan or construct a facility to serve a geographical area which is presently unserved, should indicate the number of persons who would receive a first public telecommunications signal as a result of the proposed project. (Television and radio are considered separately for the purposes of determining coverage.)

Under Priority 1B, NTIA will consider an area served when it receives a public television signal from a distant source through a cable system which has a penetration rate of 50 percent.

Priority II—Replacement of Basic Equipment of Existing Essential Broadcast Stations

Projects eligible for consideration under this category include the replacement of obsolete or worn out equipment in existing broadcast stations which provide either the only public telecommunications signal or the only locally originated telecommunications signal to a geographical area.

In order to show that the replacement of equipment is necessary, applicants must provide documentation indicating excessive downtime, or a high incidence of repair (i.e., copies of maintenance logs. Letters documenting non-availability of parts should also be included.) Additionally, applicants must show that the station is the only public telecommunications station providing a signal to a geographical area or the only station with local origination capacity in a geographical area.

The distinction between Priority II and Priority IV is that Priority II is for the replacement of basic equipment for essential stations. Where an applicant seeks to "improve" basic equipment in its station (i.e., where the equipment is not "worn out"), or where the applicant is not an essential station, NTIA would consider the applicant's project under Priority IV.

Priority III—Establishment of First Local Origination Capacity in a Geographical Area

Projects in this category include the planning or construction of facilities to bring the first local origination capacity to an area already receiving public telecommunications services from distant sources through translators, repeaters or cable systems.

Applicants seeking funds to bring the first local origination capacity to an area already receiving some public

telecommunications services may do so, either by establishing a new (and additional) public telecommunications facility, or by adding local origination capacity to an existing facility. (A source of a public telecommunications signal is distant when the geographical area to which the source is brought is beyond the grade B contour of the originating facility.)

Priority IV—Replacement and Improvement of Basic Equipment for Existing Broadcast Stations

Projects eligible for consideration under this category include the replacement of obsolete or worn out equipment and the upgrading of existing origination or delivery capacity to current industry performance standards (e.g., improvements to signal quality and significant improvements in equipment flexibility or reliability). As under Priority II, applicants seeking to replace or improve basic equipment under Priority IV should show that the replacement of the equipment is necessary by including in their applications data indicating excessive downtime, or a high incidence of repair (such as documented in maintenance logs).

Priority V—Augmentation of Existing Broadcast Stations

Projects under this priority would equip an existing station beyond a basic capacity to broadcast programming from distant sources and to originate local programming.

A. *Projects to equip auxiliary studios at remote locations, or either to provide mobile origination facilities.* An applicant must demonstrate that significant expansion in public participation in programming will result. This category includes mobile units, neighborhood production studios or facilities in other locations within a station's service area which would make participation in local programming accessible to additional segments of the population.

B. *Projects to augment production capacity beyond basic level in order to provide programming or related materials for other than local distribution.* This category would provide equipment for the production of programming for regional or national use. Need beyond existing capacity must be justified.

Special Applications

NTIA possesses the discretionary authority to award grants to eligible applicants whose proposals are so unique or innovative that they do not clearly fall within any of the listed priorities. Innovative projects submitted under this category must address demonstrated and substantial community needs (e.g., services to identifiable ethnic or linguistic minority audiences, services to the blind or deaf, instructional services or electronic text).

IV. Application Forms and Regulations

To apply for a PTFP grant, an applicant must file a timely and complete application on a current form approved by the Agency. In 1989, application materials were revised to conform with the August 1987 Final Rules. In addition, new information collection requirements have been imposed by the Office of Management and Budget (OMB). These requirements were incorporated into the 1989 application materials. *Therefore, no previous versions of the PTFP Application Form may be used.* All persons and organizations on the PTFP's mailing list will be sent a copy of the current application form and the Final Rules. Those not on the mailing list may obtain copies by contacting the PTFP at the address above. Prospective applicants should read the Final Rules carefully before submitting applications. Applicants whose applications were deferred will be mailed pertinent PTFP materials and instructions for requesting reactivation. Applicants should note that they must comply with the provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs." The Executive Order requires applicants for financial assistance under this program to file a copy of their application with the Single Points of Contact (SPOC) of all states relevant to the project. Applicants are required to serve a copy of their completed application on the appropriate SPOC on or before January 17, 1990. Applicants are encouraged to contact the appropriate SPOC well before the NTIA closing date.

NTIA requires that all applicants whose proposed projects need authorization from the Federal Communications Commission (FCC), must tender an application to the FCC for such authority on or before January 17, 1990. (An application is tendered to the FCC when it has been received by the Secretary of the FCC.) However, you are urged to submit it with as much lead time before the PTFP closing date as possible. The greater the lead time, the better the chance your FCC application will be processed to coincide with NTIA's grant cycle. NTIA will return the application of any applicant which fails to tender an application to the FCC for any necessary authority on or before January 17, 1990.

Effective October 1, 1988, OMB Circular A–102 as it applies to grant recipients has been superceded by Department of Commerce regulations, Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments, 15 CFR part 24, printed in 53 FR 8034 (March 11, 1988).

Applicants should note that all PTFP grant recipients are subject to the provisions of Office of Management and Budget OMB Circulars A–87 "Cost Principles for State and Local Governments," A–21 "Cost Principles for Educational Institutes," A–110, A–122, and A–128. In addition, any applicant organizations with outstanding accounts receivable with the Department of Commerce will not receive a new award until the debt is paid or arrangements to repay the debt which are satisfactory to the Department are made.

Potential PTFP grant recipients may also be required to submit a "Name Check" form (Form CD–346), which is used to ascertain background information on key individuals associated with the potential grantee. The "Name Check" requests information to reveal if any key individuals in the organization have been convicted of, or are presently facing, criminal charges such as fraud, theft, prejury, or other matters pertinent to management honesty or financial integrity. Potential grantee organizations may also be subject to reviews of Dun and Bradstreet data or other similar credit checks. Potential PTFP recipients are also subject to the provisions of 15 CFR part 26, Department of Commerce Nonprocurement Debarment and Suspension as well as with the provisions of the Drug-Free Workplace Act of 1988, 15 CFR part 26, subpart F.

V. Funding Criteria

The funding criteria for construction applications are as follows:

In determining whether to approve or defer a construction grant application, in whole or in part, and the amount of such grant, the Agency will evaluate all the information in the application file and consider, in no order or priority, the following factors:

(a) The extent to which the project meets the program purposes set forth in Section 2301.2 of the Final Rules as well as the specific program priorties set forth in the Appendix of those Rules;

(b) The adequacy and continuity of financial resources for long-term operational support;

(c) The extent to which non-Federal funds will be used to meet the total cost of the project;

(d) The extent to which the applicant has:

(1) Assessed specific educational, informational, and cultural needs of the community(-ies) to be served, and the extent to which the proposed service will not duplicate service already available;

(2) Evaluated alternative technologies and the bases upon which the technology was selected;

(3) Provided significant documentation of its equipment requirements, and the urgency of acquisition of replacement;

(4) Provided documentation of an increasing pattern of substantial non-Federal financial support;

(5) Provided other evidence of community support, such as letters from elected or appointed policy-making officials, and from agencies for whom the applicant produces or will produce programs or other materials;

(e) The extent to which the evidence supplied in the application reasonably assures an increase in public telecommunications services and facilities available to, operated by, and owned or controlled by minorities and women;

(f) The extent to which various items of eligible apparatus proposed are necessary to, and capable of, achieving the objectives of the project and will permit the most efficient use of the grant funds;

(g) The extent to which the eligible equipment requested meets current broadcast industry performance standards;

(h) The extent to which the applicant will have available sufficient qualified staff to operate and maintain the facility and provide services of professional quality;

(i) The extent to which the applicant has planned and coordinated the proposed services with other Telecommunications entities in the service area;

(j) The extent to which the project implements local, statewide or regional public telecommunications systems plans, if any; and,

(k) The readiness of the FCC to grant any necessary authorization.

The funding criteria for planning applications are as follows:

In determining whether to approve or defer a planning grant application, in whole or in part, and the amount of such grant, the Agency will evaluate all the information in the application file and consider, in no order of priority, the following factors:

(a) The extent to which the applicant's interests and purposes are consistent with the purposes of the Act and the priorities of the Agency;

(b) The qualifications of the proposed project planner;

(c) The extent to which the project's proposed procedural design assures that the applicant would adequately:

(1) Obtain financial, human and support resources necessary to conduct the plan;

(2) Coordinate with other telecommunications entities at the local state, regional and national levels;

(3) Evaluate alternative technologies and existing services; and

(4) Receive participation by the public to be served (and by minorities and women in particular) in the project planning;

(d) Any pre-planning studies conducted by the applicant showing the technical feasibility of the proposed planning project (such as the availability of a frequency assignment, if necessary, for the project); and,

(e) The feasibility of the proposed procedure and timetable for achieving the expected results.

VI. Matching Requirements

(a) Planning grants. A Federal grant for the planning of a public telecommunications facility shall be in an amount determined by the Agency and set forth in the award document and the attachments thereto. The Agency may provide up to 100 percent of the funds necessary for the planning of a public telecommunications construction project.

(b) Construction grants. (1) A Federal grant award for the construction of a public telecommunications facility shall be an amount determined by the Agency and set forth in the award document, except that such amount shall not exceed 75 percent of the amount determined by the Agency to be the reasonable and necessary cost of such project.

Special Note: At the time the Final Rules for PTFP were adopted, NTIA announced a policy which did not require any rule change, but which is intended to encourage stations reporting substantial non-Federal revenues to increase the matching percentage in their proposals for replacement of equipment from 25% to 50%. The Agency emphasized that applicants proposing to provide first service to a geographic area encounter considerable ineligible costs, including construction or renovation of buildings or other similar expenses. NTIA, therefore, expects to continue funding projects to extend service at up to 75% of the total project cost. Applicants from small community-licensed stations, or those who can show that a station licensed to a large institution cannot obtain direct or in-kind support from the larger institution, also will not be subject to this preference. Otherwise, a showing of extraordinary need or emergency situation will be taken into consideration as justification of grants of up to 75% of the project cost, but the presumption of 50% funding will be the general rule for replacement applications.

(2) No part of the grantee's matching share of the eligible project costs may be met with funds paid by the Federal government, except where the use of such funds to meet a Federal matching requirement is specifically and expressly authorized by Federal statute.

(3) Funds supplied to an applicant by the Corporation for Public Broadcasting may not be used for the required non-Federal matching purposes, except upon a clear compelling showing of need.

(4) The expenditure of any local matching funds prior to the filing of an application will be disallowed.

(5) *The Applicants should note that expenditure of local matching funds prior to the award of a grant is at the applicant's own risk.* The exact amount of the match will not be known with certainty until the final award agreement is negotiated. Therefore, should the applicant's expenditure of non-Federal funds exceed the non-Federal share which will be established in the final award agreement, the Federal share of the total project cost will be reduced by a corresponding amount and a penalty could be imposed. If the amount already spent at the local level is a substantial portion of the amount negotiated as the total project cost, the action could result in cancellation of the grant offer.

VII. Selection Process and Project Period

PTFP grants are awarded on the basis of a competitive review process. This includes several grant review panels, which apply the Funding Criteria listed in Section V above. The Agency determines the selection of grantees according to the Priorities listed in section III above and the evaluation of the applications by the various review panels.

The period for which a planning grant may be made is one year, whereas the period for which a construction grant may be made is two years. Although these time frames are generally applied to the award of all PTFP grants, variances in project periods may be made based on specific circumstances of an individual proposal.

VIII. Filing Applications

Applications delivered by mail must be received no later than close of business, January 17, 1990, and must be addressed to: Public Telecommunications Facilities Program, NTIA/DOC, Room 4625, 14th Street and Constitution Avenue NW., Washington, DC 20230. Applications delivered by hand must be delivered to the above address between 8:30 a.m. and 5:00 p.m. on or before close of business January 17, 1990. Applicants whose applications are not received by close of business January 17, 1990, will be notified that their applications will not be considered in the current grant cycle and will be returned.

Authority: The Public Telecommunications Financing Act of 1978, 47 U.S.C. 390–394.397–399b (Act): as amended by the Public Broadcasting Amendments of 1981. Pub. L. No. 97–35.95 Stat. 725 (1981 Amendments), and the Consolidated Omnibus Budget Reconciliation Act of 1985. Pub. L. 99–272, sec. 5001. 100 Stat. 82. 117 (1986)

(Catalog of Federal Domestic Assistance No. 11.550)

Dennis R. Connors,

Director, Office of Policy Coordination and Management.

[FR Doc. 89–22733 Filed 9–28–89; 8:45 am]

BILLING CODE 3510–60–M

Federal Register

Friday
September 29, 1989

Part III

Department of the Treasury

Fiscal Service

31 CFR Parts 315, 332, 352, and 353
Series E, EE, H, and HH Savings Bonds; Final Rule

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Parts 315, 332, 352, and 353

Series E, EE, H, and HH Savings Bonds

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: The changes prescribed reflect a new requirement that semiannual interest payments on Series HH bonds issued on or after October 1, 1989, will be made by the automated clearing house (ACH) method to the owner or coowner's account at a financial institution. Owners of Series H and Series HH bonds issued prior to October 1, 1989, may continue to receive interest payments by check, but are encouraged to receive them by ACH. Rules regarding reinvestment of the proceeds of matured Series H bonds in Series HH bonds have also been clarified.

EFFECTIVE DATE: October 1, 1989.

FOR FURTHER INFORMATION CONTACT: Dean A. Adams, Assistant Chief Counsel, Bureau of the Public Debt, Parkersburg, West Virginia 26106–1328, (304) 420–6505.

SUPPLEMENTARY INFORMATION: The Department of the Treasury has an ongoing nationwide campaign to inform the public about the convenience and safety of direct deposit, a Federal government program to have payees authorize the deposit of payments automatically into an account at a financial institution. In furtherance of the Department's goals to maximize the use of this electronic payment mechanism, the Bureau of the Public Debt has promulgated separately regulations that will govern all Bureau payments made by the ACH method. Interest on Series HH savings bonds issued on and after October 1, 1989, will be paid by the ACH method to the owner or coowner's account at a financial institution, unless it is determined that extraordinary circumstances warrant payment by check or other means. Upon an owner or coowner's request, interest on Series H bonds, as well as Series HH bonds issued prior to October 1, 1989, will be paid by the ACH method.

Financial institutions benefit from ACH payments through reduced operating costs associated with processing Series HH/H check payments and through a decrease in lobby congestion. Bondowners benefit by not having to worry about lost, stolen, or delayed interest checks and are assured that their money is on deposit and available for use on the payment date; they also save the time and expense of special trips to deposit checks. Finally, the Bureau is able to make use of technological improvements in making Series HH/H interest payments electronically and benefits from a reduction in paperwork resulting from handling claims for missing checks and responding to inquiries concerning late check payments.

The Series H offering (Department of the Treasury Circular No. 905), the regulations governing Series E and H bonds (Circular No. 530), the Series HH offering (Department of the Treasury Circular, Public Debt Series No. 2–80), and the regulations governing Series EE and HH bonds (Department of the Treasury Circular, Public Debt Series No. 3–80) provide that semiannual interest payments will be made only by check. The provisions of the above offering circulars have been amended to accommodate payment of interest by the ACH method in the case of Series H and HH bonds issued prior to October 1, 1989, upon the owner or coowner's request, and to require payment of interest by the ACH method in the case of Series HH bonds issued on or after October 1, 1989. Rules governing payments made by the Bureau of the Public Debt by the ACH method are contained in the recently issued 31 CFR Part 370.

It should be noted that under certain circumstances, interest payments made on a bond by ACH will be directed to an account for the owner held in names different from the registration on the security. As the payment in such case will be made pursuant to the owner's request, it will be deemed a payment made pursuant to the regulations and constitute a discharge of the Department's obligation thereunder. Such interest payment will have no effect on the legal ownership of the bond itself. That ownership is governed by the registration on the security. However, to better safeguard the rights of survivorship, where they exist, the registration on the bond and the designation on the deposit account should preferably be identical.

ACH payments for Series H and HH bonds bearing issue dates prior to October 1, 1989, whether previously or hereafter authorized, will be made pursuant to 31 CFR Part 370. While Form 1199–A, an ACH authorization form issued by the Financial Management Service, will be used, for the time being, to request or to make changes to ACH payments for such bonds, this use will not connote applicability of the regulations prescribed in 31 CFR Part 210 to the Series H/HH interest payments.

The second revision of Circular No. 2–80 provided that only the proceeds of Series H bonds purchased for cash that reach final maturity may be reinvested in Series HH bonds. Series H bonds were first issued in exchange for other securities in January 1960 and will reach the end of their second extended maturity period, beginning in January 1990. As these bonds will not be granted an additional extension, they will reach final maturity 30 years from their issue dates. Because it would not be appropriate to deprive owners of these bonds the opportunity to reinvest them in Series HH bonds so as to continue to receive current income, the reinvestment provisions have been expanded to include all matured Series H bonds, whether purchased for cash or issued in exchange for other securities. The increment appearing in the legends on Series H bonds issued on a tax-deferral basis that have reached final maturity must be reported for Federal income tax purposes for the year of final maturity.

Circular No. 2–80

Apart from the changes already mentioned, the Third Revision of Circular No. 2–80 does not differ substantially from the Second Revision. Where appropriate, there has been rewording for clarity and consistency. Differences between the two revisions are discussed below.

1. Language has been incorporated in § 352.0 to clarify that only eligible Series E and EE bonds and United States Savings Notes (Freedom Shares) may be exchanged for Series HH bonds.

2. Paragraphs (a) and (d) of § 352.2 have been revised to delete provisions pertaining to Series HH bonds purchased for cash under prior revisions of this Circular; the cash offering was terminated on October 31, 1982.

3. Paragraph (c) of § 352.2 has been amended to reflect the 10 year extended maturity period which has been authorized for all Series HH bonds. The bonds will now reach final maturity 20 years from their issue dates.

4. Paragraph (e) of § 352.2 has been amended to delete provisions pertaining to the cash offering of Series HH bonds and to establish the investment yields for original and extended maturity periods.

5. Paragraph (f) of § 352.2 has been rewritten to require payment of interest by the ACH method for bonds issued on or after October 1, 1989, and to permit such electronic payment of interest for bonds issued prior to that date upon request.

6. Paragraph (g) of § 352.2 has been added to include references to Circular No. 3–80, which contains rules governing the submission of deposit account information for ACH payments and to the regulations governing payments made by the ACH method by the Bureau of the Public Debt set out in 31 CFR Part 370.

7. Paragraph (h) of § 352.2 was formerly paragraph (g).

8. References to the purchase amount limitation for Series HH bonds purchased under the now-terminated cash offering have been eliminated from § 352.4; Series HH bonds issued on exchange or reinvestment are not subject to a purchase limitation.

9. Paragraph (a) of § 352.7 has been revised to clarify the length of time during which Series E bonds and savings notes that have reached final maturity may be exchanged for Series HH bonds. Paragraph (d) has been rewritten for clarity. Language with respect to the tax consequences of certain reissue transactions, formerly contained in paragraph (f), has been incorporated into subparagraph (g)(1), which deals with the tax deferral privilege. Subparagraph (g)(3) has been rewritten to incorporate interest income reporting requirements imposed by IRS regulations. The rules governing non-tax-deferred exchanges in paragraph (h) have been clarified.

10. The rules in § 352.8 permitting reinvestment of the proceeds of matured Series H bonds in Series HH bonds have been expanded to include Series H bonds issued in exchange for other securities, as well as those purchased for cash.

Circular No. 3–80

Section 353.31 of the regulations governing Series EE and HH savings bonds, as contained in Circular No. 3–80, has been revised throughout to eliminate references to payment of Series HH interest by check alone; where appropriate, there has been rewording for clarity and consistency. Substantive changes are discussed below.

1. References to the offering of Series HH bonds for cash, have been eliminated because that practice was terminated effective October 1, 1982.

2. Former Paragraph (c) has been redesignated paragraph (b) and amended to incorporate provisions mandating payment of interest by the ACH method for bonds issued on or after October 1, 1989, and to permit electronic payment of interest on bonds issued prior to that date upon request.

3. Former Paragraph (f) has been redesignated (e) and rewritten to delete reference to the regulations governing Federal government checks, because interest payments are now paid Federal government checks, because interest payments are now paid by fiscal agency checks, rather than by Treasury checks.

4. Paragraph (i) has been redesignated paragraph (h) and revised to contain new provisions for submission of deposit account information and payment of interest by the ACH method.

5. Paragraph (j) has been redesignated paragraph (i) and expanded to cover nonreceipt of ACH payments.

Circular No. 905

Paragraph (e) of Section 332.2 of the Series H offering, as contained in Circular No. 905, has been revised to permit payment of interest by the ACH method upon request.

Circular No. 530

Revisions made to § 315.31 of the regulations governing Series E and H savings bonds as contained in Circular No. 530, parallel the revisions to § 353.31 of Circular No. 3–80, as discussed above.

Procedural Requirements

Because this final rule relates to public contracts, the notice and public comment and delayed effective date provisions of the Administrative Procedure Act are inapplicable pursuant to 5 U.S.C. 553 (a)(2). This final rule is not a major rule as defined in Executive Order 12291, "Federal Regulations,". A regulatory impact analysis is, therefore, not required. Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act do not apply.

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S. C. 553). For this reason, the collections of information contained in this regulation have been reviewed and pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control number 1535–0095. Comments concerning the collections of information and the accuracy of estimated average annual burden, and suggestions for reducing this burden should be directed to the Office of Management and Budget, Paperwork Reduction Project (1535–0095), Washington, DC, 20503, with copies to the Bureau of the Public Debt, Forms Management Officer, Washington, DC, 20239–1300. Any such comments should be submitted not later than November 28, 1989.

The collections of information in this regulation are in §§ 352.2(6)(g), 353.31(b), 332.2(e)(2), 315.31(b). This information is required and will be used by the Bureau of the Public Debt to direct the interest payments of the bondowner to his or her account at the financial institution of his or her choice. The respondents are individuals who invest in U.S. savings bonds.

Estimated total annual reporting burden: 61,583 hours.

Estimated annual burden per respondent: 5 minutes.

Estimated number of respondents: 1,542,700.

Estimated annual frequency of responses: One time only.

List of Subjects in 31 CFR Parts 315, 332, 352, and 353 Bonds, Federal Reserve System Government Securities.

Dated: September 22, 1989.

Gerald Murphy,

Fiscal Assistant Secretary.

31 CFR chapter II is amended as follows:

1. Part 352 is revised to read as follows:

PART 352—OFFERING OF UNITED STATES SAVINGS BONDS, SERIES HH

Sec.

Authority: Sec. 22, of the Second Liberty Bond Act, as amended, 49 Stat. 21, as amended 31 U.S.C. 3105 and 5 U.S.C. 301.

§ 352.0 Offering of bonds.

The Secretary of the Treasury hereby offers to the people of the United States, United States Savings Bonds of Series HH in exchange for eligible United States Savings Bonds of Series E and EE and United States Savi Notes (Freedom Shares). This ering, effective as of October 1, 1989, will continue until terminated by the Secretary of the Treasury.

§ 352.1 Governing regulations.

Series HH bonds are subject to the regulations of the Department of the Treasury, now or hereafter prescribed, governing United States Savings Bonds

of Series EE and HH contained in Department of the Treasury Circular, Public Debt Series No. 3–80, as amended (31 CFR Part 353), hereinafter referred to as Circular No. 3–80.

§ 352.2 Description of bonds.

(a) *General.* Series HH bonds are issued only in registered form and are nontransferable. The bonds are distinguishable by the portraits, color, border design, tax-deferral legend, and text material.

(b) *Denominations and prices.* Series HH bonds are issued at face amount and are in denominations of $500, $1,000, $5,000 and $10,000.

(c) *Term.* Each bond bears an issue date which is the date from which interest is earned. The date is established as provided in § 352.7(f). Series HH bonds have an original maturity period of 10 years and have been granted an extended maturity period of 10 years; they will reach final maturity 20 years from their issue dates.

(d) *Redemption.* A Series HH bond may be redeemed after six months from its issue date. The Secretary of the Treasury may not call Series HH bonds for redemption prior to maturity. In any case where Series HH bonds are surrendered to an authorized paying agent for redemption in the month prior to an interest payment date, redemption will not be deferred but will be made in regular course, unless the presenter specifically requests that the transaction be delayed until that date. A request to defer redemption made more than one month preceding the interest payment date will not be accepted.

(e) *Investment yield (interest).* (1) During original maturity. Interest payments on Series HH bonds will produce the investment yields specified below during their original maturity period:

(i) *Current offering.* Series HH bonds issued on or after October 1, 1989, will yield 6 percent per annum, compounded semiannually, to original maturity. See Table 1 in the Appendix to this Circular.

(ii) *Bonds with issue dates of November 1, 1986, through September 1, 1989.* Series HH bonds with issue dates of November 1, 1986, through September 1, 1989, will yield 6 percent per annum, compounded semiannually, to original maturity.

(iii) *Bonds with issue dates of November 1, 1982, through October 1, 1986.* Series HH bonds with issue dates of November 1, 1982, through October 1, 1986, will yield 7.5 percent per annum, compounded semiannually, to original maturity.

(iv) *Bonds with issue dates of May 1, 1981, through October 1, 1982.* Series HH bonds with issue dates of May 1, 1981, through October 1, 1982, will yield 8.5 percent per annum, compounded semiannually, to original maturity.

(v) *Bonds with issue dates of November 1, 1980, through April 1, 1981.* Series HH bonds with issue dates of November 1, 1980, through April 1, 1981, were originally offered to yield 7.5 percent per annum, compounded semiannually. The yield to original maturity was increased by 1 percent, effective with the first full semiannual interest accrual period beginning on or after May 1, 1981.

(vi) *Bonds with issue dates of January 1, 1980, through October 1, 1980.* Series HH bonds with issue dates of January 1, 1980, through October 1, 1980, were originally offered to yield 6.5 percent per annum, compounded semiannually. The yield to original maturity was increased by 1 percent, effective with the first full semiannual interest accrual period beginning on or after November 1, 1980, and an additional 1 percent, effective with the first full semiannual interest accrual period beginning on or after May 1, 1981.

(2) *During extended maturity.* The investment yield during the 10 year extended maturity period authorized for Series HH bonds is 6 percent per annum, compounded semiannually, unless changed prior to the beginning of such period for any bond.

(f) *Payment of interest.* The interest on a Series HH bond is paid semiannually beginning six months from the issue date. Interest ceases at final maturity or, if the bond is redeemed before final maturity, as of the end of the interest period preceding the date of redemption. If the redemption date falls on an interest payment date, interest ceases on that date.

(1) *Bonds issued on or after October 1, 1989.* Interest on Series HH bonds issued on or after October 1, 1989, will be paid by the automated clearing house (ACH) method to the registered owner or coowner's account at a financial institution, unless the Bureau of the Public Debt determines that extraordinary circumstances warrant payment by check or other means.

(2) *Bonds issued prior to October 1, 1989.* Interest on Series HH bonds issued prior to October 1, 1989, will be paid as follows:

(i) By check drawn to the order of the registered owner or both coowners; or

(ii) Upon request, by the ACH method to the owner or coowner's account at a financial institution.

(g) *Rules governing payment of interest by the ACH method.* Provisions contained in § 353.31 of Department of the Treasury Circular, Public Debt Series No. 3–80, as amended (31 CFR Part 353), apply to the submission of deposit account information for Series HH interest payments made on and after October 1, 1989, for which ACH payment:

(1) Is required under paragraph (f)(1) of this section;

(2) Is requested by an owner or coowner on or after October 1, 1989, pursuant to paragraph (f)(2) of this section; or

(3) Was requested by an owner or coowner prior to October 1, 1989.

Interest payments made by the ACH method on and after October 1, 1989, will be processed in accordance with 31 CFR Part 370. (Approved by the Office of Management and Budget under control number 1535–0094).

(h) *Tables of interest payments and redemption values.* Tables showing the interest payments and redemption values of bonds issued under previous revisions of this Circular will be available from the Bureau of the Public Debt and Federal Reserve Banks.

§ 352.3 Registration and issue.

(a) *Registration.* Bonds may be registered in the names of natural persons in single ownership, coownership, or beneficiary form. Bonds may also be registered in the names of organizations or fiduciaries. Specific rules and examples are contained in Subpart B of Circular No. 3–80.

(b) *Validity of issue.* A bond is validly issued when it (1) is registered as provided in Circular No. 3–80 and in this Circular; and (2) bears an issue date and the validation indicia of an authorized issuing agent.

(c) *Taxpayer identifying number.* The inscription of a bond must include the taxpayer identifying number of the owner or first-named coowner. The taxpayer identifying number of the second-named coowner or beneficiary is not required but its inclusion is desirable.

§ 352.4 Limitation on purchases.

Series HH bonds issued under the terms of this Circular are not subject to a purchase limitation.

§ 352.5 Authorized issuing and paying agents.

Series HH bonds may be issued or redeemed only by Federal Reserve Banks and the Bureau of the Public Debt.

§ 352.6 [Reserved]

§ 352.7 Issues on exchange.

(a) *Securities eligible for exchange.* Owners may exchange United States

Savings Bonds of Series E and EE and United States Savings Notes (Freedom Shares) at their current redemption values for Series HH bonds. Series E bonds and savings notes remain eligible for exchange for a period of one year from the month in which they reached final maturity. Series EE bonds become eligible for exchange six months after their issue dates.

(b) *Basis for issue.* Series HH bonds will be issued on exchange by an authorized issuing agent upon receipt of a properly executed exchange application with eligible securities, and additional cash, if any, and any supporting evidence that may be required under the regulations. If eligible securities are submitted directly to a Federal Reserve Bank, each must bear a properly signed and certified request for payment. Checks in payment of additional cash needed to complete a transaction (see paragraph (d) of this section) must be drawn to the order of the Federal Reserve Bank.

(c) *Role of financial institutions.* Department of the Treasury Circular No. 750, current revision (31 CFR Part 321), authorizes financial institutions qualified as paying agents for savings bonds and notes to redeem eligible securities presented for exchange and to forward an exchange application and full payment to a Federal Reserve Bank for the issue of Series HH bonds. The securities redeemed on exchange by such an institution must be securities which it is authorized to redeem for cash.

(d) *Computation of issue price.* The total current redemption value of the eligible securities submitted for exchange in any one transaction must be $500 or more. If the current redemption value is an even multiple of $500, Series HH bonds must be issued in that exact amount. If the current redemption value exceeds, but is not an even multiple of, $500, the owner has the option either:

(1) To add the cash necessary to bring the amount of the application to the next higher multiple of $500, or

(2) To receive a payment to reduce the amount of the application to the next lower multiple of $500.

(e) *Registration.* A Series HH bond issued on exchange may be registered in any form authorized in Subpart B of Circular No. 3–80, subject to the following restrictions:

(1) If the securities submitted for exchange are in single ownership form, the owner must be named as owner or first-named coowner on the Series HH bonds. A coowner or beneficiary may be named.

(2) If the securities submitted for exchange are in coownership form, and one coowner is the "principal coowner", that person must be named as owner or first-named coowner on the Series HH bonds. A coowner or beneficiary may also be named. The "principal coowner" is the coowner who purchased the securities presented for exchange with his or her own funds, or received them as a gift, inheritance or legacy, or as a result of judicial proceedings, and had them reissued in coownership form, provided he or she has received no contribution in money or money's worth for designating the other coowner on the securities.

(3) If the securities presented for exchange are in coownership form, and both coowners shared in their purchase or received them jointly as a gift, inheritance, or legacy or as a result of judicial proceedings, both persons must be named as coowners on the Series HH bonds.

(4) If the securities presented for exchange are in beneficiary form, the owner must be named on the Series HH bonds as owner or first-named coowner. If the owner is deceased, a surviving beneficiary must be named as owner or first-named coowner. In either case, a coowner or beneficiary may also be named.

(f) *Issue date.* Series HH bonds issued on exchange will be dated as of the first day of the month in which the eligible securities presented for exchange are redeemed by an authorized paying agent, as evidenced in the payment stamp on the securities and the exchange application.

(g) *Tax-deferred exchanges.* (1) Continuation of tax deferral. Pursuant to the provisions of the Internal Revenue Code of 1954, as amended, an owner who has not been reporting the interest on his or her Series E or EE bonds and savings notes on an accrual basis for Federal income tax purposes, and who exchanges those securities for Series HH bonds, may continue to defer reporting the interest on the securities exchanged until the taxable year in which the Series HH bonds received in the exchange reach final maturity, are redeemed, or are otherwise disposed of, whichever is earlier. A reissue transaction that affects any of the persons required to be named on the Series HH bonds, as set forth in paragraph (e) of this section, may result in termination of the tax deferral privilege.

(2) *Tax deferral legend.* Each bond issued in a tax-deferred exchange shall bear a legend showing how much of its issue price represents interest on the securities exchanged. This interest must be treated as income for Federal income tax purposes and reported in accordance with paragraph (g)(1) of this section.

(3) *Reporting of interest paid to owner.* To the extent that it represents interest earned on the securities presented for exchange, an amount paid to an owner in accordance with paragraph (d) of this section is reportable as income for Federal income tax purposes for the year in which it is paid. Pursuant to 26 CFR 1.6049.4, a paying agent is required to report interest income of $10 or more included in any amount paid in an exchange transaction to the payee and to the Internal Revenue Service on Form 1099-INT or an approved substitute. A separate report may be made for each exchange transaction in which interest in the amount of $10 or more is paid, or all interest paid in both cash redemption and exchange transactions may be aggregated and reported annually should the total amount be $10 or more.

(h) *Exchanges without tax deferral.* The rules prescribed for exchanges under paragraphs (a) through (f) of this section also apply to exchanges by owners who report the interest earned on their bonds of Series E and EE and savings notes annually for Federal income tax purposes, or elect to report all such interest that was not previously reported for the taxable year of the exchange. Series HH bonds issued in a nontax-deferred exchange shall show a "0" in the tax-deferral legend.

§ 352.8 Reinvestment of matured Series H bonds.

(a) *General.* The proceeds of matured Series H bonds, whether purchased for cash or issued in exchange for other securities, may be reinvested in Series HH bonds. Tax deferral granted to interest earned on securities exchanged for Series H bonds may not be continued when the Series H bonds reach final maturity and their proceeds are reinvested in Series HH bonds. The amount appearing in the legend on a matured Series H bond on which tax deferral was granted must be reported for Federal income tax purposes for the year of such final maturity.

(b) *Rules.* The reinvestment transaction will be subject to the rules governing exchanges, as set forth in § 352.7 of this Circular, and the Series HH bonds issued on reinvestment will be identical in all respects with those issued in a non-tax-deferred exchange.

§ 352.9 Delivery of bonds.

Authorized issuing agents will deliver Series HH bonds by mail at the risk and

expense of the United States to the address given by the applicant, if it is within the United States, one of its territories or possessions, or the Commonwealth of Puerto Rico. No mail deliveries elsewhere will be made. Bonds acquired by a citizen of the United States residing abroad will be delivered only to such address in the United States as the applicant directs.

§ 352.10 Taxation.

The interest paid on Series HH bonds is subject to all taxes imposed under the Internal Revenue Code of 1954, as amended. The bonds are subject to estate, inheritance, gift, or other excise taxes, whether Federal or State, but are exempt from all taxation now or hereafter imposed on the principal or interest by any State or any local taxing authority.

§ 352.11 Reservation as to issue of bonds.

The Commissioner of the Public Debt, as delegate of the Secretary of the Treasury, reserves the right to reject any application for Series HH bonds, in whole or in part, and to refuse to issue or permit to be issued any bonds in any case or class of cases, if the action is deemed to be in the public interest. The Commissioner's action in such respect is final.

§ 352.12 Waiver.

The Commissioner of the Public Debt, as delegate of the Secretary of the Treasury, may waive or modify any provision of this Circular in any particular case or class of cases for the convenience of the United States or in order to relieve any person or persons of unnecessary hardship if:

(a) Such action would not be inconsistent with law or equity;

(b) It does not impair any existing rights; and

(c) The Commissioner is satisfied that such action would not subject the United States to any substantial expense or liability.

§ 352.13 Fiscal agents.

Federal Reserve Banks, as fiscal agents of the United States, are authorized to perform such services as may be requested of them by the Secretary of the Treasury, or a delegate, in connection with the issue, servicing, and redemption of Series HH bonds.

§ 352.14 Reservation as to terms of offer.

The Secretary of the Treasury may at any time or from time to time supplement or amend the terms of this offering of bonds.

BILLING CODE 4810-10-M

TABLE 1

SERIES HH BONDS BEARING ISSUE DATES BEGINNING OCTOBER 1, 1989

ISSUE PRICE	$500	$1,000	$5,000	$10,000	APPROXIMATE INVESTMENT YIELD (ANNUAL PERCENTAGE RATE)		
REDEMPTION AND MATURITY VALUE /1	500	1,000	5,000	10,000			
PERIOD OF TIME BOND IS HELD AFTER ISSUE DATE	(1) AMOUNTS OF INTEREST CHECKS FOR EACH DENOMINATION				(2) FROM ISSUE TO EACH INTEREST PAYMENT DATE	(3) FOR HALF-YEAR PERIOD PRECEDING INTEREST PAYMENT DATE	(4) FROM EACH INTEREST PAYMENT DATE TO MATURITY
					PERCENT	PERCENT	PERCENT
.5 YEARS	$15.00	$30.00	$150.00	$300.00	6.00	6.00	6.00
1.0 YEARS	15.00	30.00	150.00	300.00	6.00	6.00	6.00
1.5 YEARS	15.00	30.00	150.00	300.00	6.00	6.00	6.00
2.0 YEARS	15.00	30.00	150.00	300.00	6.00	6.00	6.00
2.5 YEARS	15.00	30.00	150.00	300.00	6.00	6.00	6.00
3.0 YEARS	15.00	30.00	150.00	300.00	6.00	6.00	6.00
3.5 YEARS	15.00	30.00	150.00	300.00	6.00	6.00	6.00
4.0 YEARS	15.00	30.00	150.00	300.00	6.00	6.00	6.00
4.5 YEARS	15.00	30.00	150.00	300.00	6.00	6.00	6.00
5.0 YEARS	15.00	30.00	150.00	300.00	6.00	6.00	6.00
5.5 YEARS	15.00	30.00	150.00	300.00	6.00	6.00	6.00
6.0 YEARS	15.00	30.00	150.00	300.00	6.00	6.00	6.00
6.5 YEARS	15.00	30.00	150.00	300.00	6.00	6.00	6.00
7.0 YEARS	15.00	30.00	150.00	300.00	6.00	6.00	6.00
7.5 YEARS	15.00	30.00	150.00	300.00	6.00	6.00	6.00
8.0 YEARS	15.00	30.00	150.00	300.00	6.00	6.00	6.00
8.5 YEARS	15.00	30.00	150.00	300.00	6.00	6.00	6.00
9.0 YEARS	15.00	30.00	150.00	300.00	6.00	6.00	6.00
9.5 YEARS	15.00	30.00	150.00	300.00	6.00	6.00	6.00
10.0 YEARS /2	15.00	30.00	150.00	300.00	6.00	6.00	----

/1 AT ALL TIMES, EXCEPT THAT BOND IS NOT REDEEMABLE DURING FIRST SIX MONTHS FROM ISSUE

/2 MATURITY REACHED AT 10 YEARS AND 0 MONTHS AFTER ISSUE DATE

BILLING CODE 4810-10-C

PART 353—REGULATIONS GOVERNING UNITED STATES SAVINGS BONDS, SERIES EE AND HH

The authority for Part 353 continues to read as follows:

Authority: Sec. 22 of the Second Liberty Bond Act, as amended, 49 Stat. 21, as amended (31 U.S.C. 3105); Sec. 8 of Act of July 8, 1937, as amended, 50 Stat. 481, as amended (31 U.S.C. 3125); 5 U.S.C. 301, unless otherwise noted.

2. Section 353.31 is revised to read as follows:

§ 353.31 Series HH bonds.

(a) *General.* Series HH bonds are current income bonds issued at par (face amount). Interest on a Series HH bond is paid semiannually beginning six months from the issue date. Interest ceases at final maturity, or, if the bond is redeemed prior to final maturity, as of the end of the interest period last preceding the date of redemption. For example, if a bond on which interest is payable on January 1 and July 1 is redeemed on September 1, interest ceases as of the preceding July 1, and no interest will be paid for the period from July 1 to September 1. However, if the redemption date falls on an interest payment date, interest ceases on that date. Information regarding interest rates is found in Department of the Treasury Circular, Public Debt Series No. 2–80, current revision (31 CFR Part 352).

(b) *Payment of interest.* Series HH bond interest accounts are maintained by the Bureau of the Public Debt, Parkersburg, West Virginia. Interest on bonds issued on or after October 1, 1989 will be paid on each interest due date by the Automated Clearing House (ACH) method to the owner or coowner's account at a financial institution, unless the Bureau determines that extraordinary circumstances warrant payment by check or other means. See 31 CFR Part 370. Interest on bonds issued prior to October 1, 1989, is payable by check drawn to the order of the owner or both coowners or, upon request, by the ACH method to the owner or coowner's account at a financial institution. Checks will be mailed to the delivery address provided to the Bureau. Deposit account information for ACH payments shall be provided on the form designated by the Bureau. Rules governing payment of interest by the ACH method are contained in paragraph (h) of this section. (Approved by the Office of Management and Budget under control number 1535–0094).

(c) *Delivery of interest.* (1) Notices affecting the delivery of interest payments. To ensure appropriate action, notices affecting the delivery of interest payments on Series HH bonds must be received by the Bureau of the Public Debt, Parkersburg, West Virginia 26102–1328, at least one month prior to the interest payment date. Each notice must include the owner or coowner's name and the taxpayer identifying number appearing on the account under which records of the bonds are maintained. The notice must be signed by the owner or coowner or, in the case of a minor or incompetent, as provided in paragraph (d) or (e) of this section.

(2) *Owner or coowner deceased.* (i) Sole owner. Upon receipt of notice of the death of the owner of a bond, payment of interest will be suspended until satisfactory evidence is submitted as to who is authorized to receive and collect interest payments on behalf of the estate of the decedent, in accordance with the provisions of Subpart L.

(ii) *Coowner.* Upon receipt of notice of the death of the coowner to whom interest payments have been directed, payment of interest will be suspended until delivery instructions are received from the other coowner, if living. If both coowners are deceased, payment of interest will be suspended until satisfactory evidence is submitted as to who is authorized to receive and collect interest payments on behalf of the estate of the last deceased coowner, in accordance with the provisions of Subpart L.

(iii) *Owner with beneficiary.* Interest on a bond registered in beneficiary form is paid to the owner during his or her lifetime. Upon receiving notice of the owner's death, the Bureau will suspend payment of interest until the bond is presented for payment or reissue by the beneficiary, if surviving, or by some other proper person. Interest so withheld will be paid to the person entitled to the bond.

(d) *Representative appointed for the estate of a minor, incompetent, absentee, et al.* Interest on Series HH bonds is paid in accordance with the provisions of § 353.60 to the representative appointed for the estate of an owner who is a minor, incompetent, absentee, *et al.* If the registration of the bonds does not include reference to the owner's status, the bonds should be submitted for reissue to a Federal Reserve Bank so that interest payments may be properly directed. They must be accompanied by proof of appointment, as required by § 353.60.

(e) *Adult incapacitated owner having no representative.* If an adult owner of a Series HH bond is incapacitated and unable to receive and collect interest payments, and no legal guardian or similar representative has been appointed to act for the owner's the relative, or other person, responsible for his or her care and support may apply to the Bureau of the Public Debt for recognition as voluntary guardian for the purpose of receiving and collecting the payments.

(f) *Reissue during interest period.* Physical reissue of a Series HH bond may be made without regard to interest payment dates. The Series HH interest accounts maintained by the Bureau of the Public Debt will be closed in the first week of the month preceding each interest payment date, and payments will be made pursuant to the information contained in the accounts as of the date they are closed.

(g) *Endorsement of checks.* Interest checks must be endorsed in accordance with the regulations governing the payment of fiscal agency checks, as contained in 31 CFR Part 355.

(h) *Payment of interest by the ACH method.* (1) Submission of deposit account information. To obtain payment of interest by the ACH method, the owner or coowner must furnish the name and ABA routing/transit number of the financial institution to which the payments are to be directed, as well as the deposit account title, number, and type or classification of the account. Such information shall be provided on the form(s) prescribed by the Bureau of the Public Debt. Payments on all Series HH bonds assigned to the same account maintained by the Bureau must be made to the same deposit account at a financial institution. If the financial institution designated to receive the interest payments has not agreed to receive and deposit payments under 31 CFR Part 210, but is willing to do so, it should be asked to contact a Federal Reserve Bank for enrollment advice.

(2) *Designation of financial institution as owner's agent.* The designation of a financial institution to receive Series HH interest payments by an owner or coowner constitutes the appointment of that institution as his or her agent for receipt of the payments.

(3) *Deposit account held by individuals in their own right.* Where the Series HH bonds are registered in the name of individual(s) as sole owner, or as owner and beneficiary, and the deposit account at the financial institution is held in the name of individual(s) in their own right, the owner's name must appear on the deposit account. Where the bonds are registered in the names of two individuals as coowners and the deposit

account is held in the name of individual(s) in their own right, the registration of the bonds and the title of the account must contain at least one name that is common to both. The deposit account to which the interest payments are directed should preferably be established in a form identical to the registration of the bonds to ensure that rights of ownership and survivorship can be more easily identified and preserved. Neither the United States nor any Federal Reserve Bank shall be liable for any loss sustained because the interest of the holder(s) of a deposit account to which payments are made are not the same as the owner(s) of the bonds.

(4) *Deposit account held by organization.* Where the deposit account to which interest payments are to be directed is held in the name of the financial institution itself acting as sole trustee, or as co-trustee, or is the name of a commercially-managed investment fund, the owner or coowner should inquire whether the financial institution is able to receive ACH payments; if not, the owner or coowner should make alternative arrangements.

(5) *Financial institution cannot accept ACH payments.* If after submission of deposit account information, it is determined that ACH payments cannot be accepted by the designated financial institution, pending receipt of new deposit account information, payment will be made by check drawn to the registered owner or both coowners and mailed to the address of record.

(6) *Cancellation of ACH arrangement.* (i) Bonds issued on or after October 1, 1989. As set forth in paragraph (b) of this section and in the Series HH offering contained in Circular No. 2–80, interest on Series HH bonds issued on or after October 1, 1989, will be paid by the ACH method. In the absence of extraordinary circumstances, a request to discontinue payment by the ACH method in favor of payment by check will not be accepted.

(ii) Bonds issued prior to October 1, 1989. An ACH arrangement established in accordance with paragraph (b) of this section for Series HH bonds issued prior to October 1, 1989, shall remain in effect until it is terminated by one of the following events:

(A) Either coowner submits a request to the Bureau of the Public Debt, Parkersburg, West Virginia, 26102–1328 to terminate the ACH arrangement;

(B) A change in the title of the deposit account to which payments are being directed alters the interest of the person(s) entitled to the payments;

(C) An individual named on the deposit account dies or is adjudicated legally incompetent;

(D) The account is closed; or

(E) The ACH arrangement is terminated unilaterally by the financial institution after having given written notice to the account holder 30 days in advance of the termination, except in cases of fraud, where termination shall be effective immediately.

(7) *Suspension of ACH payments.* Upon receipt of notice that a designated deposit account has been closed, that an individual named on such account is dead or has been declared legally incompetent, or where the corporation is the owner and it has been dissolved, the Bureau reserves the right to suspend ACH payments, pending satisfactory evidence of entitlement. See paragraph (c) of this section regarding suspension of payments in the case of deceased individuals.

(8) *Processing of ACH payments.* Series HH interest payments made by the ACH method will be processed in accordance with 31 CFR Part 370.

(i) *Nonreceipt or loss of interest payment.* The Bureau of the Public Debt, Parkersburg, West Virginia 26106–1328 should be notified if:

(1) An interest check is not received or is lost after receipt or

(2) An ACH payment is not credited to the designated account and the financial institution has no record of receiving it. The notice should include the owner or coowner's name and taxpayer identifying number and the interest payment date.

PART 332—OFFERING OF UNITED STATES SAVINGS BONDS, SERIES H

1. The authority for Part 332 continues to read as follows:

Authority: Sec. 22 of the Second Liberty Bond Act, as amended, 49 Stat. 21, as amended (31 U.S.C. 3105) and (5 U.S.C. 301), unless otherwise noted.

2. In § 332.2, paragraph (e) is revised to read as follows:

§ 332.2 Description of bonds.

* * * * *

(e) *Investment yield (interest).* (1) Payment of interest. The interest on a Series H bond is paid semiannually beginning six months from the issue date by check drawn to the order of the registered owner or both coowners or, upon request, by the automated clearing house (ACH) method to the owner or coowner's account at a financial institution.

(2) *Rules governing payment of interest via the ACH method.* Provisions contained in § 315.31 of Department of the Treasury Circular No. 530, as amended (31 CFR Part 315) apply to the submission of deposit account information for Series H interest payments pursuant to paragraph (e)(1) of this section. Series H interest payments made by the ACH method on and after October 1, 1989, will be processed in accordance with 31 CFR Part 370. (Approved by Office of Management and Budget under control number 1535–0094).

(3) *Investment yield.* The investment yield of Series H bonds varies depending on the age of the bonds. (See § 332.8.) Interest ceases at final maturity or, if the bond is redeemed before final maturity, at the end of the interest period last preceding the date of redemption. However, if the redemption date falls on an interest payment date, interest ceases on that date.

* * * * *

PART 315—REGULATIONS GOVERNING UNITED STATES SAVINGS BONDS, SERIES E AND H

1. The authority for Part 315 continues to read as follows:

Authority: Sec. 22 of the Second Liberty Bond Act, as amended, 49 Stat. 21, as amended (31 U.S.C. 3105); Sec. 8 of Act of July 8, 1937, as amended, 50 Stat. 481 as amended (31 U.S.C. 3125); 5 U.S.C. 301, unless otherwise noted.

2. Section 315.31 is revised to read as follows:

§ 315.31 Series H bonds.

(a) *General.* Series H bonds are current income bonds issued at par (face amount). Interest on a Series H bond is paid semiannually beginning six months from the issue date. Interest ceases at final maturity, or if the bond is redeemed prior to final maturity, as of the end of the interest period last preceding the date of redemption. For example, if a bond on which interest is payable on January 1 and July 1 is redeemed on September 1, interest ceases as of the preceding July 1, and no interest will be paid for the period from July 1 to September 1. However, if the redemption date falls on an interest payment date, interest ceases on that date. Information regarding authorized extended maturity periods and investment yields is found in Department Circular No. 905, current revision (31 CFR Part 332).

(b) *Payment of interest.* Series H bond interest accounts are maintained by the Bureau of the Public Debt, Parkersburg, West Virginia. Interest is paid on each payment date by check drawn to the order of the owner or both coowners or, upon request, by the Automated Clearing House (ACH) method to the owner or coowner's account at a

financial institution. Checks will be mailed to the delivery address provided to the Bureau. Deposit account information for Automated Clearing House (ACH) payments shall be provided on the form designated by the Bureau. Rules governing submission of deposit account information are contained in paragraph (h) of this section.

(c) *Delivery of interest.* (1) Notices affecting the delivery of interest payments. To ensure appropriate action, notices affecting the delivery of interest payments on Series H bonds must be received by the Bureau of the Public Debt, Parkersburg, West Virginia, 26102–1328, at least one month prior to the interest payment date. Each notice must include the owner or coowner's name and the taxpayer identifying number appearing on the account under which records of the bonds are maintained. The notice must be signed by the owner or coowner, or, in the case of a minor or incompetent, as provided in paragraph (d) or (e) of this section. (Approved by Office of Management and Budget under control number 1535–0094).

(2) *Owner or coowner deceased*—(i) *Sole owner.* Upon receipt of notice of the death of the owner of a bond, payment of interest will be suspended until satisfactory evidence is submitted as to who is authorized to receive and collect interest payments on behalf of the estate of the decedent, in accordance with the provisions of Subpart L.

(ii) *Coowner.* Upon receipt of notice of the death of the ooowner to whom interest payments have been directed, payment of interest will be suspended until delivery instructions are received from the other coowner, if living. If both coowners are deceased, payment of interest will be suspended until satisfactory evidence is submitted as to who is authorized to receive and collect interest payments on behalf of the estate of the last deceased coowner, in accordance with the provisions of Subpart L.

(iii) *Owner with beneficiary.* Interest on a bond registered in beneficiary form is paid to the owner during his or her lifetime. Upon receiving notice of the owner's death, the Bureau of the Public Debt will suspend payment of interest until the bond is presented for payment or reissue by the beneficiary, if surviving, or some other proper party. Interest so withheld will be paid to the person entitled to the bond.

(d) *Representative appointed for the estate of a minor, incompetent, absentee, et al.* Interest on Series H bonds is paid in accordance with the provisions of § 315.60 to the representative appointed for the estate of an owner who is a minor, incompetent, absentee, *et al.* If the registration of the bonds does not include reference to the owner's status, the bonds should be submitted for reissue to a Federal Reserve Bank so that interest payments may be properly delivered. They must be accompanied by proof of appointment as required by § 315.60.

(e) *Adult incapacitated owner having no representative.* If an adult owner of a Series H bond is incompetent to receive and collect interest payments, and no legal guardian or similar representative has been appointed to act for him or her, the relative, or other person, responsible for the owner's care and support may apply to the Bureau of the Public Debt for recognition as voluntary guardian for the purpose of receiving and collecting the payments.

(f) *Reissue during interest period.* Physical reissue of a Series H bond may be made without regard to interest payment dates. The Series H accounts maintained by the Bureau of the Public Debt will be closed in the first week of the month preceding each interest payment date, and payments will be made pursuant to the information contained in the accounts as of the date they are closed.

(g) *Endorsement of checks.* Interest checks must be endorsed in accordance with the regulations governing the payment of fiscal agency checks contained in 31 CFR Part 355.

(h) *Deposit account information for ACH payments.* (1) *Submission of deposit account information.* To obtain payment of interest by the ACH method, the owner or coowner must furnish the name and ABA routing/transit number of the financial institution to which the payments are to be directed, as well as the deposit account title, number, and type or classification of the account. Deposit account information shall be provided on the form(s) prescribed by the Bureau of the Public Debt. Payments on all Series H bonds assigned to the same account maintained by the Bureau will be made to the same deposit account at a financial institution. If the financial institution designated to receive the interest payments has not agreed to receive and deposit payments under 31 CFR Part 210, but is willing to do so, it should be asked to contact a Federal Reserve Bank for enrollment advice.

(2) *Designation of financial institution as owner's agent.* The designation of a financial institution to receive Series H interest payments by an owner or coowner constitutes the appointment of that institution as his or her agent for receipt of the payments.

(3) *Deposit account held by individuals in their own right.* Where the Series H bonds are registered in the name of individual(s) as sole owner, or as owner and beneficiary, and the deposit account at the financial institution is held in the name of individual(s) in their own right, the owner's name must appear on the deposit account. Where the bonds are registered in the names of two individuals as coowners and the deposit account is held in the name of individual(s) in their own right, the registration of the bonds and the title of the account must contain at least one name that is common to both. The deposit account to which the interest payments are directed should preferably be established in a form identical to the registration of the bonds to ensure that rights of ownership and survivorship can be more easily identified and preserved. Neither the United States nor any Federal Reserve Bank shall be liable for any loss sustained because the interest(s) of the holder(s) of a deposit account to which payments are directed are not the same as the owner(s) of the bonds.

(4) *Deposit account held by organization.* Where the deposit account to which interest payments are to be directed is held in the name of the financial institution itself, acting as sole trustee or as co-trustee, or is in the name of a commercially-managed investment fund, the owner or coowner should inquire whether the financial institution is able to receive ACH payments; if not, the owner or coowner should make alternative arrangements.

(5) *Financial institution cannot accept ACH payments.* If after submission of deposit account information, it is determined that ACH payments cannot be accepted by the designated financial institution, pending receipt of new deposit account information, payment will be made by check drawn to the registered owner or both coowners and mailed to the address of record.

(6) *Cancellation of ACH arrangement.* An ACH arrangement established in accordance with paragraph (b) of this section shall remain in effect until it is terminated by one of the following events:

(i) The owner or coowner submits a request to the Bureau of the Public Debt, Parkersburg, West Virginia 26102–1328, to terminate the ACH arrangement;

(ii) A change in the title of the deposit account to which payments are being directed alters the interest of the person(s) entitled to the payments;

(iii) An individual named on the deposit account dies or is declared legally incompetent;

(iv) The account is closed; or

(v) The ACH arrangement is terminated unilaterally by the financial institution after having given written notice to the account holder 30 days in advance of the termination, except in cases of fraud, where termination shall be effective immediately.

(7) *Suspension of ACH payments.* Upon receipt of notice that a designated deposit account has been closed, that an individual named on such account is dead or has been declared legally incompetent, or where the corporation is the owner and it has been dissolved, the Bureau reserves the right to suspend ACH payments, pending satisfactory evidence of entitlement. See paragraph (c) of this section regarding suspension of payments in the case of deceased individuals.

(8) *Processing of ACH payments.* Series H interest payments made by the ACH method will be processed in accordance with 31 CFR Part 370.

(i) *Nonreceipt or loss of interest payment.* The Bureau of the Public Debt, Parkersburg, West Virginia 26106–1328, should be notified if:

(1) an interest check is not received or is lost after receipt or

(2) an ACH payment is not credited to the designated account and the financial institution has no record of receiving it. The notice should include the owner or coowner's name and taxpayer identifying number and the interest payment date.

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Friday
September 29, 1989

Part IV

Environmental Protection Agency

40 CFR Parts 260 and 261

Hazardous Waste Management System; Testing and Monitoring Activities; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260 and 261

[FRL-3549-5]

RIN 2050-AC80

Hazardous Waste Management System; Testing and Monitoring Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule adopts 47 testing methods as approved methods for use in meeting the regulatory requirements under subtitle C of the Resource Conservation and Recovery Act (RCRA). These new methods are found in the Third Edition of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", Office of Solid Waste Publication SW-846, and in Update I of that Third Edition. As specified in revised Tables 2 and 3, these methods may be used to meet regulatory requirements in conjunction with, or in addition to the methods found in the Second Edition of SW-846 as amended by Updates I and II.

EFFECTIVE DATE: Effective on October 30, 1989.

ADDRESSES: The official record for this rulemaking (Docket No. 846-84-1) is located in Room M-2427, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays. Call (202) 475-9327 for appointments. The public may copy a maximum of 100 pages of material from any one regulatory docket at no cost; additional copies cost $0.15 per page.

Copies of the Third Edition of SW-846 and of Update I to the Third Edition are available from the Government Printing Office, Superintendent of Documents, Washington, DC 20402, (202) 783-3238. The document number is 955-001-00000-1 and the cost is $110.00 for the four-volume set plus updates. Update packages will be automatically mailed to all subscribers.

Copies of the Second Edition of SW-846 are available from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (703) 487-4600. The document number is PB87-120-291 and the cost is $48.95 for paper copies and $13.50 for microfiche.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA Hotline at (800) 424-9346 (toll free) or (202) 382-3000. For technical information contact Charles Sellers, Office of Solid Waste, OS-331, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-3282.

SUPPLEMENTARY INFORMATION:

Preamble Outline

I. Authority

These regulations are being promulgated under the authority of sections 3001, 3004, 3005, and 3006 of the Solid Waste Disposal Act, as amended (commonly known as the Resource Conservation and Recovery Act, or RCRA), 42 U.S.C. 6921, 6924, 6925, and 6926.

II. Background

A. Regulatory Framework

Subtitle C of the Resource Conservation and Recovery Act of 1976 (RCRA) creates a comprehensive national program for the safe management of hazardous waste. Among the elements of this program, section 3001 requires the Agency to develop and promulgate characteristics for identifying hazardous waste, and for specifically listing hazardous wastes. Furthermore, sections 3004 and 3005 require the Agency to promulgate the standards necessary to protect human health and the environment for the treatment, storage and disposal of hazarous waste, and to implement those standards through a permit program.

The Agency has promulgated a detailed set of criteria, standards, definitions, and other requirements to meet its charge under sections 3001, 3004, and 3005. Associated with characterizing wastes, determining their proper management, and monitoring the performance of waste management units, is a panoply of testing methods that address the sampling and analytical procedures to be used. These methods ensure accuracy, precision, and comparability of test results.

EPA Publication SW-846, "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" contains those sampling and analysis methods that EPA has, in principle, approved. In situations where the regulations require the use of appropriate SW-846 methods, the regulations specify the Second Edition of EPA's SW-846 manual (1982) as amended by Updates I (April 1984) and II (April 1985). As described in more detail below, since 1985 EPA has issued many new SW-846 methods as guidance, and has issued a Third Edition of SW-846. These later methods have not yet been approved. In January, 1989, EPA proposed to amend the regulations to approve the use of all of the new methods, in addition to the older ones.

Some of the new methods (including the 47 covered by this rule) were proposed for approval in 1984. To expedite the use of these particular 47 methods, this final rulemaking provides that these methods are approved for use where the regulations require compliance with appropriate SW-846 methods. The existing Second Edition methods continue to be approved. EPA also intends to proceed with the January 1989 proposal (excluding the 47 methods approved today), so that all new methods contained in the Third Edition of SW-846 (and Update I) will be approved.

B. Nature of the SW-846 Manual

Approved and standardized testing and quality control (QC) procedures are needed to assist both the regulated community in complying with RCRA testing requirements and EPA officials in enforcing them. Thus, the Agency publishes and maintains a guidance manual, "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", OSW publication SW-846. This manual provides a unified, up-to-date source of information on sampling, analytical, and QC procedures related to compliance with the RCRA regulations. It brings together in one reference document all of these procedures that have been approved by the Agency for use in the RCRA regulatory program and in determining compliance with the RCRA requirements. However, except where regulations specifically require the use of certain SW-846 test methods or QC procedures, use of the methods contained in SW-846 are not mandatory.

OSW first published SW-846 in May 1980, when the Agency promulgated Phase I of the hazardous waste regulations (45 FR 33065-33568). Advances in analytical instrumentation and techniques are continually reviewed by OSW and periodically incorporated into SW-846 to maintain consistency with changes in the regulatory program and to improve method performance (e.g., accuracy, precision, ruggedness, and sensitivity) and completeness. Therefore, in 1982 the Agency issued the Second Edition of SW-846, and in March of 1987, the Third Edition of SW-846 became available. The Agency has since proposed that the Third Edition of SW-846, together with Update I, replace the Second Edition as the compendium of approved testing and QC procedures (54 FR 3212-3229, January 23, 1989). The Third Edition of SW-846 broadens the scope of the manual with new methods, more guidance, and up-dated QC procedures.

EPA emphasizes that this guidance manual is a "living" document and will change over time as new information and data are developed. EPA solicits any available data and information that may affect the usefulness of this manual. Furthermore, regarding those regulations that mandate the use of appropriate SW-846 methods for specific areas of RCRA compliance, the Agency will, of course, separately propose to change those specific regulations to incorporate the revisions to SW-846. An appropriate comment period will be made available for those methods made mandatory in the eventuality of that rulemaking. This does not mean that the updating of the guidance document needs to have a prior proposal, or that it need await the completion of the rulemaking. Such a proposed rulemaking would affect only the use of SW-846 as a mandatory requirement for certain elements of the RCRA program (see next section).

C. Mandatory Use of the Manual

Several of the hazardous waste regulations under subtitle C of RCRA require that specific testing methods described in the Second Edition of SW-846 be employed for certain applications.[1] For convenience of the reader, the Agency is listing below the sections of 40 CFR Parts 260-270 that require the use of appropriate SW-846 methods. As noted earlier, any reliable anlytical methods, including any version of SW-846, may be used to meet other requirements in parts 260-270. Use of the Second Edition is currently mandatory for the regulations listed below:

(1) Section 260.22(d)(1)(i)—Submission of data in support of petitions to exclude a waste produced at a particular facility (i.e., delisting petitions);

(2) Section 261.22(a)—Evaluation of waste against the corrosivity characteristic;

(3) Section 261.24(a)—Evaluation of waste against the Extraction Procedure toxicity characteristic;

(4) Section 264.314(c) and § 265.314(d)—Evaluation of waste to determine if free liquid is a component of the waste; and

(5) Section 270.62(b)(2)(i)(C)—Analysis of waste prior to conducting a trial burn in support of an application for a hazardous waste incineration permit.

D. Origin of Today's Final Rule

On October 1, 1984 (49 FR 33786-33812), EPA proposed several changes to the subtitle C hazardous waste regulations. These proposed changes included the following elements:

(1) Addition of 61 new methods to SW-846;

(2) Mandatory adherence to the procedures and methods in SW-846 for all RCRA testing;

(3) Elimination of requirements to test for certain compounds when conducting ground water monitoring;

(4) Use of screening tests when monitoring ground water for hazardous constituents; and

(5) Use of the Hierarchical Analysis Protocol for ground water screening.

Many comments were received on the proposal. The Agency evaluated these comments and, as a result, decided not to promulgate the October 1, 1984 proposal. Instead, the Agency revised SW-846, as a guidance manual, to incorporate many of the suggestions made in the comments and undertook other actions to address changes to the ground water monitoring regulations. On March 16, 1987, EPA announced the availability of the Third Edition of SW-846 in the **Federal Register** (52 FR 8072).

The Agency has since proposed in a separate rulemaking that the Third Edition of SW-846, together with Update I, be substituted in § 260.11 as the approved, incorporated reference for parts 260-270 in lieu of the Second Edition of SW-846, the currently incorporated reference in § 260.11 (54 FR 3212-3229). The effect of this proposal would be: (1) To require use of the Third Edition as amended by Update I, for all testing for which the SW-846 methods are specifically mandated in current subtitle C regulations (see list in II.C.); and (2) to update all informational references to SW-846 wherever they occur in 40 CFR parts 260-270. Furthermore, the proposed rule would require persons performing RCRA-related testing, whether or not they are using SW-846, to follow Quality Control procedures detailed in Chapter One of the Third Edition, Update I of SW-846.

This final rule constitutes a separate approval and adoption of 47 methods now contained in the Third Edition of SW-846 as amended by Update I. These 47 methods were among 61 methods originally proposed in the October 1, 1984, **Federal Register** notice. In light of the comments received on these 47 methods, some of the methods have been revised. The Third Edition and Update I of the Third Edition of SW-846 already contain the revised versions of the 47 methods proposed in October 1984.

Through today's final rule, use of these 47 newly-approved methods becomes an acceptable means of compliance where the regulations specifically mandate use of appropriate SW-846 methods (see list in II.C.) and where the appropriate procedure includes one or more of these 47 methods. Hence, persons required by regulation to use SW-846 methods will be responsible for adhering, as appropriate, to either SW-846, Second Edition as amended by Updates I and II, or to these 47 newly-approved methods that now appear in the Third Edition and its Update I. All other portions of the Third Edition and its Update I are not approved or mandatory for anyone at this time, but may be in the future (see Proposed Rule, 54 FR 3212-3229).

III. Issues Discussed in and Arising From the October 1984 Proposed Rule

A. Overview of Proposed Rule

The October 1, 1984 Notice of Proposed Rulemaking (NPRM) proposed five major revisions to the RCRA hazardous waste regulations, each related to testing and monitoring activities (see II.D. above). A key reason behind the October 1984 proposal was that ground water monitoring required analysis for "all" or "each" constituent

[1] Note also that Appendix I of part 261, "Representative Sampling Methods", supplements SW-846 by referencing four sampling methods for extremely viscous liquids, fly ash-like materials, containerized liquid wastes, and liquid wastes in pits, ponds and lagoons. While Appendix I is not formally adopted or required by EPA, the Agency considers use of the sampling methods specified in Appendix I as acceptable for determining a "representative sample" (see § 261.20(c)). Finally, § 260.11 incorporates by reference two test methods for measuring the hazardous waste characteristic of ignitability under part 261: ASTM Standard Test Methods for Flash Point of Luquids by Seta Flash Closed Tester and ASTM Standard Test Methods for Flash Point by Pensky-Martens Closed Tester.

listed on Appendix VIII of part 261 as required under 40 CFR Part 264.

The Appendix VIII list has presented a number of problems when used for purposes of ground water monitoring. These include practical analytical problems such as listings which are large categories of chemicals, the dissociation or actual decomposition of many Appendix VIII constituents when placed in water, and the lack of analytical standards or analytical screening methods for many constituents.

EPA acknowledged in 1982 that it lack analytical methods for nine of the Appendix VIII constituents (see 47 FR 32296, July 26, 1982). Also, in 1984, EPA proposed to eliminate 23 Appendix VIII constituents from the ground water analysis requirements (see 49 FR 38786, October 1, 1984).

EPA amended its regulations of July 9, 1987, to establish a new list of constituents for ground water monitoring (52 FR 25942–25953). Appendix IX of part 264 replaces Appendix VIII of part 261 as the ground water monitoring list. Appendix IX to part 264 is made up of those compounds on Appendix VIII for which it is feasible to analyze in ground water samples, plus 17 chemicals routinely monitored in the Superfund program. This change has altered the basis for much of the October 1984 proposal. For this reason, only the addition of 47 SW–846 methods is finalized in this rule.

B. Other New Methods in SW–846 That Are Not Part of Today's Rule

The Third Edition contains 72 methods that are new to SW–846. Of these, 47 are covered by this rulemaking. As noted earlier, these 47 methods were among 61 methods first proposed in the 1984 NPRM. Four of these methods appear in Update I to the Third Edition of SW–846, not in the Third Edition itself.

The Agency's January 1989 proposal to change the incorporation by reference in § 260.11 from the Second Edition of SW–846 to the Third Edition and its Update I (54 FR 3212–3229), covers not only these 72 new methods in the current Third Edition, but also 14 methods that are new to SW–846 as of Update I to the Third Edition. If that proposal is finalized unchanged, all methods contained in the Third Edition and Update I of SW–846 (including the 47 methods adopted today) would be applicable where regulations specifically mandate use of appropriate SW–846 methods.

C. Methods Adopted in Today's Rule

The 47 methods being addressed in this rule are listed in Table 1. One other method proposed in 1984 and contained in the Third Edition and Update I is Method 9090, Compatibility Test for Wastes and Membrane Liners (as revised). Method 9090 is not included in today's final rule. Rather, the Agency has sought further comment on the revised version (54 FR 3212–3229). The remaining thirteen of the 61 methods proposed in 1984 are not included because problems were encountered during reevaluation following the comment period. Data generated by the public and by EPA has demonstrated that the methods could not be used in their published form for the purpose stated. These methods are listed in Table 2. The Agency does not plan to finalize these methods now, or in the near future.

TABLE 1—SW–846 METHODS ADOPTED IN THIS FINAL RULE

Method	Title	Comments
0010	Modified Method 5 Sampling Train	Stack sampling method for semi-volatile compounds.
0020	Source Assessment Sampling System	Stack sampling method for semi-volatile compounds.
0030	Volatile Organic Sampling Train	Stack sampling method for volatile organic compounds.
1320	Multiple Extraction Procedure	Extraction procedure used for delisting wastes that are stabilized, encapsulated, or chemically fixed.
1330	Extraction Procedure for Oily Wastes	Extraction procedures used for delisting wastes containing oil or grease that may interfere with the EP test.
3611	Alumina Column Cleanup and Separation of Petroleum Wastes	Provides a cleanup technique for oily matrices. Proposed as Method 3570.
5040	Protocol for Analysis of Sorbent Cartridges from Volatile Organic Sampling Train (VOST).	Provides quantitative analysis method following VOST collection. Proposed as Method 3720.
6010	Inductively Coupled Plasma Atomic Emmission Spectroscopy	General method for multiple element determination.
7090	Beryllium (AA, Direct Aspiration)	Flame AA method.
7091	Beryllium (AA, Furnace Technique)	Graphite furnace AA method. Provides low detection limit and analytical flexibility.
7198	Chromium, Hexavalent (Differential Pulse Polarography)	Differential pulse polarography method.
7210	Copper (AA, Direct Aspiration)	Flame AA method.
*7211	Copper (AA, Furnace Technique)	Provides lower detection limit and analytical flexibility.
7380	Iron (AA, Direct Aspiration)	Flame AA method.
*7381	Iron (AA, Furnace Technique)	Graphite furnace AA method. Provides lower detection limit and analytical flexibility.
7460	Manganese (AA, Direct Aspiration)	Flame AA method.
*7461	Manganese (AA, Furnace Technique)	Graphite furnace AA method. Provides lower detection limit and analytical flexibility.
7550	Osmium (AA, Direct Aspiration)	Flame AA method.
7770	Sodium (AA, Direct Aspiration)	Flame AA method.
7840	Thallium (AA, Direct Aspiration)	Flame AA method.
7841	Thallium (AA, Furnace Technique)	Graphite furnace AA method. Provides analytical flexibility.
7910	Vanadium (AA, Direct Aspiration)	Flame AA method.
7911	Vanadium (AA, Furnace Technique)	Graphite furnace AA method. Provides lower detection limit and analytical flexibility.
7950	Zinc (AA, Direct Aspiration)	Flame AA method.
*7951	Zinc (AA, Furnace Technique)	Provides lower detection limit and analytical flexibility.
9022	Total Organic Halides (TOX) by Neutron Activation Analysis	Neutron activation adds alternate analytical technique.
9035	Sulfate	Automated chloranilate colorimetric method.
9036	Sulfate	Automated methylthymol blue, autoanalyzer II colorimetric method.
9038	Sulfate	Turbidimetric method.
9060	Total Organic Carbon	Infrared determination of carbon dioxide.
9065	Phenolics	Manual 4–AAP with distillation spectrophotometric method.
9066	Phenolics	Automated 4–AAP with distillation colorimetric method. When used, this method must be preceded by the manual distillation specified in procedure 7.1 of Method 9065.
9067	Phenolics	MBTH** with distillation spectrophotometric method.
9070	Total Recoverable Oil and Grease	Total oil and grease for liquids. Gravimetric, separatory funnel extraction.
9071	Oil and Grease Extraction Method for Sludge Samples	Total oil and grease for solids.
9080	Cation-Exchange Capacity of Soils	Soil liner evaluation using ammonium acetate.

TABLE 1—SW-846 METHODS ADOPTED IN THIS FINAL RULE—Continued

Method	Title	Comments
9081	Cation-Exchange Capacity of Soils	Soil liner evaluation using sodium acetate.
9100	Saturated Hydraulic Conductivity, Saturated Leachate Conductivity, and Intrinisc Permeability.	General methods for hydraulic conductivity and liner permeability.
9131	Coliform	Multiple tube fermentation technique.
9132	Coliform	Membrane filter technique.
9200	Nitrate	Brucine colorimetric method.
9250	Chloride	Automated ferricyanide autoanalyzer I colorimetric method.
9251	Chloride	Automated ferricyanide autoanalyzer II colorimetric method.
9252	Chloride	Mercuric nitrate titrimetric method.
9310	Gross Alpha and Beta	General radioactivity method.
9315	Alpha-Emitting Radium Isotopes	Total radium method.
9320	Radium-228	Radium 228 method.

* This method is available in the first update to SW-846, Third Edition.
** 3-Methyl-2-benzothiazolinone hydrazone hydrochloride.

TABLE 2—PROPOSED METHODS NOT INCLUDED IN THIS FINAL RULE

Method	Title	Comments
1120	Electrochemical Corrosion	This method was proposed as an alternate to Method 1110 in an equivalency petition. After evaluation by NEIC, Method 1120 was found to be not comparable in precision or accuracy.
3560	Reverse Phase Cartridge Extraction	Lack of sufficient data on column pre-treatment and conditioning, elution sequences, elution volumes, and the effect of the loading of organic compounds on the column to permit method to be adequately defined.
7551	Osmium (AA, Furnace Technique)	EPA study indicates accuracy problems.
8320	Miscellaneous Compounds by HPLC	No supporting data on effectiveness of cleanup procedures and HPLC to determine the analytes. Questionable precision and accuracy.
8330	Thioureas	No supporting data on effectiveness of cleanup procedures and HPLC to determine the analytes. Questionable precision and accuracy.
8410	Formaldehyde, Basic and Acidic Medium	Too susceptible to interferences for application to ground water and solid waste matrices.
8411		
8600	Hierarchical Analysis Protocol	Method not sensitive enough for its intended purpose.
8610	Total Aromatics by Ultraviolet Spectroscopy	Method not sensitive enough for its intended purpose.
8620	Total Nitrogen-Phosphorous Gas Chromatographable Compounds	Method not sensitive enough for its intended purpose.
8630	Derivatization Procedure for Appendix VIII Compounds	Method not sensitive enough for its intended purpose.
9011	Photodegradable Cyanides	Uncertain how test and results relate to the environment.
9037	Sulfate, Gravimetric	Precision and sensitivity not adequate. Interference-prone and therefore not appropriate for environmental assay.

D. Comments Regarding the 47 Methods Adopted in This Final Rule

1. General Comments

EPA received comments addressing 25 of the 47 methods adopted in this final rule. Eleven commenters made 98 specific comments or queries. Five of these methods received 65 percent of the total comment; these methods are 1330, 1320, 9100, 9131, and 0030, which are discussed individually below. For other comments and the Agency's response thereto, see "Public Comment Summaries and Responses for 40 CFR parts 260 and 261, Forty-Seven New Analytical Methods Approved for subtitle C RCRA Hazardous Waste Testing, Proposed Rule—October 1, 1984," in this docket.

Many of the comments or questions regarding these 47 methods were framed against the proposed requirement of mandatory use of SW-846 methods for all testing and monitoring activities required under subtitle C. That will not be the case under this rulemaking; except where regulations specifically require the use of certain SW-846 test methods or QC procedures (see II.C.), the SW-846 manual is a guidance document and is not mandatory.

In this context, several commenters asked for clarification on the regulatory status of Methods 1320 (Multiple Extraction Procedure) and 1330 (Extraction Procedure for Oily Wastes) in relation to Method 1310: Extraction Procedure (EP) Toxicity Test Method and Structural Integrity Test. Through today's rule, all three are approved methods. However, Method 1310 is required to be used to determine whether a waste exhibits the characteristic of EP Toxicity under 40 CFR 261.24 and Appendix II of 40 CFR part 261, (*i.e.*, whether a waste is hazardous under subtitle C of RCRA). On the other hand, Methods 1320 and 1330 are not mandatory. They were created for specific applications to wastes that are already defined as hazardous as part of the permitting and delisting process, and are not used in defining whether a solid waste exhibits the toxicity characteristic. Consequently, they are employed on a case-by-case basis when requested by a permit writer. (Note that if these methods are used to support a petition to delist a listed waste at a particular facility under 40 CFR 260.22(d)(1)(i), use could become mandatory.)

Several commenters questioned the rationale for providing more than one method for certain analytes or parameters. These commenters argued that the different methods may produce data that vary in precision and accuracy; in addition, they indicated that some methods are considered outmoded by current technology. The Agency agrees that different methods will measure the presence and/or concentration of a given analyte or parameter with varying capabilities of precision and accuracy, and that some methods are seldom used due to new technology. However, the Agency believes that each method approved provides data acceptable within the scope of the method as defined in section 1.0, "Scope and Application" of each method. The philosophy of the Agency is that the manual should remain a compendium of approved

methods available for use at the discretion of the various programs and permit writers operating under RCRA. When a specific method is not required and when multiple methods are available for the analysis of the same analyte or parameter, then the permittee or the regulated facility or laboratory performing the analysis may choose among the appropriate methods.

The vast majority of the comments submitted requested specific clarification on method procedures or offered recommendations for improving these methods. These comments did not suggest that the currently applicable methods were not protective of human health or the environment, nor did they provide any reason to believe that the currently applicable methods were infeasible as a technical matter. Some of these detailed recommendations for technical improvement in SW–846 have been adopted, some have been rejected, and others will undergo further EPA consideration. At this time, however, the Agency is not prepared to adopt all the technical suggestions, even though some or all of them may ultimately prove to be meritorious. The Agency believes the best use of its resouces and the needs of the regulated community are such that these technical improvements can await a future update effort. The Agency's response is detailed in the Public Comment Summaries and Response in this docket.

2. Method 1330: Extraction Procedure for Oily Wastes

Method 1330 received 22 specific comments from seven commenters, many of which asked for clarification on technical procedures. The Public Comment Summaries and Responses document in the docket contains the Agency's discussion of the technically-oriented comments. One commenter contends that Method 1330 provides for a worst case scenario with regard to the leaching of heavy metals which were either contained in the oil or were formerly shielded from the leaching media by the oil. The commenter contends that oil biodegrades very slowly and that these metals would become available to the environment at such a slow rate that they will never be detected in otherwise naturally-occurring leachates.

While we agree that Method 1330 is intended to be a worst case scenario, it is not an unreasonable scenario. Method 1330 was designed to measure the leaching potential of metals from an oily waste in a reasonably quick and efficient manner based on the assumption that the oil phase is mobile and will migrate away from the solid. Such mobility has been seen in a number of situations. However, enough data from a variety of oil samplings to determine method accuracy has not been collected; hence pass/fail criteria have not been established. Thus, the use and interpretation of this method are currently left to evaluation by appropriate regulatory officials on a case-by-case basis.

3. Method 1320: Multiple Extraction Procedure

Method 1320 received 12 specific comments from four commenters, many of which also asked for clarification on technical procedures. See Public Comment Summaries and Responses. One commenter recommended against the inclusion of Method 1320 in Table 1 of Appendix III of 40 CFR part 261 before regulations have been promulgated that designate the implicated wastes as hazardous, or govern their treatment, storage, and disposal. The commenter states that it is more appropriate to evaluate data from the extraction method on the appropriate wastes as the regulated characteristics of these wastes develop, rather than to make this method mandatory now.

The Agency agrees with the commenter that Method 1320 not be included in Table 1 of Appendix III, nor that it be made mandatory at this time. Hence, the use and interpretation of this method are currently left to evaluation by appropriate regulatory officials on a case-by-case basis.

4. Method 9100: Saturated Hydraulic Conductivity, Saturated Leachate Conductivity, and Intrinsic Permeability

Method 9100 received eleven comments from two commenters. Most of the comments on this method were concerned with the technical requirements of individual procedures. For example, the method recommends well casing diameters of 1¼ to 1½ inches for slug tests in materials of low hydraulic conductivity. The commenter recommends a minimum inner diameter of 2 inches to allow enough resolution for slug tests in low permeability soils, and also to facilitate bailing and sampling.

The Agency believes that while this recommendation may have merit, additional information must be collected before the Agency can recommend a change. Therefore, the Agency is specifying a well casing diameter of 1¼ to 1½ inches for slug tests in materials of low hydraulic conductivity.

5. Method 9131: Total Coliform: Multiple Tube Fermentation Technique

Method 9131 received ten specific comments from a single commenter. The proposed method suffered from several typographical errors. These errors have been corrected in the current update of SW–846. The method specifies that quality control (QC) data be provided on 20 percent of all samples analyzed. The commenter contends that a 10 percent QC check is sufficient because the Confirmed Test rarely fails the Completed Test.

The Agency believes that this recommendation may have merit; however, the Agency believes that additional information must be collected before the Agency changes the QC procedures. Therefore, the Agency is specifying that 20 percent of the samples be analyzed as part of QC for this particular method.

6. Method 0030: Volatile Organic Sampling Train

Method 0030 received nine specific comments from two commenters. One commenter recommends that breakthrough criteria be established for Principal Organic Hazardous Constituents (POHCs) for the purpose of determining the validity of a test run. Specifically, the commenter recommends that a 2 to 1 front-to-back ratio of POHC collected be established.

The Agency believes that this recommendation has merit, and is developing the methodology and criteria to permit implementation of a QC procedure of this kind at some point in the future. The Agency believes, however, that the method performance check and performance audit specified in the current procedure are sufficient to identify significant problems in the methodology. The Agency is, therefore, finalizing this method in its current form.

E. Information Related to Tables 2 and 3, Appendix III, Part 261

Along with this final rule, the Agency is republishing Tables 2 and 3 of Appendix III, part 261. Table 2 identifies the approved measurement methods available for inorganic species and other miscellaneous groups of analytes contained in SW–846. Table 3 summarizes the contents of SW–846 and supplies the specific section and method number for sampling and analysis methods. Republication of these two tables in their entirety is intended to give guidance on where appropriate EPA approved methods are found in either the Second or Third Editions.

In that respect, note that parts of these tables are unchanged from the current

tables appearing in the Code of Federal Regulations. Those unchanged portions of the tables are included in today's revision strictly for the convenience of the reader. These portions were not and are not involved in this rulemaking. Other portions of Tables 2 and 3 are being updated to reflect the approval of the 47 methods which are the subject of this rulemaking, and to provide easy reference to the source documents.

IV. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under sections 3008, 7003 and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in the State where the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA applies in authorized States in the interim.

B. Effect on State Authorizations

Today's rule is imposed pursuant to pre-HSWA authority. Therefore, it is not immediately effective in authorized States. The requirements will be applicable only in those States that do not have interim or final authorization. In authorized States, the requirements will not be applicable until the State revises its program to adopt equivalent requirements under State law.

40 CFR 271.21(e)(2) requires that States that have final authorization must modify their programs to reflect Federal program changes and must subsequently submit the modifications to EPA for approval. The deadline by which the State must modify its program to adopt today's rule is July 1, 1991. These deadlines can be extended in certain cases (40 CFR 271.21(e)(3)). Once EPA approves the modification, the State requirements become Subtitle C RCRA requirements.

States with authorized RCRA programs may already have requirements similar to those in today's rule. These State regulations have not been assessed against the Federal regulations being promulgated today to determine whether they meet the tests for authorization. Thus, a State is not authorized to carry out these requirements in lieu of EPA until the State regulations are submitted to EPA for authorization approval. Of course, States with existing regulations may continue to administer and enforce their standards as a matter of State law.

States that submit their official application for final authorization less than 12 months after the effective date of these standards are not required to include standards equivalent to these standards in their application. However the State must modify its program by the deadlines set forth in § 271.21(e). States that submit official applications for final authorization 12 months after the effective date of these standards must include standards equivalent to these standards in their application. 40 CFR 271.3 sets forth the requirements a State must meet when submitting its final authorization application.

V. Effective Date

This rule will be effective 30 days after final promulgation. Section 3010(b) of RCRA provides that regulations promulgated pursuant to subtitle C of RCRA shall take effect six months after the date of promulgation. However, section 3010(b)(1) provides for a shorter period if the Agency finds that the regulated community does not need six months to comply with the new regulation.

Since today's rule is designed to incorporate test methods already known to and used by the regulated community and since use of the Second Edition of SW–846 is allowed, the Agency believes that the regulated community will not need six months to come into compliance. Therefore, these amendments are effective 30 days after promulgation, as provided under the Administrative Procedure Act.

VI. Regulatory Analyses

A. Regulatory Impact Analysis

Under Executive Order 12291, EPA must determine whether a regulation is "Major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This rule will approve, but not require, the use of these 47 methods found in the Third Edition of SW–846 and Update I. The 47 methods to be finalized in this rule offer the regulated community, in some cases, refinements of existing methods and, in other cases, new technology that provide alternative methods to those now available for the analysis of certain analytes or parameters. This final rule entails no additional testing or record keeping burden and, therefore, no additional cost burden to the regulated community.

Therefore, the Agency does not believe these added methods will result in an annual effect on the economy of $100 million or more; or 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 in domestic or export markets. The Agency believes that today's rule is not a major rule under Executive Order 12291 and, therefore, has not prepared a Regulatory Impact Analysis (RIA). This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. section 601–612, Pub. L. 96–354, September 19, 1980), whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis (RFA) that describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the head of the agency certifies that the rule will not have a significant impact on a substantial number of small entities.

This rule will not require the purchase of new instruments or equipment. The regulation requires no new reports beyond those now required. The analytical techniques approved here can either be handled by small facilities, or

are widely available by contract at a reasonable price. Furthermore, small entities may not need to use any of these 47 methods. EPA is certifying that this rule will not have a significant economic impact on a substantial number of small entities (as defined by the RFA). Therefore, in accordance with 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant adverse economic impact on a substantial number of small entities.

VII. List of Subjects in 40 CFR Parts 260 and 261

Hazardous waste, Reporting and recordkeeping requirements.

Dated: September 15, 1989.

William K. Reilly,

Administrator.

For the reasons set out in the preamble, title 40 of the Code of Federal Regulations is amended as follows:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921 through 6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

Subpart B—Definitions

2. Section 260.11 is amended by revising the fourth reference in paragraph (a) to read as follows:

§ 260.11 References.

(a) * * * "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", EPA Publication SW-846 [Second Edition, 1982 as amended by Update I (April 1984), and Update II (April 1985). The Second Edition of SW-846 and Updates I and II are available from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (703) 487-4600. The document number is PB87-120-291 and the cost is $48.95 for paper copies and $13.50 for microfiche.

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PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

3. The authority citation for Part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6922.

4. Tables 2 and 3 of Appendix III are revised to read as follows:

Appendix III—Chemical Analysis Test Methods

TABLE 2—ANALYSIS METHODS FOR INORGANIC CHEMICALS AND MISCELLANEOUS GROUPS OF ANALYTES CONTAINED IN SW-846*

Compound	Third Edition Method(s)	Second Edition Method(s)
Aluminum	6010	
Antimony	6010	7040, 7041
Arsenic	6010	7060,7061
Barium	6010	7080, 7081
Beryllium	6010, 7090, 7091	
Boron	6010	
Cadmium	6010	7130, 7131
Calcium	6010	
Chromium	6010	7190, 7191
Chromium, Hexavalent	7198	7195, 7196, 7197
Cobalt	6010	
Copper	6010, 7210, 7211	
Iron	6010, 7380, 7381	
Lead	6010	7420, 7421
Magnesium	6010	
Manganese	6010, 7460, 7461	
Mercury		7470, 7471
Molybdenum	6010	
Nickel	6010	7520, 7521
Osmium	7550	
Potassium	6010	
Selenium	6010	7740, 7741
Silicon	6010	
Silver	6010	7760, 7761
Sodium	6010, 7770	
Thallium	6010, 7840, 7841	
Vanadium	6010, 7910, 7911	
Zinc	6010, 7950, 7951	
Cyanides		9010
Total Organic Halides	9022	9020
Sulfides		9030
Sulfates	9035, 9036, 9038	
Total Organic Carbon	9060	
Phenolics	9065, 9066*, 9067	
Oil and Grease	9070, 9071	
Total Coliform	9131, 9132	
Nitrate	9200	
Chlorides	9250, 9251, 9252	
Gross Alpha and Gross Beta	9310	
Alpha-Emitting Radium Isotopes	9315	
Radium-228	9320	

* The Third Edition and its Updates will supercede the Second Edition and its Updates I and II when it is adopted. Until the Third Edition is adopted, in a final rule, the Second Edition and its updates must be used for regulatory purposes. Therefore, reference to the Third Edition, in these tables is provided for convenience. The Third Edition of SW-846 and Update I are available from the Government Printing Office, Superintendent of Documents, Washington, DC 20402, (202) 738-3238, document number 955-001-00000-1.

* When Method 9066 is used it must be preceded by the manual distillation specified in procedure 7.1 of Method 9065. Just prior to distillation in Method 9065, adjust the sulfuric acid-preserved sample to pH 4 with 1+9 NaOH. After the manual distillation is completed, the autoanalyzer manifold is simplified by connecting the re-sample line directly to the sampler.

TABLE 3—SAMPLING AND ANALYSIS METHODS CONTAINED IN SW-846 *

Title	Third Edition		Second Edition	
	Section No.	Method No.	Section No.	Method No.
Quality Control				
Introduction	1.0		10.0	
Quality Control	1.1		10.1	
Method Detection Limit	1.2			
Data Reporting	1.3			
Quality Control Documentation	1.4			
References	1.5			
Choosing the Correct Procedure	1.6			
Purpose	2.0			
Required Information	2.1			
Implementing the Guidance	2.2			
Characteristics	2.3			
Ground Water	2.4			
References	2.5			
Metallic Analytes	2.6			
Sampling Considerations	3.0			
Sample Preparation Methods	3.1			
Acid Digestion of Waters for Total Recoverable or Dissolved Metals for Analysis by Flame AAS or ICP.	3.2			
Acid Digestion of Aqueous Samples and Extracts for Total Metals for Analysis by Flame AAS or ICP.	3.2	3005		
Acid Digestion of Aqueous Samples and Extracts for Total Metals for Analysis by Furnace AAS.	3.2	3010	4.1	3010
Dissolution Procedure for Oils, Greases, or Waxes	3.2	3020	4.1	3020
Acid Digestion of Sediments, Sludges and Soils	3.2	3040	4.1	3040
Methods for the Determination of Metals	3.3	3050	4.1	3050
Inductively Coupled Plasma Atomic Emissions Spectroscopy	3.3	*6010		
Atomic Absorption Methods	3.3	7000		
Aluminum, Flame AAS	3.3	7020		
Antimony, Flame AAS	3.3	7040	7.0	7040
Antimony, Furnace AAS	3.3	7041	7.0	7041
Arsenic, Furnace AAS	3.3	7060	7.0	7060
Arsenic, Gaseous Hydride AAS	3.3	7061	7.0	7061
Barium, Flame AAS	3.3	7080	7.0	7080
Barium, Furnace AAS	3.3	7081	7.0	7881
Beryllium, Flame AAS	3.3	*7090		
Beryllium, Furnace AAS	3.3	*7091		
Cadmium, Flame AAS	3.3	7130	7.0	7130
Cadmium, Furnace AAS	3.3	7131	7.0	7131
Calcium, Flame AAS	3.3	7140		
Chromium, Flame AAS	3.3	7190	7.0	7190
Chromium, Furnace AAS	3.3	7191	7.0	7191
Chromium, Hexavalent, Coprecipitation	3.3	7195	7.0	7195
Chromium, Hexavalent, Colorimetric	3.3	7196	7.0	7196
Chromium, Hexavalent, Chelation/Extraction	3.3	7197	7.0	7197
Chromium, Hexavalent, Differential Pulse Polarography	3.3	*7198		
Cobalt, Flame AAS	3.3	7200		
Cobalt, Furnace AAS	3.3	7201		
Copper, Flame AAS	3.3	*7210		
Copper, Furnace AAS	3.3	*7211		
Iron, Flame AAS	3.3	*7380		
Iron, Furnace AAS	3.3	*7381		
Lead, Flame AAS	3.3	7420	7.0	7470
Lead, Furnace AAS	3.3	7421	5.0	7421
Magnesium, Flame AAS	3.3	7450		
Manganese, Flame AAS	3.3	*7460		
Manganese, Furnace AAS	3.3	*7461		
Mercury in Liquid Waste, Manual Cold Vapor Technique	3.3	7470	7.0	7470
Mercury in Solid or Semisolid Waste, Manual Cold Vapor Technique	3.3	7471	7.0	7471
Molybdenum, Flame AAS	3.3	7480		
Molybdenum, Furnace AAS	3.3	7481		
Nickel, Flame AAS	3.3	7520	7.0	7520
Osmium, Flame AAS	3.3	*7550		
Potassium, Flame AAS	3.3	7610		
Selenium, Furnace AAS	3.3	7740	7.0	7740
Selenium, Gaseous Hydride AAS	3.3	7741	7.0	7741
Silver, Flame AAS	3.3	7760	7.0	7760
Silver, Furnace AAS	3.3	7761	7.0	7761
Sodium, Flame AAS	3.3	*7770		
Thallium, Flame AAS	3.3	*7840		
Thallium, Furnace AAS	3.3	*7841		
Tin, Flame AAS	3.3	7870		
Vanadium, Flame AAS	3.3	*7910		
Vanadium, Furnace AAS	3.3	*7911		

TABLE 3—SAMPLING AND ANALYSIS METHODS CONTAINED IN SW-846 [a]—Continued

Title	Third Edition		Second Edition	
	Section No.	Method No.	Section No.	Method No.
Zinc, Flame AAS	3.3	*7950		
Zinc, Furnace AAS	3.3	*7951		
Organic Analytes	4.0		8.0	
Sampling Considerations	4.1			
Sample Preparation Methods	4.2			
Extractions and Preparations	4.2.1			
Organic Extraction and Sample Preparation	4.2.1	3500		
Separatory Funnel Liquid-Liquid Extraction	4.2.1	3510	4.2	3510
Continuous Liquid-Liquid Extraction	4.2.1	3520	4.2	3520
Soxhlet Extraction	4.2.1	3540	4.2	3540
Ultrasonic Extraction	4.2.1	3550	4.2	3550
Waste Dilution	4.2.1	3580		
Purge-and-Trap	4.2.1	5030	5.0	5030
Protocol for Analysis of Sorbent Cartridges from VOST	4.2.1	*5040		
Cleanup	4.2.2			
Cleanup	4.2.2	3600		
Alumina Column Cleanup	4.2.2	3610		
Alumina Column Cleanup and Separation of Petroleum Wastes	4.2.2	*3611		
Florisil Column Cleanup	4.2.2	3620		
Silica Gel Cleanup	4.2.2	3630		
Gel-Permeation Cleanup	4.2.2	3640		
Acid-Base Partition Cleanup	4.2.2	3650	4.2	3530
Sulfur Cleanup	4.2.2	3660		
Determination of Organic Analytes	4.3			
Gas Chromatographic Methods	4.3.1		8.1	
Gas Chromatography	4.3.1	8000		
Halogenated Volatile Organics	4.3.1	8010	8.1	8010
EDB and DBCP	4.3.1	8011		
Nonhalogenated Volatile Organics	4.3.1	8015	8.1	8015
Aromatic Volatile Organics	4.3.1	8020	8.1	8020
Volatile Organic Compounds in Water by Purge-and-Trap Capillary Column GC with PID and Electrolytic Conductivity Detector in Series.	4.3.1	8021		
Acrolein, Acrylonitrile, Acetonitrile	4.3.1	8030	8.1	8030
Phenols	4.3.1	8040	8.1	8040
Phthalate Esters	4.3.1	8060	8.1	8060
Nitrosamines	4.3.1	8070		
Organochlorine Pesticides and PCBs as Aroclors	4.3.1	8080	8.1	8080
Nitroaromatics and Cyclic Ketones	4.3.1	8090	8.1	8090
Polynuclear Aromatic Hydrocarbons	4.3.1	8100	8.1	8100
Haloethers	4.3.1	8110		
Chlorinated Hydrocarbons	4.3.1	8120	8.1	8120
Organophosphorus Pesticides	4.3.1	8140	8.1	8140
Organophosphorus Pesticides: Capillary Column	4.3.1	8141		
Chlorinated Herbicides	4.3.1	8150	8.1	8150
Gas Chromatographic/Mass Spectroscopic Methods	4.3.2		8.2	
GC/MS Volatiles	4.3.2	8240	8.2	8240
GC/MS Semivolatiles, Packed Column	4.3.2	8250	8.2	8250
GC/MS for Volatiles Capillary Column	4.3.2	8260		
GC/MS Semivolatiles, Capillary Column	4.3.2	8270	8.2	8270
Analysis of Chlorinated Dioxins and Dibenzofurans	4.3.2	8280		
High Performance Liquid Chromatographic Methods (HPLC)	4.3.3		8.3	
Polynuclear Aromatic Hydrocarbons	4.3.3	8310	8.3	8310
Miscellaneous Screening Methods	4.4			
Headspace	4.4	3810	5.0	5020
Hexadecane Extraction and Screening of Purgeable Organics	4.4	3820		
Miscellaneous Test Methods	5.0		9.0	
Total and Amenable Cyanide (Colorimetric, Manual)	5.0	9010	9.0	9010
Total and Amenable Cyanide (Colorimetric, Automated)	5.0	9012		
Total Organic Halides (TOX)	5.0	9020	9.0	9020
Purgeable Organic Halides (POX)	5.0	9021		
Total Organic Halides (TOX) by Neutron Activation Analysis	5.0	*9022		
Acid-Soluble and Acid-Insoluble Sulfides	5.0	9030	9.0	9030
Extractable Sulfides	5.0	9031		
Sulfate, (Colorimetric, Automated, Chloranilate)	5.0	*9035		
Sulfate, (Colorimetric, Automated, Methylthymol Blue, AA II)	5.0	*9036		
Sulfate, (Turbidimetric)	5.0	*9038		
Total Organic Carbon	5.0	*9060		
Phenolics, (Spectrophotometric, Manual 4-AAP)	5.0	*9065		
Phenolics, (Colorimetric, Automated 4-AAP)	5.0	*‡9066		
Phenolics, (Spectrophotometric, MBTH)	5.0	*9067		
Total Recoverable Oil and Grease (Gravimetric, Separatory Funnel Extraction)	5.0	*9070		
Oil and Grease Extraction Method for Sludge Samples	5.0	*9071		
Total Coliform: Multiple Tube Fermentation	5.0	*9131		
Total Coliform: Membrane Filter	5.0	*9132		
Nitrate	5.0	*9200		
Chloride (Colorimetric, Automated Ferricyanide AAI)	5.0	*9250		
Chloride (Colorimetric, Automated Ferricyanide AAII)	5.0	*9251		
Chloride (Titrimetric, Mercuric Nitrate)	5.0	*9252		

TABLE 3—SAMPLING AND ANALYSIS METHODS CONTAINED IN SW–846 [a]—Continued

Title	Third Edition		Second Edition	
	Section No.	Method No.	Section No.	Method No.
Properties				
Multiple Extraction Procedure	6.0			
Extraction Procedure for Oily Wastes	6.0	*1320		
pH Electrometric Measurement	6.0	*1330		
pH Paper Method	6.0	9040	9.0	9040
Soil pH	6.0	9041		
Specific Conductance	6.0	9045		
Cation-Exchange Capacity of Soils (Ammonium Acetate)	6.0	9050		
Cation-Exchange Capacity of Soils (Sodium Acetate)	6.0	*9080		
Compatibility Test for Wastes and Membrane Liners	6.0	*9081		
Paint Filter Liquids Test	6.0	9090		
Saturated Hydraulic Conductivity, Saturated Leachate Conductivity, and Intrinsic Permeability	6.0	9095	9.0	9095
Gross Alpha and Gross Beta	6.0	*9100		
Alpha-Emitting Radium Isotopes	6.0	*9310		
Radium-228	6.0	*9315		
Introduction and Regulatory Definitions	6.0	*9320		
Ignitability	7.0		2.0	
Corrosivity	7.1		2.1.1	
Reactivity	7.2		2.1.2	
Test Method to Determine Hydrogen Cyanide Released from Wastes	7.3		2.1.3	
Test Method to Determine Hydrogen Sulfide Released from Wastes	7.3			
Extraction Procedure Toxicity	7.3			
Methods for Determining Characteristics	7.4		2.1.4	
Ignitability	8.0		2.0	
Pensky-Martens Closed-Cup Method	8.1		2.1.1	
Setaflash Closed-Cup Method	8.1	1010	2.1.1	1010
Corrosivity	8.1	1020	2.1.1	1020
Corrosivity Toward Steel	8.2		2.1.2	
Reactivity	8.2	1110	2.1.2	1110
Toxicity	8.3		2.1.3	
Extraction Procedure (EP) Toxicity Test Method and Structural Integrity Test	8.4		2.1.4	
Sampling Plan	8.4	1310	2.1.4	1310
Design and Development	9.0		1.0	
Implementation	9.1		1.0, 1.1	
Sampling Methods	9.2		1.2, 1.3, 1.4	
Modified Method 5 Sampling Train, Appendix A and B	10.0			
Source Assessment Sampling System (SASS)	10.0	*0010		
Volatile Organic Sampling Train	10.0	*0020		
Ground Water Monitoring	10.0	*0030		
Background and Objectives	11.0			
Relationship to the Regulations and to Other Documents	11.1			
Revisions and Additions	11.2			
Acceptable Designs and Practices	11.3			
Unacceptable Designs and Practices	11.4			
Land Treatment Monitoring	11.5			
Background	12.0			
Treatment Zone	12.1			
Regulatory Definition	12.2			
Monitoring and Sampling Strategy	12.3			
Analysis	12.4			
References and Bibliography	12.5			
Incineration	12.6			
Introduction	13.0			
Regulatory Definition	13.1			
Waste Characterization Strategy	13.2			
Stack-Gas Effluent Characterization Strategy	13.3			
Additional Effluent Characterization Strategy	13.4			
Selection of Specific Sampling and Analysis Methods	13.5			
References	13.6			
	13.7			

*The Third Edition and its Updates will supersede the Second Edition and its Updates I and II when it is adopted. Until the Third Edition is adopted, in a final rule, the Second Edition and its updates must be used for regulatory purposes. Therefore, reference to the Third Edition, in these tables is provided for convenience. The Third Edition of SW–846 and Update I are available from the Government Printing Office, Superintendent of Documents, Washington, DC 20402, (202) 738–3238, document number 955–001–00000–1.

*This method may be used in conjunction with or in addition to the methods found in the Second Edition of SW–846 as amended by Updates I and II.

‡When Method 9066 is used it must be preceded by the manual distillation specified in procedure 7.1 of Method 9065. Just prior to distillation in Method 9065, adjust the sulfuric acid-preserved sample to pH 4 with 1+9 NaOH. After the manual distillation is completed, the autoanalyzer manifold is simplified by connecting the re-sample line directly to the sampler.

* * * * * * *

[FR Doc. 89–22290 Filed 9–28–89; 8:45 am]

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federal register

Friday
September 29, 1989

Part V

Department of Transportation

Research and Special Programs Administration

49 CFR Part 177

Direct Route Transportation of Radioactive Materials; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 177

[Docket No. HM-164C; Notice No. 89-7]

RIN 2137-AB59

Direct Route Transportation of Radioactive Materials

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: RSPA proposes to amend 49 CFR 177.825 to require that motor carriers of highway route controlled quantity (HRCQ) radioactive materials transport those materials directly from pickup points to preferred routes and directly from preferred routes to delivery points using shortest distance criteria. Other changes are proposed to clarify the requirements of that section.

DATE: Comments must be received on or before December 28, 1989.

ADDRESS: Address comments to the Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590. Comments should identify the docket and notice number and be submitted in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped post card. The Dockets Unit is located in Room 8419 of the Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Public Dockets may be reviewed between the hours of 8:30 a.m. and 5:00 p.m. Monday through Friday except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Edward H. Bonekemper, III, Senior Attorney, Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590, (202) 366-4362.

SUPPLEMENTARY INFORMATION:

Background

Section 177.825 of 49 CFR provides routing requirements for the highway transportation of radioactive materials. Paragraph (a) requires that placarded radioactive materials shipments, other than shipments of HRCQ packages, be transported on routes that minimize radiological risk and sets forth criteria for consideration in making risk minimization determinations.

In this notice, it is propose to revise paragraph (a) to clarify existing requirements and eliminate ambiguities. The three explicit duties imposed on operators of motor vehicles carrying radioactive materials for which placards are required would be numbered and listed in a new paragraph (a). The third of the three operator duties would be clarified by removing the word "general" from the requirement that carriers "shall indicate the general route to be taken", because the word "general" is vague and undermines the requirement. A reference to part 172 for placarding requirements would be added. The last sentence of the introductory text of paragraph (a) would be amended to refer to the "requirements" of paragraph (a) instead of the "requirement" of paragraph (a). Paragraph (a)(2) of § 177.825 would be revised by removing the phrase "on a preferred highway" because it is redundant.

Paragraph (b) of § 177.825 requires that shipments of HRCQ packages be transported over "preferred routes selected to reduce time in transit" except that an Interstate System bypass or beltway around a city must be used when available. "Preferred routes" consist of Interstate System highways for which alternative routes have not been designated by a State and State-designated routes. Additional language is being proposed to indicate more clearly then the present regulations that preferred routes may be designated by one or more states. The practices and stardards by which a State routing agency determines a preferred route, as state in paragraph (b), would be expanded from two to three subparagraphs to impove overall readability.

Section 177.825(b)(2) authorizes deviations from a preferred route for emergency conditions, and non-emergency conditions such as those necessary for rest, fuel, and vehicle repair stops, "to the extent necessary to pickup, deliver or transfer a highway route controlled quantity package of radioactive materials." It also provides that the general requirements of paragraph (a) apply when any of these deviations from a preferred route is authorized.

In a recent enforcement case involving these provisions, DOT's Chief Administrative Law judge (ALJ) ruled that § 177.825(b)(2) provides a carrier with broad discretion (within the parameters of § 177.825(a)) in selecting a route to carry HRCQ from a pickup point to a preferred route. This same discretion apparently applies to transportation between a preferred route and the delivery point because the ALJ stated: "there is no language in the regulation which imposes a mileage limitation on deviations from the preferred route for pickup and delivery purposes."

The effect of that ruling is to allow carriers to transport HRCQ for great distances on non-preferred routes. The intent of the requirements in § 177.825(b) is to restrict HRCQ transportation to preferred routes wherever possible, and to allow States the discretion to supplement or replace preferred routes by designating additonal or alternate routes.

In order to enhance the effectiveness of the HRCQ transportation requirements in paragraph (b), RSPA is proposing that HRCQ carriers be required to select pickup and delivery routes to and from preferred routes using a shortest distance criterion. Once pickup and delivery routes are selected, carriers would revert to the existing criterion and operate over preferred routes selected to reduce time in transit. The proposed requirements would restrict HRCQ carrier discretion in selecting pickup and delivery routes to and from preferred routes. However, to the extent that a State or States determine that the shortest distance route to or from a preferred route is not desirable, a State or States may designate an alternative or additonal preferred route that effectively specifies pickup and delivery routing. Further, it is proposed to eliminate references to "transfer", as the terms "pickup" and "delivery" encompass transfer operations.

The ALJ's opinion also stated that the phrase "selected to reduce time in transit" in paragraph (b) is ambiguous. The opinion states that this phrase might be a requirement imposed by a government agency upon a carrier or person operating an HRCQ-carrying vehicle, might be a direction to State authorities concerning how to select alternative routes, or might be merely an introduction to the bypass or beltway language immediately folowing that phrase. To eliminate any ambiguity, additional language is being proposed to indicate specifically that it is the carrier's responsibility to select those preferred routes that reduce time in transit.

The existing text in § 177.825(b) is not clear as to whether a State routing agency may designate a preferred route "in addition to", as well as "as an alternative to", one or more Interstate System highways. To eliminate any ambiguity, it is proposed to amend paragraph (b)(1)(ii) to provide that a State routing agency may designate a route as an alternative to, or in addtion to, one or more Interstate System highways. Paragraph (b) would also be amended to indicate that the list of State-designated preferred routes is available from the RSPA Dockets Unit upon request.

To address the person operating the HRCQ-carrying motor vehicle rather than the motor vehicle itself, the phrase "a carrier, driver or other person operating a motor vehicle" would replace the term "motor vehicle" where appropriate in paragraph (b). RSPA also proposes to add the words "Interstate System" prior to "beltway" in the introductory text of paragraph (b) to make it clear that only Interstate System beltways, as well as Interstate System bypasses, around cities are required (and authorized) for use. The phrase "shall be used in place of a preferred route through a city, unless a State routing agency has designated an alternative route" would be added to the introductory text of paragraph (b) to acknowledge State routing agency selections of preferred routes which are not Interstate System beltways or Interstate System bypasses.

Editorial changes are proposed to the first sentence in paragraph (b) to identify the specific exceptions to the general requirement for using preferred routes. Also, editorial changes are proposed to the first and sixth sentences in paragraph (b) to enhance clarity and reduce usage of the passive voice.

Paragraphs (b)(2)(i) and (b)(2)(ii) would be revised to clarify the authorized deviatons from a preferred route. They also would be expanded by adding paragraph (b)(2)(iii) to authorize HRCQ carriers to deviate from required pickup and delivery routes in emergency situations and for necessary rest, fuel and motor vehicle repair stops.

Paragraph (b)(2)(iii) would characterize and clarify the provisions of paragraph (a) as "radiological risk minimization criteria". In the same vein, paragaph (b)(1)(i) would state specifically that the "State routing agency shall select routes to minimize radiological risk". This addition would apply the underlying principle of paragraph (a) to state designations under paragraph (b).

Comments are invited on the proposed changes and possible alternatives to them, such as the desirability or necessity of allowing carriers to deviate from the proposed shortest distance pickup and delivery route criterion under certain circumstances. Such a "permissible deviation" (PD) might improve the shipment safety of HRCQ packages, for example, where alternate pickup or delivery routes are not included in State-designated preferred routes. A PD could allow carriers to select an alternative to, or make a limited detour off, shortest distance (base) pickup or delivery routes in order to reduce HRCQ transportation risks and costs.

DOT places the authority to make local HRCQ routing decisions with State routing authorities. To date, Arkansas, Colorado, Iowa, Kentucky, Nebraska, Tennessee, and Virginia have reigstered State-designated preferred routes in the RSPA Registry of State-designated Routes. Another seven States have not designated altenate preferred routes but have identified the Interstate System highways as routes of choice. The inclusion of a PD in conjunction with the shortest-distance criterion for pickups and deliveries might imporve HRCQ shipment safety for all States.

This notice of proposed rulemaking would require carriers to use shortest-distance criterion for pickup and delivery of highway route controlled quantity packages of radioactive materials. A PD would permit carriers to deviate from the shortest-distance criterion when circumstances dictate. A PD would reflect radiological risk minimization criteria, including consideration of available information on accident rates, transit time population density and activities, and the time of day and the day of week during which transportation will occur. The following examples provide two possible methods for determining the length of a PD.

Two PD calculation methods, I and II, that could be used as a means to alleviate two circumstances where the shortest-distance criterion may preclude HRCQ carriers from selecting the safest overall shipment routes are discussed below. In cases where use of either PD calculation method would increase HRCQ shipment safety, carriers would be permitted to select the method that results in the longer PD. The longer PD would reflect a greater increase in shipment safety, because the length of the PD would be directly related to a reduction in the risks associated with the shipment of HRCQ packages. The following two examples illustrate the problems solved and means of solution using PD calculation methods I and II, respectively.

Method I would enable an HRCQ carrier to avoid a base pickup or delivery route that requires the carrier to select an excessively time-consuming shipment route. Method I would permit a carrier to select either an altenate pickup or delivery route or add mileage to the base route in order to facilitate selection of a preferred route with a shorter transit time, and thereby reduce the overall transit time of the HRCQ shipment.

The method I PD would begin with the shortest-distance pickup or delivery route that an HRCQ carrier would be required to select. The PD length would be determined incrementally by allowing the carrier to add one unit of distance (k) to the length of the shortest-distance pickup or delivery route for each minute eliminated from the preferred route segment of the HRCQ shipment. The value of k would equate the average marginal benefit from eliminating one minute of preferred route transit, with the average marginal cost of travelling one mile over a non-preferred route.

The following example illustrates the calculation of a PD using calculation method I, tentatively selecting $k=0.1$ miles/minute. In this example there are two non-preferred pickup Routes, A and B, that lead to two distinct preferred Routes, AI and BI, respectively. Both preferred Routes AI and BI lead directly to the final point of HRCQ shipment delivery. The shipment travels at an average speed of 30 miles per hour over non-preferred Routes A or B, and 60 miles per hour over preferred Routes AI or BI. If the base route is used, the carrier would travel 3 non-preferred route miles over Route A and 300 preferred route miles over Route AI. If the alternate route is used, the carrier would travel 10 non-preferred route miles over Route B and 180 preferred route miles over Route BI. The transit time of the overall base route (A plus

AI) is 306 minutes, which is 106 minutes (or approximately 35 percent) longer than the transit time (200 minutes) of the overall altenate route (B plus BI). This is a conservative estimate that does not include additional rest and fuel delays that might be required by longer transit times.

The three-mile length of pickup Route A constitutes the shortest distance to the nearest preferred route entry point; therefore, the proposed shortest distance criterion would require the HRCQ carrier to select Routes A and AI for transport. The inclusion of a PD, however, would give an HRCQ carrier the option to select the shorter overall Route B and BI, if the greater length of Route B could be justified through the PD calculation using method I. The PD calculation would involve three simple steps: First, the preferred route transit time of the alternate route would be subtracted from the preferred route transit time of the base route to determine the savings in preferred route transit time. In this example the 180 minute duration of alternate Route BI is subtracted from the 300 minute duration of base Route AI, to arrive at a preferred route transit time savings of 120 minutes. If k equals 0.1 miles/minute, then the next step would be to multiply the 120 minute savings times 0.1 miles/minute to arrive at a length of 12 miles. Finally, the carrier would add this 12 mile distance to the 3 mile length of the base pickup Route A to arrive at the PD length of 15 miles.

The carrier in this example would be allowed to access an alternate preferred route if its pickup route was shorter than or equal to the 15 mile length of the PD. In this example the 10 mile length of the alternate pickup Route B is less than the PD length of 15 miles. The carrier would be permitted to select alternate Route B in place of base Route A, and reduce the shipment's overall travel time by 106 minutes, through taking preferred Route BI in place of preferred Route AI.

Method II is a separate method for use in a different set of circumstances, where the safest pickup or delivery route is slightly longer than the shortest distance (base) pickup or delivery route. Method II would permit the HRCQ carrier to extend or replace the base pickup or delivery route, using § 177.825(a) criteria and pre-specified limits. A PD limit of 200% with a PD Factor of 2 is used on the basis of functional considerations. A PD limit of 200% would enable carriers to extend or replace the base pickup or delivery route, with an alternate one up to twice as long using § 177.825(a) safety criteria.

The following example pertains to the situation where there are two possible delivery Routes, X or Y, that connect the nearest preferred route exit location to the point of shipment delivery. Route X is 12 miles long and passes through the middle of a densely-populated town that includes several traffic lights, heavy traffic, and dilapidated roads. Route Y is 20 miles long, consists of well-maintained roads, and passes through sparsely populated countryside. Route X is the base route and must be taken under the proposed shortest-distance criterion unless the longer Route Y is included in a State-designated preferred route.

Using method II, the PD would be derived by multiplying the PD Factor of 2 times the 12 mile length of the base Route X. The HRCQ carrier would be allowed to select a safer delivery route up to 24 miles long; therefore, the carrier would be permitted to select the 20 mile delivery route Y.

The examples above illustrate the types of permissible deviations which might be included in a final rule. The final fule might contain a more restrictive or less restrictive permissible deviation or none at all. RSPA requests comments and information on the factors (e.g., travel time, population density, road conditions, etc.), tolerances, and methodologies which might be used to calculate such permissible deviation in conjunction with shortest distance HRCQ pickup and delivery route.

In summary, RSPA requests comments concerning whether it should modify the shortest distance criterion proposed herein with some form of permissible deviation, and, if so, how that deviation should be determined. The final rule may or may not contain such a permissible deviation.

Administrative Notices

Based on available information concerning the size and nature of entities likely to be affected, I certify that this proposed regulation will not, if promulgated, have a significant economic impact on a subtantial number of small entities under the criteria of the Regulatory Flexibility Act. Also, in view of the type of changes, RSPA has further determined that this Notice: (1) is not "major" under Excutive Order 12291; (2) is not "significant" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) will not affect not-for-profit enterprises or small governmental jurisdictions and (4) does not require an environmental impact statement under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*). A regulatory evaluation is available for review in the Dockets Unit.

I have reviewed this regulation in accordance with Executive Order 12612 ("Federalism"). It has no substantial direct effects on the States, on the current Federal-State relationship, or the current distribution of power and responsibilities among levels of government. Thus, this regulation contains no policies that have Federalism implications, as defined in Excutive Order 12612, and no Federalism Assessment is required.

The following **Federal Register** Thesaurus of Indexing Terms apply to this notice of proposed rulemaking:

List of Subjects in 49 CFR Part 177

Hazardous materials transportation, Highway route controlled quantity, Radioactive materials, Routing, Shippers, Carriers.

In consideration of the foregoing, 49 CFR Part 177 would be amended as follows:

PART 177—CARRIAGE BY PUBLIC HIGHWAY

1. The authority citation for part 177 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 49 CFR part 1, unless otherwise noted.

2. In § 177.825, paragraphs (a) and (b) would be revised to read as follows:

§ 177.825 Routing and training requirements for radioactive materials.

(a) Except as provided in paragraph (b) of this section, a carrier operating a motor vehicle that contains a radioactive material for which placarding is required under part 172 of this subchapter shall—

(1) Ensure that the motor vehicle is operated on routes that minimize radiological risk;

(2) In determining the level of radiological risk, consider available information on accident rates, transit time, population density and activities, and the time of day and the day of week during which transportation will occur; and

(3) Tell the driver the route to be taken and that the motor vehicle contains radioactive materials.

The requirements of this paragraph do not apply when there is only one practicable highway route available, considering operating necessity and safety; or the routing of the motor vehicle is subject to paragraph (b) of this section.

(b) Except as otherwise permitted in this paragraph and in paragraph (e) of this section, a carrier, driver or other person operating a motor vehicle containing a package of a highway route

controlled quantity of radioactive materials (HRCQ), as defined in § 173.403(1) of this subchapter, shall operate the motor vehicle only over preferred routes selected by the carrier to reduce time in transit over the preferred route segment of the trip, except that an Interstate System bypass or Interstate System beltway around a city, when available, shall be used in place of a preferred route through a city, unless State routing agency has designated an alternative route.

(1) A perferred route is either of both an Interstate System highway for which an alternative route is not designated by one or more State routing agencies as provided in this section or a State-designated route selected by one or more State routing agencies (see § 171.8 of this subchapter) in accordance with the following conditions:

(i) The State routing agency shall select routes to minimize radiological risk using "Guidelines for Selecting Preferred Highway Routes for Highway Route Controlled Quantity Shipments of Radioactive Materials", or an equivalent routing analysis which adequately considers overall risk to the public. Designations must be preceded by substantive consultation with affected local jurisdictions and with any other affected States to ensure consideration of all impacts and continuity of designated routes.

(ii) State routing agencies may designate preferred routes as an alternative to, or in addition to, one or more Interstate System higways, including an Interstate Systems bypass or an Interstate System beltway.

(iii) A State-designated route is not effective until the State gives written notice, by certified mail, return receipt requested, to, and receipt thereof is acknowledged by, the Dockets Unit (DHM-30), Research and Special Programs Adminsitration, U.S. Department of Transportation, Washington, DC 20590 (Attention: Registry of State-designated Routes, Docket HM-164A). The Dockets Unit will provide a list of State-designated preferred routes upon request.

(2) A motor vehicle may be operate over a route, other than a preferred route, only under the following conditions:

(i) The deviation from the preferred route is necesssary to pickup or deliver a highway route controlled quantity of package of radioactive materials, to make necessary rest, fuel or motor vehicle repair stops, or because emergency conditions make continued use of the preferred route unsafe or impossible;

(ii) For pickup and delivery not over preferred routes, the route selected must be the shortest distance route from the pickup location to the nearest preferred route entry location, and the shortest distance route to the delivery location from the nearest preferred route exist location.

(iii) Deviations from preferred routes, or pickup or deliver routes other than preferred routes, which are necessary for rest, fuel or motor vehicle repair stops; or which are necessary because of emergency conditions, shall be made in accordance with the radiological risk minimization criteria of paragraph (a) of this section unless, due to emergency conditions, time does not permit use of those criteria.

* * * * *

Issued in Washington, DC on September 25, 1989, under authority delegated in 49 CFR part 106, Appendix A.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

[FR Doc. 89-22987 Filed 9-28-89; 8:45 am]

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federal register

Friday
September 29, 1989

Part VI

Federal Emergency Management Agency

44 CFR Parts 59 and 60

National Flood Insurance Program; Elevation Requirements for Manufactured Homes in Existing Manufactured Home Parks and Subdivisions; Final Rule

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Parts 59 and 60

RIN 3067-AB32

National Flood Insurance Program; Elevation Requirements for Manufactured Homes in Existing Manufactured Home Parks and Subdivisions

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This final rule revises the National Flood Insurance Program (NFIP) floodplain management criteria that are applicable to the placement or substantial improvement of manufactured homes in existing manufactured home parks and subdivisions in flood hazard areas and also the requirements applicable to recreational vehicles. The final rule replaces provisions of § 60.3(c)(6) that became effective on October 1, 1986, but that were suspended by a notice published in the **Federal Register** on June 30, 1987 (52 FR 24370). That suspension is extended through October 31, 1989 elsewhere in this issue to be consistent with the effective date of this final rule.

EFFECTIVE DATE: November 1, 1989.

FOR FURTHER INFORMATION CONTACT: Michael F. Robinson, Federal Emergency Management Agency, Federal Insurance Administration, 500 C Street SW., Washington , DC 20472; telephone number (202) 646-2717.

SUPPLEMENTARY INFORMATION: On May 19, 1989, FEMA published for comment in the **Federal Register** (54 FR 21889) a proposed rule. This proposed rule contained provisions which would revise NFIP floodplain management criteria on placement and substantial improvement of manufactured homes on sites in existing manufactured home parks and subdivisions. It replaces provisions that became effective on October 1, 1986, but which were subsequently suspended by FEMA in a June 30, 1987 **Federal Register** notice and later by the Supplemental Appropriations Act of 1987 (Pub. L. 100-71). In addition, provisions were included regarding the application of these requirements to certain recreational vehicles.

Prior to developing the proposed rule, FEMA reviewed the comments submitted in response to the June 30, 1987 **Federal Register** notice, conducted further research into the impacts of flooding on existing manufactured home parks and subdivisions, and developed a report for Congress entitled "National Flood Insurance Program: Report on Existing Manufactured Home Parks and Subdivisions". That report concluded that there were alternatives to the October 1, 1986 rule revision that would reduce the adverse economic impacts on the owners and residents of existing manufactured home parks and subdivisions, yet still achieve the NFIP objectives of reducing flood damages and threats to public safety.

After submitting that report to Congress in September of 1988, FEMA met with a task force chaired by the National Manufactured Housing Federation which made additional recommendations to FEMA in February of 1989. The proposed rule contained elements of both the alternative developed by FEMA in its report for Congress and the recommendations of that task force. Further background on the development of the proposed rule and on issues related to the regulation of placement of manufactured homes in existing manufactured home parks located in flood hazard areas and on regulations applicable to recreational vehicles is contained in the supplemental information to the proposed rule.

Copies of the proposed rule were mailed to the nearly 18,000 communities participating in the NFIP and to a number of associations, organizations and individuals which have expressed interest in the issues which the rule addresses. There were 44 comments or letters from 40 different organizations, government units, or individuals. Of those submitting comments, six were local and state agencies, two were owners or operators of recreational vehicle parks, two were owners of operators of existing manufactured home parks and subdivisions, three were owners or operators of recreational vehicle parks, two were owners of combination manufactured home parks and recreational vehicle parks, sixteen were residents of recreational vehicle parks, eight were manufactured housing or floodplain management associations, one was a manufacturer of manufactured homes, one was a manufactured home park resident, and one was an insurance company representative. Note that more than one comment was received from several respondents and that several letters that were sent directly to FEMA during the comment period were placed in the Rules Docket. This number of comments is small relative to the 1,407 comments that were submitted to the Rules Docket established by the June 30, 1987 **Federal Register** notice.

In general, the comments concerning provisions in the proposed rule on existing manufactured home parks and subdivisions were supportive. Most recognized that the rule represents a compromise that is intended to minimize adverse economic impacts on the manufactured home community while at the same time substantially achieving the NFIP objectives of reducing loss of life and property due to flooding. However, many of these comments requested clarifications of various provisions or of specific terms used in the proposed rule or raised issues or questions not fully addressed in the proposed rule. Comments regarding the requirements for recreational vehicles for the most part expressed concerns that no provisions were included to "grandfather" certain recreational vehicle parks which contain park trailers or park models and which are operated in much the same manner as manufactured home parks. This final rule has been developed after consideration of the comments and suggestions received in response to the proposed rule.

Requirements for Existing Manufactured Home parks and Subdivisions

For existing manufactured home parks and subdivisions, the proposed rule contained three basic provisions. First, communities would be required to develop or have developed evacuation plans for residents of existing manufactured home parks and subdivisions. Second, manufactured homes placed or substantially improved on sites in an existing manufactured home park or subdivision on which a manufactured home has incurred substantial damage as the result of a flood would be required to be elevated to or above the base flood elevation. Third, all other manufactured homes placed or substantially improved in these existing manufactured home parks and subdivisions would have to be elevated on reinforced piers or other foundation elements that are no less than 36 inches in height above grade or have their lowest floor at or above the base flood elevation if this allows for the use of a lower foundation.

Evacuation Plans

The first of the three basic provisions of the proposed rule would require that a plan for evacuating the residents of existing manufactured home parks or subdivisions be developed and filed with and approved by appropriate community emergency management authorities. The purpose of this requirement is to reduce the potential

for loss of life if existing manufactured home parks or subdivisions are flooded. This requirement was included in the regulations prior to October 1, 1986. Five comments addressed this requirement. Two manufactured home park owners opposed the requirement due to the time and cost required to develop evacuation plans. Three communities supported the need for evacuation plans, but raised issues regarding the implementation of the requirement. One of the communities asked whether the plans would be required if it continued to require elevation of all manufactured homes, one community requested a one year period to develop the plan, and a third community felt that the requirement was appropriate, but that annual notification of existing manufactured home park residents should also be required.

Upon further consultation with its Regional Office staffs, FEMA has decided to retain the provision, but place it instead in 44 CFR 60.22. "Planning considerations for floodprone areas." While the adoption or implementation of the provisions in § 60.22 are at the option of the community, FEMA recommends that communities adopt or implement any of the provisions that are appropriate given its circumstances. The agency's reason for moving the provision to this section is that the requirement is more appropriately addressed as part of the community's overall comprehensive emergency management plan. These plans are necessary to protect lives and property in the community as a whole and not merely in existing manufactured home parks and subdivisions. FEMA believes that in most communities adequate plans are already in place. FEMA regional staff will be available to provide advice and assistance if any community wishes to develop or modify an emergency plan.

Substantial Damage

The second, and, from the standpoint of reducing future flood losses, the most important of the basic provisions in the proposed rule, is the revised requirement at 44 CFR 60.3(c)(6) that manufactured homes be elevated so that their lowest floors are at or above the base flood elevation when placed on sites in an existing manufactured home park or subdivision where a manufactured home has incurred substantial damage as a result of a flood. Paragraph (c)(6) would also require elevation of manufactured homes placed or substantially improved on sites outside of a manufactured home park or subdivision, in a new manufactured home park or subdivision, or in an expansion to an existing manufactured home park or subdivision. These other sites were subject to the elevation requirement prior to the October 1, 1986 rule revision.

The term "substantial damage" is defined in a final rule which FEMA published in the Federal Register on August 15, 1989 (54 FR 33541). "Substantial damage" means damage sustained by a structure (in this case a manufactured home) whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. As indicated in the supplemental information to the proposed rule, once a manufactured home has been destroyed or sustained major damage due to a flood on a particular site, there is no justification to further delay imposition of an elevation requirement on that site since the post-flood period provides opportunities to upgrade or relocate sites with fewer impacts due to the disruptions already caused by the flood. In addition, these sites will tend to include those subject to the most severe and frequent flooding.

One comment requested confirmation that the provision only applied to flood damage and not to other types of damage such as fire or wind. This is correct and is specifically stated in the proposed rule. To do otherwise might create practical difficulties where manufactured homes on small scattered lots would have to meet elevation requirements, a situation that the proposed rule sought to avoid where possible.

Three comments concerned how the market value of a manufactured home would be determined for application of the substantial damage requirement. The market value in the "substantial damage" provision is the market value of the manufactured home itself and its foundation and does not include the market value of the land or of other improvements made to the land.

Generally, the nature of the flood damages that occur to manufactured homes will minimize the frequency of problems in making this determination. Manufactured homes which are flooded and sustain other than minor damages often have major structural damages and cannot be repaired. However, if flood damages do approach 50 percent, the determination of market value becomes more critical and use of a qualified appraiser may be required.

The example provided in one of the comment letters is a manufactured home in a particularly desirable rental community which has a market value far in excess of the purchase price and installation costs of the manufactured home. If this manufactured home were located in a manufactured home subdivision, the market value of the manufactured home plus the lot could be determined through looking at comparable sales. The value of the land could also be determined through comparable sales and that amount subtracted to determine a market value for the manufactured home itself. Generally, this market value should approximate the actual cash value of the manufactured home plus the cost of installing a manufactured home on the site. Any added value due to the desirability of the location would be reflected in the market value of the land itself and not the manufactured home located on the land.

If the manufactured home is on a particularly attractive leased site such as the example in the comment letter, the market value of the manufactured home should be determined through comparable sales and the value of the lease subtracted. Again, the market value of the manufactured home should approximate the actual cash value of the manufactured home plus the value of the installation. Much of the high market value of these manufactured homes must be ascribed to the value of the lease or other rights to the location and not to the manufactured home.

One comment requested confirmation that a manufactured home could be repaired without meeting elevation requirements if the damage was less than 50% of market value. This is correct. The elevation requirement would only apply if the criteria in the definition of "substantial damage" were met.

Use of the 36 Inch Reinforced Pier or Other Foundation

The third basic provision in the proposed rule requires that manufactured homes that are placed or substantially improved (for other than substantial damage due to a flood) on sites in existing manufactured home parks or subdivisions in flood hazard areas are elevated so that the manufactured home chassis is supported by reinforced piers or other foundation elements that are no less than 36 inches in height above the grade at the site. A lower foundation system could be used if the lower floor of the manufactured home would be at or above the base flood elevation using such a foundation.

There were four comments regarding this requirement. One local government recommended requiring use of an 18 inch pier since they believe that these

piers are more common and since a 36 inch pier requires proper reinforced footings and additional anchoring. FEMA notes that these manufactured homes are being installed in flood hazard areas. By requiring, at a minimum, a 36 inch reinforced pier or other foundation sytem, additional flood protection can be achieved with minimal impacts on the owners of manufactured homes or on the owners of existing manufactured home parks. This should result in a reduction of flood losses and the resulting flood insurance claims payments and disaster assistance costs.

One comment requested clarification of what FEMA means by "other foundation elements". FEMA does not want to preclude the use of foundations other than reinforced piers. Many of these other foundations may be more resistant to flood forces than a reinforced pier and their use is advisable under many flooding conditions. Examples of these other types of foundation elements include posts, piles, poured concrete or reinforced block foundation walls, or properly compacted fill. Information on these other foundations can be found in the FEMA publication Manufactured Home Installation in Flood Hazard Areas. In response to inquiries raised regarding the proposed rule, FEMA has revised the final rule to read "reinforced piers or other foundation elements of at least equivalent strength". This is intended to make it clear that, when these other foundation elements are used, they must also be capable of resisting flood forces.

One comment requested that FEMA define "reinforced pier" since dry stacked blocks are commonly used to install manufactured homes. This type of foundation is not a "reinforced pier" and would not be an acceptable manufactured home installation in a flood hazard area. A dry stacked block pier foundation is dependent on the weight of the manufactured home to keep the foundation in place and provides very little resistance to flood forces. Under flooding conditions, the manufactured home can become buoyant or the manufactured home and the supporting piers can become subject to lateral flood forces even if anchored with over-the-top of frame ties. This can result in overturning and collapse of the piers and severe damage to the manufactured home.

The word "reinforced" is intended to reemphasize the general requirement that the manufactured home be placed on a permanent foundation and be securely anchored to an adequately anchored foundation system to prevent floatation, collapse or lateral movement of the manufactured home due to flood forces. A reinforced pier is an integral part of this foundation and anchoring system. At a minimum a "reinforced pier" would have a footing adequate to support the weight of the manufactured home under saturated soil conditions such as occur during a flood. In addition, if stacked concrete blocks are used, vertical steel reinforcing rods should be placed in the hollows of the blocks and those hollows filled with concrete or high strength mortar. In areas subject to high velocity floodwaters and debris impact, cast-in-place reinforced concrete piers may be appropriate. The community will have to determine what reinforcement is appropriate given the flooding and debris conditions at the site. The FEMA manual Manufactured Home Installation in Flood Hazard Areas contains further guidance on reinforced pier foundations.

One comment requested that FEMA clarify how the requirement would be applied to a manufactured home installation on a sloping site. Would the 36 inches be measured from the lowest or highest grade on that site? The 36 inches would be measured from the lowest grade since the intent of the provision is to minimize costs by not requiring higher foundations which in some states must be designed by an engineer.

Clarification of Requirements

An association suggested a revised organization of the provisions in 44 CFR 60.3(c) and (e) to clarify the requirements applicable to manufactured homes and recreational vehicles. FEMA agrees that the provisions are complicated and further clarification is desirable. However, it believes that the language recommended by this association would be no clearer than that in the proposed rule. Instead, FEMA has made a number of language changes intended to clarify the requirements.

In the final rule, paragraph (c)(14) on recreational vehicles has been revised by adding the phrase "elevation and anchoring requirements" in the reference to the provisions of (c)(6) to make it clear that the portions of (c)(6) that are being referenced are the performance standards and not the provisions regarding which manufactured homes are subject to those requirements.

Section 60.3(e) in the final rule was revised to clarify which requirements apply to existing manufactured home parks or subdivisions or to recreational vehicles in V-zones. In developing the proposed rule, FEMA had not believed that it was necessary to include these provisions in § 60.3(e) since paragraph (e)(1) includes by reference all requirements in § 60.3(c). However, FEMA agrees that some clarification is warranted. The provision at § 60.3(e)(8) has been modified to specifically state that manufactured homes placed in existing manufactured home parks or subdivisions (except on sites where a manufactured home has been substantially damaged by a flood) are subject to the provisions of (c)(12). Paragraph (e)(9) has been added to clarify the requirements applicable to recreational vehicles placed in V-zones. Recreational vehicles must either be on the site for fewer than 180 consecutive days, be fully licensed and ready for highway use, or meet the requirements for V-zone structures in (e) (2) through (7).

Requirements To Be Applied to Recreational Vehicles

The proposed rule included a separate definition of "recreational vehicle" which was consistent with the definition in U.S. Department of Housing and Urban Development (HUD) regulations and included separate floodplain management requirements for "recreational vehicles" at 44 CFR 60.3(c)(14).

Under the proposed rule, no floodplain management regulations would apply to a recreational vehicle if the recreational vehicle was on site for fewer than 180 consecutive days or was fully licensed and "ready for highway use". "Ready for highway use" means that the recreational vehicle is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions. If the recreational vehicle did not meet either of these criteria, the recreational vehicle would be subject to the permitting requirements in § 60.3(b)(1) and the elevation and anchoring requirements in § 60.3 (c)(6) or (e) (2) through (7) as appropriate.

The proposed rule contained no provisions for "grandfathering" recreational vehicle sites in campgrounds, travel trailer parks, or recreational vehicle parks or resorts. It was believed that generally these sites can continue to be used by recreational vehicles which are "fully licensed and ready for highway use". Those recreational vehicles which are currently on sites and which are not "fully licensed and ready for highway use" would not be subject to these requirements unless they were substantially improved or replaced by

another recreational vehicle. When a recreational vehicle is removed from the site for whatever reason, the owner of the campground, travel trailer park, or recreational vehicle park or resort or the owner of an individual site will have the option of either meeting the floodplain management requirements with any replacement recreational vehicle or ensuring that such a vehicle remained fully licensed and highway ready. The latter alternative is not inconsistent with the manner in which most of these facilities are traditionally operated and should pose no hardship to the owner or operator of that facility.

An additional reason for not "grandfathering" recreational vehicle sites is that most campgrounds, travel trailer parks and recreational vehicle parks or resorts were initially established to serve a transient clientele and only later evolved into permanent placements of individual recreational vehicles on sites. It would not be possible to develop a simple set of criteria for "grandfathering" individual recreational vehicle sites.

A total of 21 comments were received that specifically addressed this provision. Most of these comments were from persons residing in a community in Florida where there are a number of recreational vehicle parks or resorts with sites designed and intended for the permanent placement of park trailers or park models. FEMA understands that in this particular community permanent placement of park trailers or park models in certain of these recreational vehicle parks or resorts is permitted, but the park trailer must be installed on piers, have permanent utility connections, be adequately anchored, and have no additions other than a screen room of prescribed size. Generally, these recreational vehicle parks or resorts do rent some sites on a short term basis. However, the intent of the owners is to eventually lease as many sites as possible for permanent placement or park trailers or park models. Comments indicate that the State of Florida requires park trailers or park models in excess of 400 square feet to meet both American National Standards Institute (ANSI) standards for recreational vehicles and U.S. Department of Housing and Urban Development (HUD) standards for manufactured homes. The argument is made that the only real distinction between these recreational vehicle parks or resorts and nearby manufactured home parks is that one contains manufactured homes and the other contain the somewhat smaller park trailers and park models.

The general thrust of the comments is that those recreational vehicle parks or resorts which are designed or intended for permanent placement of park trailers or park models should be "grandfathered" in the same manner as existing manufactured home parks and subdivisions. Several comments suggested that some form of special procedure be developed to allow for this "grandfathering". FEMA continues to believe that for most recreational vehicle parks and for most communities, the alternative of using the site for recreational vehicles that are fully licensed and ready for highway use is reasonable and consistent with standard recreational vehicle park operations. However, the Agency does recognize that there may be an inequity in the case of recreational vehicle facilities that have been established for the permanent placement of park trailers or park models and whose operations are analogous to those of manufactured home parks.

FEMA has determined that at this time it would be inappropriate to "grandfather" all recreational vehicle parks or resorts since most are not limited to park models or regulated and operated the same as manufactured home parks. However, it will entertain requests from communities for exceptions to this requirement under 44 CFR 60.6(b)(1) of NFIP regulations. This paragraph allows the Federal Insurance Administrator to permit certain exceptions from NFIP criteria if he or she recognizes that, because of extraordinary circumstances, local conditions may render the application of those standards the cause for severe hardship or gross inequity for a particular community. FEMA will consider granting such an exception if the community can demonstrate that it places restrictions on recreational vehicle parks or resorts that are substantially the same as those placed on manufactured home parks. In particular, FEMA will examine the community's installation requirements, limitations on additions, types of recreational vehicles permitted and requirements placed on park operation. If such a request is granted, that community will be permitted to apply the same floodplain management standards to these recreational vehicle parks as are applied to existing manufactured home parks and subdivisions under this final rule.

FEMA also recognizes that the regulation of park trailers or park models by Federal, State and local government continues to evolve. In many ways, the park trailer or park model shares more in common with a manufactured home than with other types of recreational vehicles. At some future date FEMA may determine that it is appropriate to include all or certain categories of park trailers or park models in its definition of manufactured home. However, at this time, the Agency feels that such an action would be premature.

Other Issues

Several comments from States, local government, or associations expressed support for more restrictive requirements such as those in the October 1, 1986 rule revision which required elevation to or above the base flood elevation of all newly placed manufactured homes. A number of these comments are supportive of the proposed rule only to the degree that it represents a compromise position and an improvement over a return to the "grandfathering" provision as it existed prior to October 1, 1986. Several of these States or communities intend to continue to require the elevation of all manufactured homes to or above the base flood elevation. These concerns were addressed in FEMA's report for Congress entitled "National Flood Insurance Program: Report on Existing Manufactured Home Parks and Subdivisions."

One association recommended that FEMA require use of the 36 inch reinforced pier or other foundation in A-zones where FEMA has not developed base flood elevations. Since it is beyond the scope of the proposed rule, this revision cannot be considered at this time. However, in these unnumbered A-zones where no base flood elevations are available, FEMA encourages communities to require use of the 36 inch reinforced pier or other reinforced foundation elements as a means of minimizing flood damages to manufactured homes.

Two comments from owners of manufactured home parks characterized the proposed rule provisions as an effort to confiscate property without compensation and that, as such, claimed that they exposed communities to litigation. Several comments raised perceived practical problems related to elevating manufactured homes to or above the base flood elevation or even on a 36 inch reinforced pier or raised issues regarding accessibility, aesthetics, or the cost of housing. FEMA has addressed these issues either in its report for Congress or in supplemental information to the proposed rule. Although the perception may exist that there will be practical difficulties and

other problems in meeting the various requirements, this must be balanced against the fact that these existing manufactured home parks are located in flood hazard areas, and that protecting lives and property from flood damage must be the paramount concern.

Two comments recommended that some provision be made for insurance coverage on existing manufactured home park infrastructure. NFIP legislation does not currently authorize coverage for infrastructure and provides coverage only for structures and their contents. Coverage for manufactured home park infrastructure could only be provided if the National Flood Insurance Act of 1968 were amended by Congress.

One comment questioned whether coverage under the NFIP's new Master Condominium Policy would be available for manufactured home parks that have been converted to condominium ownership. It would not since that policy is currently limited to certain multi-family residential structures. In addition, the manufactured homes in a condominium manufactured home park are generally individually owned and only the land and amenities are jointly owned.

Impacts on Community Ordinances

Several comments raised questions regarding adoption of this final rule by NFIP participating communities. It is important to emphasize that NFIP criteria are minimum standards that communities must meet in order to participate in the program. The criteria do not preempt State or community authority to adopt more restrictive requirements if they so choose. This is provided for at 44 CFR 60.1(d) which specifically states that more restrictive State and local regulations take precedence over NFIP criteria. No matter what actions FEMA takes regarding existing manufactured home parks and subdivisions, some States and many communities are likely to continue to require standards equivalent to those in the October 1, 1986 rule revision.

Many communities currently have ordinances in effect which contain provisions which are more restrictive than this final rule. These include communities in several States which require that all manufactured homes be elevated to or above the base flood elevation. In addition, these include any community which has adopted and currently has in force the October 1, 1986 elevation requirement. These communities are compliant with this final rule since they have more restrictive requirements in effect. These communities will have the option of incorporating the final rule into their ordinances if they so wish.

In addition, FEMA has determined that any community which does not have an existing manufactured home park or subdivision within its boundaries will also be considered compliant regardless of the language in their ordinance since the "grandfather" provision would have no practical effect. However, these communities will be expected to revise their ordinances to meet or exceed the new requirements the next time they revise these ordinances for any other reason.

Ordinance revisions will be required by FEMA for those communities that both (1) have existing manufactured home parks or subdivisions and (2) have retained or amended their ordinances to reincorporate the complete "grandfathering". These communities will also have to adopt the definition of "substantial damage" from the final rule published in the **Federal Register** on August 15, 1989 (54 FR 33541). NFIP criteria at 44 CFR 60.7 allow communities up to six months from the effective date of any new regulation to revise their floodplain management ordinances to comply with the changes. Since the effective date of this final rule is October 1, 1989, communities must amend their ordinances prior to April 1, 1990 in order to comply with this final rule. Amended ordinances should be submitted to the appropriate FEMA Regional office. If subsequent to that date, FEMA determines that a particular community has not complied with the new requirements, that community will be provided 90 days written notice of suspension from the NFIP. A suspension letter will be sent to the community 30 days prior to the suspension date and notice of the suspension will be published in the **Federal Register**. If the community has not submitted compliant regulations to the appropriate FEMA Regional office prior to the suspension date, it will be suspended from the NFIP. FEMA Regional offices will be available to provide communities with assistance in meeting this requirement.

FEMA has determined, based upon an Environmental Assessment, that the final rule does not have significant impact upon the quality of the human environment. As a result, an Environmental Impact Statement will not be prepared. A finding of no significant impact is included in the formal docket file and is available for public inspection and copying at the Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

The final rule does not have a significant economic impact on a substantial number of small entities and has not undergone regulatory flexibility analysis. Note that the basis of this determination is FEMA's report "National Flood Insurance Program: Existing Manufactured Home Parks and Subdivisions", which examined these potential impacts in detail.

The final rule is not a "major rule" as defined in Executive Order 12291, dated February 17, 1981, and hence, no regulatory analysis has been prepared.

FEMA has determined that this final rule does not contain a collection of information requirement as described in section 3504(h) of the Paperwork Reduction Act.

List of Subjects in 44 CFR Parts 59 and 60

Flood insurance, Flood plains.

Accordingly, 44 CFR chapter I, subchapter B is amended as follows:

PART 59—GENERAL PROVISIONS

1. The authority citation for part 59 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978; E.O. 12127.

§ 59.1 [Amended]

2. Section 59.1 is amended as follows:

a. By adding alphabetically, a definition of "Existing manufactured home park or subdivision" to read as follows:

* * * * *

Existing manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

* * * * *

b. By adding alphabetically, a definition of "Expansion to an existing manufactured home park or subdivision" to read as follows:

* * * * *

Expansion to an existing manfactured home park or subdivision means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufacturing homes are to be affixed (including the installation of utilities, the construction

of streets, and either final site grading or the pouring of concrete pads).

* * * * *

c. By revising the definition of "Manufactured home" to read as follows:

* * * * *

Manufactured home means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle".

* * * * *

d. By adding, alphabetically, a definition of "New manufactured home park or subdivision" to read as follows:

* * * * *

New manufactured home park or subdivision means a manufactured home park or subdivision for which the construciton of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community.

* * * * *

e. By adding, alphabetically, a definition of "Recreation vehicle" to read as follows:

* * * * *

Recreational vehicle means a vehicle which is:

(a) built on a single chassis;

(b) 400 square feet or less when measured at the largest horizontal projection;

(c) designed to be self-propelled or permanently towable by a light duty truck; and

(d) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

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PART 60—CRITERIA FOR LAND USE MANAGEMENT AND USE

3. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978; E.O. 12127.

§ 60.3 [Amended]

4. Section 60.3 is amended as follows:

a. By adding in paragraph (b)(4) between the phases "(c)(5)" and (c)(12)" the phrase "(c)(6)" and between the phrases "(c)(12)" and "(d)(2)" the phrase "(c)(14)".

* * * * *

b. By revising paragraph (c)(6) to read as follows:

* * * * *

(c) * * *

(6) Require that manufactured homes that are placed or substantially improved within Zones A1–30, AH, and AE on the community's FIRM on sites

(i) outside of a manufactured home park or subdivision,

(ii) in a new manufactured home park or subdivision,

(iii) in an expansion to an existing manufactured home park or subdivision, or

(iv) in an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as the result of a flood, be elevated on a permanent foundation such that the lowest flood of the manufactured home is elevated to or above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist floatation collapse and lateral movement.

* * * * *

c. By adding paragraph (c)(12) to read as follows:

* * * * *

(c) * * *

(12) Require that manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision within Zones A–1–30, AH, and AE on the community's FIRM that are not subject to the provisions of paragraph (c)(6) of this section be elevated so that either

(i) The lowest floor of the manufactured home is at or above the base flood elevation, or

(ii) The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and be securely anchored to an adequately anchored foundation system to resist floatation, collapse, and lateral movement.

* * * * *

d. By adding paragraph (c)(14) to read as follows:

* * * * *

(c) * * *

(14) Require that recreational vehicles placed on sites within Zones A1–30, AH, and AE on the community's FIRM either

(i) Be on the site for fewer than 180 consecutive days,

(ii) Be fully licensed and ready for highway use, or

(iii) Meet the permit requirements of paragraph (b)(1) of this section and the elevation and anchoring requirements for "manufactured homes" in paragraph (c)(6) of this section.

A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.

* * * * *

e. By removing in paragraph (d)(1) the phrase "(c)(13)" and replacing it with "(c)(14)".

f. By removing in paragraph (e)(1) the phrase "(c)(13)" and replacing it with "(c)(14)".

g. By adding paragraph (e)(8) to read as follows:

* * * * *

(e) * * *

(8) Require that manufactured homes placed or substantially improved within Zones V1–30, V, and VE on the community's FIRM on sites

(i) Outside of a manufactured home park or subdivision,

(ii) In a new manufactured home park or subdivision,

(iii) In an expansion to an existing manufactured home park or subdivision, or

(iv) In an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as the result of a flood,

meet the standards of paragraphs (e)(2) through (7) of this section and that manufactured homes placed or substantially improved on other sites in an existing manufactured home park or subdivision within Zones VI–30, V, and VE on the community's FIRM meet the requirements of paragraph (c)(12) of this section.

* * * * *

h. By adding paragraph (e)(9) to read as follows:

(e) * * *

(9) Require that recreational vehicles placed on sites within Zones V1–30, V, and VE on the community's FIRM either

(i) Be on the site for fewer than 180 consecutive days,

(ii) Be fully licensed and ready for highway use, or

(iii) Meet the requirements in paragraphs (b)(1) and (e) (2) through (7) of this section.

A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.

§ 60.22 [Amended]

4. Section 60.22 is amended by adding paragraph (c)(19) to read as follows:

* * * * *

(c) * * *

(19) Requirement that a plan for evacuating residents of all manufactured home parks or subdivisions located within flood prone areas be developed and filed with and approved by appropriate community emergency management authorities.

Dated: September 21, 1989.

Harold T. Duryee,

Federal Insurance Administrator.

[FR Doc. 89-22894 Filed 9-28-89; 8:45 am]

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federal register

Friday
September 29, 1989

Part VII

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 405, 412, and 413
Medicare Program; Changes in Payment Policy for Direct Graduate Medical Education Costs; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

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42 CFR Parts 405, 412, and 413

[BPD-375-F]

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Medicare Program; Changes in Payment Policy for Direct Graduate Medical Education Costs

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

ACTION: Final rule.

SUMMARY: This rule sets forth changes in Medicare policy concerning payment for the direct graduate medical education costs of providers associated with approved residency programs in medicine, osteopathy, dentistry, and podiatry. These changes implement section 1886(h) of the Social Security Act, which was added by section 9202 of the Consolidated Omnibus Budget Reconciliation Act of 1985 and amended by section 9314 of the Omnibus Budget Reconciliation Act of 1986. Also, we are making a conforming change that affects the indirect medical education payments of hospitals that became subject to the prospective payment system during the period October 1, 1983 through December 31, 1983.

DATE: This final rule is effective October 30, 1989.

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SUPPLEMENTARY INFORMATION:

I. Background

Medicare has historically paid a share of the net cost of approved medical education activities. Our regulations at 42 CFR 413.85(b) currently define approved educational activities to mean formally organized or planned programs of study usually engaged in by providers in order to enhance the quality of care in an institution. These activities include approved training programs for physicians, nurses, and certain paramedical health professionals (sometimes referred to as allied health professionals), for example, physical therapists. The allowable costs of these activities include the direct costs of salaries and fringe benefits of interns and residents, salaries attributable to the supervisory time of teaching physicians, other teachers' salaries, and the indirect costs (that is, institutional overhead, for example, employee health and welfare benefits) that are appropriately allocated to the particular medical education cost center.

The Medicare program has shared in the costs of approved medical education activities, as defined above, on a reasonable cost basis. Section 1861(v)(1)(A) of the Social Security Act (the Act) defines reasonable cost as the cost actually incurred, excluding any cost unnecessary in the efficient delivery of needed health services to Medicare beneficiaries. Section 413.85 of the regulations further specifies that the allowable cost of approved educational activities is the net cost, which is determined by deducting tuition revenues from total costs.

Under sections 1886 (a)(4) and (d)(1)(A) of the Act, and § 412.113 of the regulations, direct medical education costs are excluded from the definition of operating costs and, accordingly, are not included in the calculation of payment rates under the prospective payment system for inpatient hospital services or in the calculation of the target amount for hospitals excluded from the prospective payment system and subject to the rate-of-increase ceiling. These costs are separately identified and "passed-through," that is, paid on a reasonable cost basis.

We also note that section 1886(d)(5)(B) of the Act and § 412.115(b) of our regulations specify that hospitals with "indirect costs of medical education" will receive an additional payment amount under the prospective payment system. As used in section 1886(d)(5)(B) of the Act, "indirect costs of medical education" means those additional operating (that is, patient care) costs incurred by hospitals with graduate medical education programs. The indirect costs of medical education might, for example, include added costs resulting from an increased number of tests ordered by residents as compared to the number of tests normally ordered by more experienced physicians. (For the regulations governing the determination of indirect medical education costs, see § 412.118.)

Generally, except for hospitals whose first cost reporting period began during the period October 1, 1983 through December 31, 1983, this rule will not apply to indirect medical education payments. It also will not apply to the costs of approved nursing and allied health training programs. It will apply only to the costs associated with approved medical, osteopathic, dental, and podiatric residency programs as currently governed by § 413.85. We are adding a new § 413.86 that will govern approved medical, osteopathic, dental, and podiatric residency programs. In order to avoid confusion, we use the term "direct graduate medical education costs" to refer to the costs of the activities governed by the new § 413.86. We are also making conforming changes to § 413.85. However, none of these changes represents policy changes with regard to the reasonable cost reimbursement of approved nursing and paramedical training programs.

This rule will apply to direct graduate medical education (GME) costs in all hospitals and hospital-based providers and subproviders. Although providers other than hospitals may participate in approved GME programs that Medicare supports, the majority of these programs are concentrated in hospitals and health care complexes. The latter are complexes that include, in addition to a hospital, subproviders such as psychiatric units and other hospital-based providers such as skilled nursing facilities or home health agencies. The allowable costs of GME on which the per resident amounts established by this rule are based include GME costs attributable to nonhospital portions of a health care complex. These costs are not separable in such a manner as to permit per resident amounts based exclusively on the GME costs of the hospital. For example, it would not be unusual for a resident in family practice to see patients in both the acute care portion of a hospital and in the hospital-based skilled nursing facility on his or her daily rounds. To require a tracking of a resident's time in each entity of the hospital complex would not be practical.

In this document, for ease of reference, we will use the term hospital to refer to the institutions to which this rule applies, that is, both hospitals and hospital-based providers and subproviders.

A. The July 1985 Final Rule

In a final rule published in the Federal Register on July 5, 1985 (50 FR 27722), we modified § 413.85 (formerly § 405.421(a)(2) but redesignated on September 30, 1986 (51 FR 34790)) to revise our method of paying for allowable direct medical education costs by imposing a 1-year limit on these costs. Under that final rule, for cost reporting periods beginning on or after July 1, 1985 but before July 1, 1986, a provider's allowable direct medical education costs were to have been limited, under the authority of section 186(v)(1)(A) of the Act, to the lesser of the provider's actual cost of its program or programs for that particular cost reporting period or the provider's allowable costs incurred during a base period (the provider's cost reporting period that began on or after October 1, 1983 but before October 1, 1984).

B. Public Law 99-272

Section 9202 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99-272) enacted on April 7,

1986 set forth new provisions, generally effective for cost reporting periods beginning on or after July 1, 1985, for Medicare payment of direct GME costs. One of these provisions, added a new section 1861(v)(1)(Q) of the Act which, in effect, nullified the July 1985 final rule. Section 9202 of Public Law 99–272 also added a new section 1886(h) of the Act, which is effective for cost reporting periods beginning on or after July 1, 1985. Consequently, the provisions of this final rule will be applied retroactively to cost reporting periods beginning on or after July 1, 1985. It applies to all hospitals, whether or not they are subject to the prospective payment system. As an interim step, pending issuance of this final rule, we informed the public in the Federal Register of May 6, 1986 (51 FR 16776) that the July 1985 final rule had been rescinded.

Section 9202 of Public Law 99–272 and its accompanying conference report established two distinct components of the direct medical education pass-through that are used in determining Medicare payment for the costs of approved educational activities—

- Nursing and paramedical health professional (allied health) programs; and
- Graduate medical, osteopathic, dental, and podiatric residency programs.

The statutory language of section 1886(h) of the Act, as enacted by Public Law 99–272, does not specifically address Medicare payment for the costs of approved nursing and paramedical health professional programs. However, the conference report accompanying Public Law 99–272, (H.R. Rep. No. 453, 99th Cong., 1st Sess. 484 (1985)) indicates that the Medicare program will continue to pay hospitals for the direct medical education costs associated with nursing and allied health training activities. In addition, section 1861(v)(1)(Q) of the Act, as added by section 9202(i) of PubLic Law 99–272, prohibits the Secretary from limiting the rate of increase on allowable costs of approved medical education activities other than as explicitly authorized by statute. Thus, section 9202 of Public Law 99–272 does not establish a new payment methodology regarding Medicare's payment for approved nursing and paramedical health professional programs. The effect of section 1861(v)(1)(Q) of the Act and the conference report, as cited above, is to restore the Medicare payment policy for these costs to the policy that existed prior to the publication of the July 1985 rule. Medicare will continue to pay a share of the allowable costs of approved nursing and paramedical health professional programs using Medicare's principles of reasonable cost reimbursement.

In this final rule, we have removed the provisions of current paragraph (a)(2) from § 413.85 since section 9202(i) of Public Law 99–272 has overturned the limitation set forth in this paragraph. We are also revising § 413.85(e) to make changes to the list of the approving bodies for certain nursing and paramedical programs. These changes will conform the regulations to existing policy, as described in chapter 4 of the Provider Reimbursement Manual (HCFA Pub. 15–1).

Section 1886(h) of the Act revises the method for calculating Medicare payment for the direct costs of approved GME activities effective for cost reporting periods beginning on or after July 1, 1985. Section 1886(h) of the Act requires the calculation of hospital-specific approved per resident amounts for each hospital, which are to be determined based on the hospital's allowable costs for its cost reporting period beginning during Federal fiscal year (FY) 1984 (that is, cost reporting periods beginning on or after October 1, 1983 and before October 1, 1984). For most hospitals, that cost reporting period was their first period under the prospective payment system. For cost reporting periods beginning on or after October 1, 1983 but before July 1, 1984, the average per resident amounts will be updated by the Consumer Price Index in order to reflect inflation occurring in the intervening cost reporting period between the base period and the first cost reporting period to which the new methodology would apply. There would be no update factor applied to cost reporting periods beginning from July 1, 1984 through September 30, 1984, since there is no intervening period between the base period and the first period to which the new methodology applies.

For cost reporting periods beginning on or after July 1, 1985 (that is, the first cost reporting period to which section 1886(h) of the Act applies), the per resident amount determined for the base period (that is, cost reporting periods beginning on or after October 1, 1983 but before October 1, 1984) is to be updated by one percent. For subsequent periods, the per resident amounts are to be updated annually based on changes in the Consumer Price Index.

The updated per resident amount is to be multiplied by the weighted average number of full-time equivalent (FTE) residents in an approved program working in the hospital during the cost reporting period to obtain an aggregate approved amount. (As explained below, effective July 1, 1987, the time residents spend in patient care activities outside the hospital setting will also be counted for purposes of determining FTEs if the hospital incurs all or substantially all of the training costs in the outside setting.) Two weighting factors are involved. The first weighting factor to be used is to apply an overall limitation on the number of years that a resident may be counted as an FTE in calculating aggregate approved amounts. This limitation is to be based on an initial residency period (that is, the minimum number of years necessary to achieve board eligibility in a specialty plus 1-year) not to exceed 5 years. Participation for up to 2 years in certain programs in geriatrics will not be counted in determining this limitation. Residents who are no longer in initial residency periods are to be counted as 1.00 FTE prior to July 1, 1986, .75 FTE beginning July 1, 1986, and .50 FTE beginning July 1, 1987.

A second weighting factor to be applied is one regarding residents who are graduates of foreign medical schools. Prior to July 1, 1986, these residents are counted as 1.00 FTE. Effective July 1, 1986, residents who are graduates of foreign medical schools will not be counted at all unless they have passed the Foreign Medical Graduate Examination in Medical Science (FMGEMS) or have received certification from or have previously passed the examination of the Educational Commission for Foreign Medical Graduates. However, section 1886(h)(4) of the Act provides a 1-year transition period (July 1, 1986 through June 30, 1987) for residents who do not meet one of the above qualifying criteria but were in an approved program prior to July 1, 1986. During this 1-year period, these residents will be counted at a rate equal to one-half of the rate at which they would otherwise be counted.

Section 1886(h) of the Act provides that the aggregate approved amount is to be multiplied by the proportion of Medicare hospital inpatient days to total hospital inpatient days in order to determine Medicare's share of direct GME costs. Medicare's share of the costs is then to be apportioned between Medicare's Part A (Hospital Insurance) and Part B (Supplementary Medical Insurance) in such a manner as reasonably reflects the GME costs associated with the provision of services under each part.

Section 1886(h)(2)(E) of the Act provides that if a hospital did not have an approved GME program or did not

participate in Medicare for its cost reporting period beginning in FY 1984, then the Secretary is to determine an appropriate per resident amount.

C. Public Law 99–509

Section 9314 of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509), enacted on October 21, 1986, added section 1886(h)(4)(E) to the Act to allow a hospital, for purposes of determining FTEs, to count the time residents spend in patient care activities outside the hospital setting if the hospital incurs all or substantially all of the training costs in the outside setting. This change is effective as of July 1, 1987.

To implement both this legislative change and the changes made by Public Law 99–272, on September 21, 1988, we published a proposed rule in the **Federal Register** (53 FR 36589). In that document, we proposed to add a new § 413.86 that would deal with payment for GME costs and to revise § 413.85 for the purpose of making conforming changes. Our specific proposals are discussed in detail below.

II. Provisions of the Proposed Rule

A. Removal of Limit on Costs

As discussed above, section 1861(v)(1)(Q) of the Act prohibits the Secretary from imposing limits on the rate of increase on allowable costs of medical education other than as explicitly prescribed by law. Currently, § 413.85(a)(2) of the regulations imposes a limit on providers' net costs of approved educational activities for cost reporting periods beginning on or after July 1, 1985 and before July 1, 1986. In order to comply with this statutory prohibition on limits, we proposed to remove the current paragraph (a)(2) from § 413.85.

B. Medicare Payment for Approved GME Programs

Section 1886(h) of the Act establishes a new methodology that is to be used for the purpose of determining Medicare's payment for the part of the direct medical education pass-through attributable to approved GME programs (that is, programs for training interns and residents, hereinafter referred to as residency programs) in medicine, osteopathy, dentistry, or podiatry. Section 9202(b) of Public Law 99–272 specifies that this new methodology is to apply to cost reporting periods beginning on or after July 1, 1985.

The new methodology provides for the determination of a hospital-specific base-period per resident amount to be calculated by dividing a hospital's allowable costs of graduate medical education for a base period by its number of interns and residents in the base period. The base period is the cost reporting period beginning in FY 1984 (that is, the period October 1, 1983 through September 30, 1984). We proposed to update the hospital-specific base-period amount yearly as described below.

The updated base-period per resident amount would be multiplied by the hospital's weighted number of FTE residents during each cost reporting period beginning on or after July 1, 1985 to determine an aggregate approved amount for the period. The aggregate approved amount would represent the basis for Medicare's support of approved residency programs for the period, with no consideration given to actual costs incurred for these programs during a cost reporting period. Medicare's share of the aggregate approved amount would be determined by the Medicare patient load as measured by the ratio of Medicare hospital inpatient days to total hospital inpatient days, and would be apportioned between Part A and Part B based on the ratio of Medicare's share of reasonable costs, excluding GME costs, attributable to each part.

1. Determining Base-Period per Resident Amounts

a. *Methodology.* We proposed to determine an average FTE per resident amount for each hospital during its base cost reporting period. This hospital-specific average FTE per resident amount would be determined based on data reported on the cost reports for that base period with respect to direct GME costs and the number of residents. Thus, we would determine the base-period per resident amount for each hospital by dividing the allowable GME costs for the hospital's cost reporting period beginning in FY 1984 by the number of FTE residents (exclusive of those employed to replace nonphysician anesthetists) reported by the hospital on its cost report for that cost reporting period. (Under the provisions of § 413.85(d)(7), the cost of interns and residents in anesthesiology who are employed to replace nonphysician anesthetists are excluded as approved educational costs since they are not costs for the actual operation of an approved education program.)

In establishing the base-period per resident amount for a specific hospital based on FY 1984 GME costs, it is important that the amount determined be an accurate reflection of legitimate GME costs incurred during the FY 1984 base period. Because the payment methodology required by section 1886(h) of the Act sets future payments using the FY 1984 base-period amounts as the initial starting point, we believe that it is very important that inappropriate costs not be included in the base-period amount. Therefore, we proposed to instruct Medicare contractors to reexamine FY 1984 GME costs and to request appropriate supporting documentation in those cases in which reported costs seem questionable.

Generally, we believe that this review activity would be limited to hospitals and health care complexes that claimed either direct GME costs or indirect medical education payments for cost reporting periods beginning in FY 1984. Cost reports should be amended to remove nonallowable and misclassified costs from the GME base-period costs used to establish per resident amounts. We proposed to initiate this review and reaudit activity prior to the publication of the final rule, so that as soon as possible after the publication of final rule, intermediaries would be able to notify hospitals of their base-period per resident amounts. We did not propose any specific time schedules for this activity, however, in view of the significant other tasks that have been placed on Medicare contractors.

Hospitals whose base-period GME costs appear to be in order would be notified of their base-period per resident amounts. We proposed that hospitals could appeal this determination within 180 days of the later of their receipt of this notice concerning their per resident amounts or of receipt of an original or revised Notice of Program Reimbursement for the GME base period. All appeals of per resident amounts must be appeals of the FY 1984 GME costs or resident counts used in the per resident amount determination. Section 1886(h) of the Act specifies that period as the base-period for determination of such amounts. In other words, a hospital could not appeal its base-period per resident amount in connection with an appeal for the cost reporting period beginning July 1, 1985 or later.

For teaching hospitals whose base-period GME costs appear to include misclassified or nonallowable costs or whose per resident amounts appear to be unreasonably high or low, we proposed that intermediaries will notify these hospitals that their base-period costs will be reaudited. During the reaudits, hospitals would have an opportunity to present documentation of any factors that should be taken into account in the final determination of their base-period per resident amounts. If the basis for the disallowance of costs

from the base-period GME costs is nonallowability, rather than the misclassification of costs, we proposed that recoupment of overpayments should be made for cost reporting periods beginning in FY 1984 and any prior or subsequent cost reporting period in which similar circumstances exist and which may still be reopened under the limitations of § 405.1885.

A hospital whose base-period GME costs are reduced because of a misclassification of operating costs as GME costs may want to reexamine the classification of the affected costs in its prospective payment system base year and request revisions to the prospective payment base-year cost report. If the costs in question were similarly treated in the prospective payment base year, the hospital may want to receive the benefit of consistent treatment of the costs in question as operating costs for the purpose of adjusting its hospital-specific rate (HSR) due to the treatment of GME costs. We proposed that a hospital's cost report for the prospective payment system base year that may no longer be reopened under § 405.1885 may, nevertheless, be reopened but only for the sole purpose of adjusting its HSR for the misclassified GME costs. This adjustment would be based on a recalculation of the hospital's prospective payment system base-year costs. However, no overpayment would be recovered or underpayment paid for the prospective payment system base-year costs if the hospital's cost report for its prospective payment system base year is no longer subject to reopening under § 405.1885. The modification of the prospective payment system base-year costs would be used solely to adjust the hospital's HSR for cost reporting periods under the prospective payment system.

Under § 405.1885, there is a 3-year restriction on reopenings of settled cost reports. We proposed to create a special exception to this time limit so that a hospital could request an adjustment to its HSR. The hospital must request this special reopening within 180 days of the notice to the hospital by the intermediary of the hospital's GME base-period per resident amount. The hospital would bear the burden of proof to document the appropriate treatment of the costs in the prospective payment base year. If the hospital can demonstrate to the satisfaction of the intermediary that this change should be made, the intermediary would appropriately modify retroactively the hospital's base-year cost report used to determine the HSR with respect to operating costs misclassified as GME. As proposed, this modification would be a special exception to our policy concerning retroactive modification of the prospective payment system base-year costs, as specified in §§ 412.71 and 412.72. (That policy is that an intermediary's original estimate of the HSR for purposes of the prospective payment system may not be revised unless the estimate was erroneous based on information available to the intermediary at the time of the estimate.)

In the proposed rule, we emphasized that this policy change is a one-time modification, solely for purposes of calculating GME costs. This change is necessary to properly implement section 1886(h) of the Act, which prescribes the new GME payment methodology. In addition, § 412.113(b) requires that the allowable costs involved in setting the HSR should be recognized consistently as either GME costs or operating costs through the prospective payment system transition period.

This proposed policy change relating to the prospective payment system base-year costs that are used to establish the HSR would be limited to inpatient operating costs that were misclassified as GME costs. Any adjustments to the HSR that are made as a result of this proposed policy change could not include other elements of costs that may have been omitted from the original determination of a provider's HSR.

If a hospital similarly misclassified any of its GME costs as operating costs in the GME base period, the methodology prescribed in section 1886(h) of the Act would preclude this hospital from receiving Medicare payment for the misclassified GME costs. Therefore, in these situations, we again proposed that, if a hospital wants the benefit of the appropriate classification of these legitimate GME costs for the purpose of determining its per resident amount, and if the hospital's cost report for the prospective payment system base year is no longer subject to reopening under § 405.1885, the cost report may nevertheless be reopened. The hospital would need to present its intermediary with sufficient evidence in order to satisfy the intermediary that a change in classification of costs is necessary. If the intermediary is satisfied that such a change is appropriate, the intermediary would adjust the hospital's HSR and recompute the per resident amount in order to reflect the change.

We further proposed that any hospital requesting such a change would have to accept the consequences of a reduced HSR retroactive to the first cost reporting period subject to the prospective payment system. A hospital that believes its FY 1984 GME costs were inappropriately low based on misclassification of GME costs as operating costs would have up to 180 days after notification by its intermediary of its base-period per resident amount to present this additional information. This special reopening provision would be available to hospitals for the sole purpose of correcting a misclassification of GME costs as operating costs.

In both of the above situations involving the adjustment of HSRs, the action is taking place at the request of the hospital or health care complex to mitigate certain negative, though unintended, results of the enactment of section 1886(h) of the Act. Therefore, we proposed that, notwithstanding the provisions of § 405.1885 (a) and (c), all cost reporting periods beginning with the period that served as the prospective payment base year that are no longer subject to reopening may nevertheless be subject to this special reopening. The practical implication of this proposal is to permit reopening in some cases and for a limited purpose after the usual 3-year limitation on reopening of settled cost reports. We emphasized that this special reopening procedure would apply only at the request of the hospital and only to operating costs misclassified as GME costs or GME costs misclassified as operating costs. All other elements of the Medicare cost reports for the years in question would remain settled.

We proposed to use the number of residents reported on the FY 1984 cost report under indirect medical education payment rules as the denominator in calculating base-period per resident amounts. Because of the enactment of section 1886(h) of the Act, we also proposed to modify the criteria governing the counting of interns and residents in approved programs for those hospitals that first entered the prospective payment system during the period October 1, 1983 through December 31, 1983. For these hospitals, we proposed to use the counting criteria adopted in the January 3, 1984 prospective payment rule (49 FR 234) for the purpose of calculating the base-period per resident amount.

The September 1, 1983 interim final rule that implemented the prospective payment system provided that, in calculating the ratio of interns and residents to inpatient hospital beds, a prospective payment system hospital could count only those interns and residents in approved programs that

were employed by the hospital and who furnished services at that hospital (48 FR 39829). However, in the final rule published January 3, 1984, we modified this policy as a result of the comments received on the interim final rule. As discussed in the preamble of that final rule (49 FR 268), we changed our counting policy to allow hospitals to include in their indirect GME intern and resident count, those residents employed by an organization with a long-standing historical medical relationship with the hospital. The organization had to be the sole employer of substantially all of the interns and residents furnishing services at the hospital. This change was effective for cost reporting periods beginning on or after January 1, 1984. This prospective application of the revised policy was determined to be appropriate at that time because of the prospective nature of the prospective payment system.

Because we believe that there is a genuine program interest in using a uniform counting method for purposes of determining per resident amounts, we proposed to adopt the policy of counting interns and residents that was described in the January 3, 1984 prospective payment final rule retroactively to the onset of the prospective payment system. We would include in a hospital's indirect GME count those interns and residents employed by an organization that has a longstanding relationship with a hospital to furnish substantially all of the hospital's residents. This proposed policy would apply to all hospitals that entered the prospective payment system in FY 1984.

If a hospital's base period reflects GME costs for a period other than a full year, we proposed that the intermediary would convert the allowable costs for the base period to a monthly figure and multiply this figure by 12 in order to derive the approved per resident amount for a 12-month cost reporting period. This adjustment to costs would be permissible only if either—

- The length of the base period cost reporting period is shorter than 50 weeks or longer than 54 weeks; or
- The hospital's GME program began after the first month of the hospital's base period.

If a hospital has more than one cost reporting period beginning during FY 1984 (because of a short cost reporting period), we proposed that the latest period would serve as the base period since it is likely that it is more representative of future GME costs. If the latest period is also a short period, allowable GME costs would also be converted to a monthly figure and multiplied by 12 as discussed above.

Section 1886(h)(2)(B) of the Act requires that, for hospitals whose cost reporting periods began between October 1, 1983 and June 30, 1984, the amount derived for the base year be updated by the percentage increase in the Consumer Price Index (CPI) between the hospital's cost reporting period that began during FY 1984 (the GME base period) and the first cost reporting period to which this provision applies. In making this adjustment, we proposed, as discussed in the conference agreement that accompanied section 9202 of Public Law 99–272, (H. R. Rep. No. 453, 99th Cong., 1st Sess. 484 (1985)), to use the Consumer Price Index for All Urban Consumers (CPI–U), a generally accepted measure of inflation. However, if the hospital's base-period cost reporting period began on or after July 1, 1984 and before October 1, 1984, updating is not necessary since the base period occurred immediately prior to the first cost reporting period to which this provision would apply.

The base-period costs would be updated using an inflation factor tied to the month that the cost reporting period began. Included below are the updating factors that we proposed to use. The CPI–U factors shown below apply only to 12-month periods that begin and end in the same month for both years. If this is not the case, we proposed that intermediaries contact HCFA Central Office as to the appropriate factor to use.

Cost reporting period	Update factor*—percent
10/1/83 to 9/30/84	4.20
11/1/83 to 10/31/84	4.03
12/1/83 to 11/30/84	3.95
1/1/84 to 12/31/84	3.57
2/1/84 to 1/31/85	3.52
3/1/84 to 2/28/85	3.74
4/1/84 to 3/31/85	3.66
5/1/84 to 4/30/85	3.75
6/1/84 to 5/31/85	3.73

* The inflation factor represents the 12-month average change in the CPI–U during the intervening period between the provider's base period and the first cost reporting period beginning on or after July 1, 1985.

b. *Updating for cost reporting periods that begin from July 1, 1985 through June 30, 1986.* As required by section 1886(h)(2)(C) of the Act, we proposed to increase the base-period FTE amount, discussed above, by one percent (that is, multiplied by 1.01) for purposes of determining the approved per resident amount applicable to the hospital's cost reporting period that began on or after July 1, 1985 but before July 1, 1986.

c. *Updating for cost reporting periods that begin on or after July 1, 1986.* Section 1886(h)(2)(D) of the Act states that, for subsequent cost reporting periods (that is, those beginning on or after July 1, 1986) "* * * the approved FTE resident amount for the hospital is equal to the amount determined under this paragraph for the previous cost reporting period updated, through the midpoint of the period, by projecting the estimated percentage change in the consumer price index during the 12-month period ending at that midpoint, with appropriate adjustments to reflect previous under- or over-estimations under this subparagraph in the projected percentage change in the consumer price index." We proposed to use the CPI–U to implement this provision. Thus, for cost reporting periods beginning on or after July 1, 1986, the FTE resident amount would be determined by applying the 12-month average change in the CPI–U to the per resident amount applicable in the previous cost reporting period. The 12-month average change in the CPI–U represents inflation through the midpoint relative to 12 months earlier.

We proposed that the intermediary use the projected percentage change for interim payment purposes only and adjust the final settlement amount based on the actual average CPI–U percentage change for the months comprising the cost reporting period. The reference to overestimations and underestimations is necessary for purposes of interim payments since the actual inflation rate is not known in advance. However, the actual inflation rate generally becomes available shortly after the end of the cost reporting period and thus the actual rate would be used for settlement purposes. Also, it will be necessary for providers to notify intermediaries of their best estimates of the average number of resident FTEs that should be counted for the cost reporting period for purposes of interim payments.

d. *Per resident amounts for certain Hospitals.* Section 1886(h)(2)(E) of the Act requires us to provide a method for determining an appropriate per resident amount for "* * * a hospital that did not have an approved medical residency training program or was not participating in * * *." Medicare during a cost reporting period that began on or after October 1, 1983 and before October 1, 1984.

In order to implement this provision, we proposed that a hospital's intermediary would establish an average per resident amount for the hospital based on the lower of—

• The actual direct graduate medical education costs of the hospital during its first year of operation of a GME program; or

• The mean value of per resident amounts of hospitals located in the same wage area, as that term is used for purposes of the prospective payment system in §§ 412.62 and 412.63, for cost reporting periods beginning in the same fiscal year.

The intermediaries would determine an average per resident amount for these hospitals based on the hospital's actual cost for the first cost reporting period during which residents were on duty in their GME program during the first month of the cost reporting period. For the purpose of this calculation, we proposed that residents would be counted in the same way as they would for all other hospitals (see description of counting methodology in section II.B.4 of this final rule) except that the weighting factors would not be applied. The intermediary would compare this amount with the mean value of per resident amounts of other teaching hospitals located in the same wage area (as that term is used in the prospective payment system) for cost reporting periods beginning in the same fiscal year. The intermediary would then base its payment on the lower of these amounts (that is, actual per resident amount based on actual allowable costs for the first year, or per resident amounts of other teaching hospitals in the same wage area). If there are fewer than three amounts in the wage area, we proposed that the intermediary write HCFA Central Office for a determination of the per resident amount to use. The per resident amount used for the first year would be updated in future years without regard to actual costs.

The proposed rule further specified that this provision would not be applied to hospitals that expand existing programs or that establish residency programs in additional specialties during the base period. It also would not apply to certain hospitals in States that were formerly paid under a waiver from the Medicare inpatient hospital prospective payment system that incurred GME costs but did not allocate these costs to the intern and resident cost center. (See the discussion in section II.B.10. of this final rule, below).

2. Determining Full-Time Equivalency (FTE)

Section 1886(h)(4) of the Act bases payment for direct GME costs on a hospital's number of full-time equivalent (FTE) residents multiplied by a hospital-specific per resident amount. Since our main concern in the counting of residents is that no individual be counted as more than one FTE, we did not propose to define a FTE based on a specific number of hours worked per week or per year. Rather, we proposed that FTE status would be based on the total time necessary to fill a residency slot.

As proposed, the number of hours involved would vary from specialty program to specialty program within a hospital and could vary from hospital to hospital for the same type of program. For example, if a resident spends all of his or her time in one hospital and is considered by the approved residency program to meet all the requirements of a full-time resident, the resident would always be counted as one FTE (before application of any applicable weighting factors). However, if a resident spends time in more than one hospital, that resident would not be counted as one FTE for either hospital regardless of the actual hours worked. Rather, we proposed that resident's time should be prorated between or among the hospitals to total no more than one FTE.

Section 1886(h)(4)(B) of the Act requires us to take into account, in determining FTEs, individuals who serve as part-time residents. We proposed to count these part-time residents based on the proportion of time worked as compared to the average time spent by others in the same year working in the same specialty program. For example, if a part-time resident spends only sixty percent of the time spent by others in the same program, the part-time resident would be counted as .6 FTE. Similarly, in situations in which two residents "share" one residency slot, no more than one FTE would be counted for the two individuals for the duration of the shared residency. As discussed in the proposed rule, neither of the above policies would apply to full-time residents who spend time sequentially, in more than one hospital. They also would not apply to a full-time resident who drops out of a program. In both of these cases, the individuals are considered full-time residents whose assignments to hospitals would be prorated on a monthly basis.

In determining resident FTEs, we proposed that we would first determine whether the resident is to be counted by the hospital at all. Accordingly, we argued that it was appropriate not to include in a hospital's resident FTE count those residents for whom no hospital participating in Medicare incurs salary/stipend and fringe benefit costs, such as residents in Veterans Administration or Department of Defense programs who are on rotation at civilian hospitals and whose salaries or stipends are fully paid by those respective Federal entities.

We also proposed to prorate FTEs based on the time spent among hospitals by individual residents on a monthly basis. When resident rotations to hospitals are for periods of time other than monthly segments, we proposed that the hospital in which the resident spent the majority of the month will receive full credit for the month and the other hospitals will receive no credit for that month.

Residency programs are based in hospitals in some cases and in medical schools with affiliated hospitals in others. Although the information on the counting of residents must come from the teaching hospitals claiming payment, we argued that it would be helpful, and facilitate payment, if program officials would voluntarily furnish the requisite data on resident assignments to all hospitals involved. The hospitals could then verify the accuracy of their respective FTE count and retain the information for review by the intermediary as needed.

In order to ensure that all residents are properly counted and that no resident is counted as more than one FTE, we proposed to require that each hospital maintain and have available the following information for each resident whom it counts toward its number of FTEs:

• The name and social security number of the resident.

• The type of residency program in which the resident participates and the number of years the resident has completed in all types of residency programs.

• The dates the resident was assigned to the hospital during the cost reporting period.

• The dates, if any, the resident was assigned to other hospitals.

• The name of the medical, osteopathic, dental, or podiatric school from which the resident graduated and date of graduation.

• In the case of graduates of foreign medical schools, the resident's status concerning the Foreign Medical Graduate Examination in the Medical Sciences, or certification by the Education Commission for Foreign Medical Graduates, and the appropriate date.

We proposed that this information be certified by an official of the hospital and, if different, an official responsible for administering the residency program.

3. Counting Residents in Nonprovider Settings

Prior to July 1, 1987, the time a resident spends in nonprovider settings (that is, settings that are not considered part of a provider for Medicare purposes) is not counted toward a hospital's FTE count. For example, if the normal GME program commitment for a third-year resident in Family Practice at Hospital A is 80 hours per week and a resident spends 20 of those hours per week in a freestanding family practice clinic, that resident is counted as .75 FTE in Hospital A's count.

Effective July 1, 1987, in accordance with section 1886(h)(4)(E) of the Act, we proposed to count the time a resident spends in nonprovider settings if there is a written agreement between the hospital and the nonprovider entity to the effect that the hospital bears substantially all the training costs in the outside setting. However, section 1886(h)(4)(E) of the Act specifies that only time spent in activities relating to patient care may be counted toward the hospital's FTE count. In the proposed rule, we solicited comments on methods under which intermediaries can ensure that the portions of residency training programs that are spent in settings that are not a part of a hospital are spent in activities related to patient care. We specifically asked that suggestions address the data that hospitals would need to maintain to substantiate the nature of assignments to settings that are not a part of a hospital.

4. Determining the Number of FTE Residents

We proposed that the number of FTE residents for direct graduate medical education payment purposes would be determined by applying a weighting factor to each FTE resident, as explained below.

a. *Initial residency period and weighting factor.* Subject to special rules concerning certain foreign medical graduates, in general, the weighting factor that would apply to each resident in an initial residency period would be 1.0. Under section 1886(h)(5)(F) of the Act, an initial residency period means the period of board eligibility plus one year, not to exceed a total of five years.

Section 1886(h)(5)(G) of the Act defines the term "period of board eligibility" as it applies to a resident to mean the minimum number of years of formal training necessary to satisfy the requirements for initial board eligibility in the particular specialty for which the resident is training. The statute specifically requires that the 1985–1986 Directory of Residency Training Programs published by the American Medical Association (AMA) be used in determining the period of board eligibility. This directory indicates that most specialty boards no longer use the term "board eligible." However, as discussed in the proposed rule we believe that it is clear from the language of the statute that, for the purpose of determining initial residency periods, it is the intent of Congress that we use the minimum number of years of training required to qualify for a specialty board's certifying examination plus 1 year.

We also stated in the proposed rule that we believe that the definition of resident in section 1886(h)(5)(H) of the Act is intended to include residents in approved programs in osteopathy, dentistry, and podiatry as well as to residents who have a doctor of medicine (MD) degree. This intent is demonstrated by section 1886(h)(5)(D) of the Act which defines foreign medical graduates as those who have not graduated from a school of medicine, osteopathy, dentistry, or podiatry that is recognized by Medicare. There would be no need for such a definition unless residents in those disciplines were included in the definition of a resident. The Directory of Residency Training Programs (the Directory) can be used as a source document only for determining the lengths of initial residency periods for the types of medical programs accredited by the Accreditation Council for Graduate Medical Education (ACGME). Therefore, for approved programs in osteopathy, dentistry, and podiatry, we contacted the appropriate accrediting organizations for these specialties and based our determinations of initial residency periods on the information they furnished to us. Whenever these accrediting bodies establish standards for new types of specialty programs, we have encouraged them to notify HCFA so that this information can be disseminated to our fiscal intermediaries.

Our proposed determination of initial residency periods for medical residency programs was based on the sections of the Directory entitled, "Essentials of Accredited Residencies" and "Requirements for Certification." The initial residency period includes years in a qualifying prior program. The 4 years of full funding for the internal medicine subspecialties includes the 3 years of a prerequisite general internal medicine program plus 1 additional year. The second year of a subspecialty training program receives a reduced weighting factor since it is in excess of the initial board eligibility plus 1 year criterion.

Although the Directory lists the minimum number of years for surgical residencies as 5 or more, we proposed to attach a weight of 1.0 to a surgical resident for 5 years, but not for an additional year, because section 1886(h)(5)(F) of the Act specifies 5 years as the maximum period we can count a resident as 1.0 FTE. Similarly, the Directory lists the minimum number of years for a residency in family practice as 3. Thus, we proposed that a family practice resident who specializes further in an approved program would be counted fully for the fourth year of GME training and partially for a fifth or subsequent year. In both situations residents would be counted partially after their initial residency periods (that is, .75 from July 1, 1986 through June 30, 1987 and .5 thereafter).

In addition, we proposed that a resident who has used up the time allotted to an initial residency period before July 1, 1986 and then participates in either the same or a different program would be counted only partially thereafter. As proposed, this would also apply to the situation in which a resident spends some time in one residency program and decides to change specialties before completing that program.

As was discussed in the proposed rule, some of the programs are subspecialty programs of other programs. For example, cardiology is a subspecialty of internal medicine. Section 1886(h)(5)(F) of the Act states that the initial residency period must be determined at the time the resident enters the residency training program. All of the subspecialties of internal medicine require that the subspecialty training be preceded by completion of an accredited program in internal medicine. Thus, the internal medicine residency program controls the length of the initial residency period. That is, the initial residency period would consist of a 3-year program in internal medicine plus 1 additional year of an appropriate subspecialty program.

Similarly, only one year of an accredited allergy and immunology residency would be included in an initial residency period since this program requires a 3-year residency in internal medicine as a prerequisite. As soon as a physician enters a basic internal medicine program, whether immediately after medical school or after a transitional year (see discussion below), the 3-year duration of the internal medicine program governs the length of time the resident is counted as 1.0 FTE. In this case, the initial residency period would be 3 years for

the internal medicine program plus 1 year (either a transitional year or a year of a subspecialty program, but not both).

Section 1886(h)(5)(F)(ii) of the Act provides for an exemption (up to 2 years) from the initial residency period limitation for individuals enrolled in a "* * * geriatric residency or fellowship program which meets the criteria as the Secretary may establish * * *." Currently, there is no private sector program of accreditation or approval for graduate programs of physician training in geriatric medicine. Accordingly, we were unable to obtain extensive information on geriatric programs prior to publishing the proposed rule. Therefore, we solicited comments on our proposed approach to implementing this provision of the law.

We proposed that geriatric fellowship programs, which an individual enters upon completion of a basic specialty program, should be the focus of the geriatric exception to initial residency periods established by section 1886(h)(5)(F) of the Act. It is our understanding that these fellowship programs are normally of 1 to 2 years' duration, and they are undertaken by residents upon completion of approved programs in internal medicine, family practice, or other basic specialty programs. Thus, if a resident completes a 3-year family practice program and enters a 2-year geriatric fellowship program, the latter would not be counted against the individual's initial residency period of 4 years. In fact, that individual could still have 1 additional year in another type of approved program upon completion of the geriatric fellowship program in which to be fully counted. Thus, that individual's initial residency period would be computed as follows: 3 years in a family practice residency program plus 2 years in a geriatric fellowship (not counted) plus 1 year in another unspecified approved program. In this way, the individual would be fully counted for 6 years of actual training even though his or her initial residency period consists of only 4 years.

It was our understanding that the ACGME will soon be establishing the criteria under which fellowships programs will be accredited as geriatric training programs for residents who have completed specialty programs in internal medicine or family practice. We proposed to use ACGME's criteria for purposes of determining what constitutes an approved geriatric fellowship program for these specialties. We also proposed that once the ACGME accredits a program in one of these specialties, HCFA will treat that program as an approved residency program for the purpose of including the participants of the program in the direct graduate medical education FTE count. We would treat the program as approved retroactively to the later of—

- The date the program was established; or
- The cost reporting period beginning on or after July 1, 1985.

We proposed to recognize these programs retroactively to the effective date of section 1886(h) of the Act (that is, cost reporting periods beginning on or after July 1, 1985) since Congress expressly provided for a geriatric exception in section 1886(h) of the Act. We also proposed to consider expanding the exception to geriatric fellowship programs in other specialties when the appropriate national organization establishes criteria for approving these programs.

In the last few years, ACGME has begun to accredit transitional year programs. The Directory indicates that these programs are provided for medical school graduates who—

- Have chosen a career specialty that requires as a prerequisite an entry year of fundamental clinical education;
- Desire a broader base of clinical experience than is initially provided by their chosen specialty; or
- Plan to enter active duty in the military.

These programs are apparently different from other ACGME accredited programs in that there is no board certification and, for initial residency period purposes, they must be considered in conjunction with other types of programs as set forth below. For these programs, there is no transitional year initial residency period limitation.

Several types of specialties, for example, anesthesiology, require a "clinical base year" or other type of fundamental training as an integral part of the accredited training program. In these cases, the transitional year program is counted as part of the medical specialty program for the purpose of determining the initial residency period and does not count as the additional year beyond initial board eligibility. For example, in anesthesiology, the one "clinical base year" is added to the 3 years of training in clinical anesthesia to comprise a 4-year training program. The additional year allowed by section 1886(h)(5)(F) of the Act would then be added to total a 5-year initial residency period (1+3+1=5).

In the case of a medical school graduate desiring a broader base of clinical experience, the transitional year is an additional year of training undertaken by a resident beyond the requirements for certification in a specialty. In these cases, we proposed that participation in the transitional year program would count as the additional year beyond the minimum number of years of training that is required for board certification. (Transitional year+number of years of training required for board certification=initial residency period, provided that the total does not exceed five years.)

In the case of the medical graduate planning to enter active duty in the military, there is a single year of broad-based clinical training in an ACGME accredited program before the resident enters active duty in the military. If the resident in this type of program is in his or her first residency program after graduation from medical school or has not exceeded the limits of an initial residency period in another specialty, we proposed that the resident be counted as 1.0 FTE for that one year. If the resident subsequently leaves the military and enters a residency program, the transitional year would be counted towards that resident's initial residency period at that time. However, any training in a residency program operated by the military that may be counted towards board certification would also count towards the initial residency period.

As stated in the proposed rule, we are interpreting the statutory use of the term "medical" in section 9202 of Public Law 99-272 to include osteopathic, dental, and podiatric residents. Section 1886(h)(5)(A) of the Act defines approved residency programs as those programs that count toward certification in a specialty or subspecialty.

It is our understanding that in most osteopathic graduate medical education programs, the first year of training is a rotating internship that is required prior to acceptance in a residency program. Specialized residency training does not begin until the second year of postgraduate training, which is counted as the first year of residency training in the osteopathic profession. Therefore, we proposed to treat the first year of osteopathic graduate medical education in the same fashion as the transitional year programs in medical programs. That is, since the rotating internship is required for further training in all programs, it counts as the first year of an initial residency period. Thus, we proposed that the first year would not be counted as the additional year beyond board eligibility as specified in the 1985-1986 Yearbook and Directory

of Osteopathic Physicians. For example, the Directory of Osteopathic Physicians specifies a 3-year residency for osteopaths entering internal medicine. We proposed to count such a resident for 5 years, the 1 year rotating internship plus 3 years, plus 1 additional year if that resident enters another year of approved training. In no case would any resident be counted as 1.0 FTE beyond 5 years.

Approximately one-half of all dental residents are in 1-year or 2-year general practice residencies. The information we have received from the American Dental Association indicates that general practice is neither a recognized dental specialty nor required or counted towards meeting the board eligibility requirement for dental specialties. Therefore, a strict application of the definition of an "approved medical residency training program" as set forth in section 1886(h)(5)(A) of the Act would preclude our recognizing these programs as approved programs under section 1886(h) of the Act. However, since we could find no evidence in the conference report that accompanied section 9202 of Public Law 99-272 that Congress intended a reduction in the types of programs Medicare supports, we proposed to continue to recognize dental general practice programs as approved programs under the authority of section 1861(b)(6) of the Act. However, the payment methodology to be used would be that proposed for implementation of section 1886(h) of the Act.

We proposed to treat dental general practice programs in the same way that we would treat transition year medical residency programs. A resident in a 1-year or 2-year general practice program would be counted as a resident in an approved program for the purpose of this section. However, if an individual enters a specialty program at a later date, the year or years of general practice residency would be counted toward the initial residency period for the specialty training. In the case of 2-year approved general practice residency programs, both years would count toward completion of the initial residency period for the specialty involved.

b. *Resident not in an initial residency period.* As required by section 1886(h)(4)(C)(iii) and (iv) of the Act, we proposed that the weighting factor for residents who are not in a period of initial residency (limited to 5 years) would be 1.00 prior to July 1, 1986, .75 during any portion of a hospital's cost reporting period occurring from July 1, 1986 through June 30, 1987, and thereafter would be .50.

5. Special Rule for Foreign Medical Graduates

a. *Definition of a foreign medical graduate.* We proposed that, as specified in section 1886(h)(5)(D) of the Act, the term foreign medical graduate (FMG) means an individual who is not a graduate of one of the following:

- A medical school accredited by the Liaison Committee on Medical Education of the American Medical Association which accredits medical schools in the United States and Canada (or approved by the committee as meeting the standards necessary for accreditation).
- An osteopathy school accredited (or approved as meeting the standards necessary for such accreditation) by the American Osteopathic Association.
- A dental or podiatry school that is accredited by an organization (or meets the standards for accreditation) recognized by the Secretary.

b. *Requirement for application of 1.0 weighting factor.* We proposed that, as specified in section 1886(h)(4)(D)(i) of the Act, effective July 1, 1986, a resident who is an FMG and who otherwise qualifies by being in an initial residency period would be considered to have a weighting factor of 1.0 only if the individual—

- Has passed Day 1 and Day 2 of the Foreign Medical Graduate Examination in Medical Sciences (FMGEMS); or
- Has received certification from, or has passed an examination of, the Educational Commission for Foreign Medical Graduates (ECFMG) before July 1, 1986.

c. *Transition period rule.* We proposed that during a transition period from July 1, 1986 through June 30, 1987, the otherwise applicable weight for an FMG, who was a resident before, on, and after July 1, 1986 but who has not passed FMGEMS or met the ECFMG requirements would be multiplied by .5. Thus, any such resident who is no longer in an initial residency period would be counted as .375 FTE (.5×.75=.375). Any FMG whose residency begins on or after July 1, 1986, and who, by the date the residency begins, has not passed FMGEMS or received certification from or passed an examination of ECFMG, would not be counted at all.

d. *Counting FMGs who pass FMGEMS.* As was discussed in the proposed rule, once an FMG passes FMGEMS, the FMG is counted on the same basis as any other resident in an approved program. Thus, the FMG is counted as 1.0 if the FMG is in an initial residency period. For the period July 1, 1986 through June 30, 1987, an FMG who is not in an initial residency period would be counted as .75 and as .5 for the period beginning on July 1, 1987. The counting of FMGs is complicated by the fact that the time spent in an approved residency program counts toward the completion of an initial residency period regardless of whether the FMG who has not passed FMGEMS is partially counted or not counted at all. The definition of an initial residency period in section 1886(h)(5)(F) of the Act does not require that training be subsidized by Medicare in order for the training to be counted towards the completion of an initial residency period. Thus, any training that can be counted toward certification in a specialty, including any training outside the United States that has been deemed acceptable, is counted in the determination of the initial residency period.

6. Medicare Patient Load

Section 1886(h)(3)(C) of the Act defines "Medicare patient load" during a cost reporting period as "* * * the fraction of the total number of inpatient-bed-days (as established by the Secretary) during the period which are attributable to patients with respect to whom payment may be made under part A." This definition provides the basis for determining Medicare's share of GME costs that would be paid to a hospital or health care complex using the proposed payment methodology. We proposed that the calculation be made by dividing total part A inpatient days by total inpatient days (that is, Medicare and non-Medicare inpatient days) to determine the Medicare patient load. In the case of a health care complex, we proposed that the Medicare patient load for the hospital part of the complex be used as the Medicare payment share for the complex as a whole.

As proposed, the inpatient days would include inpatient days of the hospital that are payable under part A, which include special care units of the hospital along with its subproviders, including distinct part psychiatric, rehabilitation, and alcohol/drug units that are excluded from the prospective payment system. (We noted that alcohol/drug units were excluded from the prospective payment system for cost reporting periods beginning before October 1, 1987.) As is the case with other apportionment issues, hospital inpatient days of Medicare beneficiaries whose hospital stays are paid by risk-basis health maintenance organizations are recorded as non-Medicare days. Inpatient days applicable to hospital-based skilled nursing facilities and intermediate care facilities would not be

counted for the purpose of determining the Medicare patient load.

7. Apportionment Between Part A and Part B

Although section 1886(h)(1) of the Act provides for the "allocation" of Medicare payment between Part A and Part B, we interpreted this to mean that Medicare's liability for direct GME payment must be apportioned between the respective trust funds from which payments are made. We proposed that payment under Part A and payment under Part B be based on the ratio of Medicare's share of reasonable costs excluding graduate medical education costs attributable to each part for the individual provider as determined through normal Medicare cost finding rules.

8. Identifying Approved Teaching Programs

In addition to the changes required by section 1886(h) of the Act, we proposed to clarify what constitutes an approved program for the purpose of payment for direct GME costs. Program experience indicates that in the past there has been a problem in identifying approved teaching programs for certain medical subspecialties. These programs are sometimes called "fellowship" programs.

In some areas of medical specialty, subspecialty training programs have traditionally been accredited independently of general programs in the specialty. Examples of this are thoracic and neurological surgery programs that are accredited independently of general surgery programs. In other specialties, however, individual subspecialty programs were not accredited although they were given in conjunction with an accredited general specialty program. The most notable example of this situation is in the specialty of internal medicine. A resident completed a three-year program in general internal medicine and entered a fellowship program (for example, cardiology, nephrology, or oncology) for which the resident received a certificate of special competence by the appropriate board. Prior to 1986, these subspecialty programs were not individually accredited, and we have received several inquiries as to whether these programs should be treated as approved programs.

Historically, section 1861(b)(6) of the Act has provided the statutory basis for determining approval of GME programs. It cites approving bodies for graduate programs in medicine, osteopathy, dentistry, and podiatry The approving body for GME programs in medicine is currently the ACGME. (Section 1861(b)(6) of the Act cites the Council on Medical Education of the American Medical Association. This association has been replaced in this function by the ACGME. Section 1873 of the Act permits the recognition of successor organizations at the discretion of the Secretary.)

The Medicare program has generally treated fellowship programs as if they were accredited and paid for the services of residents in these programs as residents in approved programs. We argued in the proposed rule that it was not the intent of Congress, in adding section 1886(h)(5)(A) to the Act, to change that practice. The law and conference report do not indicate that section 1886(h)(5)(A) of the Act was intended to change the types of residency programs that Medicare supports except to expand the coverage to programs in geriatric medicine.

Section 1886(h)(5)(A) of the Act sets forth a new definition of an approved medical residency program that largely resolves any question about the status of these fellowship programs in past years. It defines an approved medical residency program as "a residency or other postgraduate medical training program participation in which may be counted toward certification in a specialty or subspecialty * * *." Thus, for the purpose of determining direct GME costs, Congress has shifted the emphasis from the accreditation of the program to the acceptability of the training for the purpose of attaining certification in a specialty or subspecialty. Further, the internal medicine subspecialty programs are now individually accredited by the ACGME.

However, section 1886(h)(5)(A) of the Act did not change the existing reference in section 1861(b)(6) of the Act with respect to approved programs. Therefore, we were faced with the rather complicated situation of having two statutory definitions of an approved residency program for cost reporting periods beginning on or after July 1, 1985. We proposed to resolve this matter by defining an approved program as a residency program in medicine, osteopathy, dentistry, or podiatry that is approved by one of the national accrediting bodies set forth in section 1861(b)(6) of the Act or that may be counted toward certification in a medical specialty or subspecialty cited in the 1985–1986 Directory of Residency Training Programs. Furthermore, any fellowship program that meets the requirements of an approved program in geriatric medicine as defined by the Secretary will also be included in this definition.

In the case of residents or fellows in programs that meet none of these criteria, we proposed that Medicare would pay its share of the costs of residents not in approved programs as described in § 405.523 of our regulations regarding residents not in approved teaching programs. Under § 405.523, hospitals are paid under Part B for up to 80 percent of the reasonable costs of services (that is, salaries and salary-related fringe benefits) of interns and residents who are not in approved programs, after payment of the Part B deductible by the Medicare beneficiary. No other educational program costs (that is, faculty compensation costs and other direct and indirect program expenses) in connection with such residents are payable. The Medicare beneficiary incurs the expense of deductible and coinsurance amounts as determined on the basis of the hospital's charges under Part B of the Medicare program.

The costs relating to patient care services of licensed physicians who are classified as "fellows" but who are not in an identifiable formal program leading to certification as defined in section 1886(h)(5) of the Act but remain at a teaching hospital/medical school complex to enhance their expertise in a field of study are payable on a Part B reasonable charge basis as physicians' services.

9. Special Treatment for States Formerly Under a Waiver From Medicare's Hospital Reimbursement System

Section 9202(j) of Public Law 99–272 provides that, effective with cost reporting periods beginning on or after January 1, 1986, hospitals in a State whose waiver under section 1886(c) of the Act for the operation of a State reimbursement control system has been terminated are permitted to change the order in which they allocate administrative and general costs to the order specified in the Medicare cost report. The only three States that were reimbursed under a waiver that has been terminated are Massachusetts, New Jersey, and New York. Hospitals in Massachusetts and New York were paid under a reimbursement system approved under section 402 of the Social Security Amendments of 1967 (Pub. L. 90–248) or section 222(a) of the Social Security Amendments of 1972 (Pub. L. 92–603).

Of these States, New York is the only State affected by this provision. Most hospitals in New York, including hospitals with direct medical education

cost centers, allocate administrative and general costs in a manner that differs from the recommended order prescribed in the Medicare cost report. Many of these hospitals use an order of allocation in which the administrative and general cost center follows, rather than precedes, the direct medical education cost centers. As a result of this methodology, none of the hospital's administrative and general costs were allocated to the direct medical education cost centers. This has had the effect of increasing the Medicare inpatient operating costs for teaching hospitals in New York and reducing the amount of medical education costs including the GME costs upon which the resident amounts are to be based. It was because of concerns about this matter that Congress enacted section 9202(j) of Public Law 99–272. Because New York never had a reimbursement control program approved under section 1886(c) of the Act, as specified in that section of Public Law 99–272, we provided for the same adjustment to be made in the September 3, 1986 final rule governing changes to the hospital prospective payment system (51 FR 31522) under the general exception and adjustment authority of section 1886(d)(5)(C)(iii) of the Act.

Under that authority, we provided for—

- An adjustment of Federal regional prospective payment system rates for the middle Atlantic census division (of which New York is a part) based on the assumption that all teaching hospitals in New York use the allocation order prescribed in the Medicare cost report; and
- An adjustment of the hospital-specific rate for hospitals that choose to follow the order of allocation prescribed by the Medicare cost report.

We proposed to use that same authority to provide an adjustment of direct GME costs for the cost reporting period beginning in FY 1984 for the purpose of determining per resident amounts.

In order to accommodate this adjustment, we proposed to allow hospitals in New York that have GME costs in the cost reporting period beginning in FY 1984 to change the method by which they allocate administrative and general costs to the method specified in the Medicare cost report for FY 1984 for the purpose of establishing per resident amounts. The intermediary would have to ensure that the shifted costs are properly allocated between cost of residency programs and costs of other medical education programs, since only the former go into the base used to determine the per resident amounts. These amounts should be updated as indicated for the cost reporting periods beginning on or after July 1, 1985, even though the per resident amounts will not serve as the bases of Medicare payment in these hospitals until January 1, 1986. Since the New York waiver ended for all hospitals effective December 31, 1985, the per resident amounts will be applied to cost reporting periods or portions of cost reporting periods effective January 1, 1986. As of that date, we proposed that direct GME costs of New York hospitals would be payable on the same basis that applies to hospitals in other States. This proposed provision would not affect payments for cost reporting periods or parts of cost reporting periods that fall before January 1, 1986. The New York teaching hospitals will have to continue to follow the specified allocation order to apportion costs between part A and part B thereafter.

10. Teaching Hospitals That Elect Cost Payments for Physicians' Direct Medical and Surgical Services Furnished to Medicare Beneficiaries

Section 1861(b)(7) of the Act provides that if all the physicians who furnish medical or surgical services to Medicare beneficiaries in the hospital agree not to bill charges for these services, a teaching hospital may elect to be paid on a reasonable cost basis for those services. This provision, as added by section 227 of the Social Security Amendments of 1972 (Pub. L. 92–603), was intended in part to simplify the administration of the program by eliminating the need for the hospital to document what portion of the physician's time is attributable to "medical and surgical services," and what portion constitutes "supervision of interns and residents." This documentation would otherwise be necessary in order to establish whether the "attending physician" criteria were met, which would allow the physicians to bill charges under Part B for their medical and surgical services. (See S. Rep. No. 1230, 92d Cong., 2d Sess. 198 (1972).)

We argued in the proposed rule that we do not believe that section 1861(b)(7) is inconsistent with section 1886(h) of the Act, which, as discussed above, provides that effective with cost reporting periods beginning on or after July 1, 1985, the direct costs of GME will be paid on the basis of per resident amounts, rather than reasonable cost. The per resident amount will be based on GME costs included in the hospital's intern and resident cost center in a specified base year.

For those hospitals that made the election under section 1861(b)(7) for cost reporting periods beginning prior to October 1, 1983, both physicians' medical and surgical services, and any supervision of interns and residents incident to furnishing the medical and surgical services in a hospital, were treated separately and paid through a special payment arrangement during the base year. Moreover, as explained above, there is no documentation that would provide the basis for distinguishing between the time spent on medical services as opposed to supervision. Accordingly, the supervision of interns and residents under these circumstances will not be reflected in the per resident amounts for payment of direct GME costs under section 1886(h) of the Act, but will be reimbursed separately, on a reasonable cost basis pursuant to the election provided by section 1861(b)(7) of the Act.

However, if a hospital made the section 1861(b)(7) election after the FY 1984 base year, the costs of supervising interns and residents would have been included in the intern and resident cost center, and therefore were included in the calculation of the per resident amount. Thus, the effect of the 1861(b)(7) election would be a duplicate payment for the supervisory services. Accordingly, for hospitals that elect the special payment method for cost reporting periods beginning on or after the FY 1984 base year, we proposed to adjust the per resident amounts for GME to reflect proportionately lower costs from those that are represented in the amounts determined for other teaching hospitals, in order to avoid duplicate payments.

11. End Stage Renal Disease (ESRD) Exception Criteria

Currently, payment for educational costs is included in the composite rate payment system for outpatient dialysis services. A hospital-based ESRD facility that incurs costs attributable to an approved residency or nursing education program may request an exception to its composite rate payment.

To qualify, a hospital-based ESRD facility must incur costs above its composite rate payment that are attributable to its educational program, as described in § 413.170(g)(3). Section 1881(b)(1) of the Act requires Medicare to pay for institutional dialysis services and supplies. Section 1881(b)(2)(B) of the Act determines how these outpatient dialysis services are paid. Neither of these sections requires Medicare to pay for medical educational costs under the

composite rate payment system. Under section 1886(h) of the Act, however, payment for GME costs in hospital-based ESRD facilities would be payable through per resident amounts. Therefore, we proposed that any costs attributable to approved residency, nursing, and paramedical training programs be excluded from the composite rate. Costs associated with approved residency programs would be payable through the per resident amounts. Costs incurred in connection with approved nursing and paramedical training programs would be reimbursable on a reasonable cost basis under the authority of § 413.85. Such treatment of these costs would eliminate the need for exception criteria for the cost of approved educational activities. This proposal would be applicable to cost reporting periods beginning on or after July 1, 1985, the effective date of section 1886(h) of the Act.

In conjunction with this proposal, in order to avoid duplicate payments that might result because of this statutory effective date, we proposed that it will be necessary to recover or offset any exception amounts already paid that are related to GME programs for cost reporting periods beginning on or after July 1, 1985, since these amounts would be payable through the per resident payment established by section 1886(h) of the Act. As stated in the proposed rule, HCFA would not approve any new composite rate educational exceptions once the proposed regulations are published in final in order to prevent overpayments from continuing.

III. Discussion of Public Comments

In response to the proposed rule, we received approximately 75 timely items of correspondence. Comments were received from hospitals and hospital associations, professional health-related organizations, intermediaries, and local governments. The specific comments and our responses to them are set forth below.

A. General Comments

Comment: Many commenters opposed the change from reasonable cost reimbursement to the per resident amount payments. One commenter pointed out that it adds another level of complexity to an already convoluted payment system, and that it does not result in a more equitable system of payment for direct GME costs.

Response: The modified payment system we are implementing was established by Congress in section 9202 of Public Law 99–272. In implementing this law, we have endeavored to produce as few disruptions as possible consistent with Congressional intent.

Comment: Several commenters cited the negative impact on their hospitals resulting from the retroactive application of section 1886(h) of the Act. One commenter pointed out that hospitals had made GME expenditures in good faith without knowing how the final rule would affect the hospitals' GME costs. Several commenters argued that HCFA should disregard the statutory effective date and that HCFA should implement section 1886(h) of the Act on a prospective basis only. One commenter gave an example of other statutory provisions in which effective dates were delayed administratively for various reasons.

Response: The statute requires that the new GME payment policy is to be effective for hospital cost reporting periods beginning on or after July 1, 1985. At the time of its enactment in April 1986, section 9202 of Public Law 99–272 was already a retroactive provision; that is, its effective date was cost reporting periods beginning on or after July 1, 1985. The fact that Congress passed the provision as a retroactive measure is a clear indication of Congressional intent that the statute be implemented retroactively effective with July 1, 1985. Moreover, we infer from the retroactive nature of the statutory provision that Congress viewed the methodology it was enacting as preferable to the methodology on direct medical education payments that the Department had adopted for cost reporting periods beginning on or after July 1, 1985 and intended that the new payment provision supersede the July 5, 1985 final rule. (On July 5, 1985, the Department published a final rule, effective July 1, 1985, in which allowable direct medical education costs were to have been limited to the lesser of the hospital's actual costs or the hospital's allowable costs incurred during a prior base period (51 FR 34790). Moreover, we believe that hospitals have had adequate notice that their Medicare payments for graduate medical education costs would be limited. Initially, hospitals should have anticipated a "freeze" in Medicare GME payments for cost reporting periods beginning on or after July 1, 1985 based on the publication of the July 5, 1985 final rule. As an interim step pending issuance of this final rule, we notified the public in the May 6, 1986 Federal Register that section 9202 of Public Law 99–272 specified a different approach to payment of direct medical education costs starting with cost reporting periods beginning on or after July 1, 1985.

Also, we understand that information about the enactment of section 9202 of Public Law 99–272 and its provisions was conveyed to teaching hospitals by their advocacy groups to encourage them to give due consideration to holding down their GME costs. It is obvious from the provisions of the legislation that Congress intended to place limits on Medicare participation in GME costs, and we believe that teaching hospitals should have been making decisions about their GME costs accordingly. Most of the provisions of the proposed rule (for example, the CPI–U update factor, the one percent update for the first year, and the weighting factors for residents) were specified in the law and should have been considered by teaching hospitals at least since the enactment of section 9202 of Public Law 99–272 on April 7, 1986.

Finally, we note that retroactive application of the new payment provisions will benefit some hospitals. Some hospitals will benefit from the new methodology for apportioning Medicare costs based on Medicare inpatient load and others will benefit from the removal of GME costs in making the lower-of cost-or-charges comparison. Hospitals that incur all or substantially all of the training costs for the time that residents spend in patient care activities outside the hospital setting will benefit from recognition of this time in the intern and resident FTE count effective July 1, 1987. Hospitals that operate a geriatric training program that receives accreditation from ACGME will benefit from treatment of the program as approved retroactively to the later of July 1, 1985 or the date the program was established. Failure to implement the provision retroactively would deny these hospitals the benefits to which they are entitled by statute. (Additional discussion of the circumstances that require retroactive application of this final rule is provided in section VI below.)

Comment: One commenter suggested that the revised payment method should apply only to hospitals subject to the prospective payment system and disagreed with our proposal to apply section 1886(h) of the Act to all hospitals and hospital-based providers and subproviders.

Response: We believe that it is clear from the language of section 1886(h) of the Act that it applies to all hospitals regardless of their status under the prospective payment system. Nowhere in that section is there any indication that Congress intended that it apply only to those hospitals paid under the provision of section 1886(d) of the Act. On the contrary, section 1886(h) of the Act refers only to "hospitals" or to "a hospital with an approved medical

residency training program," whereas the provisions in section 1886(d) of the Act concerning the prospective payment system usually refer instead to a "subsection (d) hospital" or to a "subsection (d) Puerto Rico hospital." (Those terms are defined in sections 1886(d)(1)(B) and 1886(d)(9)(A) of the Act.) Further, subsection (h) of section 1886 of the Act is the only subsection of that section that has a heading, "Payment for Direct Graduate Medical Education Costs." This unusual feature is a further indication that the provisions of subsection (h) are to be distinguished from the provisions on the prospective payment system (and related payment provisions) that are set forth in the preceding subsections of section 1886 of the Act. Thus, it seems clear that section 1886(h) of the Act was not intended to be limited to hospitals receiving payment under the prospective payment system. As discussed in the proposed rule at 53 FR 36590, we believe that it would be impractical not to apply the revised payment method to the entire healthcare complex. Any alternative would be too burdensome on all parties to administer.

Comment: One commenter stated that the change in payment method breaks a promise made by the Medicare program to pay for GME costs and will force hospitals to pass GME costs on to other payers.

Response: As noted above, these rules are necessary to implement legislation passed by Congress. We believe that when the three-fold Medicare response to GME programs is considered (that is, direct medical education payments, indirect medical education payments, and attending physician billing), there will continue to be a considerable commitment of Medicare funds to GME programs.

Comment: One commenter indicated that the retroactive application disrupts finality of payments under the prospective payment system.

Response: We do not believe this to be the case. We are instructing fiscal intermediaries to review GME base period amounts for the purpose of making the payments under the final rule as correct as possible for the future. Since payment for GME has been made as a pass-through cost rather than as part of the prospective payment rate, these payments (as with all other amounts paid on a reasonable cost basis) were always subject to reopening by intermediaries in appropriate cases within three years of settlement to correct erroneous payment. This would be the case, and has been taking place, independent of the enactment of section 1886(h) of the Act. As for the finality of payments made under the prospective payment system, the only payments that will be affected are hospital-specific payments during the transition period and this will be done at the request of a hospital for the benefit of the hospital for those cost reporting periods that are subject to reopening.

B. Determining Base-Period per Resident Amounts

Comment: Many commenters addressed the need to have consistency in the counting of resident FTE's between the base period and the payment periods and cited the individual circumstances of their hospitals with respect to funding sources of residency programs. A particular problem referred to was the treatment of residents who are paid by medical schools, faculty practice plans, and others rather than by hospitals that participate in Medicare. It was pointed out that teaching hospitals incur other costs such as teaching physicians' salaries and overhead costs in connection with these residents, and that it would be unfair not to count these residents for payment purposes.

One commenter suggested that residents who are paid a salary by nonhospital entities be counted as .25 FTE in recognition of these costs while another indicated that the GME costs not associated with residents' salaries were higher than the salary costs. A commenter from a major academic health center recommended that the one-day count of residents taken each September for indirect medical education payment purposes be weighted for individual residents as set forth in section 1886(h) of the Act and used for direct GME payment purposes also. The commenter pointed out that if that count was accurate enough for indirect medical education purposes, which involve much larger payments, it should suffice for direct GME payments as well.

Response: As we stated in the preamble to the proposed rule, the count of residents is the most complicated aspect of implementing section 1886(h) of the Act. Section 1886(h)(2)(A) of the Act states:

> The Secretary shall determine for the hospital's cost reporting period that began during fiscal year 1984, the average amount recognized as reasonable under this title for direct graduate medical education costs of the hospital for each full-time-equivalent resident.

As provided in section 1886(h)(3)(B) of the Act, the requirement for determining payments for cost reporting periods beginning on or after July 1, 1985 is that the updated per resident amount is multiplied by "* * * the weighted average number of full-time-equivalent residents * * * in the hospital's approved medical residency training programs in that period."

Nothing in section 1886(h) of the Act indicates that the bearing of certain types of costs in connection with particular residents is a factor in determining who should be counted. The law simply requires the Secretary to determine the average amount incurred to train residents during the specified base period and to make GME payments for the residents in the hospital's programs thereafter on that basis. There was no authorization to establish a two-tiered system to account both for residents for whom the hospital incurs full training costs and for residents for whom hospitals incur only supervisory and overhead costs because the residents' salaries are paid by another entity.

Not only does section 1886(h) of the Act not take into account the various types of financial arrangements that teaching hospitals have made for their GME programs, it also does not provide for reasonable modification of program arrangements after the base period. Thus, depending on the composition of GME costs during the base period, some teaching hospitals that later decide to change the financing of their GME programs could experience windfall profits, while others could experience a shortfall of the Medicare funding to which they had become accustomed. In short, the revised payment method is less flexible in responding to change than was reasonable cost reimbursement.

In responding to the various comments received, we would like to stress that we agree that there should be consistency between the residents counted in the base period and in the payment periods. The primary difference between the count of residents in the base period and in the payment years should be increases or reductions in the numbers of FTE residents in approved programs in the hospital during the cost reporting periods in question. The problem is how to count the residents in such a way that hospitals are treated as fairly as possible given the restrictions imposed by the revised payment method.

The revised payment method set forth in section 1886(h) of the Act seems to assume that GME programs remain relatively static except for upward and downward movements in the number of residents in a program. Carried further, the assumption seems to be that there is fairly constant rotation of residents to

other hospitals, and that the exchange of funds between program hospitals on a yearly basis is also fairly constant. While the apparent assumptions stated above would seem to argue for the use of a uniform one-day count of residents as has been the case with indirect medical education payments since cost reporting periods beginning on or after October 1, 1984, we have reservations about this approach. Specifically, we have concerns about proper application of the weighting factors across teaching hospitals. For residents beyond their initial residency period and for foreign medical graduates who have not passed FMGEMs, we have no assurance that the assignments of such residents on September 1 each year is actually reflective of the entire year. We believe that this is a much more important consideration with direct medical education payments than with indirect medical education payments since GME payments will be reduced for these categories of residents. The indirect medical education payments are made to teaching hospitals regardless of the weighting factors.

We proposed to use the number of residents shown on the Medicare cost report for the base period as the denominator in calculating a base-period per resident amount for each teaching hospital. Although one of the numbers entered on the cost report was for the purpose of calculating indirect medical education payments, the total number reported applied to the entire health care complex including hospital-based providers and subproviders even though the indirect medical education payment did not apply to these residents.

We concede that some commenters on the proposed rule were confused by our discussion of indirect medical education numbers in the preamble (see 53 FR 36593). We did not mean that the number used for indirect medical education payments was to be used as the denominator but the number entered on the cost report for the complex as a whole under indirect medical education counting procedures was to be used.

However, in response to the commenters' concern that the base-period count of residents be consistent with the method of counting residents for cost reporting periods beginning on or after July 1, 1985, we are modifying proposed § 413.86(e)(1) to specify that fiscal intermediaries will use a count of FTE residents for the GME base period that reflects the average number of FTE residents working in the health care complex during the GME base period. The residents' assignment schedules for the GME base period should already be included in the fiscal intermediary work papers since these assignment schedules were to be used to verify the "assigned time" or "FTE" statistics on Worksheet B–1 of the cost report which were used to allocate the GME cost to the various cost centers. If such documentation is not included in the fiscal intermediary work papers, the hospital will be required to present additional documentation to determine a base year count of residents consistent with the counting of residents after July 1, 1985. This information must be in a format that may be verified by the intermediary.

Several commenters were concerned that their base-period per resident amounts would be too low if the count entered on the FY 1984 cost report were used as the denominator since varying percentages of their residents received their salaries from other entities. The commenters argued that when these residents, for whom the hospital incurs certain nonsalary costs, are combined with residents for whom they incur full training costs, the hospital's base-period amount will be too low. We believe that this should not be a problem if the same financial arrangements apply in the payment years. The fact that one teaching hospital's per resident amount is significantly lower than another hospital's is immaterial if it accurately reflects base-year costs, unless the financial arrangements are changed.

However, we note that some of the comments have led us to believe that, in addition to Federally-employed residents (for example, residents in Veterans Administration or Department of Defense programs), a significant number of residents are paid a salary by non-Federal, nonprovider entities (for example, medical schools or philanthropic agencies). As noted by the commenters, although no hospital participating in Medicare incurs salary costs for these residents, hospitals do incur other substantial GME costs associated with these residents. Therefore, we are modifying our proposed rule to require Medicare hospitals to count residents who are working in their facility even if the residents' salaries are fully paid by other entities, either Federal or nonFederal. This revised counting policy will apply to both the GME base period and cost reporting periods subject to the new payment methodology.

Finally, we reject the comment of substituting a fractional FTE count for residents who are paid a salary by nonhospital entities in both the base period and the payment years, because the financing of GME programs varies so widely as to preclude arriving at an appropriate uniform figure. The following examples are provided to illustrate the counting of residents under the revised GME payment methodology:

EXAMPLE 1:

In its GME base period (cost reporting period beginning July 1, 1984), teaching hospital A had 502 residents filling 500 slots in its various GME programs (4 residents share 2 slots). Hospital A is a health care complex that also includes a skilled nursing facility (SNF), a comprehensive outpatient rehabilitation facility (CORF), and a home health agency (HHA). Teaching hospital A paid the salaries of 402 residents while the remaining 100 residents had their salaries paid by another entity. The assignment of the 502 residents was as follows:

Number of residents	Salary paid by	Where assigned (percent of time)
1. 198	Hospital A	Prospective payment unit of Hospital A—100%.
2. 4 (sharing 2 slots)	Hospital A	Prospective payment unit of Hospital A—50%.
3. 10	Hospital A	Prospective payment unit of Hospital A—50%; Excluded units of Hospital A—50%.
4. 10	Hospital A	Prospective payment unit of Hospital A—50%; Freestanding clinic—50%.
5. 180	Hospital A	Prospective payment unit of Hospital A—50%; On rotation at other hospitals—50%.
Total 402		
6. 80	Medical school	Prospective payment unit of Hospital A—75%; SNF, CORF, HHA of Hospital A—25%.
7. 20	Veterans' Administration	Prospective payment unit of Hospital A; 25%; On rotation at other hospitals—75%.
Total 100		

For the purpose of calculating Teaching Hospital A's base-period per resident amount, the total number of residents to be included in the denominator is 390, computed as follows: (Line 1)+(Line 2×0.5)+(Line 3)+(Line 4×0.5)+(Line 5×0.5)+(Line 6)+(Line 7×0.25)=198+2+10+5+90+80+5=390.

If we assume that the number of residents remains the same in all future years, and that all residents are within their initial residency periods, and that all foreign medical graduates have passed FMGEMS or its equivalent, then for the cost reporting period beginning July 1, 1986, Hospital A would count 390 residents for payment purposes under the new payment methodology. Effective July 1, 1987, Hospital A would count 395 residents since the hospital incurs substantially all of the costs for the 10 residents that spend 50 percent of their time in freestanding clinics. If Hospital A did not incur substantially all of the costs for the 10 residents, the hospital would continue to count 390 residents (and no payment would be made to the hospital for the time the residents spend in freestanding clinics).

Example 2

Hospital B does not have a GME program, however, at any given time, 20 residents from approved programs at other hospitals are on rotation at Hospital B. The other hospitals pay the salaries of all 20 residents. The other hospitals cannot count the residents for the portion of their time they spend at Hospital B. Hospital B compensates one hospital a fixed amount per month for each of 10 residents provided by the hospital. Hospital B is not required to provide any compensation for the other 10 residents. For the purpose of calculating Hospital B's base period per resident amount, the total number of residents to be included in the denominator is 20. (The costs are the costs incurred by Hospital B for the 20 residents; that is, the amounts paid to the other hospital and the nonsalary costs incurred by Hospital B.) If we assume that the number of residents remains the same over time, and that all residents count as 1.0 FTE in future periods, then for cost reporting periods subject to the new payment methodology, Hospital B would also count 20 residents for payment purposes.

Comment: Several commenters objected to the use of the indirect medical education count in calculating the base period per resident amounts, and suggested that residents assigned to excluded units such as psychiatric units be included in both the base year and payment year counts.

Response: As was discussed above, it has been our intention all along to count residents assigned to excluded units, hospital-based skilled nursing facilities, and other providers and subproviders of the health care complex. Proposed § 413.86(e)(1) did not specify that the indirect medical education count be used in the calculation. Rather, it specified that the number of residents reported on the cost report should be used. Residents assigned to excluded units are reported on the cost report. To clarify this point, we are adding an additional sentence to § 413.86(e)(1), in addition to the changes discussed above, to make it clear that all residents reported for all components of the complex (other than residents hired to replace anesthetists, as provided in § 413.85(d)(7)) would be counted in calculating base-period amounts. In addition, we are classifying in § 413.86(f) how residents, including those working part-time and on rotation, will be counted in the payment years.

Comment: Several commenters indicated that there were problems with using the indirect medical education count of residents in the base period since the count of residents assigned to the hospital as of the first working day in September is independent of the payment of salaries.

Response: We believe the commenters are confused about the method used in the base-period count of residents. The base period for determining per resident amounts under section 1886(h) of the Act is the cost reporting period beginning in FY 1984. At that time, the one-day September count was not the basis upon which the indirect medical education count was made. Rather, the indirect medical education count was based on the number of residents working at the hospital and employed by either this hospital or by an organization that has a longstanding medical relationship with the hospital and that is the sole employer of substantially all the residents furnishing services at the hospital.

However, as was discussed above, we are modifying § 413.86(e)(1), in response to commenters' concerns, to specify that fiscal intermediaries will use a count of FTE residents for the base period that reflects the average number of FTE residents working in the health care complex during the base period.

Comment: Several commenters pointed out that the 35-hour a week threshold was applied to the indirect medical education count on the cost report that will be used for the GME base-period calculation and could affect the base-period amount. It was suggested that hospitals should be allowed to adjust their base-period FTE counts to take this factor into account.

Response: As discussed above, we proposed to use the count of residents entered on the cost report under indirect medical education provision for all components of the complex because that number was available. However, based on comments received, we are modifying § 413.86(e)(1)(i) of the proposed rule to specify that fiscal intermediaries will use a count of FTE residents for the GME base period that reflects the average number of FTE residents working in the health care complex during the GME base period.

Comment: One commenter indicated that HCFA's concern about the correctness of GME base period costs is unfounded since there was extensive audit activity of these costs for both the prospective payment base period and the first cost reporting year of the prospective payment system.

Response: It may not be necessary to reaudit all teaching hospitals in setting the base-period rates. However, several situations have been brought to our attention in which physicians' costs incurred for activities unrelated to GME, malpractice costs, and medical library costs have been misclassified as GME costs or excessive administrative and general service costs were allocated to the GME cost center. Thus, we believe that there is a basis for reaudit activity where indicated.

Comment: Some commenters were concerned that some records necessary to support payments made in the base period may no longer be available, and that since most hospitals have already undergone audits, the commenters believe that they should be given the benefit of the doubt when supporting documentation is unavailable. The commenters also pointed out that, with respect to section 1886(h)(4)(E) of the Act, which permits the counting of the time residents spend in nonhospital settings for the teaching hospital that bears the training costs of the residents in the outside setting on or after July 1, 1987, some hospitals would be unable to document from their affiliation agreements which entity paid the residents' salaries.

Response: Obviously, all records used to support the reimbursement of costs are not of equal importance in determining the allowability and classification of costs. While it may be necessary at some point for HCFA to set a policy on this issue, we would find it hard to believe that teaching hospitals would not have some supporting documentation of costs incurred no more than 5 years ago. Furthermore, even if the information is no longer available at the hospital, the fiscal intermediary would have retained some of the documentation in its workpapers.

With respect to the provision effective July 1, 1987, the only requirement is for

documentation that the hospital pays for the training costs, specifically residents' salaries, in the outside setting. If hospitals cannot document that they incurred salary costs for certain residents in 1987, they should not receive GME payments for those individuals.

Comment: One commenter asked for clarification of why we would reopen cost reports that had been settled for more than 3 years if no adjustments to amounts paid in that year could be made.

Response: The commenter is referring to our proposed policy to allow hospitals who have had misclassified operating costs removed from their GME base period costs to request an upward adjustment to their hospital specific rate (HSR) during the prospective payment transition period reflecting these higher operating costs. If costs that were misclassified as GME in the GME base-period costs received similar treatment in the prospective payment base period, there would be a basis for an upward adjustment of the hospital's HSR. To make this adjustment, it is necessary to use the cost report from the prospective payment base period even though payments in that year might not be affected. The affected years would be those cost reporting periods subject to reopening in which the HSR was a factor in the hospital's payments under the usual provisions of § 405.1885 (that is, within 3 years of settlement).

Comment: Some commenters argued that hospitals that are excluded from the prospective payment system should be permitted to request to have their target amount recomputed to reflect misclassified costs in the same way prospective payment hospitals may request to have their HSRs recomputed.

Response: We agree with the commenters that this adjustment should be made. We are revising the proposed regulations to include this provision (see § 413.86(j)).

Comment: One commenter objected "* * * to legislation which, for the government's convenience, allows a modification to the hospital specific base rule for any errors found to be applied retroactively, while denying hospitals retroactive application to all other known errors (those supported by successful appeals)."

Response: There is nothing in section 1886(h) of the Act that addresses the recomputation of HSRs. However, we believed that the enactment of section 9202 of Public Law 99–272 was a special circumstance calling for special treatment of the costs involved. Under both situations in which we have proposed recomputation of HSRs, the recomputation works to the benefit of the hospitals involved.

Comment: One commenter questioned whether the proposed reopening of cost reports will allow areas other than GME to be reopened.

Response: As indicated in the proposed rule at 53 FR 36592, we are making a one-time adjustment solely for the purposes of correctly classifying GME costs. We do not intend that any other areas of the cost report be reopened.

Comment: Several comments oppose the review and potential reopening of cost reporting periods beginning in FY 1984 for the purpose of setting base-period per resident amounts. One commenter representing a group of physicians pointed out that Congress made the clear-cut decision that the figures for that year would serve as the base period and expressed concern that different standards would be applied on audit that were not applied originally.

Response: Section 1886(h)(2)(A) of the Act provides that the Secretary must determine, for the cost reporting period that began during FY 1984, the average amount recognized as reasonable. We would find it hard to believe that Congress intended that misclassified and nonallowable costs continue to be recognized through the GME payment indefinitely. The first cost reporting period under the prospective payment system will serve as the base period for the new GME payment policy. We believe that GME costs were not given sufficient scrutiny at the time because of the many changes that were taking place in Medicare generally. We would like to assure all interested parties that no new reimbursement principles will be applied during the reaudit. Rather, our intent is to ensure that the reimbursement principles in effect during the GME base period were correctly applied. Moreover, we are clarifying § 413.86(e)(1) to indicate that if a hospital's base-period cost report is no longer subject to reopening under § 405.1885, the intermediary may modify the hospital's GME base-period costs solely for purposes of computing the per resident amount.

Comment: One commenter requested clarification of whether the proposed rule permits recalculation of the prospective payment base-period rate and adjustments to reimbursement for all years since the beginning of the prospective payment system.

Response: Even if section 1886(h) of the Act had never been enacted, intermediaries would have had the authority to reopen cost reports within 3 years of settlement to correct erroneous direct medical education pass-through cost reimbursement amounts. What the proposed rule does is to allow hospitals to request to have their HSR adjusted upward whenever the retroactive disallowance of misclassified GME costs would result in no payment for what are otherwise allowable operating costs of the hospital, (that is, an overpayment that the Medicare program otherwise would have to recover). Adjustments to the HSR (and the target rate for hospitals excluded from the prospective payment system) will be made for cost reporting periods that are still subject to reopening (that is, within 3 years of settlement) under the usual provisions of § 405.1885.

Comment: One commenter pointed out that the proposed rule permits limited revision to the HSR, but there is no discussion of the effect on Federal rates.

Response: The Federal portion of the prospective payment rates in effect during the transition period will not be revised as part of this final rule. We believe it would be inappropriate to change all hospitals' prospective payments retroactively to take account of changes to a subset of teaching hospitals' costs. The prospective payment system, as legislated by Congress, was designed to set payments in advance, and payment rates were established based on the best data available at the time.

Comment: One commenter suggested that, during any reaudit activity, hospitals should be able to introduce additional GME costs not previously claimed, as well as misclassified costs, to augment base-period GME costs.

Response: We would seriously question the legitimacy of costs introduced 4 or 5 years after the base-period cost report was prepared by the hospital. However, if it can be demonstrated to the satisfaction of the fiscal intermediary that legitimate GME costs were inadvertently omitted from the base-period cost report, then these costs could be introduced during the reaudit activity. However, these costs would have to be supported by actual documentation developed during the GME base-period that was maintained in a format that can be audited. Costs other than GME costs could not be introduced if the cost report is not otherwise subject to being reopened.

Comment: One commenter pointed out that the GME base period costs include capital costs properly allocated to GME programs and raised a number of issues arising from the fact that capital payments related to GME will be limited by the CPI–U on the same basis as GME payments generally. It was noted that such a limit on capital payments related

to GME ultimately restricts growth and does not take into consideration future expansion and increases in debt.

Response: It is true that the revised GME payment method established by section 1886(h) of the Act locks into place a teaching hospital's cost circumstances as they existed during the base period with no provision for modifying per resident amounts to reflect changes in those circumstances. We infer from the lack of an exception for capital or any other category of costs related to GME programs that it was the intent of the Congress to do this. The practical result of this policy is to preclude additional payments for capital costs related to GME for cost reporting periods beginning on or after July 1, 1985, except to the extent such costs might be payable through per resident amounts.

Comment: Several commenters questioned the need for reaudit activity of GME base-period costs since there is no reason to believe that the results would be more consistent on reaudit than they were after the original audit.

Response: Periodically, findings have come to our attention that indicate that fiscal intermediaries were inconsistent in their application of GME policy under reasonable cost reimbursement. The enactment of section 1886(h) of the Act, with its potential to perpetuate misclassified and nonallowable costs through the per resident amounts, compels us to take actions to strive for consistent treatment of GME costs. Reaudit guidelines for the intermediaries have been prepared by HCFA. We believe that the reaudits will clear up these problems.

Comment: Some commenters expressed concern about treatment of GME costs of a related medical school. One commenter pointed out that, in some complexes, GME activities may take place in space assigned to the medical school, and that it would be unfair to impose a restriction on the location of allowable GME patient care activities in large academic health care centers for reimbursement purposes. Another commenter was concerned that medical schools often are adequately funded by grants from State and local governments, so it seems inappropriate for the medical school under such circumstances to also pass-through such costs to the hospital. In the opinion of the commenter, we should address whether there is a redistribution of GME costs when State appropriations or other funding sources are sufficient to cover the costs of operating the medical school.

Response: We agree that determination of allowable costs of related medical schools can be a complicated matter. We are guided by the general principle that, to be allowable at all, the costs must be related to patient care furnished in the hospital, and, to be allowable as a direct GME cost, the costs must be related to the GME program in the hospital. Certain identifiable activities conducted by the faculty of a related medical school, which are necessary for the clinical training function at the hospital, may represent allowable costs for Medicare program purposes. These activities include supervision of interns and residents in activities for which no Part B charge is made and the conducting of rounds and patient care conferences related to hospital patients. To reiterate, services that are both related to the care and treatment of the hospital's patients and furnished in support of the training of interns and residents meet the requirements for payment.

These items and services must be necessary and directly related to the provision of medical school faculty services in the hospital and may not be duplicative of items and services furnished by the hospital. For example, if the hospital is unable to provide office space or clerical support to the physicians supervising its interns and residents, a portion of those costs that are incurred by the university medical school may be allowable if it can be demonstrated to the satisfaction of the fiscal intermediary that such costs are directly related to the training program of the interns and residents working in the university hospital and are related to the care and treatment of the hospital's patients.

In the past, hospitals have alleged that the related organization principle set forth in § 413.17 requires Medicare to reimburse a hospital for a share of all costs of a medical complex or even of the entire university on the basis that the component entities were indistinguishable from the whole. Our policy concerning related organizations was established to avoid program recognition of costs of a provider for services furnished by a related organization in excess of the costs incurred by the related organization, and to avoid payment of artificially inflated costs that might be generated from less than arm's length bargaining. This policy was not intended to expand the range of items and services for which a provider could claim Medicare reimbursement, or to include items and services not specifically related to patient care.

With respect to the comment that we should address the issue of funding that covers the costs of operating the medical school, our policy prior to October 1, 1983 provided that restricted grants (those grants that were designated by the donor for paying certain specified provider costs) were deducted from the designated costs incurred by the provider. Unrestricted contributions, however, would not be deducted from such costs. Section 901 of the Omnibus Budget Reconciliation Act of 1980 (Pub. L. 96-499) added section 1134 of the Act. This provision affirmed the Secretary's authority not to offset donor-restricted grants and gifts that the Secretary finds, in the best interests of needed health care, should be encouraged. The policy that restricted grants could be offset against allowable costs incurred by providers was changed effective October 1, 1983 (as provided in the September 1, 1983 final rule (48 FR 39797)). Thereafter, any grant monies received by a provider could not be offset against the reimbursable amounts due the provider under Medicare.

Comment: One commenter suggested that a date should be set by which intermediaries must decide whether a cost report should be reopened based on findings made during reaudit activity so that hospitals will not be penalized due to the tardiness of their intermediaries' actions.

Response: We do not agree. As pointed out in the preamble to the proposed rule, budgetary restraints that have been placed on contractors make specific time schedules for this activity impractical. We will, however, begin this review and reaudit as soon as possible after publication of this final rule.

Comment: One commenter indicated that the 3-year restriction on reopening cost reports should not be waived for the reaudit activity and the consistency requirement of the regulations for direct medical education costs during the prospective payment system transition period should be applied in defining GME costs on a per resident basis.

Response: We would like to reiterate that payments will not be affected for cost reporting periods that have been settled for more than three years. Rather, we proposed that cost reports settled for more than 3 years could be re-examined for purposes of modifying the hospital's target amount or HSR in subsequent years still subject to reopening. With respect to the second part of the comment, the consistency clause in § 412.113(b) was never intended to recognize operating costs misclassified as GME costs. It was designed to prevent hospitals from

claiming amounts on a reasonable cost basis for the types of costs already included in its HSR. As part of the September 30, 1988 prospective payment system final rule, we removed the portion of § 412.113(b) dealing with the consistency rule for medical education costs. With the expiration of the transition period, the restrictions on the classification of medical education costs were no longer needed for cost reporting periods beginning on or after October 1, 1987. We removed this requirement so it would not be confusing in future cost reporting periods. However, we now believe that the requirement for consistent treatment of medical education costs during the transition period should remain in the regulations to enhance understanding of the treatment of misclassified costs for purposes of determining the GME per resident amount and adjusting the HSR. Therefore, we are making the changes as proposed to § 412.113 and retaining in § 412.113(b)(3) the consistency rule for medical education costs.

Comment: One commenter expressed concern with the proposal to review, and, in some cases, reaudit GME base period costs because of an "* * * arbitrary and capricious application of a 'suspicion' by fiscal intermediaries that such costs are high."

Response: The GME base period under section 1886(h) of the Act was also the first period under the prospective payment system, a period in which many changes were occurring in the Medicare program. The costs that were classified as costs of approved educational activities did not always receive the scrutiny they should have. Several instances of misclassified costs have come to our attention, and we believe that it is necessary to correct these errors before incorporating these FY 1984 costs into the per resident amounts that will not be revised again except by an update factor. Because of this, we believe that it is imperative that we do our best to ensure that these amounts are correct.

Comment: One commenter suggested that different per resident amounts be established for each type of specialty program to reflect the differing costs of the programs.

Response: The revised payment method established by section 1886(h) of the Act made no provision for such differentiation. Further, it would be extremely difficult to calculate such amounts from Medicare cost reports since the costs of all GME programs are aggregated within one cost center on the cost report.

Comment: One commenter requested clarification as to how overhead would be apportioned between GME programs and nursing and allied health training programs.

Response: All overhead associated with GME programs will be payable only through the per resident amount, regardless of the actual costs incurred, based on the overhead costs during the base period. Overhead costs incurred in connection with approved nursing and allied health training programs will continue to be reimbursed on a reasonable cost basis under existing cost report procedures.

Comment: We were asked to elaborate on the appeals process with respect to the computation of the per resident amount. One commenter suggested that a hospital be permitted to make an initial appeal to the fiscal intermediary within 180 days of receipt of the notice of its per resident amount. Then, if still dissatisfied, the hospital could appeal to the Provider Reimbursement Review Board (PRRB) within 180 days of the revised notice.

Response: Once the intermediary computes a per resident amount that the intermediary believes is correct, the intermediary will notify the hospital that this is HCFA's final determination. Upon receipt of this notification, the hospital has 180 days in which to appeal the intermediary's determination. Although the hospital must appeal to the PRRB, it can continue to negotiate with the intermediary to resolve any dispute with respect to the intermediary's determination. The hospital has no appeal rights after 180 days have elapsed since its receipt of the original notice or any revised notice of its per resident amount. (A revised notice would be issued in response to further negotiation between the hospital and the intermediary, as a result of the issuance of a revised Notice of Program Reimbursement for the GME base period at a later date, or in response to a PRRB or court determination.) It should be noted that the per resident amount determination process is separate from the settlement of GME payments made on or after July 1, 1985. For settlement of GME payments made on or after July 1, 1985, the hospital can still appeal the count of residents for the cost reporting year in question or the application of the update factor in the settlement of GME payments. We are modifying § 413.86(e)(1) to further clarify these points.

C. Updating Per Resident Amount in Subsequent Years

Comment: One commenter suggested that the CPI–U, which we proposed to use to update per resident amounts for cost reporting years beginning on or after July 1, 1986, will always be less than actual inflation and salary increases. The commenter proposed that the CPI–U should be replaced by a factor representing the average increase in GME costs among teaching hospitals.

Response: Section 1886(h)(2)(d) of the Act specifically requires that per resident amounts be updated yearly based on the estimated percentage change in the Consumer Price Index. Section 1886(h)(5)(B) of the Act defines the Consumer Price Index as the Consumer Price Index for All Urban Consumers (United States city average (CPI–U)). Therefore, we believe we are barred by the statute from setting any update factor other than the CPI–U.

Comment: One commenter indicated that the precedent set in the past 5 years by the update factors established for the prospective payment system leads the commenter to anticipate that the update factors for GME costs will not be reflective of costs.

Response: As noted above, the update factor (that is, the CPI–U) to be applied to GME payments is established by section 1886(h) of the Act. The factor itself is determined by another component of the Federal government (that is, the Secretary of Labor.) We note that the update factors for the prospective payment system are not based on the CPI–U. Therefore, we do not believe that comparisons between the two update factors can be made.

Comment: One commenter opposed our policy to not use an update factor for base cost reporting periods beginning from July 1 through September 30, 1984, alleged that the one percent update factor applicable for the first cost reporting period beginning on or after July 1, 1985 was arbitrary and without substantiated support, objected to the application of the revised payment methodology to outpatient departments, and suggested that the GME base period be established for cost reporting periods beginning in FY 1990 rather than FY 1984. Another commenter suggested that the one percent update for the first payment year be replaced by the CPI–U, as is the case with subsequent years.

Response: All of the provisions to which the commenter is objecting are based on the provisions of section 1886(h) of the Act. The point of having an update factor for the base period is to account for the inflation in an intervening period between the base period and the first payment period. Hospitals with cost reporting periods beginning from July 1 through September 30, 1984 do not have such an intervening period thus eliminating the need for an update factor. While the commenters

may be dissatisfied with the one percent update factor, the figure was established by Congress, as was the effective date of the legislation and its application to hospital outpatient settings.

Comment: One commenter suggested that HCFA should quantify the update factors to be used for cost reporting periods beginning on or after July 1, 1986 and establish a publication date of the update factors to be applied to future periods.

Response: We agree. We plan to publish actual and projected update factors in an annual notice that will be published in the **Federal Register** before July 1 of every year in order that hospitals will be able to plan accordingly. The update factors for the cost reporting periods beginning on or after July 1, 1986 are listed in Table 1 of the appendix to this final rule.

Comment: Several commenters suggested that use of the CPI–U update factor be replaced by indexes more closely related to the inflation experienced by teaching hospitals such as the hospital market basket index or the CPI–U for the geographic area in which the hospital is located.

Response: As explained in detail above, section 1886(h)(2) and (h)(5)(B) of the Act require the use of the increase in the CPI for all teaching hospitals. We do not believe that we have the authority to interpret those provisions of the law in any other manner.

D. Counting Residents in Years Subject to the Revised GME Policy

Comment: One commenter pointed out that fully counting all residents in the base period while applying the initial residency period weighting factors in subsequent years will create an automatic decrease in payments.

Response: We believe that this was clearly the intent of Congress as the language of sections 1886(h)(2)(A) and (h)(4)(C) of the Act leaves us no discretion in implementing these provisions.

Comment: One commenter indicated that the application to past periods of weighting factors for graduates of foreign medical-schools and residents no longer in initial residency periods would be inequitable, and the factors should be applied on a prospective basis only.

Response: As has been pointed out previously, section 9202 of Public Law 99–272 was a retroactive provision when it was enacted, and we believe that Congress intended that the factors be applied as indicated in section 1886(h) of the Act to achieve the intended savings from the revised payment methodology.

Comment: One commenter requested that we change our proposal to count a resident for only the hospital in which he or she spent the majority of the month to a prorated count between the hospitals.

Response: We agree. We had originally believed that a monthly count would be significantly less burdensome than a daily or hourly count, or a count on any other basis. However, in order to attribute the count of a resident to the hospital in which the resident spent the majority of the month, sufficient documentation would be required so that prorating the resident across hospitals would probably not require that much additional time and effort. Therefore, we will instruct hospitals and fiscal intermediaries to apportion the time spent by each resident among the hospitals based on the number of days (or portions of days if necessary) worked at each facility. It will be necessary for the hospital to maintain documentation acceptable to the fiscal intermediary to verify that no resident is counted as more than one FTE during the graduate medical education academic year, regardless of the number of hospitals in which he or she is providing services or the total number of hours of service provided.

Comment: Several commenters suggested that the problem of counting rotating residents would be best resolved by making all payments to the hospital that is the primary sponsor of the program. One commenter pointed out that, while some hospitals would not be paid for costs they incur for teaching and supervision of the residents, they would be adequately "repaid" by the services provided by residents to the patients at that hospital.

Response: Section 1886(h)(2) of the Act requires that "The Secretary shall determine, for each hospital with an approved medical residency training program, an approved FTE resident amount * * *." We do not believe that we have the authority to restrict the number of hospitals for which an approved FTE resident amount will be computed.

Comment: In the preamble to the proposed rule (53 FR 36596), HCFA requested comments on methods by which intermediaries can ensure that the time spent by residents who are assigned to work in nonhospital settings and who will be counted under section 1886(h)(4)(E) of the Act is spent in patient care activities. Some commenters argued that it was not necessary to establish criteria for verification that the time residents spend in nonhospital settings is spent in patient care activities. It was pointed out that this would establish a separate standard for those residents that would not apply to residents in hospital settings and, in any case, the overwhelming majority of time spent in these settings is related to patient care. One commenter suggested that the time be documented by residents' logs of their activities. Another commenter stated that any verification effort should require minimum documentation. It was suggested that it was enough for the hospital to certify that all requirements of the residency program are being satisfied by the training in nonhospital settings.

Response: We have reviewed the comments, some of which recommended extensive recordkeeping that we believe is unnecessary, and have decided that it is not necessary to account for every hour the resident spends in nonhospital settings. Essentially, section 1886(h)(4)(E) of the Act simply ensures that the FTE amount attributable to an individual resident is not reduced below 1.0 simply because he or she is assigned to a freestanding clinic for a portion of his or her residency program. Therefore, we are not changing our original proposal that there be a written agreement between the hospital and the nonhospital entity that the resident will spend substantially all of his or her time in patient care activities, and that the resident's compensation for the time spent in the outside entity is paid by the hospital. We would also like to clarify that, where a hospital has such an agreement with a nonhospital entity, appropriate reductions are to be made to the September 1 indirect medical education count of interns and residents in approved programs to reflect the fact that some residents are assigned to settings outside the hospital. (See § 412.118(h).)

Comment: One commenter requested clarification as to the treatment of short cost reporting periods in the GME base period and in periods beginning on or after July 1, 1985. The commenter felt that counting a partial month as a full month in the base period would understate the base period amounts while the opposite would be true in the payment years.

Response: We agree. Therefore, we are modifying § 413.86(e)(4)(ii) to provide that daily averages are multiplied by the number of days in a year to achieve a more equitable base period average per resident amount. We are not modifying § 413.86(e)(4)(iii) since that subclause does not discuss the adjustment in terms of monthly amounts, and it would only be reasonable to prorate a month as

applicable for payment purposes for cost reporting periods beginning on or after July 1, 1985.

Comment: One commenter expressed concern about the inability to update the list of approved residencies and their initial residency periods from the 1985 edition of the Directory of Residency Training Programs to the 1989 edition of that book.

Response: Section 1886(h)(5)(G)(ii) of the Act indicates that we must use periods necessary to satisfy the requirements for board eligibility as specified in the 1985–1986 Directory of Residency Training Programs (the Directory) published by the ACGME. Section 1886(h)(5)(G)(iii) of the Act indicates that initial residency periods may be changed beginning July 1, 1989 if the ACGME increases or decreases the minimum number of years for board eligibility in its revised Directory. We intend to adopt a similar approach to publications concerning approved programs in osteopathy, dentistry, and podiatry. However, the provision applies only to the number of years of training necessary to satisfy the requirements of a specialty and does not affect our ability to recognize additional types of programs. In this regard, we applied initial residency periods to subspecialty programs in internal medicine that were not listed in the 1985–1986 edition of the ACGME Directory.

Comment: A law firm representing the Society of Critical Care Medicine commented that fellowship programs in Critical Care Medicine should be added to the listing of approved GME programs in Internal Medicine, Anesthesiology, Surgery, and Pediatrics. A letter from the Accreditation Council for Graduate Medical Education was submitted indicating that residency programs in Surgical Critical Care Medicine, Anesthesiology Critical Care Medicine, and Critical Care Medicine (Internal Medicine) will be approved during 1989, and that the approved programs would be listed in the Directory of Graduate Medical Education Programs published in March 1990.

Response: We are adding the three types of programs that have been approved to our listings, effective July 1, 1989. The complete list of approved GME programs and the corresponding initial residency periods is set forth in Table 2b of the appendix to this final rule. We shall await additional information on the status of Pediatric Critical Care Medicine programs. If such programs are approved at some later date, we will make the appropriate changes in a notice we plan to publish in the **Federal Register** before July 1 of every year listing the limits on initial residency periods for the various specialty and subspecialty programs for the academic year beginning on July 1.

Comment: The American Association of Dental School notified us that effective July 1989, oral and maxillofacial surgery residency programs will require an additional year of training. Similarly, the American College of General Practitioners in Osteopathic Medicine and Surgery notified us that on July 1, 1989, the length of training in osteopathic general practice program will be increased by one year.

Response: As discussed in the previous response, we plan to publish a notice in the **Federal Register** before July 1 of every year listing the limits on initial residency periods for the various specialty and subspecialty programs for the academic year beginning on July 1. We are making the changes referred to in the comment in Table 2b of the appendix to this final rule which will serve as the notice applicable to July 1, 1989.

Comment: One commenter pointed out that some residency programs require less than the 5-year limit for completion while others require more than 5 years. The commenter suggested that some latitude be given in recognizing these variations.

Response: We do not believe that the provisions of section 1886(h) of the Act permit these variations. While the conference report that accompanied Pub. L. 99–272 (H.R. Rep. No. 453, 99th Cong., 1st Sess. 481 (1985)) is not explicit on why Congress set this limit, we must infer that Congress intended a reduced Medicare participation in longer programs.

Comment: Several commenters requested clarification of how the initial residency period limit applies when a resident changes from one specialty program to another. One commenter suggested that the first portion of GME training not be counted toward completion of an initial residency period while another inquired whether training in both programs will be counted. It was pointed out that, under the proposed rule, the number of years of prior training becomes a factor in the selection process because of the payment implications.

Response: An individual resident would have only one initial residency period. Section 1886(h)(5)(F) of the Act requires that the initial residency period be determined at the time the resident enters the residency program. We believe it was the intent of Congress that any time spent in an approved GME program would be counted toward the overall limit, and that Congress provided an additional year beyond that necessary to be eligible for board certification to address situations such as a change in specialty programs. It would not be necessary for a resident to complete a program to have the years spent in that program counted. Thus, if a resident transferred from a 3-year program after the second year to a 5-year program, the initial residency period of the 3-year program would set the limit. As a practical matter, this would have the effect of counting the resident as .5 rather than 1.0 for only 1 year more than if the 5-year program's limit was used.

If it were the intent of Congress that a new initial residency period begin whenever a resident changes programs or hospitals, there would have been no need to use the adjective "initial", and the overall limit would be meaningless. We would add that, if eligibility for Medicare payments becomes a criterion for the selection of residents by officials of residency programs, it is a further indication that Medicare has become the financier of GME programs to an inordinate degree.

Comment: Representatives of the specialities of Internal Medicine and Family Practice requested clarification of the status of individuals who are spending a fourth year in a program such as General Internal Medicine and Family Practice that usually is a 3-year program. It was pointed out that some programs have added a fourth year for a variety of reasons. In other programs, individuals who have completed their requirements for board certification spend a fourth year as a chief resident and are technically no longer in a program leading to certification in a specialty or subspecialty.

Response: If it is clear that these individuals are actually in formally organized approved programs, we believe that they should be counted as residents in approved programs even if the individual has completed the requirements for board certification. The situation is not unlike those we discussed in the proposed rule concerning Transitional Year programs and General Dentistry programs, neither of which, in itself, lead to certification in a specialty or subspecialty. We do not believe that Congress enacted section 1886(h) of the Act to reduce the types of programs recognized by Medicare. Thus, if the ACGME and other accrediting bodies recognize such individuals as residents in the General Internal Medicine or Family Practice program, we would count them for purposes of direct GME payments at .5 or 1.0 FTE depending on whether they are still in

their initial residency period. We would differentiate these individuals from those who have completed their residency but remain for an additional period of time within the academic settings to continue their training outside the context of a formally organized approved program. Individuals in the latter group should be paid as physicians.

Comment: One commenter cited situations in which residents who plan research or academic careers take time off from the normal course of their residency programs to pursue a year or two of research and laboratory work. Since residents in these situations would not be counted for purposes of direct GME payments, the commenter believed that it should be clarified that such years would not count against their initial residency periods.

Response: We can envision situations in which GME training that may not be counted for direct GME payment purposes could, nevertheless, be counted against the initial residency period such as in the case of an FMG who has not passed the FMGEMS. However, in the situation presented, it appears that such residents would not be in an approved GME program and, thus, should not be counted for either direct, or indirect, GME payment purposes.

Comment: One commenter pointed out the different results that can occur when a medical school graduate enters a transition year program before selecting a specialty program and when another graduate enters a general internal medicine program and uses the latter program as an internship year prior to selecting another specialty program. In the former case, the resident's initial residency period is determined by the specialty program selected after the transition year, while in the latter case, the resident's initial residency period is limited to the 4-year period assigned to internal medicine. The commenter believes that in the latter case, the graduate has made himself or herself a less attractive candidate for the specialty program they ultimately chose.

Response: This is probably an unintended result of the legislation. It would be unfortunate if someone's career plans were negatively affected in this way. However, section 1886(h)(5)(F) of the Act requires that the initial residency periods shall be determined at the time the resident enters the training program. We believe that this precludes starting a new initial residency period every time a resident changes a program.

Comment: One commenter indicated that the concept of "initial residency period" as proposed penalizes residents (and their hospitals) who change from one specialty program to another. These changes may take place for various reasons such as lack of adequate training or inappropriate career counselling.

Response: We believe that, by the use of the word "initial," Congress intended the provision to be implemented as we proposed. Otherwise, there would be no need to use that term. We concede that there could be individual residents who are negatively affected by this provision, but we believe that we have no discretion in the application of the overall five-year limit.

Comment: Several commenters pointed out that counting residents by their monthly assignments will be particularly difficult for past cost reporting periods to which section 1886(h) of the Act would apply. One suggested that the indirect medical education count be used for the past periods and that the monthly count should be used prospectively.

Response: We believe that hospitals or GME program directors should have this information for the cost reporting periods in question. We also believe that it would not be appropriate to use the indirect count for those periods since it would not be possible to apply the weighting factors without specific information on the residents involved.

Comment: One commenter believes that we acted prematurely in publishing the proposal on counting graduates of foreign medical schools (FMGs) prior to Congressional action on the recommendations of the Council on Graduate Medical Education on FMGs. The commenter went on to indicate that it was unfair to require FMGs to pass FMGEMS while not requiring graduates of American medical schools to pass the National Board of Medical Examiners' examination.

Response: The proposed rule essentially restates the statutory provisions on counting procedures for FMGs (section 1886(h)(4) (C) and (D) of the Act), and we cannot ignore a provision of law enacted by Congress on the basis that the law might be changed in the future. Further, the statute gives HCFA no discretion with respect to the implementation of this provision. We would like to point out that once an individual FMG passes FMGEMS, he or she is treated by Medicare on the same basis as any other resident in an approved GME program.

Comment: In commenting on the proposed rule, a representative of the Public Health Service pointed out that, beginning in September 1989, the Education Commission for Foreign Medical Graduates (ECFMG) will be offering the National Board of Medical Examiners' Part I and Part II examination to graduates of foreign medical schools (FMGs) as an alternative to the FMGEMS.

Response: Section 1886(h)(4)(D) of the Act provides that, generally, to be counted for payment purposes beginning July 1, 1986, an FMG must have passed FMGEMS or previously received certification from, or has previously passed the examination at, the ECFMG. Section 1886(h)(5)(E) of the Act provides that, "the term, 'FMGEMS' examination, means parts I and II of the Foreign Medical Graduate Examination in the Medical Sciences recognized by the Secretary for this purpose." It does not specify a particular sponsoring organization for the examination. Since the ECFMG has recognized an alternate examination and since the Secretary is willing to accept this change, we believe that he is directly authorized to do so under section 1886(h)(5)(E) of the Act. Accordingly, we are adding a new subparagraph (h)(5) to § 413.86 to state that beginning September 1, 1989, passage of both parts of that examination may be substituted for passage of FMGEMS.

Comment: One commenter asked why it was necessary for us to know the school the resident graduated from and the date of the graduation.

Response: Section 1886(h)(4)(D) of the Act requires that we identify residents who are graduates of foreign medical schools and to ascertain whether these residents qualify to be counted for payment purposes. Intermediaries need to know the date of graduation from medical school in order to ensure that all GME training time has been counted for purpose of determining the limit of an initial residency period.

Comment: One commenter suggested that the exception to the 5-year overall limit on initial residency periods should be applied to other specialties in which there are shortages of physicians such as family practice, anesthesiology, and physical medicine.

Response: We believe that the language of section 1886(h)(5)(F)(ii) of the Act makes it clear that Congress intended to exempt only geriatric programs from the ceiling on initial residency periods.

Comment: One commenter suggested that the regulations clearly state that resident time studies, for purposes of allocation on Worksheet B–1, are no longer required.

Response: We do not believe that it is necessary to include this type of detail in the regulations; it would more

properly be handled through operating instructions. To clarify the point, however, since reimbursement is not made on a reasonable cost basis, resident time studies would not be required for payment purposes. However, any time residents are assigned outside the hospital should be documented as set forth in § 413.86(f).

Comment: One commenter suggested that HCFA should take into consideration changes that have taken place in GME training in ambulatory settings and apply the provision to count time spent in nonhospital training sites retroactively to the GME base period costs.

Response: The provision on counting time spent in outpatient settings in section 1886(h)(4)(E) of the Act that was added by section 9314 of Public Law 99–509 has an effective date of July 1, 1987, and a change in that date would compromise some of the savings contemplated by the enactment of section 1886(h) of the Act. Further, HCFA changed its policy in the 1970's to allow the services of licensed residents in nonprovider settings to be covered as physicians' services payable on reasonable charge basis even though the services were furnished within the scope of an approved GME program. These billings would not be allowed where the provisions of section 1886(h)(4)(E) of the Act are applied.

E. Determining Medicare Patient Load

Comment: One commenter opposed the substitution of "Medicare patient load" (based on inpatient days only) for the traditional approach of determining Medicare's share of GME costs and payments. The commenter believed that this approach is inconsistent with other Medicare policies and regulations that encourage more procedures to be performed in outpatient settings thereby reducing the Part A inpatient load.

Response: Section 1886(h)(3)(A) of the Act specifies that the Medicare patient load is the basis to be used in determining Medicare's share of the GME payments. Section 1886(h)(3)(C) defines Medicare patient load as "the fraction of the total number of inpatient-bed-days (as established by the Secretary) during the period which are attributable to patients with respect to whom payments may be made under Part A." While this provision gives the Secretary some flexibility in deciding which inpatient days are to be counted, it is clear that Congress intended that inpatient days are to be used for this purpose. We recognize that this provision will affect some hospitals negatively while others will receive a higher payment than would otherwise be the case.

Comment: Some commenters indicated that it was not clear whether the inpatient days of a subprovider, such as psychiatric or rehabilitation units that are excluded from the prospective payment system, are counted in calculating the Medicare patient load in a health care complex. One commenter pointed out that it was inconsistent to count inpatient days in excluded units while not counting inpatient days of hospital-based skilled nursing facilities. The commenter indicated that excluded units are likely to have lower Medicare utilization and not to be part of a hospital's GME program. Another commenter expressed concern that our definition of "Medicare patient load" could have a negative impact on a health care complex with a large skilled nursing facility.

Response: We believe that the preamble discussion on this point at 53 FR 36600 was clearer than the regulation text and we are modifying the definition of "Medicare patient load" in § 413.86(b)(2). The Medicare inpatient days and total inpatient days of all components of a health care complex that are classified as part of the "hospital" are added together to determine the Medicare patient load for the complex. Inpatient days of a hospital-based skilled nursing facility would not be counted in calculating the Medicare patient load since the facility is not classified as part of the "hospital". We believe that this approach is consistent with the special method of determining Medicare utilization established by Congress in section 1886(h)(3)(C) of the Act. It treats similarly situated hospitals consistently, regardless of their connections (if any) with skilled nursing facilities.

Comment: Some commenters suggested that section 1886(h) of the Act should apply only to hospitals paid under the prospective payment system. One commenter believed that the policy on determining "Medicare patient load" that is based on all inpatient hospital days of a health care complex is inappropriate because residents are never assigned to the excluded psychiatric units in some hospitals and counting the inpatient days of the unit would skew the GME payments.

Response: There is nothing in the language of section 1886(h) of the Act or its accompanying conference report that indicates that it should apply only to prospective payment hospitals. We believe that the Congress intended the revised payment method to apply to all hospitals and hospital-based providers.

Comment: Several commenters requested clarification as to whether nursery room days (or newborn days) are counted when the ratio of inpatient bed days payable under Part A to total inpatient bed days is calculated for the purpose of determining the Medicare patient load.

Response: It has been the standard practice to exclude nursery room days in all Medicare computations that involve inpatient days since the Medicare program does not incur any liabilities for nursery room costs. We believe that such days should also be excluded in the determination of Medicare patient load for the purposes of this provision. Therefore, we are modifying the definition of "Medicare patient load" in § 413.86(b) to clarify this point. However, consistent with this treatment of nursery room days, no GME costs that are allocated to the nursery room cost center in the GME base period will be included in the GME base-period per resident amount.

Comment: One commenter opposed the application of section 1886(h) of the Act to the outpatient dialysis facilities of hospitals. It was pointed out that determining utilization under the Medicare patient load does not take into consideration that the patient group affected in these outpatient departments is virtually 100 percent Medicare.

Response: We believe that the substitution of GME payments based on per-resident amounts under section 1886(h) of the Act for reasonable cost reimbursement in all components of hospitals is required by the statute. An integral part of the revised payment methodology is the use of inpatient statistics alone to determine Medicare utilization for GME payments. While the commenter has raised a valid point, we do not believe that section 1886(h) of the Act gives us the authority to continue reimbursement for GME costs on a reasonable cost basis in these facilities. On the contrary, section 1886(h)(4)(E) of the Act specifically provides that all the time spent by a resident under an approved program must be counted without regard to the setting in which the activities are performed, if the hospital incurs all, or substantially all, of the costs for the training program in that setting.

Comment: Some commenters asked for clarification of whether the part of the GME payment apportioned for Part B will be paid at 100 percent or 80 percent.

Response: 100 percent of the Part B GME amount will be added to Medicare Part B allowable costs after excluding actual GME costs and after subtracting

the 20 percent coinsurance amount charged to the beneficiary under the regular provisions applicable to hospital outpatient services.

Comment: Two commenters requested clarification as to the treatment of Part B inpatient days in calculating the Medicare patient load for payment purposes.

Response: The commenters have raised a point that was not discussed in the proposed rule and is a further example of the widespread effects of section 1886(h) of the Act on many areas of Medicare payments to hospitals. In the early years of Medicare, it was decided administratively that once a Medicare beneficiary's Part A benefits expire, it was appropriate to count any remaining days of hospitalization as Part B inpatient days. In this way, a per diem payment could be developed for these beneficiaries to compensate teaching hospitals for GME costs under Part B even though no reimbursement was available under Part A.

The GME payment made under section 1886(h) of the Act is a substitute for all reasonable cost reimbursement in hospitals and health care complexes for the costs of approved GME programs under both Part A and Part B. Therefore, in settling cost reports for periods beginning on or after July 1, 1985, no reasonable cost payments will be made for GME costs attributable to Part B inpatient days. Also, these days would not be counted in calculating the Medicare patient load since section 1886(h)(3)(C) of the Act specifies that only inpatient days payable under Part A would be counted in making this calculation. We note that with the implementation of the Medicare Catastrophic Coverage Act (Pub. L. 100–360) on January 1, 1989, Part B inpatient days will no longer occur as a result of the expiration of Part A benefits. However, we do recognize there may be relatively few Medicare inpatients who do not have Part A coverage but do have Part B coverage.

F. Apportionment Between Part A and Part B

Comment: Some commenters asked whether GME payments apportioned to Part B in accordance with proposed § 413.86(d)(3) are to be subjected to the lesser-of-costs-or-charges provision set forth in § 413.13 on the same basis as hospital outpatient costs.

Response: The payment methodology established by section 1886(h) of the Act is a self-contained payment provision without reference to the usual Medicare payment provisions. It is a substitution for reasonable cost reimbursement of GME costs that had previously been made under section 1861(v) of the Act. Payments are to be made under the provisions of section 1886(h)(3) of the Act, which does not contain a lesser-of-costs-or-charges provision. Accordingly, we believe that it would be inappropriate to apply the lesser-of-costs-or-charges provision to payments that are not determined on a reasonable cost basis since the outpatient component of the GME payments made under section 1886(h) of the Act is to be made to the hospital regardless of the costs actually incurred by the hospital. Therefore, effective with cost reporting periods beginning on or after July 1, 1985, the lesser-of costs-or charges comparison is made with no GME costs (or section 1886(h) payments) included in the cost element of the comparison. (The Medicare cost report will be modified to exclude actual GME cost in the comparison.)

The effect of this policy position will vary depending on the circumstances of individual hospitals, and it will be necessary to adjust retroactively the settlements that have been made with regard to some teaching hospitals effective back to cost reporting periods beginning on or after July 1, 1985. Hospitals will be advantaged in situations in which a hospital's allowable Part B costs were higher than its charges in past periods resulting in a reduction in Medicare reasonable cost reimbursement to the level Medicare charges. These hospitals will receive GME payments for some or all of their costs that were not reimbursable under the lesser-of-costs-or-charges provision. On the other hand, the hospitals that were exempted from lesser-of-costs-or-charges provision by section 2308(b)(1) of the Deficit Reduction Act of 1984 (Pub. L. 98–369) because their charges were considered "nominal" by virtue of being 60 percent or less of the reasonable costs of services or items represented by the charges could be disadvantaged by this policy. These hospitals could lose their exemption from the lesser-of-costs-or-charges provision if, in comparing costs to charges for purposes of the nominality test, GME costs are not included in reasonable costs. To avoid having unreimbursed costs, these hospitals would need to reduce their charges in order to retain their nominal charge status or alternatively, forego their exemption and raise their charges.

We do not believe it would be appropriate to implement a policy that would require these hospitals to either alter their charge structures or face reductions in reasonable cost payments. We recognize that hospitals take their full costs into account in establishing their charge structure and believe it is appropriate that they continue to do so without facing reduction in Medicare payments. Therefore, we are providing that, solely for the purpose of applying the nominality test, reasonable costs will include GME payments rather than GME costs. The use of GME payments, which are subject to a special apportionment methodology, offers the simplicity of avoiding the need to determine actual GME costs. In fact, the use of GME payments, if greater than actual GME costs, will provide an advantage to the hospital by causing the nominality test to be met more easily. However, if the hospital believes that its actual costs are greater than the GME payments, it may use its actual GME costs in applying the nominality test if it can demonstrate to the intermediary that its actual reasonable costs are greater. If the intermediary can be assured that the hospital's actual reasonable GME costs applicable to Medicare patients covered under Part B are greater, such costs will be used in lieu of the Medicare Part B GME payments in the nominality test.

Comment: One commenter argued that the proposed method of apportioning GME payments between Part A and Part B would be arbitrary and incorrect and should only be used if the hospital cannot provide specified documentation of GME costs. It was also pointed out that the hospital cannot recover the applicable Part B deductible and coinsurance amounts under this methodology.

Response: First, we note that the revised payment methodology results in GME payments that are not based on a hospital's actual costs incurred for GME programs. Under this provision, a teaching hospital could receive more or less than it actually incurs for the programs. Thus, we believe that it cannot be maintained that Congress intended that the GME payments reflect actual current GME costs. Second, the apportionment process does not affect the total direct GME payments to be made. Rather, it is used to determine the respective trust funds from which payments are to made. Finally, with regard to the point on Medicare beneficiary copayments, these payments are made by beneficiaries based on a hospital's Part B charges, not costs. The proposed apportionment method would have no effect on this aspect of the Medicare program.

G. Other Comments

Comment: Many commenters suggested that an exceptions process be established to take into consideration

changes that take place in a hospital's GME program after the base period. Among the many examples given of changes that might take place were modifications of salary arrangements regarding the residents, the need to pay higher salaries to fill certain residency slots, and new arrangements involving space costs allocated to GME activities.

Response: We believe that Congress intended to establish a payment method that has a historical basis in the GME costs of individual hospitals during the base period, but which is not based on actual costs incurred for GME programs in any year thereafter. Thus, section 1886(h) of the Act does not provide for an exceptions procedure that would raise or lower per resident amounts based on some new circumstance of the program. The only exception provided by Congress applied to hospitals that did not have a GME program during the base period or that were not participating in Medicare during that period. We can only infer that had Congress intended that a more general exceptions process exist, it would have provided for this in provisions of the law or in the conference report. Further, it could be argued that if it were intended that the per resident amounts reflect actual costs, there would have been little point in changing the payment method already in effect in 1986. Congress could have simply retained reasonable cost reimbursement with some limiting factor on the rate-of-increase in the costs of these programs.

However, Congress provided instead for a hospital-specific payment that may be characterized as similar to the hospital-specific rate used in the prospective payment system. As such, the payment method is neutral with regards to hospital-specific costs. For example, a hospital could change its arrangements with its teaching physicians in such a way that the physicians are no longer receiving a salary for their services associated with the GME programs. These hospitals could conceivably make a profit on their GME programs since they would continue to receive per resident amounts based on costs they no longer incur. We believe that it was the intent of Congress not to take these sorts of program changes into account but, rather, to leave it to the hospitals to adjust for such changes in view of the amount of payment they are receiving.

Comment: One commenter pointed out that the provisions of the proposed § 405.521(d)(3) allow for an adjustment to be made for situations in which a teaching hospital may elect to be reimbursed on a reasonable cost basis for direct medical and surgical services furnished to individual patients, in lieu of reasonable charge payments that might otherwise be payable for such services, for the first time in a cost reporting period beginning on or after the effective date of section 1886(h) of the Act. The proposed rule accommodated this election (which is made under the authority of section 1861(b)(7) of the Act) by providing for the removal of physician compensation costs related to the supervision of interns and residents in approved programs in the care of individual patients from the GME base-period costs to prevent duplicate payments. The commenter suggested that a similar accommodation should be provided for the opposite situation in which a hospital withdraws the election in a cost reporting period beginning on or after the effective date of section 1886(h) of the Act. This would involve augmenting the GME base-period costs by costs incurred for the supervision of interns and residents in the care of individual patients.

Response: Section 1886(h) of the Act does not address the special payment provision of section 1861(b)(7) of the Act, that is, the cost election for reimbursement of physicians' direct medical and surgical services in teaching hospitals. In our proposed § 405.521(d)(3), we provided for the special circumstance of teaching hospitals making the cost election both because it was still an effective payment provision and because we believed that it was possible to make the necessary adjustment to the GME base-period costs. However, we do not believe that it would be possible to make the necessary adjustment to the GME base period in the situation of a hospital that withdraws the cost election after the effective date of section 1886(h) of the Act.

The term "direct medical and surgical services" was established in § 405.465 (which implements part of section 1861(b)(7) of the Act) and encompasses the following types of activities engaged in by physicians in teaching hospitals:

- Services in which teaching physicians exercise an overall supervisory role over the cases in which residents treat patients.
- Services in which teaching physicians are more actively involved in the care furnished to individual patients by residents to the extent that a fee would be payable in the absence of the cost election (that is, there is an attending physician relationship).
- Services personally furnished by the physicians without involvement of residents.

One of the major features of section 1861(b)(7) of the Act, originally enacted as part of section 227 of Public Law 92-603, was the administrative simplicity that resulted from relieving teaching hospitals, intermediaries, and carriers from having to distinguish which of the three circumstances applied in individual cases. Costs representing all three types of cases would be included without separate identity in the amounts paid under the cost election while only the costs that fall into the first category would be appropriately included in the GME cost category. Since the different types of costs are not separately identified, we do not believe it would be possible to adjust GME base-period costs if the cost election were withdrawn.

One of the reasons a teaching hospital would want to drop the cost election for physicians' direct medical and surgical services would be to institute fee-for-service billing for physician services furnished to Medicare patients. This would apply both to services personally performed by the physician and those which he or she furnishes within the context of an attending physician relationship. The only classification of costs for which a teaching hospital would not be paid would be the less intensive role of supervising residents in the care of individual patients where no attending physician relationship is established. Other physician compensation costs associated with the GME program would not have been reimbursable through the cost election mechanism but as direct GME costs during the GME base period. The teaching hospital could address any shortfall from not recognizing the supervisory services of teaching physicians in the care of individual patients by upgrading the physicians' involvement to that of an attending physician role. The supervisory role of the physician would then be recognized through reasonable charge billing under Medicare Part B, and we believe that this would have been the whole purpose of changing to a fee-for-service situation. Hence, we believe that, in the situation described by the commenter, there is an available mechanism (that is, Part B reasonable charge billing) to address the change.

Comment: One commenter indicated that the payment policy in the proposed rule seems to favor GME programs that are fairly stable and fails to take into account rapid changes that are taking place in GME training.

Response: We have inferred from the revised payment method established by section 1886(h) of the Act that, for Medicare payment purposes, Congress intended to freeze direct GME financial arrangements as they existed during the base period subject to an update factor for inflation and recognition of changes in the number of residents in approved programs. It has the effect of tying Medicare payments to the financial arrangements that existed in the base year, regardless of any future changes in such arrangements. However, the subsequent enactment of section 1886(h)(4)(E) of the Act by section 9314 of Public Law 99–509 does provide for at least one exception in that training in settings other than Medicare providers would be recognized for payment purposes.

Comment: One commenter suggested that hospitals in New York State be allowed to use their first year under the prospective payment system (that is, cost reporting periods beginning on or after January 1, 1986) as the GME base period rather than the generally applicable FY 1984 cost reporting period.

Response: The statute requires that per resident amounts be based on hospital cost reporting periods that began during FY 1984. We have no authority to revise that base period. We note that the revised GME payment methodology applies to both hospitals subject to and excluded from the prospective payment system. Therefore, there would seem to be no reason for using a different base period for a hospital simply because the State chose to apply for a waiver from the prospective payment system.

Comment: One commenter believed that the proposed policy concerning the determination of per resident amounts for hospitals that did not participate or have an approved medical residency training program during base period was unclear as to whether it applied to any new programs in a hospital with existing programs, or only to a hospital that starts its first GME program after the base period. This policy was proposed in § 413.86(e)(5) and is now located in § 413.86(e)(4).

Response: This policy applies only to hospitals that either were not participating in Medicare during the base period or that had no approved GME program during the base period. The provisions of section 1886(h) of the Act provides for additional new programs in teaching hospitals with existing programs by recognizing changes in the number of residents in approved programs.

Comment: One commenter representing a hospital that began its first GME program after its cost reporting period beginning in FY 1984 believes that the costs incurred for the first program year are not representative of the actual yearly costs of its program since it became fully operational. The commenter pointed out that the hospital incurred program costs prior to the entrance of residents into the program, that residents' salaries would be understated in the initial years because of the absence of senior residents from the program, that faculty physicians and plant facilities came into use at various times, and that start-up costs were inherently different from ongoing program costs. The commenter suggested that per resident amounts of other teaching hospitals be used as a floor rather than a ceiling in calculating a base period amount for new programs. Another commenter recommended that new programs be given a three-year exemption from the revised GME payment methodology, and be paid during those years on the basis of reasonable costs. The third year of operation would then become the base year for determining the per resident amount for all future periods.

Response: We believe that the commenters have raised some very valid points about new GME programs in that all elements of the program do not fall into place at the same time. Further, we believe that the applicable provision of section 1886(h) of the Act did not envision a situation in which a hospital's GME program began on July 1 of a given year, while the hospital's cost reporting period began on some other date, such as October 1 or January 1. In such a situation, the first year of the program would not be reflective of the costs of the program since residents might be on duty and receiving a salary during as few as one or two months of the cost reporting period. Further, a strict application of the law would preclude any recognition of start-up costs incurred in a cost reporting period before the arrival of residents since the counting of residents in the program is the payment vehicle for GME costs. On the other hand, ongoing GME programs often undergo changes with additions and reductions of staff and facilities. There will be many situations in which a hospital's GME payments under the provisions of section 1886(h) of the Act may fall short of a hospital's actual GME costs during a particular cost reporting period. We believe that it is implicit in the revised payment method that Congress intended that no special adjustments be made if this should happen.

However, we believe that instances in which a hospital begins a GME program for the first time after the GME base period will be rare, and we wish to reach a reasonable accommodation as to the per resident amounts payable to these hospitals. Accordingly, we are modifying § 413.86(e)(4) (proposed § 413.86(c)(5)) to provide that the base period for determining per resident amounts in hospitals that begin a GME program after the base period will be the first cost reporting period in which residents were on duty in their GME program during the first month of the cost reporting period. Any GME costs incurred for the prior cost reporting period will be made on a reasonable cost basis under section 1861(v) of the Act as was the case for cost reporting periods beginning prior to July 1, 1985. We agree that basing payments on an unrepresentative base period could have an adverse effect on a hospital; however, we are also bound by the statutory language of section 1886(h)(2)(E) of the Act, which deals with hospitals that start a GME program only after 1984. We believe that the modifications we are making in § 413.86(e)(4) of the proposed rule represent a reasonable compromise between these two conflicting objectives but are also consistent with the statutory language.

IV. Summary of Changes from the Proposed Rule

For the convenience of the reader, we are briefly summarizing the major changes we have made in this document.

- We have revised § 413.13 to specify the treatment of GME costs and payments under the lesser of costs-or-charges provision.
- We have modified the definition of "Medicare patient load" in § 413.86(b)(2) to be the total number of Medicare hospital inpatient days during the cost reporting period divided by total hospital inpatient days. In calculating inpatient hospital days, nursery days are excluded and only hospital distinct part days are included.
- We have revised § 413.86(e)(1) to specify that the intermediary will use a count of FTE residents for the GME base period that is reflective of the average number of FTE residents working in the health care complex during the GME base period.
- We have also revised § 413.86(e)(1) to clarify that all residents reported for all providers of the health care complex will be counted in calculating base-period amounts and that a hospital may appeal the intermediary's determination of the hospital's base-period average per

resident amount within 180 days from the date of the intermediary's notice.

- We have also revised § 413.86(e)(1) to clarify that costs allocated to the nursery and to research and other nonreimbursable cost centers are excluded in determining GME base period costs.
- We have added § 413.86(e)(1)(iii) to clarify that if the hospital's cost report for its GME base period is no longer subject to reopening under § 405.1885, the intermediary may modify the hospital's base period costs solely for purposes of computing the per resident amount.
- We have revised § 413.86(e)(4) (proposed § 413.86(c)(5)) to provide that the base period for determining per resident amounts in hospitals that begin a GME program after the base period will be the first cost reporting period in which residents were on duty in their GME program during the first month of the cost reporting period.
- We have modified § 413.86(e)(4)(ii) to provide that daily averages are multiplied by the number of days in a year to achieve a more equitable base-period average per resident amount.
- We have moved to § 413.86(e)(5) the policy proposed in paragraph (e)(4) regarding the determination of per resident amounts for hospitals that did not participate or have an approved medical residency training program during the base period.
- We have modified § 413.86(f) so as to include in the FTE count residents who are working in a Medicare hospital even if the residents' salaries are fully paid by other entities, either Federal or nonFederal. This revised counting policy will apply to both the GME base period and cost reporting periods subject to the new payment methodology. We have also revised § 413.86(f) to specify how part-time interns and interns on rotation will be counted.
- We have added a new subparagraph (h)(4) to § 413.86 to state that, beginning on September 1, 1989, passage of both parts of the National Board of Medical Examiners Examination may be substituted for passage of FMGEMS.
- We have moved to § 413.86(f)(1)(iii) the policy proposed in § 413.86(g)(4), effective July 1, 1987, concerning the time spent in nonprovider settings.
- We clarify in new § 413.86(j) that hospitals that are excluded from the prospective payment system may request to have their target amount recomputed to reflect misclassified costs in the same way prospective payment hospitals may request to have their HSRs recomputed. We also clarify that the adjustment to the HSR is effective for the hospital's cost reporting periods that are still subject to reopening under § 405.1885.

V. Regulatory Impact Analysis

A. Introduction

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any rule that meets one of the E.O. criteria for a "major rule"; that is, a rule that will be 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 a final 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 final regulation will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we treat all hospitals as small entities. Also, section 1102(b) of the Social Security Act requires the Secretary to prepare a final regulatory impact analysis for any final rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside of a Metropolitan Statistical Area.

The following discussion, in combination with the rest of this final rule, constitutes a combined regulatory impact analysis and regulatory flexibility analysis. However, because there are so few small rural hospitals with approved GME programs, we have determined, and the Secretary certifies that this final rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

B. Affected Entities

We estimate that approximately 1,170 acute care hospitals in the 50 States and in Puerto Rico have approved programs for which they are receiving Medicare payment for GME costs. In 1987, there were approximately 81,000 interns and residents enrolled in approved programs.

The following table shows the distribution by census division of short-term acute care hospitals with approved GME programs, residents enrolled in GME programs and GME programs approved as of September 1, 1987.

TABLE I—PERCENT OF ACUTE CARE HOSPITALS WITH APPROVED GME PROGRAMS IN FY 1987, RESIDENTS ON DUTY ON SEPTEMBER 1, 1987, AND APPROVED GME PROGRAMS BY CENSUS DIVISION

	Teaching hospitals	Residents [1]	Approved programs [1]
New England	6.7	7.4	8.0
Middle Atlantic	22.1	23.8	23.3
South Atlantic	12.4	15.2	15.2
East North Central	21.7	17.3	17.0
East South Central	5.1	4.3	4.6
West North Central	8.3	6.8	6.5
West South Central	8.0	8.8	8.9
Mountain	3.6	3.1	3.4
Pacific	11.0	12.2	12.0
Puerto Rico	1.2	1.1	1.1
Total	[2] 100.1	100.0	100.0

[1] Source: 1988–1989 Directory of Graduate Medical Education Programs; Accredited by the Accreditation Council for Graduate Medical Education. Reproduced with permission of the copyright holder, the American Medical Association.

[2] Total does not add to 100 percent due to rounding.

Table I shows that the distributions of teaching hospitals, residents, and approved GME programs parallel each other fairly closely. The Middle Atlantic division has the greatest number of teaching hospitals, residents, and GME programs while the Mountain census division has the smallest number of teaching hospitals, residents, and programs.

It should be noted that while Table I presents only general acute care hospitals (primarily those hospitals under the prospective payment system), these regulations will apply to all participating Medicare hospitals and health care complexes having residents. These include long-term care hospitals, children's hospitals, psychiatric facilities, and rehabilitation hospitals.

C. Savings

These final regulations will implement the statutory requirement to control the growth in payments to hospitals with currently approved GME programs by limiting payment increases for direct GME costs to increases in the CPI–U, rather than paying these costs on the basis of the hospital's allowable reasonable costs. We also expect to achieve some small savings by reducing

the per resident amount paid for residents not in an initial residency period. The following table presents the estimated savings expected to be achieved from implementing this final rule, relative to what we estimate would have been paid for the direct cost of GME under Medicare reasonable cost principles. The statutory provision requiring this regulation effectively negated the July 5, 1985, regulation that placed cost limits on GME payments and which would have resulted in greater savings than those shown below.

TABLE II—MEDICARE PROGRAM SAVINGS *

[In millions]

FY 1990	FY 1991	FY 1992	FY 1993	FY 1994
$500	$430	$370	$470	$580

* Rounded to the nearest $10 million.

Since this final rule is effective retroactively from July 1, 1985, we will be making adjustments to hospital GME payments made between July 1, 1985, and the date this final rule is published. These adjustments reflect differences in payments made under the previous payment rules formerly located at § 413.85 and this final rule. The savings shown in Table II, above, include retroactive annual savings of $290 million we expect to recoup in FY 1990 and $150 million in FY 1991. (In the proposed rule, we had assumed that the retroactive savings would be recouped in FYs 1989–1991.) In Table III, we present these same retroactive savings displayed by fiscal year (FY 1985 to the present) in which these amounts were generated.

TABLE III—ESTIMATED RETROACTIVE MEDICARE PROGRAM SAVINGS BY FISCAL YEAR IN WHICH THEY WERE GENERATED*

[In millions]

FY 1985	FY 1986	FY 1987	FY 1988	FY 1989
$10	$30	$120	$120	$160

*Rounded to the nearest $10 million.

These savings estimates were computed using the method of apportioning GME costs prescribed by section 1886(h)(3) of the Act. That is, we compared the GME payments made under the previous payment method with those that will be made under the new payment method using inpatient days as the basis of apportioning GME costs between Medicare and non-Medicare payment sources. This approach to computing the savings estimates differs from the way we computed savings in the initial impact analysis. In the initial analysis, we computed savings based on the method of apportioning GME costs prescribed by the Provider Reimbursement Manual (HCFA Pub. 15—Part II). Under these procedures, only routine service and special care costs are apportioned on the basis of inpatient days. Ancillary and outpatient costs are apportioned on the basis of charges. Had we computed savings using the cost report method of apportioning GME costs to Medicare, we would have overstated savings for the next five fiscal years by about $440 million.

Although this rule implements provisions to substantially reduce Medicare payments for GME, it is difficult to predict the effects these reductions will have on specific GME programs. We know that patient revenues generally comprise the major portion of GME funding, but the proportion of funding varies depending on a hospital's affiliation and the speciality programs the hospital operates. State-run hospitals, for example, depend less on patient revenues than do unaffiliated or church-affiliated hospitals. Also, oncology GME programs tend to receive more funding from sources other than patient revenues (that is, from grants and gifts) than GME programs in family practice medicine.

A critical factor in determining the impact of these regulations is the proportion of Medicare revenues a hospital received in its base period. The lower the proportion of Medicare revenues received in the base period, the smaller will be the impact of the new payment rules on the hospital's funding of its GME programs. Conversely, the greater the proportion of Medicare revenues received in its base period, the greater will be the effect of the new payment rules.

D. Alternatives Considered

Prior to the enactment of section 9202 of Public Law 99–272, we had considered several alternatives that were based on the July 5, 1985 final rule establishing a ceiling on payment for all direct medical education expenses. The alternatives would have maintained the ceiling for either 1 or 2 more years and then permitted the payment amount to increase by the CPI–U. Also, we considered eliminating all payment for nursing and allied health professional education programs. Section 1886(h) of the Act enacted by section 9202 of Public Law 99–272 precluded further consideration of these alternatives.

Under E.O. 12291 and the RFA we are also required to consider the consequences of not taking the action. The consequence of not issuing the final rule will be the failure to implement duly enacted legislation. The changes to provide payments based on the number of residents employed full-time in initial residency programs are mandated by statute.

E. Discussion of Public Comments

In response to the impact analysis in the proposed rule we received two timely items of correspondence. The comments and our responses to them are set forth below.

Comment: One commenter indicated that the preamble to the proposed rule should have discussed in greater detail the impact of the 5-year limitation on Medicare payments for residency programs of longer duration. The commenter also believes that it will be more difficult for teaching hospitals to obtain alternative funding to replace reduced Medicare participation than is indicated in the Regulatory Impact Analysis.

Response: We should first point out that the payment methodology set forth in section 1886(h) of the Act does not end payments for residents in approved programs after their fifth residency year but merely reduces the payments due to the reduction in the weighting factors for residents who are not in their initial residency periods. Further, we believe that it would be difficult to argue that the Medicare program, with its multiple types of payments in response to various aspects of GME, has not been receptive to financing of GME programs. We believe that the enactment of section 1886(h) of the Act was a clear statement from Congress that a limitation on the growth in Medicare GME expenditures was necessary. Further, although not explicitly stated, it reflects a decision on the part of Congress to focus reductions on subspecialty programs beyond the initial residency period rather than on primary care programs.

We believe that a more appropriate organization to assess in greater detail the impact of this change is the Council on Graduate Medical Education established by Congress to make recommendations on various aspects of GME training. HCFA does not possess the expertise to assess the long-term impact of its financing mechanisms on the training of physicians. Our role is to administer the Medicare program under the laws as passed by Congress.

Comment: A State hospital association suggested that it would be helpful if all proposed rules contain a financial impact by State in order that

an appropriate analysis could be assessed.

Response: We have not adopted the commenter's suggestion for two reasons. First, the data available to us, in many instances, are either incomplete or inaccurate. At a regional (census division) or national level of aggregation, the effects of these deficiencies are diminished because errors have a greater probability of being distributed normally throughout the data. Thus, errors in the data will tend to cancel each other out in the aggregate.

Also errors in a large sample will have less of an impact on statistics drawn from that sample than would errors in a small sample because of the smaller weight each value has in the large sample. Thus, erroneous or missing values will have less of an effect on a large sample than they would on a small sample. It then also follows that any conclusions drawn from a small data set have a higher probability of being wrong than do conclusions drawn from a large data set.

The second reason for not constructing an impact analysis by State has to do with policy consideration. To develop an impact analysis for each State, we believe, would be inconsistent with the national character of the Medicare program. In contrast to the Medicaid program (which is under the administrative control of each State Medicaid agency), the Medicare program is under direct control of the Federal government, and therefore, the concerns and goals of the Medicare program are national in scope. Nevertheless, when our data permit a reasonably accurate analysis, we have presented impacts of proposed and final rules by census division and by locations in urban or rural areas. Yet, because of the data limitations and the national character of the Medicare program, we believe that formulating an analysis for each State is inappropriate.

F. Conclusion

This rule is expected to significantly reduce payments to hospitals for their GME programs, principally through controlling the rate at which these payments increase. It is difficult, however, to predict which hospitals will be significantly affected and how hospitals will respond to this rule.

VI. Circumstances Require Retroactive Application of this Final Rule

Pursuant to Congress's mandate in section 9202(b) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. No. 99–272), this regulation is effective for cost reporting periods beginning on or after July 1, 1985. We believe that we are required by law to apply this rule retroactively to all cost reports for cost reporting periods beginning on or after the effective date prescribed by Congress.

A. Congress Has Required Retroactive Application of this Rule

The language of the statute unambiguously requires the retroactive application of this regulation. The statute expressly requires that the new payment method for direct medical education costs be applied "to hospital cost reporting periods beginning on or after July 1, 1985." Moreover, the statutory language expressly provides for a "*Substitution* of Special Payment Rules," substituting a new payment method for the method already in place, a method that was to be applicable for cost reporting periods beginning on or after July 1, 1985. Section 9202(a) of Public Law 99–272 *enacting* section 1886(h)(1) of the Act (emphasis added). In addition, the description of the new payment method set forth at 9202(a) of Public Law 99–272 is replete with Congressional references to July 1, 1985 as the date upon which the Secretary is to begin applying that new method. *See* § 9202(a) of Public Law 99–272 *enacting* sections 1886 (h)(2), (h)(2)(C) and (h)(3)(A) of the Act; *see also* section 9202(i) of Public Law 99–272 *amending* section 1861(v)(1)(A) of the Act.

This straightforward statutory language is, moreover, simply a manifestation of Congress's clear intent that this implementing regulation be applied retroactively. That intent is demonstrated by the fact that Congress's enactment of the new payment regime for direct medical education costs itself had a retroactive effect. The new payment method was enacted on April 1, 1986, over nine months after the beginning of the cost reporting period to which it was first applicable. In addition, with the enactment of this new method, Congress deliberately foreclosed the possibility of making payment for direct medical education costs under the payment methodology previously in effect for cost periods beginning on or after July 1, 1985. That method was based on a final rule, promulgated by the agency on July 5, 1985, that placed a one year limit on medical education costs for cost reporting periods beginning on or after July 1, 1985 but before July 1, 1986. With the passage of section 9202 of Public Law 99–272, Congress nullified the payment method embodied in the agency's 1985 regulation (section 9202(i) of Public Law 99–272) and replaced it with a detailed payment method of its own devising.

The legislative history accompanying section 9202 of Public Law 99–272 makes it clear that Congress intended to repeal the previous system of direct medical education cost payment beginning on July 1, 1985. The Conference Report states that the "methodology [prescribed in section 9202(a) of Pub. L. 99–272] replaces the current reasonable cost methodology for determining hospitals allowable costs, in calculating hospitals' medicare payments for graduate medical education activities." See H.R. Rep. No. 453, 99th Cong., 1st Sess. 484 (1985).

Thus, for cost reporting periods beginning on or after July 1, 1985, HCFA has no authority to make final payment to providers under the previous method; HCFA is only authorized to make payment for direct medical education costs on the basis of the method prescribed by Congress in section 9202 of Pub. L. 99–272. In repealing the regulation that previously governed medical education payment for cost reporting periods beginning on or after July 1, 1985, Congress must have intended its new method to apply to that period instead. Consequently, in order to give effect to the intent of Congress, the agency must apply this regulation retroactively. Given the express language of the statute, the fact that the statute itself has retroactive effect and the lack of legal authority to settle cost reports beginning on or after July 1, 1985 on the basis of the old payment method, it is clear that Congress intended that this regulation be applied retroactively.

B. Retroactive Application of This Rule Is Consistent With the Supreme Court's Decision in Bowen v. *Georgetown University Hospital*

We believe that retroactive application of this regulation is not only mandated by Congress but that it is also consistent with *Bowen* v. *Georgetown University Hospital*, 109 S. Ct. 468 (1988) ("*Georgetown*"), the recent Supreme Court decision on retroactive rulemaking. *Georgetown* involved a retroactive application of a cost limits regulation that the agency contended was authorized by section 1861(v)(1)(A)(ii) of the Act, permitting "retroactive corrective adjustments" to Medicare cost reports. However, the Supreme Court held that an agency may not apply a regulation retroactively without the authorization of Congress, *Georgetown*, 109 S. Ct. at 471, and that the Medicare Act's corrective adjustment provision did not authorize

the retroactive application of the cost limits rule.

Thus, the *Georgetown* decision holds that there must be some sort of Congressional authorization for the promulgation of retroactive rules. However, *Georgetown* does not require an express grant of Congressional authority in each case in which an agency seeks to apply a regulation retroactively. Rather, such an express grant is only required as an aid in construing a general grant of rulemaking authority such as section 1861(v)(1)(A) of the Act or the Administrative Procedure Act. Where other Congressional enactments (such as section 9202 of Public Law 99–272) are relied upon as authority for retroactive application, it need only be shown that the "language requires" retroactive application. Such language need not contain an express authorization. Rather, the authorization may be implicit; it may be evident only upon reading the language of the statute in light of the circumstances surrounding the enactment of that language. *See, for example, Georgetown*, 109 S. Ct. at 479–80. Nevertheless, even if *Georgetown* were to be read as requiring express authority at all times, it is clear that section 9202 of Public Law 99–272 provides such express authority.

The *Georgetown* court also held that congressional enactments other than general grants of rulemaking authority will be construed to authorize retroactive application where their "language requires this result." Here the agency is not relying on our general grant of rulemaking authority to support retroactive application, but, rather, on a specific congressional enactment, that is, section 9202 of Public Law 99–272. As demonstrated above, the plain language of section 9202 of Public Law 99–272, the fact that section 9202 of Public Law 99–272 itself has retroactive effect and the repeal of the previous payment rule all require the retroactive application of this regime. Accordingly, it is clear that retroactive application of this regulation is supported by the Supreme Court's ruling in *Georgetown*.

The concurring opinion in *Georgetown* explains in more detail the circumstances under which retroactive application of an informal rule is permitted and, in doing so, provides even stronger support for retroactive application of this medical education regulation. In his concurrence, Justice Scalia notes that "a particular statute may in some circumstances implicitly authorize retroactive rulemaking." He explains that "if a statute prescribes a deadline by which particular rules must be in effect, and if the agency misses the deadline, the statute may be interpreted to authorize a reasonable retroactive rule * * *." Justice Scalia's example is analogous to the situation here in which Congress has prescribed a specific effective date for the operation of the new payment system and that date has passed before the promulgation of the implementing regulation. Indeed, that date passed before the enactment of the statute. Clearly, under Justice Scalia's analysis, Congress must be deemed to have at least implicitly authorized retroactive application of this medical education regulation. In any event, the retroactive application of this medical education regulation is plainly supported by the majority opinion in *Georgetown*.

C. Equitable Considerations Also Support the Retroactive Application of This Rule

Retroactive application of this rule is not only supported by *Georgetown* but by several equitable considerations as well. Section 9202 of Public Law 99–272 explicitly states that the new payment method is effective for cost reporting periods beginning on or after July 1, 1985. Since enactment of section 9202 of Public Law 99–272, all of HCFA's actions respecting direct medical education costs have been consistent with its stated intention to apply the new payment method beginning on the effective date of the new statute. For example, on May 6, 1986 (at 51 FR 16776), HCFA announced that it planned to publish regulations implementing section 9202 of Public Law 99–272 that would be designed to replace the old payment method for medical education costs for cost reporting periods beginning on or after July 1, 1985. During this period, and the fiscal intermediaries have informed providers that the new payment method would be applied to those costs.

In addition, because this regulation is largely self-implementing and the Secretary has had little discretion in crafting it, it contains few, if any, innovations or deviations from the Congressionally-prescribed scheme that could come as a surprise to providers. Therefore, affected providers have known since at least the date of the enactment of Public Law 99–272 of the details of the new payment method and of the fact that this new method would be applied retroactively.

Finally, failure to apply this regulation retroactively will result not only in a failure to effect Congress's intent but will also result in a windfall to the affected providers. To the extent that they have received greater interim payments based on the old payment method than they will receive under the new payment method, providers have, in effect, received an interest-free advance of Medicare funds that Congress clearly intended them not to retain. It would be egregiously inequitable to permit providers to reap this windfall, estimated to be $570 million, especially since they have been on notice that they would not be entitled to retain these funds.

VII. Other Required Information

A. Paperwork Burden

Under section 9202(h) of Public Law 99–272, information required for purposes of implementation of the new section 1886(h) of the Act, as enacted by Public Law 99–272, is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35). Other provisions of this final rule do not contain reporting requirements. Therefore, it is not necessary that the rule be reviewed by the Office of Management and Budget under the latter Act.

B. List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 412

Health facilities, Medicare.

42 CFR Part 413

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR chapter IV is amended as set forth below:

A. Part 405, subpart E is amended as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Subpart E—Criteria for Determination of Reasonable Charges; Reimbursement for Services for Hospital Interns, Residents, and Supervisory Physicians

1. The authority citation for part 405, subpart E continues to read as follows:

Authority: Secs. 1102, 1814(b), 1832, 1833(a), 1842 (b) and (h), 1861 (b) and (v), 1862(a)(14),

1866(a), 1871, 1881, 1886 and 1887 of the Social Security Act as amended (42 U.S.C. 1302, 1395f(b), 1395k, 1395l(a), 1395u (b) and (h), 1395x (b) and (v), 1395y(a)(14), 1395cc(a), 1395hh, 1395rr, 1395ww and 1395xx).

2. In § 405.521, the last sentence of paragraph (a) and the last two sentences of paragraph (d)(1) are removed; at the end of the last sentence of amended paragraph (d)(1) the phrase, "as described in § 413.86." is inserted; paragraphs (d)(2) and (d)(3) are revised to read as follows; and in paragraph (e), the phrase "health insurance" is replaced with the word "Medicare":

§ 405.521 Services of attending physicians supervising interns and residents.

* * * * *

(d) * * *

(2) For cost-reporting periods beginning after June 30, 1973, a hospital with an approved teaching program (see § 405.522(a)) may elect to receive reimbursement on a reasonable cost basis for the direct medical and surgical services of its physicians in lieu of any payment on the basis of reasonable charges that might otherwise be payable for such services. A hospital may make this election to receive cost reimbursement only if all physicians who furnish services in the hospital that are covered under Medicare agree not to bill charges for such services (or if all the physicians are employees of the hospital and as a condition of employment they are precluded from billing for such services). If the requirements of this paragraph (d)(2) are satisfied by a hospital, the reimbursement provisions of § 405.465 are applicable.

(3) For cost reporting periods beginning on or after July 1, 1985, a teaching hospital that elects payment for the direct medical and surgical services of its physicians in accordance with paragraph (d)(2) of this section must, for purposes of calculating the per resident amounts described in § 413.86(e) of this chapter, remove from its graduate medical education base period costs, as defined in § 483.86(d) of this chapter, those costs relating to the supervision of interns and residents in approved programs related to the care of individual patients.

* * * * *

§ 405.522 [Amended]

3. In § 405.522, the phrase "Council on Medical Education" in paragraph (a) is replaced by the phrase "Accreditation Council for Graduate Medical Education".

B. Part 412, subpart H is amended as set forth below:

PART 412—PROSPECTIVE PAYMENT SYSTEM FOR INPATIENT HOSPITAL SERVICES

Subpart H—Payments to Hospitals Under the Prospective Payment System

1. The authority citation for part 412 continues to read as follows:

Authority: Secs. 1102, 1122, 1815(e), 1871, and 1886 of the Social Security Act (42 U.S.C. 1302, 1320a–1, 1395g(e), 1395hh, and 1395ww).

2. In § 412.113, paragraph (b) is revised to read as follows:

§ 412.113 Payments determined on a reasonable cost basis.

* * * * *

(b) *Direct medical education costs.* (1) Payment for the direct medical education costs of interns and residents in approved programs for cost reporting periods beginning prior to July 1, 1985, and for approved education activities of nurses and paramedical health professionals is made as described in § 413.85 of this chapter.

(2) For cost reporting periods beginning on or after July 1, 1985, payment for the direct medical education costs of interns and residents in approved programs is made as described in § 413.85 of this chapter.

(3) Except as provided in § 413.86(c)(1) of this chapter, for cost reporting periods during the prospective payment transition period, the costs of medical education must be determined in a manner that is consistent with the treatment of these costs for purposes of determining the hospital-specific portion of the payment rate as provided in subpart E of this part.

C. In part 413, subparts A, F, and H are amended as set forth below:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES

A. The authority citation for part 413 continues to read as follows:

Authority: Secs. 1102, 1122, 1814(b), 1815, 1833(a), 1861(v), 1871, 1881, and 1886 of the Social Security Act as amended (42 U.S.C. 1302, 1320a–1, 1395f(b), 1395g, 1395l(a), 1395x(v), 1395hh, 1395rr and 1395ww).

B. In subpart A, § 413.13, the introductory text of paragraph (d) is republished; paragraphs (d)(3) and (d)(4) are revised; a new paragraph (d)(5) is added; the introductory text of paragraph (f)(2) is republished; and a new paragraph (f)(2)(iii)(C) is added to read as follows:

Subpart A—Introduction and General Rules

§ 413.13 Amount of payment if customary charges for services furnished are less than reasonable costs.

* * * * *

(d) *Exclusions from reasonable cost.* For purposes of comparison with customary charges under this section, reasonable cost does not include—

* * * * *

(3) Amounts that result from a disposition of depreciable assets (§ 413.134(f)), applicable to prior cost reporting periods;

(4) Payments to funds for the donated services of teaching physicians (§ 413.85); and

(5) Graduate medical education costs for cost reporting periods beginning on or after July 1, 1985.

* * * * *

(f) *Nominal charges.* * * *

(2) *Cost reporting periods beginning on or after October 1, 1984.* For cost reporting periods beginning on or after October 1, 1984, the following provisions apply in determining nominal charges:

* * * * *

(iii) *Determination of nominal charges in special situations.* * * *

(C) For cost reporting periods beginning on or after July 1, 1985, graduate medical education payments (or a provider's graduate medical education reasonable costs if supported by appropriate data) are included in reasonable costs when making the nominal charge determination.

* * * * *

C. Subpart F is amended as follows:

Subpart F—Specific Categories of Costs

1. In § 413.85, paragraphs (a) and (e) are revised to read as follows:

§ 413.85 Cost of educational activities.

(a) *Payment*—(1) *General rule.* Except as provided in paragraph (a)(2) of this section, a provider's allowable cost may include its net cost of approved educational activities, as calculated under paragraph (g) of this section. The net cost is subject to apportionment based on Medicare utilization as described in § 413.50.

(2) *Exception.* For cost reporting periods beginning on or after July 1, 1985, payment to hospitals and hospital-based providers for approved residency programs in medicine, osteopathy, dentistry, and podiatry is determined as provided in § 413.86.

* * * * *

(e) *Approved programs.* Recognized professional and paramedical educational training programs now being conducted by provider institutions, and their approving bodies, include the following:

(1) Cytotechnology	Committee on Allied Health, Education, and Accreditation in collaboration with the Board of Schools of Medical Technology, American Society of Clinical Pathologists.
(2) Dietetic internships.	The American Dietetic Association.
(3) Hospital administration residencies.	Accrediting Commission on Education in Health Services Administration.
(4) Inhalation therapy.	Committee on Allied Health, Education, and Accreditation in collaboration with the Board of Schools of Inhalation Therapy.
(5) Medical records.	Committee on Allied Health, Education, and Accreditation in collaboration with the Committee on Education and Registration of the American Association of Medical Records Librarians.
(6) Medical technology.	Committee on Allied Health, Education, and Accreditation in collaboration with the Board of Schools of Medical Technology, American Society of Clinical Pathologists.
(7) Nurse anesthetists.	The American Association of Nurse Anesthetists.
(8) Professional nursing.	Approved by the respective State approving authorities. Reported for the United States by the National League for Nursing.
(9) Practical nursing.	Approved by the respective State approving authorities. Reported for the United States by the National League for Nursing.
(10) Occupational Therapy.	Committee on Allied Health, Education, and Accreditation in collaboration with the Council on Education of the American Occupational Therapy Association.
(11) Pharmacy residencies.	American Society of Hospital Pharmacists.
(12) Physical therapy.	Committee on Allied Health, Education, and Accreditation in collaboration with the American Physical Therapy Association.
(13) X-ray technology.	Committee on Allied Health, Education, and Accreditation in collaboration with the American College of Radiology.

* * * * *

2. A new § 413.86 is added to read as follows:

§ 413.86 Direct graduate medical education payments.

(a) *Statutory basis and scope*—(1) *Basis.* This section implements section 1886(h) of the Act by establishing the methodology for Medicare payment of the cost of direct graduate medical educational activities.

(2) *Scope.* This section applies to Medicare payments to hospitals and hospital-based providers for the costs of approved residency programs in medicine, osteopathy, dentistry, and podiatry for cost reporting periods beginning on or after July 1, 1985.

(b) *Definitions.* For purposes of this section, the following definitions apply:

"Approved geriatric program" means a fellowship program of one or more years in length that is approved by the Accreditation Council for Graduate Medical Education (ACGME) under the ACGME's criteria for geriatric fellowship programs in internal medicine and family practice.

"Approved medical residency program" means a program that meets one of the following criteria:

(1) Is approved by one of the national organizations listed in § 405.522(a) of this chapter.

(2) May count towards certification of the participant in a specialty or subspecialty listed in the *Directory of Residency Training Programs* published by the American Medical Association.

(3) Is approved by the Accreditation Council For Graduate Medical Education (ACGME) as a fellowship program in geriatric medicine.

"Base period" means a cost reporting period that began on or after October 1, 1983 but before October 1, 1984.

"CPI—U" stands for the Consumer Price Index for All Urban Consumers as compiled by the Bureau of Labor Statistics.

"Foreign medical graduate" means a resident who is not a graduate of a medical, osteopathy, dental, or podiatry school, respectively, accredited or approved as meeting the standards necessary for accreditation by one of the following organizations:

(1) The Liaison Committee on Medical Education of the American Medical Association.

(2) The American Osteopathic Association.

(3) The Commission on Dental Accreditation.

(4) The Council on Podiatric Medical Education.

"FMGEMS" stands for the Foreign Medical Graduate Examination in the Medical Sciences (Days I and II).

"FTE" stands for full-time equivalent.

"Medicare patient load" means, with respect to a hospital's cost reporting period, the total number of hospital inpatient days during the cost reporting period that are attributable to patients for whom payment is made under Medicare Part A divided by total hospital inpatient days. In calculating inpatient days, inpatient days in any district part of the hospital furnishing a hospital level of care are included and nursery days are excluded.

"Resident" means an intern, resident, or fellow who participates in an approved medical residency program, including programs in osteopathy, dentistry, and podiatry, as required in order to become certified by the appropriate specialty board.

(c) *Payment for graduate medical education costs—General rule.* Beginning with cost reporting periods starting on or after July 1, 1985, hospitals, including hospital-based providers, are paid for the costs of approved graduate medical education programs as described in paragraph (d) through (h) of this section.

(d) *Calculating payment for graduate medical education costs.* A hospital's Medicare payment for the costs of an approved residency program is calculated as follows:

(1) *Step one.* The hospital's updated per resident amount (as determined under paragraph (e) of this section) is multipled by the actual number of FTE residents (as determined under paragraph (g) of this section). This result is the aggregate approved amount for the cost reporting period.

(2) *Step two.* The product derived in step one is multipled by the hospital's Medicare patient load.

(3) *Step three.* The product derived in step two is apportioned between Part A and Part B of Medicare based on the ratio of Medicare's share of reasonable costs excluding graduate medical education costs attributable to each part as determined through the Medicare cost report.

(e) *Determining per resident amounts for the base period*—(1) *For the base period.* (i) Except as provided in paragraph (e)(4) of this section, the intermediary determines a base-period per resident amount for each hospital as follows:

(A) Determine the allowable graduate medical education costs for the cost reporting period beginning on or after October 1, 1983 but before October 1, 1984. In determining these costs, graduate medical education costs allocated to the nursery cost center, research and other nonreimbursable cost centers, and hospital-based providers that are not participating in Medicare are excluded and graduate medical education costs allocated to distinct-part hospital units and hospital-based providers that participate in Medicare are included.

(B) Divide the costs calculated in paragraph (e)(1)(i)(A) of this section by the average number of FTE residents working in all areas of the hospital complex (including those areas whose costs were excluded under paragraph (e)(1)(i)(A) of this section) for its cost reporting period beginning on or after October 1, 1983 but before October 1, 1984.

(ii) In determining the base-period per resident amount under paragraph (e)(1)(i) of this section, the intermediary—

(A) Verifies the hospital's base-period graduate medical education costs and the hospital's average number of FTE residents;

(B) Excludes from the base-period graduate medical education costs any nonallowable or misclassified costs, including those previously allowed under § 412.113(b)(3) of this chapter; and

(C) Upon a hospital's request, includes graduate medical education costs that were misclassified as operating costs during the hospital's prospective payment base year and were not allowable under § 412.113(b)(3) of this chapter during the graduate medical education base period. These costs may be included only if the hospital requests an adjustment of its prospective payment hospital-specific rate or target amount as described in paragraph (j)(2) of this section.

(iii) If the hospital's cost report for its GME base period is no longer subject to reopening under § 405.1885 of this chapter, the intermediary may modify the hospital's base-period costs solely for purposes of computing the per resident amount.

(iv) If the intermediary modifies a hospital's base-period graduate medical education costs as described in paragraph (e)(1)(ii)(B) of this section, the hospital may request an adjustment of its prospective payment hospital-specific rate or target amount as described in paragraph (j)(2) of this section.

(v) The intermediary notifies each hospital that either had direct graduate medical education coats or received indirect education payment in its cost reporting period beginning on or after October 1, 1984 and before October 1, 1985 of its base-period average per resident amount. A hospital may appeal this amount within 180 days of the date of that notice.

(2) *For cost reporting periods beginning on or after July 1, 1985 and before July 1, 1986.* For cost reporting periods beginning on or after July 1, 1985 and before July 1, 1986, a hospital's base-period per resident amount is adjusted as follows:

(i) If a hospital's base period began on or after October 1, 1983 and before July 1, 1984, the amount is adjusted by the percentage change in the CPI–U that occurred between the hospital's base period and the first cost reporting period to which the provisions of this section apply. The adjusted amount is then increased by one percent.

(ii) If a hospital's base period began on or after July 1, 1984 and before October 1, 1984, the amount is increased by one percent.

(3) *For cost reporting periods beginning on or after July 1, 1986.* For cost reporting periods beginning on or after July 1, 1986, each hospital's per resident amount for the previous cost reporting period is adjusted by the projected change in the CPI–U for the 12-month cost reporting period. This adjustment is subject to revision during the settlement of the cost report to reflect actual changes in the CPI–U that occurred during the cost reporting period.

(4) *Exceptions*—(i) *Base period for certain hospitals.* If a hospital did not have any approved medical residency training programs or did not participate in Medicare during the base period, but either condition changes in a cost reporting period beginning on or after July 1, 1985, the intermediary establishes a per resident amount for the hospital using the information from the first cost reporting period during which the hospital participates in Medicare and the residents are on duty during the first month of that period. Any graduate medical education program costs incurred by the hospital before that cost reporting period are reimbursed on a reasonable cost basis. The per resident amount is based on the lower of the following:

(A) The hospital's actual costs, incurred in connection with the graduate medical education program for the hospital's first cost reporting period in which residents were on duty during the first month of the cost reporting period.

(B) The mean value of per resident amounts of hospitals located in the same geographic wage area, as that term is used in the prospective payment system under Part 412 of this chapter, for cost reporting periods beginning in the same fiscal years. If there are fewer than three amounts that can be used to calculate the mean value, the intermediary must contact HCFA Central Office for a determination of the appropriate amount to use.

(ii) *Short or long base-period cost reporting periods.* If a hospital's base-period cost reporting period reflects graduate medical education costs for a period that is shorter than 50 weeks or longer than 54 weeks, the intermediary converts the allowable costs for the base period into a daily figure. The daily figure is then multiplied by 365 or 366, as appropriate, to derive the approved per resident amount for a 12-month base-period cost reporting period. If a hospital has two cost reporting periods beginning in the base period, the later period serves as the base-period cost reporting period.

(iii) *Short or long cost reporting periods beginning on or after July 1, 1985.* If a hospital's cost reporting period is shorter than 50 weeks or longer than 54 weeks, the hospital's intermediary should contact HCFA Central Office to receive a special CPI–U adjustment factor.

(f) *Determining the total number of FTE residents.* (1) Subject to the weighting factors in paragraphs (g) and (h) of this section, the count of FTE residents is determined as follows:

(i) Residents in an approved program working in all areas of the hospital complex may be counted.

(ii) No individual may be counted as more than one FTE. If a resident spends time in more than one hospital or, except as provided in paragraph (f)(1)(iii) of this section, in a nonprovider setting, the resident counts as a partial FTE based on the proportion of time worked at the hospital to the total time worked. A part-time resident counts as a partial FTE based on the proportion of time worked as compared to the average time spent by other residents working in the same specialty program.

(iii) On or after July 1, 1987, the time residents spend in nonprovider settings such as freestanding clinics, nursing homes, and physicians' offices in connection with approved programs is not excluded in determining the number of FTE residents in the calculation of a hospital's resident count if the following conditions are met:

(A) The resident spends his or her time in patient care activities.

(B) There is a written agreement between the hospital and the outside entity that states that the resident's compensation for training time spent outside of the hospital setting is to be paid by the hospital.

(2) To include a resident in the FTE count for a particular cost reporting period, the hospital must furnish the following information.

The information must be certified by an official of the hospital and, if different, an official responsible for administering the residency program.

(i) The name and social security number of the resident.

(ii) The type of residency program in which the individual participates and the number of years the resident has completed in all types of residency programs.

(iii) The dates the resident is assigned to the hospital and any hospital-based providers.

(iv) The dates the resident is assigned to other hospitals, or other freestanding providers, and any nonprovider setting during the cost reporting period, if any.

(v) The name of the medical, osteopathic, dental, or podiatric school from which the resident graduated and the date of graduation.

(vi) If the resident is an FMG, documentation concerning whether the resident has satisfied the requirements of paragraph (h) of this section.

(vii) The name of the employer paying the resident's salary.

(g) *Determining the weighted number of FTE residents.* Subject to the provisions in paragraph (h) of this section, HCFA determines a hospital's number of FTE residents by applying a weighting factor to each resident and then summing the resulting numbers that represent each resident. The weighting factor is determined as follows:

(1) For purposes of this section, an initial residency period is the number of years necessary to satisfy the minimum requirements for certification in a specialty or subspecialty, plus one year. An initial residency period may not exceed five years in order to be counted toward determining FTE status except in the case of fellows in an approved geriatric program whose initial residency period may last up to two additional years.

(i) For residency programs other than those specified in paragraphs (g)(1)(ii) and (g)(1)(iii) of this section, the initial residency period is the minimum number of years of formal training necessary to satisfy the requirements for initial board eligibility in the particular specialty for which the resident is training, as specified in the 1985–1986 Directory of Residency Training Programs.

(ii) For residency programs in osteopathy, dentistry, and podiatry, the minimum requirement for certification in a specialty or subspecialty is the minimum number of years of formal training necessary to satisfy the requirements of the appropriate approving body listed in § 405.522(a) of this chapter.

(iii) For residency programs in geriatric medicine approved by the ACGME, as set forth in later editions of the directory specified in paragraph (g)(1)(ii) of this section, these programs are considered approved programs retroactively to the latter of—

(A) The starting date of the program within a hospital; or

(B) The hospital's costs reporting period beginning on or after July 1, 1985.

(iv) The time spent in residency programs that do not lead to certification in a specialty or subspecialty, but that otherwise meet the definition of approved programs, as described in paragraph (b) of this section, is counted toward the initial residency period limitation.

(2) If the resident is in an initial residency period, the weighting factor is one.

(3) If the resident is not in an initial residency period, the weighting factor is 1.00 during the period beginning on or after July 1, 1985 and before July 1, 1986, .75 during the period beginning on or after July 1, 1986 and before July 1, 1987 and is .50 thereafter without regard to the hospital's cost reporting period.

(h) *Determination of weighting factors for foreign medical graduates.* (1) The weighting factor for a foreign medical graduate is determined under the provisions of paragraph (g) of this section if the foreign medical graduate—

(i) Has passed FMGEMS; or

(ii) Before July 1, 1986, received certification from, or passed an examination of, the Educational Committee for Foreign Medical Graduates.

(2) Before July 1, 1986, the weighting factor for a foreign medical graduate is 1.0 times the weight determined under the provisions of paragraph (g) of this section. On or before July 1, 1986 and before July 1, 1987, the weighting factor who does not meet the requirements set forth in paragraph (h)(1) of this section is .50 times the weight determined under the provisions of paragraph (g) of this section.

(3) On or after July 1, 1987, these foreign medical graduates are not counted in determining the number of FTE residents.

(4) During the cost reporting period in which a foreign medical graduate passes FMGEMS, the weighting factor for that resident is determined under the provisions of paragraph (g) of this section for the part of the cost reporting period beginning with the month the resident passes the test.

(5) On or after September 1, 1989, the National Board of Medical Examiners Examination, Parts I and II, may be substituted for FMGEMS for purposes of the determination made under paragraphs (h)(1) and (h)(4) of this section.

(i) *Special rules for States that formerly had a waiver from Medicare reimbursement principles.* (1) Effective for cost reporting periods beginning on or after Janaury 1, 1986, hospitals in States that, prior to becoming subject to the prospective payment system, had a waiver for the operation of a State reimbursement control system under section 1886(c) of the Act, section 402 of the Social Security Amendments of 1967 (42 U.S.C. 1395b–1 or section 222(a) of the Social Security Amendment of 1972 (42 U.S.C. 1395b–1 (note)) are permitted to change the order in which they allocate administrative and general costs to the order specified in the instructions for the Medicare cost report.

(2) For hospitals making this election, the base-period costs for the purpose of determining the per resident amount are adjusted to take into account the change in the order by which they allocate administrative and general costs to interns and residents in approved program cost centers.

(3) Per resident amounts are determined for the base period and updated as described in paragraph (e) of this section. For cost reporting periods beginning on or after January 1, 1986, payment is made based on the methodology described in paragraph (d) of this section.

(j) *Adjustment of a hospital's target amount or prospective payment hospital-specific rate*—(1) *Misclassified operating costs*—(i) *General rule.* If a hospital has its base-period graduate medical education costs reduced under paragraph (e)(1) of this section because those costs included misclassified operating costs, the hospital may request that the intermediary review the classification of the affected costs in its rate-of-increase ceiling or prospective payment base year for purposes of adjusting the hospital's target amount or hospital-specific rate. For those cost reports that are not subject to reopening under § 405.1885 of this chapter, the hospital's reopening request must explicitly state that the review is limited to this one issue.

(ii) *Request for review.* The hospital must request review of the classification of its rate of increase ceiling or prospective payment base year costs no later than 180 days after the date of the notice by the intermediary of the hospital's base-period average per resident amount. A hospital's request for review must include sufficient documentation to demonstrate to the intermediary that adjustment of the hospital's hospital-specific rate or target amount is warranted.

(iii) *Effect of intermediary's review.* If the intermediary, upon review of the hospital's costs, determines that the

hospital's hospital-specific rate or target amount should be adjusted, the adjustment of the hospital-specific rate or the target amount is effective for the hospital's cost reporting periods subject to the prospective payment system or the rate-of-increase ceiling that are still subject to reopening under § 405.1885 of this chapter.

(2) *Misclassification of graduate medical education costs*—(i) *General rule.* If costs that should have been classified as graduate medical education costs were treated as operating costs during both the graduate medical education base period and the rate-of-increase ceiling base year or prospective payment base year and the hospital wishes to receive benefit for the appropriate classification of these costs as graduate medical education costs in the graduate medical education base period, the hospital must request that the intermediary review the classification of the affected costs in the rate-of-increase ceiling or prospective payment base year for purposes of adjusting the hospital's target amount or hospital-specific rate. For those cost reports that are not subject to reopening under § 405.1885 of this chapter, the hospital's reopening request must explicitly state that the review is limited to this one issue.

(ii) *Request for review.* The hospital must request review of the classification of its costs no later than 180 days after the date of the intermediary's notice of the hospital's base-period average per resident amount. A hospital's request for review must include sufficient documentation to demonstrate to the intermediary that modification of the adjustment of the hospital's hospital-specific rate or target amount is warranted.

(iii) *Effect of intermediary's review.* If the intermediary, upon review of the hospital's costs, determines that the hospital's hospital-specific rate or target amount should be adjusted, the adjustment of the hospital-specific rate and the adjustment of the target amount is effective for the hospital's cost reporting periods subject to the prospective payment system or the rate-of-increase ceiling that are still subject to reopening under § 405.1885 of this chapter.

D. Subpart H is amended as follows:

Subpart H—Payment for End-Stage Renal Disease (ESRD) Services

§ 413.170 [Amended]

In § 413.170, paragraph (g)(3) is removed and reserved.

(Catalog of Federal Domestic Assistance program No. 13.773, Medicare-Hospital Insurance)

Dated: September 20, 1989.

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

Approved: September 25, 1989.

Louis W. Sullivan,

Secretary.

Editorial Note: The following Appendix will not appear in the Code of Federal Regulations.

Appendix

TABLE 1a.—UPDATE FACTORS FOR COST REPORTING PERIODS BEGINNING ON OR AFTER JULY 1, 1985 AND BEFORE JULY 1, 1988

Cost reporting period	Update factor [1]
7/1/85 to 6/30/86	1.0100
8/1/85 to 7/31/86	1.0100
9/1/85 to 8/31/86	1.0100
10/1/85 to 9/30/86	1.0100
11/1/85 to 10/31/86	1.0100
12/1/85 to 11/30/86	1.0100
1/1/86 to 12/31/86	1.0100
2/1/86 to 1/31/87	1.0100
3/1/86 to 2/28/87	1.0100
4/1/66 to 3/31/87	1.0100
5/1/86 to 4/30/87	1.0100
6/1/86 to 5/31/87	1.0100
7/1/86 to 6/30/87	1.0146
8/1/86 to 7/31/87	1.0210
9/1/86 to 8/31/87	1.0303
10/1/86 to 9/30/87	1.0378
11/1/86 to 10/31/87	1.0386
12/1/86 to 11/30/87	1.0365
1/1/87 to 12/31/87	1.0393
2/1/87 to 1/31/88	1.0428
3/1/87 to 2/29/88	1.0436
4/1/87 to 3/31/88	1.0453
5/1/87 to 4/30/88	1.0453
6/1/87 to 5/31/88	1.0443
7/1/87 to 6/30/88	1.0405
8/1/87 to 7/31/88	1.0394
9/1/87 to 8/31/88	1.0393
10/1/87 to 9/30/88	1.0390
11/1/87 to 10/31/88	1.0389
12/1/87 to 11/30/88	1.0397
1/1/88 to 12/31/88	1.0413
2/1/88 to 1/31/99	1.0402
3/1/88 to 2/28/89	1.0417
4/1/88 to 3/31/89	1.0425
5/1/88 to 4/30/89	1.0425
6/1/88 to 5/30/89	1.0442

[1] The update factor for a specified cost reporting period is applied to the prior period's per resident amount and, for cost reporting periods beginning on or after July 1, 1986, accounts for the 12-month average change in the CPI-U ending at the midpoint of the specified cost reporting period.

Appendix

TABLE 1b.—PROJECTED UPDATE FACTORS FOR COST REPORTING PERIODS BEGINNING ON OR AFTER JULY 1, 1988, TO BE USED FOR INTERIM PAYMENT PURPOSES ONLY

Cost reporting period	Updated factor [1]
7/1/88 to 6/30/89	1.0416
8/1/88 to 7/31/89	1.0416
9/1/88 to 8/31/89	1.0416
10/1/88 to 9/30/89	1.0436
11/1/88 to 10/31/89	1.0436
12/1/88 to 11/30/89	1.0436
1/1/89 to 12/31/89	1.0453
2/1/89 to 1/31/90	1.0453
3/1/89 to 2/28/90	1.0453
4/1/89 to 3/31/90	1.0465
5/1/89 to 4/30/90	1.0465
6/1/89 to 5/31/90	1.0465
7/1/89 to 6/30/90	
8/1/89 to 7/31/90	
9/1/89 to 8/31/90	
10/1/89 to 9/30/90	
11/1/89 to 10/31/90	
12/1/89 to 11/30/90	
1/1/90 to 12/31/90	
2/1/90 to 1/31/91	
3/1/90 to 2/28/91	
4/1/90 to 3/31/91	
5/1/90 to 4/30/91	
6/1/90 to 5/31/91	

[1] The projected update factor for a specified cost reporting period is to be used for interim payment purposes only and is applied to the prior period's per resident amount. The actual update factor will be published in a future notice and is to be used for final settlement purposes. The projected update factors are based on estimates prepared for HCFA by Data Resources, Inc. on a quarterly basis. The forecasted percent changes in the CPI-U over the previous 12-month period serve as the proxy behind the All Other NonLabor Intensive portion of the hospital input price index used in the Medicare prospective payment system.

TABLE 2a.—INITIAL RESIDENCY PERIOD LIMITATIONS EFFECTIVE JULY 1, 1985 THROUGH JUNE 30, 1989

Specialties	Initial residency period
Medicine	
Allergy & Immunology	4
Diagnostic Laboratory Immunology	4
Anesthesiology	5
Colon and Rectal Surgery	5
Dermatology	5
Dermatopathology	5
Emergency Medicine	4
Family Practice	4
Internal Medicine	4
Cardiology	4
Endocrinology and Metabolism	4
Gastroenterology	4
Hematology	4
Infectious Disease	4
Medical Oncology	4
Nephrology	4
Pulmonary Disease	4
Rheumatology	4
Neurological Surgery	5
Nuclear Medicine	5
Obstetrics and Gynecology	5
Ophthamology	5

TABLE 2a.—INITIAL RESIDENCY PERIOD LIMITATIONS EFFECTIVE JULY 1, 1985 THROUGH JUNE 30, 1989—Continued

Specialities	Initial residency period
Orthopaedic Surgery	5
Otolaryngology	5
Pathology	5
Blood Banking	5
Chemical Pathology	5
Dermatopathology	5
Forensic Pathology	5
Hematology	5
Immunopathology	5
Medical Microbiology	5
Neuropathology	5
Radioisotopic Pathology	5
Pediatrics	4
Pediatric Cardiology	4
Pediatric Endocrinology	4
Pediatric Hematology-Oncology	4
Pediatric Nephrology	4
Neonatal-Perinatal Medicine	4
Physical Medicine/Rehabilitation	5
Plastic Surgery	5
Preventive Medicine	4
Psychiatry and Neurology	5
Child Psychiatry	5
Radiology	5
Nuclear Radiology	5
Surgery	5
General Vascular Surgery	5
Pediatric Surgery	5
Thoracic Surgery	5
Urology	5
Osteopathy	
Aerospace Medicine	4
Anesthesiology	5
Angiography and Interventional Radiology	5
Cardiology	5
Clinical Allergy and Immunology	5
Dermatology	5
Diagnostic Radiology	5
Osteopathic Manipulative Medicine	3
Emergency Medicine	5
Endocrinology	5
Gastroenterology	5
General Practice	4
General Surgery	5
General Vascular Surgery	5
Hematology	5
Hematology/Oncology	5
Infectious Diseases	5
Internal Medicine	4
Medical Diseases of the Chest	5
Neonatal Medicine	5
Nephrology	5
Neurology	5
Neuroradiology	5
Neurosurgery	5
Nuclear Medicine	4
Nuclear Radiology	5
Obstetrics—Gynecology	5
Obstetrics & Gynecological Surgery	5
Occupational Medicine	4
Oncology	5
Ophthalmology	5
Orthopedic Surgery	5
Otorhinolaryngology	5
Otorhinolaryngology/Oro-Facial Plastic Surgery	5
Pathology	5
Pathology, Anatomical	5
Pediatrics	4
Plastic and Reconstructive Surgery	5
Proctology	4
Psychiatry, General and Child	5
Public Health and Preventive Medicine	4

TABLE 2a.—INITIAL RESIDENCY PERIOD LIMITATIONS EFFECTIVE JULY 1, 1985 THROUGH JUNE 30, 1989—Continued

Specialities	Initial residency period
Radiation Oncology	5
Radiological Imaging	5
Radiology	5
Rehabilitation Medicine	5
Reproductive Endocrinology	5
Rheumatology	5
Thoracic Surgery	5
Urological Surgery	5
Podiatry	
Rotating Podiatric Residency	2
Podiatric Orthopedic Residency	2
Podiatric Surgical Residency	2
Dentistry	
Dental Public Health	3
Endodontics	3
Oral Pathology	4
Oral and Maxillofacial Surgery	4
Orthodontics	3
Pediatric Dentistry	3
Periodontics	3
Prosthodontics	3
Prosthodontics Maxillofacial	4

TABLE 2b.—INITIAL RESIDENCY PERIOD LIMITATIONS EFFECTIVE JULY 1, 1989 [1]

Specialities	Initial residency period
Medicine	
Allergy & Immunology	4
Diagnostic Laboratory Immunology	4
Anesthesiology	5
Critical Care Medicine	5
Colon and Rectal Surgery	5
Dermatology	5
Dermatopathology	5
Emergency Medicine	4
Family Practice	4
Internal Medicine	4
Cardiology	4
Critical Care Medicine	4
Endocrinology and Metabolism	4
Gastroenterology	4
Hematology	4
Infectious Disease	4
Medicine Oncology	4
Nephrology	4
Pulmonary Disease	4
Rheumatology	4
Neurological Surgery	5
Nuclear Medicine	5
Obstetrics and Gynecology	5
Ophthalmology	5
Orthopaedic Surgery	5
Otolaryngology	5
Pathology	5
Blood Banking	5
Chemical Pathology	5
Dermatopathology	5
Forensic Pathology	5
Hematology	5
Immunopathology	5
Medicine Microbiology	5
Neuropathology	5
Radioisotopic Pathology	5
Pediatrics	4
Pediatric Cardiology	4
Pediatric Endocrinology	4
Pediatric Hematology-Oncology	4

TABLE 2b.—INITIAL RESIDENCY PERIOD LIMITATIONS EFFECTIVE JULY 1, 1989 [1]—Continued

Specialities	Initial residency period
Pediatric Nephrology	4
Neonatal-Perinatal Medicine	4
Physical Medicine/Rehabilitation	5
Plastic Surgery	5
Preventive Medicine	4
Psychiatry and Neurology	5
Child Psychiatry	5
Radiology	5
Nuclear Radiology	5
Surgery	5
Critical Care Medicine	5
General Vascular Surgery	5
Pediatric Surgery	5
Thoracic Surgery	5
Urology	5
Osteopathy	
Aerospace Medicine	4
Anesthesiology	5
Angiography and Interventional Radiology	5
Cardiology	5
Clinical Allergy and Immunology	5
Dermatology	5
Diagnostic Radiology	5
Osteopathic Manipulative Medicine	3
Emergency Medicine	5
Endocrinology	5
Gastroenterology	5
General Practice	4
General Surgery	5
General Vascular Surgery	5
Hematology	5
Hematology/Oncology	5
Infectious Diseases	5
Internal Medicine	5
Medical Diseases of the Chest	5
Neonatal Medicine	5
Nephrology	5
Neurology	5
Neuroradiology	5
Neurosurgery	5
Nuclear Medicine	4
Nuclear Radiology	5
Obstetrics—Gynecology	5
Obstetrics and Gynecological Surgery	5
Occupational Medicine	4
Oncology	5
Ophthalmology	5
Orthopedic Surgery	5
Otorhinolaryngology	5
Otorhinolaryngology/Oro-Facial Plastic Surgery	5
Pathology	5
Pathology, Anatomical	5
Pediatrics	4
Plastic and Reconstructive Surgery	5
Proctology	4
Psychiatry, General and Child	5
Public Health and Preventive Medicine	4
Radiation Oncology	5
Radiological Imaging	5
Radiology	5
Rehabilitation Medicine	5
Reproductive Endocrinology	5
Rheumatology	5
Thoracic Surgery	5
Urological Surgery	5
Podiatry	
Rotating Podiatric Residency	2
Podiatric Orthopedic Residency	2
Podiatric Surgical Residency	2
Dentistry	
Dental Public Health	3

TABLE 2b.—INITIAL RESIDENCY PERIOD LIMITATIONS EFFECTIVE JULY 1, 1989 [1]—Continued

Specialities	Initial residency period
Endodontics	3
Oral Pathology	4
Oral and Maxillofacial Surgery	5
Orthodontics	3
Pediatric Dentistry	3
Periodontics	3
Prosthodontics	3
Prosthodontics Maxillofacial	4

[1] The changes from Table 2a, which applies to cost reporting periods beginning on or after July 1, 1985, through June 30, 1989, are as follows: Critical Care Medicine is added as a subspecialty in three specialties—Anesthesiology (5), Cardiology (4), and Surgery (5); Osteopathic programs in Emergency Medicine are increased to 5; Osteopathic programs in General Practice are increased to 4; and Dentistry programs in Oral and Maxillofacial Surgery are increased to 5 years beginning July 1, 1989.

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Friday
September 29, 1989

Part VIII

Department of Transportation

Federal Aviation Administration

14 CFR Part 91

Night-Visual Flight Rules Visibility and Distance From Clouds Minimums; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 24722; Amdt. 91-213]

RIN 2120-AB04

Night-Visual Flight Rules Visibility and Distance From Clouds Minimums

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule establishes standard visibility and cloud clearance minimums for night-visual flight rules (VFR) operations. Except for helicopter operations in uncontrolled airspace and fixed-wing operations in a closed traffic pattern in uncontrolled airspace, these minimums apply to such operations regardless of whether the operation is conducted in controlled or uncontrolled airspace. The FAA originated this rulemaking effort as a result of a recommendation of a nongovernmental aviation safety panel. This panel's recommendation sought to reduce the incidence of fatal aircraft accidents associated with VFR flights in instrument flight rules (IFR) conditions while in uncontrolled airspace. Such accidents have occurred under the visibility and cloud criteria of the existing rule.

EFFECTIVE DATE: November 13, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Laser, Air Traffic Rules Branch, ATO-230, Federal Aviation Administration, 800 Independence Avenue, SW., Washington DC. 20591, telephone (202) 267-9251.

SUPPLEMENTARY INFORMATION:

Background

Prompting the FAA to initiate rulemaking on this aspect was a report by a nongovernmental aviation safety group, the General Aviation Safety Panel (GASP). Members of the panel making this recommendation represented the following organizations—

Baker Flying Service;
Piper Aircraft Corporation;
U.S. Aviation Underwriters, Inc.;
Flying Magazine;
Flight Safety Foundation, Inc.;
Air Traffic Control Association;
Avionics Engineering Center;
Aircraft Owners and Pilots Association;
The Upjohn Company;
Experimental Aircraft Association, Inc.;
Aircraft Owners and Pilots Association Air Safety Foundation;
Flight Safety International, Inc.; and
Business and Commercial Aviation Magazine.

The panel's report, in part, stated that a major cause of fatal aircraft accidents is a pilot's continued flight under VFR into adverse weather conditions. The panel reported further that in the vast majority of such accidents the failure or inability to follow IFR procedures was present and that over half of those accidents occurred during night-VFR flight. The full text of this report, entitled "Final Report of an Informal Panel on General Aviation Safety Submitted to J. Lynn Helms, FAA Administrator," is in the regulatory docket associated with this rulemaking action and may be reviewed there by interested parties.

The FAA's analysis of pertinent safety data supported the panel's report and recommendation. In issuing Notice No. 85-14 (50 FR 30124; July 23, 1985), the FAA endorsed the panel's recommendation and proposed to amend Section 91.105 of the Federal Aviation Regulations (FAR) (14 CFR Part 91) to establish standard visibility and cloud clearance minimums for all night-VFR operations except for helicopter operations in uncontrolled airspace. Under that proposal, the reduced minimums applicable to VFR flight in uncontrolled airspace would be eliminated.

Discussion of Comments

The following aviation organizations supported the proposal without any reservation:

Air Transport Association of America (ATA)
National Business Aircraft Association, Inc. (NBAA)
Experimental Aircraft Association (EAA)
Air Line Pilots Association (ALPA)
Business and Commercial Aviation, White Plains, NY
General Aviation Manufacturers Association (GAMA)

Several aviation organizations agreed with the proposal and offered additional recommendations. Such recommendations were made by the following commenters:

Star Aviation, Spearfish, SD
Aircraft Owners and Pilots Association (AOPA)
Civil Aviation Authority (CAA) (United Kingdom)
Helicopter Association International (HAI)
Hynes Aviation Industries, Inc. (HAII), Frederick, OK

Star Aviation, while agreeing with the proposal, suggested that the FAA allow instrument qualified pilots to operate aircraft at night within 50 nautical miles of their base of operation provided visibility is at least 1 statute mile and the ceiling is 500 feet or higher. The FAA agrees with Star Aviation's implication that an IFR-current pilot should have no difficulty in transitioning from VFR flight to flight under IFR. However, nothing in the proposal would prohibit such an occurrence. For example, regardless of the established minimum visibility for night-VFR flight, an IFR-current pilot, when operating in uncontrolled airspace under VFR and when encountering instrument meteorological conditions (IMC) in uncontrolled airspace, would simply change his/her cruising altitude from that required for VFR flight to that required for IFR flight. The reverse of this situation would be true also; i.e., if that same pilot would again encounter visual meteorological conditions (VMC) while in uncontrolled airspace, he/she would simply change from an IFR-cruising altitude to a VFR-cruising altitude. In neither of these situations would the pilot be required to obtain an air traffic control (ATC) clearance. Only when the pilot entered controlled airspace and encountered IMC would the pilot be required to obtain an ATC clearance. This would be true regardless of the adoption of the minimum visibility and cloud clearance distances proposed in Notice 85-14.

The HAI, while in general agreement with the proposal, made an editorial suggestion. HAI recommended that the statement "except as provided in paragraph (b) and in § 91.107" be retained in the revised table in paragraph (a). The FAA agrees that a similar phrase is currently in that table and could continue to be used for other purposes, such as when that table is taken out of context and used as a stand-alone illustration. However, since § 91.107 applies only to special VFR (SVFR) operations and such operations are permitted only in certain control zones, the inclusion of a reference to § 91.107 in the table in § 91.105(a) would be inappropriate. Therefore, the FAA has partially adopted the HAI recommendation and has revised the table in § 91.105(a) to note the exceptions in § 91.105(b).

Both the HAI and HAII conditioned their concurrence with the proposal on the assumption that the proposed rule would not change any provision currently available to helicopters. Further examination of the proposal, in regard to proposed § 91.105(b), revealed that the provision whereby helicopters are permitted to operate clear of clouds in uncontrolled airspace was inadvertently omitted. Adoption of this proposal without this provision would have caused helicopters to be required to maintain the same distance from clouds as fixed-wing aircraft when

conducting operations below 1,200 feet in uncontrolled airspace. It was not the intention of the FAA to propose any change to § 91.105 pertaining to helicopters; therefore, the FAA has modified the proposal to retain the provision whereby helicopter operations are permitted to operate clear of clouds instead of the distance specified in the notice.

The CAA, in agreeing with the proposal, suggested that a maximum speed be specified for helicopters operating in uncontrolled airspace with less than 1 mile visibility. CAA also suggested that a new type of rating be adopted and issued to pilots who have demonstrated an ability to operate in reduced visibilities and distances from clouds. The FAA notes that the suggestion concerning a maximum helicopter speed is beyond the scope of the notice. In regard to the suggested new type of rating, the FAA believes that such a rating already exists—an instrument rating, which permits an IFR-current pilot to operate in meteorological conditions less than currently required for operations conducted under VFR.

While expressing general agreement with the proposal, AOPA suggested that operations conducted under VFR in uncontrolled airspace within a closed airport traffic pattern should be permitted to continue to operate under the provisions of the current rule. This, AOPA stated, would allow pilots to maintain currency and proficiency in night takeoffs and landings per § 61.57(d). Further, it is AOPA's opinion that a pilot operating in a closed pattern, within one-half mile of the runway, at traffic pattern airspeeds, is able to maintain contact with the landing environment and avoid any objects by an adequate safety margin. Another commenter shared this opinion, but added that many of these operations are conducted by IFR-current pilots in IFR-equipped aircraft.

The FAA agrees with AOPA that safety can be maintained in a closed traffic pattern of an airport in uncontrolled airspace when the pilot can maintain visual contact with the landing environment. Operations in an airport traffic pattern within one-half mile of the runway should enable the pilot to maintain such visual contact and be in a position to land immediately should the meteorological conditions deteriorate. Accordingly, the FAA has modified the proposed rule to permit operations in a closed traffic pattern within one-half mile of the runway provided such operations are conducted with at least 1 mile visibility and the aircraft remains clear of clouds.

One commenter, objecting to the proposal, suggested that changing the regulation would not solve the problem but that better education of pilots would. Objecting to the proposal, another commenter suggested that the FAA consider increasing the instrument proficiency requirement for a private pilot certificate. This commenter also stated that additional recurrent training should be required for private pilots. However, neither of these commenters provided any suggestion as to the kind or extent of training that should be required. In any regard, the FAA believes that the current rules associated with night-VFR flight currency and general pilot proficiency are adequate and promote safety. Further, the FAA is of the belief that the rule as adopted will require that pilots be more cognizant of the actual meteorological conditions when planning night-VFR operations.

One of the commenters, in objecting to the proposal, stated that there would be a negative impact on many operators arriving or departing airports in uncontrolled airspace because many of these airports do not have adequate radio or telephone communications for obtaining an IFR clearance or cancelling an IFR flight plan. An IFR operation in uncontrolled airspace does not require a flight plan, nor does it require an IFR clearance. Therefore, radio or telephone communications required for IFR flight in controlled airspace is unnecessary for an airport in uncontrolled airspace.

There were several other commenters that objected to the proposal on the grounds that the rule would impact their operation in some way.

The FAA has considered all of the comments received and, except for the suggestions adopted that modify the proposal, believes that the potential safety benefits of the proposal far outweigh any potential impacts which may result from the implementation of this rule.

Federalism Determination

The amendment set forth herein would not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that such a regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

Regulatory Evaluation Summary

Analysis of Benefits and Costs

The primary benefit of the final rule is potentially fewer accidents, with a consequential reduction in loss of life and diminished property damage. Precise quantification of the benefit is not feasible because the rule's effectiveness can be estimated only roughly. As noted in the General Aviation Safety Panel report, the number of general aviation accidents related to weather conditions is extremely high, and improved effectiveness should be a major benefit.

The panel found that 40 percent of fatal general aviation accidents involved weather as a cause or factor, with low ceilings being a leading causal factor in fatal accidents. For the period 1976 to 1980, 60 percent of fatal accidents in which the pilot had continued VFR flight in adverse weather conditions occurred when the ceiling was 1,000 feet or less, and only 16 percent occurred when the ceiling was above 2,000 feet. In 1980, for example, over 50 percent of such accidents occurred during darkness, even though, according to the panel, only about 5 to 10 percent of VFR flying by general aviation pilots occurs at night. In 1977, 258 fatal accidents involving weather as a cause or factor occurred. The year 1977 is elected as a typical year for general aviation activity within the panel's study period of 1976–1980. After adjusting for hour of day, type of operation and visibility or ceiling factors, 19 accidents involving 36 fatalities comprised the basis for estimating the rule's potential benefits.

Effectiveness of the regulation is difficult to estimate since there may not be 100 percent compliance with the current rule. If there is 100 percent effectiveness of the rule adopted, however, and the 1977 history is taken as a reasonable approximation of an average year, then the benefit of the rule would be approximately $36 million annually, if only 36 lives could be saved.

The cost of implementing this final rule is the value of time that travelers might lose because of deferred, cancelled, or rescheduled trips. Calculating this cost requires specific data, including frequency of trips, persons aboard (since not only aircraft hours, but also person hours are relevant), time lost due to the final rule's weather standards, and the purposes of trips (since the purpose of a trip determines its value).

The final rule affects only VFR operations in uncontrolled airspace within the criteria for visibility and cloud cover. Many operations, such as

those in controlled airspace, are not affected; nor are operations within the criterion condition for cloud cover when visibility is 3 miles or more.

Although the FAA has no accurate count of operations the rule actually will affect, the panel stated that only 5 to 10 percent of general aviation VFR flights occur at night. The FAA's data indicates approximately 3.5 million conditions in 1983. This number equals approximately 10 percent of total general aviation flying hours and is the basis for assuming the number of trips affected.

The 3.5 million night VFR hours are assumed to account for 1.75 million trips, and the final rule to affect 10 percent of these trips.

The estimate of cost assumes a delay of 2 hours per trip for each of 2.5 persons per trip, the average occupancy of the major type of piston aircraft likely to be affected. The FAA values the time of air travelers at $24 per hour.

The estimated cost to implement the final rule equals the product of 175,000 trips (X) 2.5 persons per trip (X) 2 hours delay per trip (X) $24 per hour, which is $21 million per year. The estimated potential benefits exceed the estimated costs of implementing the final rule. While precise numerical estimates of benefits and costs attributable to the final rule are not achievable, the FAA concludes that the estimates are reliable.

Regulatory Flexibility Determination

The small entities potentially affected by this rule are those businesses which operate VFR only, at night, in uncontrolled airspace. The final regulatory evaluation in the docket discusses in detail the extent of the potential economic impact on these entities. The Federal Aviation Administration has certified that the final rule will not have significant economic impact on a substantial number of small entities.

Trade Impact Statement

The Federal Aviation Administration has determined that this regulation will not have an impact on international trade because it affects only domestic operating rules for flights.

Conclusion

For the reasons stated above, the FAA has determined that this is not a major regulation as defined in Executive Order 12291. The FAA has further determined that this action is not significant as defined in Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). In addition, for reasons discussed in the Regulatory Evaluation Summary, it is certified that under the criteria of the Regulatory Flexibility Act this regulation will not have a significant economic impact on a substantial number of small entities. A full regulatory evaluation has been placed in the public docket.

List of Subjects in Part 91

Aviation safety, Air traffic control, Flight visibility, Visual flight rules, Traffic pattern.

The Amendment

PART 91—GENERAL OPERATING AND FLIGHT RULES

For the reasons set forth above, part 91, subpart B, of the Federal Aviation Regulations (14 CFR part 91) is amended as follows:

1. The Authority citation for Part 91 is revised to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 (as amended by P.L. 100–223), 1422 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 *et seq.*; E.O. 11514; P.L. 100–202; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

2. Section 91.105 is revised to read as follows:

§ 91.105 Basic VFR weather minimums.

(a) Except as provided in §§ 91.105(b) and 91.107, no person may operate an aircraft under VFR when the flight visibility is less, or at a distance from clouds that is less than that prescribed for the corresponding altitude in the following table:

Altitude	Flight visibility	Distance from clouds
1,200 feet or less above the surface—		
Within controlled airspace	3 statute miles	500 feet below. 1,000 feet above. 2,000 feet horizontal.
Outside controlled airspace:		
Day: (except as provided in section 91.105(b))	1 statute mile	Clear of clouds
Night: (except as provided in section 91.105(b))	3 statute miles	500 feet below. 1,000 feet above. 2,000 feet horizontal.
More than 1,200 feet above the surface but less than 10,000 feet MSL—		
Within controlled airspace	3 statute miles	500 feet below. 1,000 feet above. 2,000 feet horizontal.
Outside controlled airspace:		
Day	1 statute mile	500 feet below. 1,000 feet above. 2,000 feet horizontal.
Night	3 statute miles	500 feet below. 1,000 feet above. 2,000 feet horizontal.
More than 1,200 feet above the surface and at or above 10,000 feet MSL.	5 statute miles	1,000 feet below. 1,000 feet above. 2,000 feet horizontal.

(b) *Inapplicability.* Notwithstanding the provisions of paragraph (a) above, the following operations may be conducted outside of controlled airspace below 1,200 feet above the surface:

(1) *Helicopter.* When the visibility is less than 1 mile during day hours or less than 3 miles during night hours, a helicopter may be operated clear of clouds if operated at a speed that allows the pilot adequate opportunity to see any air traffic or obstruction in time to avoid a collision.

(2) *Airplane.* When the visibility is less than 3 miles but greater than 1 mile

during night hours, an airplane may be operated clear of clouds if operated in an airport traffic pattern within one-half mile of the runway.

Issued in Washington, DC, on September 25, 1989.

James B. Busey,

Administrator.

[FR Doc. 89–22990 Filed 9–28–89; 8:45 am]

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Friday
September 29, 1989

Part IX

Department of Health and Human Services

Office of Human Development Services

Administration for Native Americans; Availability of Financial Assistance; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

[Program Announcement No. 13612-902]

Administration for Native Americans; Availability of Financial Assistance

AGENCY: Administration for Native Americans (ANA), Office of Human Development Services (OHDS), HHS.

ACTION: Announcement of availability of competitive financial assistance for Alaskan Native social and economic development projects.

SUMMARY: The Administration for Native Americans announces the anticipated availability of fiscal year 1990 funds for social and economic development projects. Financial assistance provided by ANA is designed to strengthen the self-sufficiency of Alaskan Natives through the support of both social and economic development projects and the strengthening of local governance capabilities.

DATES: The closing dates for receipt of applications are February 2, 1990, and May 18, 1990.

FOR FURTHER INFORMATION CONTACT: Ted George (206) 442-0992 or Robert Kreidler (206) 442-8113, Administration for Native Americans, Office of Human Development Services, Department of Health and Human Services, 2201 6th Avenue, Mail Stop RX-34, Seattle, Washington 98121.

SUPPLEMENTARY INFORMATION

A. Introduction and Program Purpose

The purpose of this program announcement is to announce the anticipated availability of fiscal year 1990 financial assistance to promote self-sufficiency for Alaskan Natives through support of local governance, social and economic development projects. Funds will be awarded under section 803(a) of the Native American Programs Act of 1974, as amended, Public Law 93-644, 88 Stat. 2324, 42 U.S.C. 2991b.

Proposed projects will be reviewed on a competitive basis against the evaluation criteria in this announcement.

The purpose of the financial assistance provided by ANA under the Native American Programs Act (the Act) is to promote social and economic self-sufficiency for American Indians, Alaska Natives, Native Hawaiians, and Native American Pacific Islanders (American Samoan Natives and indigenous peoples of Guam and the Commonwealth of the Northern Mariana Islands).

ANA believes that responsibility for achieving self-sufficiency rests with the governing bodies of Indian tribes and Alaskan Native villages and in the leadership of Native American groups. The development of self-sufficiency requires strengthening governmental responsibilities, economic progress, and improvement of social systems which protect and enhance the health and well-being of individuals, families and communities.

Achievement of self-sufficiency is based on the community's ability to plan, organize, and direct resources in a comprehensive manner to achieve long-range community goals. ANA bases its program and policy initiatives on the following three program goals:

(1) *Governance:* to assist tribal and village governments, Native American institutions, and local leadership to exercise local control and make decisions over their resources;

(2) *Economic Development:* to foster the development of stable, diversified local economies and economic activities which will provide jobs, promote economic well-being, and reduce dependency on public funds and social services; and

(3) *Social Development:* to support local access to, control of, and coordination of services and programs which safeguard the health and well-being of people, and which are essential to a thriving and self-sufficient community.

To accomplish these goals, ANA supports tribal and village governments and other Native American organizations in the development and implementation of community-based, long-term governance and social and economic development strategies (SEDS) aimed at promoting the self-sufficiency of their own communities. This approach is based on two fundamental principles:

(1) The local community and its leadership are responsible for determining their own goals, setting priorities, and planning and implementing programs aimed at achieving those goals; the unique mix of socio-economic, political, and cultural factors involved in each community makes such self-determination necessary; the local community is in the best position to apply its own cultural, political, and socio-economic values in deciding on long-term strategies and programs; and

(2) Economic and social development are interrelated, and development in one area should be balanced with development in the other in order to enhance self-sufficiency. Without a careful balance of the two, the community's development efforts may be jeopardized. Expansion of social services, without providing opportunities for employment and economic development, may lead to greater dependency. Conversely, inadequate social services can seriously impede productivity and economic development.

B. Proposed Projects to be Funded

The fundamental task which Native American communities face is developing enduring social and economic strategies in keeping with local goals, resources, and cultural values. ANA is interested in assisting communities in the implementation of projects that are a part of long-range strategies to achieve social and economic self-sufficiency. ANA expects its applicants to have undertaken a long-range planning process that addresses the community's development and encourages social and economic growth for the community. Such long-range planning must consider the maximum use of available resources, directing those resources at opportunities and addressing issues that hinder progress.

ANA encourages applicants to consider innovative approaches to achieve the specific governance and social and economic goals of the community, and to use non-ANA resources including human, natural, and financial ones to strengthen and broaden the proposed project's impact in the community.

All projects funded by ANA must be completed, self-sustaining, or supported with other than ANA funds at the end of the project period. ANA's funding of specific projects is not for those programs which operate indefinitely or have need for ANA funding on a recurring basis.

Goal 1: Governance

Effective governance is a necessary foundation and condition for social and economic development of Indian tribes, Alaskan Native villages, and Native American groups. Efforts to achieve effective governance include (1) strengthening the effectiveness of tribal and village governments; (2) increasing the ability of tribes, villages and Native American groups and organizations to plan, develop, and administer a comprehensive program supportive of community social and economic self-sufficiency; and (3) increasing awareness of the legal rights and benefits to which Native Americans are entitled, either by virtue of treaties, the

Federal trust relationship, legislative authority, or as citizens of a particular state or of the United States.

Under the governance goal, ANA strongly encourages tribal and village councils and other governing bodies to create, strengthen, improve, and streamline their institutional management in order to develop and implement social and economic development strategies and to improve the day-to-day management of programs. By improving such capabilities, Indian Tribes, Alaskan villages and Native American groups can better define, control, and achieve the goals of their people and promote greater efficiency and effectiveness in the use of available resources.

Goal 2: Economic Development

Economic development is the long-term mobilization and management of economic resources to achieve a diversified economy characterized by widespread distribution of economic resources, services, and benefits; participation of community members in the productive activities and economic investments of the community; and pursuit of economic interests in ways that balance economic gain with social development.

Goal 3: Social Development

Social development is the mobilization and management of resources for the social benefit of community members, and involves the establishment of institutions, systems, and practices that contribute to the social environment desired by the community. This includes the development of, access to, and local control over the institutions that protect the health and welfare of individuals and families, and that preserve the values, language, and culture of the community.

Building on the foundation of strong local governance, ANA supports tribal and village governments' and other Native American organizations' efforts to achieve coordinated and balanced development and implementation of social and economic development strategies. These interrelated strategies should coordinate and direct all resources, Federal and non-Federal, toward locally determined priorities, and affect the community and its members in ways that promote greater economic and social self-sufficiency. In addition, these combined strategies should provide an independent source of revenue to the community which will assist the applicant in decreasing dependency on public funds.

Alaska Initiative

Based on the three ANA goals, in fiscal year 1984, ANA implemented a special Alaska social and economic development initiative. The purpose of this special effort was to provide financial assistance at the village level, or for village-specific projects aimed at improving a village's social and economic development. This program announcement continues to implement this initiative. ANA sees both the nonprofit and for-profit corporations in Alaska as being able to play an important supportive role in assisting individual villages to develop and implement their own locally determined strategies which take advantage of the opportunities afforded to Alaskan Natives under the Alaska Native Claims Settlement Act (ANCSA), Public Law 92–202.

Examples of the types of projects that ANA is seeking to fund include, but are not limited to, projects that will:

Governance

- Initiate a demonstration program at a regional level to allow Native people to become involved in developing strategies to maintain and develop their economic subsistence base.
- Assist villages in developing land use capabilities and skills in the areas of land and natural resource management, resource assessment and development, and studies of the potential impact of land use upon the environment and the subsistence ecology.
- Assist village consortia in the development of tribal constitutions, codes, and court systems.
- Develop agreements between the State and villages that transfer programs, jurisdictions, and/or control to Native entities.
- Strengthen village government control of land management, including land protection.
- Develop tribal courts, adoption codes, and/or related comprehensive children's codes.
- Assist in status clarification for traditional councils.
- Initiate village level mergers between village councils and village corporations.
- Develop Regional IRAs (Indian Reorganization Act of 1934) and village consortia, in order to maximize tribal government resources, i.e., to develop model codes, tribal court systems, governance structures, and organic documents.

Economic Development

- Assist villages to develop businesses and industries which (1) use local materials, (2) create jobs for Alaskan Natives, (3) are capable of high productivity at a small scale of operation, and (4) complement traditional and necessary seasonal activities.
- Substantially increase and strengthen efforts to establish and improve the village and regional infrastructure and the capabilities to develop and manage resources in a highly competitive cash-economy system.
- Assist villages or consortia of villages in developing subsistence compatible industries that will retain local dollars in villages, reducing dependency on State and Federal subsidies.
- Assist in new or expanded Native businesses.
- Assist villages in labor export, i.e., people leaving the local communities for seasonal work and returning to their communities.
- Consider strategies and plans to protect against, monitor, and assist when catastrophic events occur, such as the current oil spill.

Social Development

- Assist villages in developing programs to deliver needed social services.
- Assist in developing training and education programs for those jobs in education, government, and health usually found in local communities; and to work with the various agencies to encourage job replacement of non-Natives by Natives.
- Coordinate land use planning with village corporations and city government.
- Develop local models related to comprehensive planning and delivery of social services.
- Develop new service programs established with ANA funds and funded for continued operation by local communities or the private sector.
- Develop or coordinate activities with State-funded projects, in decreasing the incidences of child abuse and neglect, fetal alcohol syndrome, or Native suicides.
- Assist in obtaining licenses to provide housing or related services for State or local governments.
- Assist villages to determine the viability of a business that could provide relief for caretakers needing respite from demanding care work.

C. Eligible Applicants

The following are eligible to apply for a grant award under this program announcement:

• Current ANA grantees in Alaska funded under section 803(a) of the Native American Programs Act with a project period ending in Fiscal Year 1990 (October 1, 1989–September 30, 1990);

• Alaskan Native villages as defined in the Alaska Native Claims Settlement Act (ANCSA) and/or nonprofit village consortia;

• Nonprofit Alaskan Native Regional Associations in Alaska with village specific projects;

• Nonprofit Native organizations in Alaska with village specific projects; and

• Nonprofit Alaskan Native community entities or tribal governing bodies (IRA or traditional councils) as recognized by the Bureau of Indian Affairs.

Although for-profit Regional Corporations established under ANCSA are not eligible applicants, individual villages and Indian communities are encouraged to use the for-profit corporations as subcontractors and to collaborate with them in joint-venture projects for promoting social and economic self-sufficiency. ANA encourages the for-profit corporations to assist the villages in developing applications and to participate as subcontractors in the project.

This program announcement does not apply to current grantees with multi-year projects when applying for continuation funding for their second or third budget periods.

D. Available Funds

Approximately $1.5 million of financial assistance is expected to be available under this program announcement.

Funding Guidance: ANA plans to award approximately 15–18 grants under this announcement. For individual village projects, the funding level for a budget period of 12 months will be up to $100,000; for regional nonprofit and village consortia, the funding level for a budget period is up to $150,000, commensurate with approved multi-village objectives. This program announcement is being issued in anticipation of appropriation of the necessary funds and is contingent upon that appropriation.

Each applicant is eligible to receive no more than one grant award under this announcement.

E. Multi-Year projects

Applicants may apply for projects of up to 36 months duration. A multi-year project, one extending more than 12 months, affords grantees the opportunity to undertake more complex and in-depth projects than can be completed in one year. Applicants are encouraged to develop multi-year projects. However, applicants should note that a multi-year project is a project on a single theme that requires more than 12 months to complete. It is not a series of unrelated projects presented in chronological order over a three year period. Funding after the first budget period of a multi-year project is non-competitive.

The budget period for each multi-year project grant will be 12 months. The non-competitive funding for the second and third years will depend upon the grantee's progress in achieving the objectives of the project according to the approved work plan, the availability of Federal funds, and compliance with applicable statutory, regulatory, and grant requirements.

F. Grantee Share of Project

Grantees must provide at least 20 percent of the total approved cost of the project, which may be cash or in-kind contributions. The total approved cost of the project is the sum of the Federal share and the non-Federal share. The method to compute the non-Federal share is shown in the Application Kit. An itemized budget detailing the applicant's non-Federal share and its source must be included in the application. A request for a waiver of the non-Federal share requirement may be submitted in accordance with 45 CFR 1336.50(b)(3) of the Native American Program Regulations.

G. Intergovernmental Review of Federal Programs

This program is not covered by Executive Order 12372.

H. The Application Process

Availability of Application Forms

In order to be considered for a grant under this program announcement, an application must be submitted on the forms supplied and in the manner prescribed by ANA. The application kits containing the necessary forms may be obtained from:

Administration for Native Americans, Office of Human Development Services, DHHS, 2201 6th Avenue, Mail Stop RX–34, Seattle, Washington 98121, Attention: No. 13612–902, (206) 442–0992.

Application Submission

One signed original and two copies of the grant application, including all attachments, must be hand delivered or mailed to:

Department of Health and Human Services, Office of Human Development Services, Discretionary Grants Management Branch, 2201 6th Avenue, Mail Stop RX–31, Seattle, Washington 98121, ATTENTION: ANA 13612–902.

Do Not Submit the Application to Washington, DC.

The application shall be signed by an individual authorized to act for the applicant village or organization and to assume the applicant's obligations under the terms and conditions of the grant award, including Native American Program statutory and regulatory requirements.

Application Consideration

The Commissioner of the Administration for Native Americans determines the final action to be taken with respect to each grant application received under this announcement.

The factors discussed below should be taken into consideration by all applicants:

• Incomplete applications and applications that do not conform to this announcement will not be accepted for review. Applicants will be notified in writing of any such determination by ANA.

• Complete applications that conform to all the requirements of this program announcement are subjected to a competitive review and evaluation process. An independent review panel evaluates each application against the published criteria. The results of this review assist the Commissioner in making final funding decisions.

• The Commissioner's decision takes into account the comments of the ANA staff, State and Federal agencies having performance related information, and other interested parties.

• The Commissioner makes grant awards consistent with the purpose of the Act, all relevant statutory and regulatory requirements, this Program Announcement, and the availability of funds.

• After the Commissioner has made decisions on all applications, unsuccessful applicants will be notified in writing within approximately 120 days of the closing date. Successful applicants are notified through an official Financial Assistance Award (FAA). The award will state the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the grant award, the effective date of the award, the project period, the budget period, and the amount of the non-Federal matching share requirement.

I. Review Process and Criteria

Applications submitted in a timely manner under this program

announcement will undergo a pre-review to determine:

- That the applicant is eligible in accordance with the Eligible Applicant Section of this announcement;
- That the application proposes project objectives which are responsive to the Program Announcement; and
- That the application materials submitted are sufficient to allow the panel to undertake an in-depth evaluation. All required materials and forms are listed in the Grant Application Checklist in the Application Kit.

Applications which pass the pre-review will be evaluated and rated by an independent review panel on the basis of five evaluation criteria. These criteria are used to evaluate the quality of a proposed project and to determine its likelihood of success. A proposed project should reflect the purposes of ANA's SEDS philosophy and program goals (as described under "Introduction and Program Purpose" of this announcement) and increase the probability of greater self-sufficiency for a specific tribe or Native American community. The five programmatic and management criteria are closely related to each other and are considered in judging the overall quality of an application. Points will be given only to applications which are responsive to this announcement and these criteria. The five evaluation criteria are set forth below:

(1) Long-Range Goals and Available Resources

(15 points)

(a) The application presents long-range goals, within the context of the community's comprehensive social and economic development goals, which the proposed project addresses. (Inclusion of the community's entire development plan is not necessary.)

(b) Available resources (other than ANA) which will assist and be coordinated with the project are described. These resources may be human, natural or financial, and may include other Federal and non-Federal resources.

(2) Organizational Capabilities and Qualifications

(10 points)

Position descriptions or resumes of key personnel, including those of consultants, are included. Position descriptions specifically describe the job and are clearly related to the project. Resumes indicate that the proposed staff are qualified to carry out the project activities. Either a position description or a resume set forth the qualifications that the applicant believes are necessary for overall quality management.

(3) Project Objectives, Approach and Activities (45 points)

The application proposes specific project objectives and activities. The Objective Work Plan includes project objectives and activities for each budget period proposed and demonstrates that these objectives and activities—

- Are measurable and quantifiable;
- Are based on a fully described and locally determined balanced strategy for governance and for social and economic development;
- Clearly address the community's long-range goals;
- Can be accomplished with available or expected resources during the proposed project period;
- Indicate when the objective and major activities under each objective will be accomplished; and
- Specify who will conduct the activities under each objective.

(4) Results or Benefits Expected. (20 points)

The proposed project will result in specific, measurable outcomes for each objective which will clearly contribute to the overall development of the community and its members. The specific information provided on expected outcomes for each objective is the basis upon which the outcomes can be evaluated at the end of each budget year.

(5) Budget (10 points)

There is a budget for each budget period requested. The budget fully explains and justifies the line items in the budget categories in section B of the Budget Information. Sufficient detail is included to facilitate determination of allowability and relevance to the project. The funds requested are commensurate with the scope of the project. For business development projects, the proposal has demonstrated that the expected return on the funds used to develop the project provides a reasonable profit/benefit ratio within a future specified time frame.

J. Guidance to Applicants

The following points are provided to assist applicants in developing a competitive application.

(1) Program Guidance

- ANA reviewers of applications have indicated they are better able to judge the feasibility and practicality of a proposed economic development project when the applicant has utilized a business plan to discuss the project. ANA has included sample business plans in the application kit. It is strongly suggested that an applicant use these as a guide in the development of an application. The more information given a review panel on a proposed business project, the better able it is to evaluate the potential for success.
- Community Coordination: ANA supports the concept that the key to balanced socio-economic development is the local village. ANA encourages native village governments to coordinate their local plans with other village entities, if any, and especially the city government and the village corporation. In addition, villages are encouraged to make maximum use of regional nonprofit resources, including village-to-regional corporation subcontracts.
- ANA does not fund on the basis of need. ANA funds projects presenting the strongest prospects for fulfilling a community's governance, social or economic development.
- In discussing the problems of the community being addressed in the application, sufficient background and/or history of the community concerning these problems should be included so that the suitability of the proposed project will be understood by reviewers.
- The project proposal must clearly identify in measurable terms the expected results of the project and its positive and continuing impact on the community.
- In the ANA Program Narrative, Section A of the application package, "Resources Available to the Proposed Project," the applicant should address any specific financial circumstances which may impact on the project, such as any monetary or land settlements made to the applicant and any restrictions on the use of those settlements. The specific reasons for seeking ANA funds must be explained when the applicant appears to have other resources to support the proposed project and chooses not to use them.
- Supporting documentation, including testimonials from concerned interests other than the applicant, should be used to provide support for the feasibility of the project.

(2) Technical Guidance.

- The application's Form 424 must be signed by the applicant's representative authorized to act with full authority on behalf of the applicant.
- ANA suggests that the pages of the application be numbered sequentially from the first page. This allows for easy reference during the review process. Simple tabbing of the sections of the application is also helpful to the reviewers.

• Two copies of the application plus the original are required.

• Applicants are encouraged to have someone other than the author apply the evaluation criteria and score the application prior to its submission in order to gain a better sense of the application's quality and potential competitiveness.

• For purposes of developing an application, applicants should plan for a project start date approximately 120 days after the closing date under which the application is submitted.

• ANA will not fund essentially identical projects serving the same constituency.

• ANA will accept only one application from any one applicant. If an eligible applicant sends in two applications, the one with the earlier postmark will be accepted for review unless the applicant withdraws the earlier application.

• An application from a Federally recognized Alaska Native tribal entity must be from the governing body.

• The Cover Page (included in the Kit) should be the first page of an application.

• The Approach page (section B of the ANA Program Narrative) for each objective proposed should be of sufficient detail to become a daily or weekly staff guide of responsibilities should the applicant be funded.

• If a profit-making venture is being proposed, profits must be reinvested in the business in order to decrease or eliminate ANA's future participation. Such revenue must be reported as general program income. A decision will be made at the time of grant award regarding appropriate use of program income. (See 45 CFR part 74 and part 92.)

• Applicants proposing multi-year projects must fully describe annual project objectives and activities. Separate Objective Work Plans (OWP) must be presented for each project year and a separate itemized budget of the Federal and non-Federal costs of the project for each budget period must be included.

• Applicants for multi-year projects must justify the entire time-frame of the project (i.e., why the project needs funding for more than one year) and describe the results to be achieved by the end of each budget period of the total project period.

• The applicant should specify the entire project period length on the first page of the Form 424, Block 13, not the length of the first budget period. Should the application's contents propose one length of project period and the Form 424 specify a conflicting length of project period, ANA will consider the project period specified on the Form 424 as governing.

• Line 15a of the 424 should specify the Federal funds requested for the first Budget Period, not the entire project period.

• Village governments or other applicants without established accounting systems must arrange for qualified, acceptable accounting services prior to release of grant funds.

Note. Subpart H, 45 CFR part 74 and subpart C, 45 CFR part 92 address those elements of a generally acceptable accounting system for Federal grantees. The financial management standards in subparts H and C, for example, include:

(1) Accurate, current and complete disclosure;

(2) Records which show source and application of funds;

(3) Effective control and accountability of funds and property;

(4) Comparison of actual and budgeted amounts;

(5) Procedures to minimize time lapsing between transfer and disbursement of funds;

(6) Procedures to determine allowability and allocating of funds;

(7) Accounting records with source documentation;

(8) Periodic audits; and

(9) A follow-up system.

(3) Projects or Activities that generally will not meet the purposes of this Announcement.

• Projects which support a grantee in providing training and/or technical assistance (T/TA) to other tribes or Native American organizations ("third party T/TA"). However, the purchase of T/TA by a grantee for its own use or for its members' use (as in the case of a consortium), where T/TA is necessary to carry out project objectives, is acceptable.

• The development of feasibility studies, business plans, marketing plans or written materials such as manuals that are not an essential part of the applicant's long-range development plan. ANA is not interested in funding "wish lists" of business possibilities. ANA expects evidence of solid investment of time and thought on the part of the applicant to any development of business plans, etc.

• The provision of direct delivery of social services programs or expansion or continuation of existing social service delivery programs.

• Core administrative functions or other activities that essentially support the applicant's ongoing administrative functions. However, ANA will allow villages which do not have governing systems in place to apply for projects for core administrative capacity-building at the village governmental level.

• Project goals which are not responsive to one or more of the three ANA goals (Governance, Economic Development, Social Development).

• Project plans or strategies that do not meet the needs of the local community.

• Proposals from consortia of tribes that are not specific in regard to support from and roles of member tribes.

• Projects which should be supported by other Federal funding sources appropriate and available for the proposed activity.

• Activities that will not be completed by the end of the project period or that will not be self-sustaining at the end of the project period, including projects that will not be supported by other than ANA funds at the end of the project period.

• Lack of demonstrated coordination with non-ANA resources.

• Lack of a justification or explanation for requesting ANA funds, or a lack of discussion of other resources and revenues for use in the project.

• The purchase of real estate (see 45 CFR 1336.50 (e)) or construction (see HDS Grants Administration Manual Ch. 3, § E.).

• The outright purchase of an existing business or a speculative business development investment purpose (capital venture).

ANA will critically evaluate applications within which the acquisition of major capital equipment (whether oil rigs or computers/word processing equipment), franchises, or the payment of management fees are major components of the Federal share of the budget. During negotiation, such expenditures may be deleted from the budget of an otherwise approved application.

ANA will also critically evaluate projects reflecting heavy reliance on use of outside consultants, especially where consultants have prepared the application and have provided a major role for themselves in the proposed project.

K. Due Date for Receipt of Applications

The closing dates for applications submitted in response to this program announcement are February 2, 1990 and May 18, 1990.

L. Receipt of Applications

Applications must either be hand delivered or mailed.

Deadlines. Applications mailed through the U.S. Postal Service or a

commercial delivery service shall be considered as meeting an announced deadline if they are either:

(1) Received on or before the deadline date at the address specified in the Application Submission Section, or

(2) Sent on or before the deadline date and received in time for the ANA independent review. (Applicants are cautioned to request a legibly dated receipt from a commercial carrier or U.S. Postal Service or a legible postmark date from the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late applications. Applications which do not meet the criteria in the above paragraph of this section are considered late applications and will be returned to the applicant. Applications will not be held over for the next closing date. ANA shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines. ANA may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is a widespread disruption of the mails. However, if ANA does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant.

(Catalog of Federal Domestic Assistance Program Number 13.612 Native American Programs)

Dated: August 16, 1989.

Dominic J. Mastrapasqua,

Acting Commissioner, Administration for Native Americans.

Approved: September 20, 1989.

Mary Sheila Gall,

Assistant Secretary for Human Development Services.

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Part X

Department of the Interior
Fish and Wildlife Service

Department of Commerce
National Oceanic and Atmospheric Administration

50 CFR Parts 18, 228, and 402
Incidental Take of Endangered, Threatened and Other Depleted Marine Mammals; Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 18, 228, and 402

RIN 1018-AB05

Incidental Take of Endangered, Threatened and Other Depleted Marine Mammals

AGENCIES: Fish and Wildlife Service (FWS), Interior; National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: Regulations are issued to implement amendments enacted in 1986 to the Marine Mammal Protection Act of 1972 (MMPA) and Endangered Species Act of 1973 (ESA). These amendments provide a mechanism for allowing certain takings of endangered, threatened and other depleted marine mammals incidental to activities other than commercial fishing operations. Previously, the incidental taking of depleted marine mammals was not allowable under the terms of the MMPA. This rule amends existing procedures governing incidental take authorizations.

EFFECTIVE DATE: October 30, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia Montanio, Protected Species Management Division, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910, 301-427-2322, or Robert Peoples, Division of Fish and Wildlife Management Assistance, U.S. Fish and Wildlife Service, Department of the Interior, Mail Stop—820 Arlington Square, 18th and C Streets, NW., Washington, DC 20240, 703-358-1718.

SUPPLEMENTARY INFORMATION: Proposed regulations on the Incidental Take of Endangered, Threatened and Other Depleted Marine Mammals were published on March 15, 1988 (53 FR 8473-8477). The original May 16 close of the comment period was extended until July 5, 1988 (53 FR 17964-17965). More than 20 entities, including conservation groups, Federal, state and local government agencies, private industry and other interested parties commented on the proposed rule. These comments are summarized along with responses in the discussions below.

General Requirements and Processes

FWS and NMFS share responsibilities under the MMPA (16 U.S.C., 1361 *et seq.*) and ESA (16 U.S.C. 1531 *et seq.*). NMFS is responsible for species of the order Cetacea (whales and dolphins) and the suborder Pinnipedia (seals and sea lions) except walrus. FWS is responsible for the dugong, manatees, polar bear, sea and marine otters and walrus. Depending on the animals involved, the term "Service" used in this document may refer to FWS and/or NMFS.

Section 101(a)(5) of the MMPA allows for the taking of marine mammals incidental to non-commercial fishing activities under certain circumstances; Section 7(b)(4) of the ESA allows, under certain circumstances; for the taking of endangered and threatened species incidental to activities that have Federal involvement or control. If a marine mammal species is listed as endangered or threatened under the ESA, the requirements of both the MMPA and ESA must be met before the incidental take can be allowed.

Summary of Amendments

Prior to amendment, section 101(a)(5) of the MMPA applied only to non-depleted species. Under section 3(1)(C) of the MMPA, all endangered and threatened marine mammals are by definition depleted. Since the more restrictive provisions of the MMPA prevail, the ESA provisions alone could not be used to authorize the incidental taking of endangered or threatened marine mammals.

Public Law 99-659, title IV, section 411 (approved November 14, 1986) amended section 101(a)(5) of the MMPA and made conforming changes to sections 7(b)(4) and 7(o) of the ESA. The primary change was to allow the taking of depleted as well as non-depleted species of marine mammals incidental to specified activities (other than commercial fishing operations) under certain conditions. The amendments also changed some of the conditions under which incidental taking can be allowed.

General Comment: One commenter believed that there should not be any taking, hunting or killing of endangered, threatened or depleted species.

Under the 1986 Amendments, Congress provides an exception for the incidental, but not intentional, taking of small numbers of depleted marine mammals under limited circumstances. Although we anticipate most taking to be by harassment only, the amendment is not limited to non-lethal takings.

MMPA—Section 101(a)(5) Process

Under sections 101(a)(5) of the MMPA, the Service can allow the taking of small numbers of marine mammals incidental to a specified activity (other than commercial fishing) within a specified geographical area. For the Service to consider allowing an incidental taking, a written request for specific regulations must be submitted to the Service containing detailed information on the activity as a whole and impacts of the total potential take. The Service will evaluate the impacts resulting from all persons conducting the specified activity, not just the impacts from one entity's activities. If the Service makes certain findings, specific regulations will be issued that, among other things, establish permissible methods of taking and other means of effecting the least practicable adverse impact on the species. After regulations are issued, individual Letters of Authorization must be obtained from the Service by those conducting the activity.

Procedural regulations implementing this provision of the MMPA are found at 50 CFR 18.27 for FWS and at 50 CFR part 228 for NMFS.

Processing time: In the preamble to the proposed rule, the Service advised requestors that the regulatory process for specific regulations can take a year or more. Many commenters believed this to be excessive resulting in unnecessary time and financial costs to applicants and delayed the identification and development of hydrocarbon resources. Further, two commenters believed that the lengthy review process does not account for the urgency of some situations, such as platform removals for safety or reuse purposes, or operational constraints due to weather and ice conditions in Alaska. They argued that Congress intended that the Service act expeditiously on requests.

The Service will complete the process as quickly as possible and will provide the applicant with a proposed schedule, if requested. Although regulations have been issued in as little as six months, the process generally takes longer because of the time necessary to complete the environmental and regulatory reviews and provide an opportunity for public comment on the proposed rule. Therefore, the Service believes one year is a realistic estimate. Knowing the potential time requirements, applicants can plan their activities accordingly. Since the MMPA process can be conducted simultaneously with other requirements, early initiation of the MMPA process will avoid delaying approval and implementation of specific activities. Once regulations are established governing a specific activity, Letters of

Authorization can be issued quickly and can accommodate specific urgencies.

Comment Periods: Under 50 CFR 228.4(b), NMFS publishes a notice of receipt of request for regulations and solicits information. Public comments are also accepted on the proposed findings and regulations. The FWS, on the other hand, does not require publication of a notice of receipt of request and generally solicits comments only on its proposed findings and regulations (50 CFR 18.27(d)(2)). This is the only difference between NMFS and FWS processes, which is relatively minor reflecting standard agency procedures. Some commenters opposed the initial comment period established by NMFS since it is not mandated under the MMPA or Administrative Procedure Act and could delay issuance of final regulations.

The NMFS approach is consistent with its general approach to regulations—providing the public with an advance notice of a rulemaking where possible. The NMFS believes that the first comment period facilitates gathering all available information prior to developing the required regulatory and environmental analyses and publishing a proposed rule. No minimum time for the initial comment period is established in the NMFS regulations. Therefore, in unusual or critical situations, this comment period could be less than the usual 30 days. In addition, drafting the required environmental and regulatory documents could begin during the comment period, resulting in no significant delay to the process.

Application assistance: Commenters suggested that applicants be encouraged to consult with the Service in preparing a request to identify sources of information and to ensure an adequate request.

The Service agrees, but does not believe that this needs to be stated in the regulations. The Service will assist potential applicants by explaining requirements and identifying sources of information. Potential applicants are encouraged to contact the Service and the Service's Regional Offices for assistance.

Completeness of request: One commenter believed that the Service should be required to determine the completeness of a request within 15 days. If found incomplete, the Service would notify the applicant with an explanation of what is required to make the request complete.

The Service will review requests and notify applicants as soon as practicable of any additional information required. However, information needs (such as the feasibility of implementing certain mitigating measures) may become apparent anytime during the regulatory process. Therefore, the Service reserves the option to request additional information when required, rather than just within the first 15 days.

Denial of requests: Some commenters believed that the regulations should require that denials of requests for specific regulations along with the findings in support of that decision be published and made available to the applicant.

The Service agrees and has added new §§18.27(d)(4) and 228.4(d) requiring publication in the **Federal Register** of any decision to deny a request along with the basis for denying the request.

Required information: One commenter believed that the information required in § 18.27(d) (vi), (vii) and (viii) and § 228.4(a) (9), (10) and (11) dealing with suggested means of mitigating and monitoring impacts should be optional, since these discussions would be more productive after the applicant has an opportunity to consult with the Service and subsistence users.

The Service believes the applicant should be required to identify mitigating measures and ways to monitor impacts to assist the Service in developing the most workable regulations. The applicant's detailed knowledge of the proposed activity provides a good basis for such initial proposals. Including these suggestions for comment and further discussion as the process continues will serve to enhance and facilitate the process of developing regulations. Therefore, the Service has retained these questions.

Total impacts: One commenter believed that the current reference to "cumulative" impacts in the information required under §§ 18.27(d) and 228.4 should be deleted.

As used in these sections, cumulative impacts was intended to mean the total impacts resulting from the activity as a whole, not just the impacts resulting from one individual's or company's participation. It was not intended to mean the impacts resulting from the activity in conjunction with unrelated ongoing or projected activities (as the term is used under NEPA). Therefore, the word cumulative has been deleted and the sentence clarified to request information on the "activity as a whole, which includes, but is not limited to, an assessment of total impacts by all persons conducting the activity." (See also "Cumulative Impacts" discussion below.)

Burden of proof: In the preamble to the proposed rule, the Service stated that the applicant has the burden to demonstrate, through the best scientific information available, that only a negligible impact is reasonably likely to occur. Commenters suggested that only the best presently available, readily obtainable information should be required in requests, and that applicants should not be required to conduct research if information gaps exist. Commenters also objected to the applicant having the burden to demonstrate negligible impact, and believed it is the responsibility of the Service.

In response to the commenters' concerns, the Service notes that its "best available scientific evidence" standard used to determine the completeness of a request in the MMPA regulations is similar to the "best available scientific and commercial data" standard that is used in the Section 7 (ESA) consultation regulations. Therefore, the Service intends to use the principles described in the following excerpt from the preamble to the consultation regulations when additional data is needed to complete a request for specific regulations under this final rule:

> A Service request for additonal data will not be used as a vehicle for burdening applicants with unnecessary studies and inordinate delays * * *. As in the *Pittston* case [*Roosevelt Campobello International Park Commission* v. *EPA*, 684 F.2d 1041 (1st Cir. 1982)], these requirements will be limited to readily obtainable data that would assist the Service in formulating its biological opinion [under Section 7(b) of the ESA] * * *. [A]s in *Pittston*, a distinction must be made between requests for special research projects and requests for routine, customary data collection activities.

51 FR 19926, 19952 (June 3, 1986).

Only the best available information needs to be submitted with a request, and conducting research is not a requirement. The Service believes it is the responsibility of the applicant to provide the required information and to demonstrate negligible impact since the applicant is requesting authority to take the marine mammals and is the beneficiary of such authority. The Service will also consider information submitted by other interested parties or otherwise available. If the information submitted by the applicant together with any other information available to the Service is not sufficient to support a negligible impact finding, regulations cannot be issued. In this case, additional studies may be needed to support a negligible impact finding.

It should also be noted that Congress placed a continuing burden on those operating under the authority of Section 101(a)(5) to "engage in appropriate

research designed to reduce the incidental taking of marine mammals pursuant to the specified activity concerned." H.R. Rep. No. 228, 97th Cong., 1st Sess. 20 (1981).

Placing the burden on the applicant to demonstrate negligible impact is consistent with other take authorizations under the MMPA. Under Section 104(d)(3), permit applicants "must demonstrate to the Secretary that the taking * * * will be consistent with the purposes of this Act and the applicable regulations established under section 103 of this title." In the 1971 House Report, Congress explained this basic concept:

> Before any marine mammal may be taken, the appropriate Secretary must first establish general limitations on the taking, and must issue a permit which would allow that taking. In every case, the burden is placed upon those seeking permits to show that the taking should be allowed and will not work to the disadvantage of the species or stock of animals involved. If that burden is not carried—and it is by no means a light burden—the permit may not be issued. The effect of this set of requirements is to insist that the management of the animal populations be carried out with the interests of the animals as the prime consideration.

H.R. Rep. No. 707, 92d Cong., 1st Sess. 18 (1971).

U.S. Citizen: As stated in the preamble to the proposed rule, under section 101(a)(5) of the MMPA only U.S. citizens are eligible to apply for Letters of Authorization. Commenters believed that the definition of U.S. citizens in the regulations is unduly restrictive since it requires that companies or corporations be controlled by U.S. citizens. Commenters pointed out that this is inconsistent with regulatory practice under the Outer Continental Shelf Lands Act (OCSLA) which requires only that the company be organized under the laws of the United States to be considered a U.S. citizen. Commenters believed that Congress intended that all holders of offshore leases be eligible for a small take authorization under the MMPA, and, therefore, the MMPA regulatory definition should be made consistent with the OCSLA definition.

The Service agrees that a change in the definition may be appropriate. However, since this change was not discussed in the proposed rule and is a potentially significant modification, the Service is addressing this issue in a separate proposed rulemaking to avoid delay in publication of this final rule. That proposed rule was published in the Federal Register on August 17, 1989 (54 FR 33949).

Impact on Species or Stock

Before the Service may allow a taking of marine mammals under the authority of section 101(a)(5) of the MMPA, it must find that the total taking expected from the specified activity will have a negligible impact on the species or stock. After a thorough review of the public comments on this issue, the Service adopts its proposed definition of "negligible impact."

Under the Service's regulatory definition, a finding of negligible impact would require that the impact resulting from the specified activity cannot reasonably be expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival. The Service believes that this definition of negligible impact follows congressional intent when enacting Public Law 99-659.

Effects on annual rates of recruitment or survival: Several commenters contended that the proposed definition of negligible impact was too lenient because it suggested that only effects on annual rates of recruitment or survival will be considered. The commenters urged the Service to add back to the definition the standards used to determine negligible impact under the 1981 MMPA Amendments—that the impact from the taking had to be "so small, unimportant, or of so little consequence as to warrant little or no attention." 50 CFR 228.3 (1987) (NMFS regulations); *accord, id.* § 18.27(c) (FWS regulations).

The Service, while sympathetic with the concerns expressed by the commenters, believes that the clear congressional intent behind the 1986 Amendments was to alter the standard for determining negligible impact. In addition, the basic amendment to section 101(a)(5) of the MMPA expanded the coverage of this incidental take provision to depleted as well as non-depleted species, requiring a corresponding change in the approach to assessing negligible impact. To capture the intent of the amendment, the Service has adopted, substantially without change, the definition of negligible impact set out in the Senate's "Section-by-Section Analysis," 132 Cong. Rec. S16305 (Oct. 15, 1986).

Species specific factors/indirect effects: Several commenters noted that the factors analyzed to understand the expected impacts will vary widely from species to species. They also stated that a complete assessment of effects must cover the full range of factors that support recruitment and survival, including an assessment of indirect effects on habitat, behavioral patterns, breeding and feeding, and special management considerations (*e.g.*, impacts on recovery plan objectives or other management initiatives).

The Service agrees with these comments. Although the 1986 Amendments deleted the reference to "habitat" from the determination of negligible impact, the stated reason for this change confirms that the factors indicated by the commenters, such as effects on habitat, remain important in the assessment of negligible impact:

> A minor impact upon a small segment of habitat might be found to be more than negligible under the prior standard, even if it has no impact upon the overall population utilizing the habitat. But it is also the case that populations could be affected a[d]versely by actions that damage rookeries, mating grounds, feeding areas and areas of similar significance. The Secretary shall take those impacts into accounts [*sic*] when making a "negligible impact" determination under section 105(A)(5)(i) [*sic*]. Because these factors are to be taken into account, in making such a determination, subparagraph (a)(2)(A) of this section deletes the phrase "and its habitat" from subparagraph 5(A)(i) [*sic*] of the MMPA.

132 Cong. Rec. S16305 (Oct. 15, 1986). The Service does not believe that it is necessary to amend the regulatory language to reflect the above factors; it is sufficient to note that the Service will consider these factors when determining negligible impact.

Impact on optimum sustainable population (OSP): An OSP determination is not required to make a negligible impact finding. In the preamble of the proposed rule, the Service provided some illustrative examples of how the negligible impact test would be applied depending on whether the particular marine mammal stock was within or below its OSP range. 53 FR 8473, 8474 (Mar. 15, 1988). Citing the management goal of the MMPA—the maintenance or attainment of an OSP level for each population stock of marine mammals (see sections 2(2) and 2(6) of the MMPA)—the Service set out the following general analytical framework for applying the definition of negligible impact:

> If a request for specific regulations under section 101(a)(5) involves potential impacts to a "depleted" population, then a determination of negligible impact can be made only if the permitted activities are not likely to significantly reduce the increase of that population or prevent it from ultimately achieving its OSP; on the other hand, if a "nondepleted" population is involved, then a determination of negligible impact can be made only if the permitted activities are not likely to reduce that population below its OSP.

53 FR at 8474. The Service provided this proposed analytical framework to elicit public comment so that the final rule could more fully explore the application of the negligible impact test. Since these examples attracted a wide spectrum of views on the basic meaning of the 1986 Amendments and negligible impact, the Service will now clarify the analytical approach it will follow in making this essential finding.

Several commenters, citing the complex and controversial nature of the OSP concept, asserted that OSP should not be used as the framework for determining negligible impact, especially since no mention is made in section 101(a)(5) of OSP. Many of the commenters emphasized that Congress intended a simplified process that focused on impacts on annual rates of recruitment or survival rather than on impacts to OSP. One commenter argued that Congress rejected an analytical approach based on OSP by failing to pass H.R. 1027, 99th Cong., 1st Sess. (1985), which would have authorized incidental takes under the MMPA "if the proposed incidental take would not impede the species' ability to eventually attain its optimum sustainable population." H.R. Rept. No. 124, 99th Cong., 1st Sess. 13 (1985).

The Service notes that H.R. 1027 would have provided an exception to the taking prohibitions of both the ESA and the MMPA through the section 7 consultation process. The rulemaking process of section 101(a)(5) of the MMPA would not have been required. The Service believes that the congressional choice of imposing an additional regulatory process before authorizing the incidental taking of listed marine mammals reflected a concern for the need for more safeguards rather than a concern for simplification.

The Service did not intend, however, to imply that a formal determination of OSP was necessary in order to make the negligible impact finding. Section 101(a)(5)(C)(ii) of the MMPA clearly exempts the issuance of specific regulations from compliance with the formal rulemaking requirements of section 103 of the MMPA. The Service's factual examples illustrating a proposed analytical framework for the determination of negligible impact did not involve the formal determination of OSP. The first example involved depleted populations and how impacts to recruitment rates and survival would be treated; an OSP determination was not needed because one need only establish that the total take would not "significantly reduce the increase of that population" and would not prevent ultimate achievement of OSP. This conceptual framework for depleted species focuses on the absence of "significant" reductions to the rate of long-term population increases and the absence of barriers to the attainment of OSP.

In response to several comments, the Service notes that the same analytical framework for depleted species applies to stocks of unknown status, since it is not OSP that is at issue, but rather that the incidental taking would not prevent the population from attaining or maintaining its OSP.

Therefore, an OSP determination is not necessary in making a negligible impact finding. Qualitative judgments will be made on a case-by-case basis on how the anticipated incidental taking will affect the status and population trends of the species or stocks concerned. Many factors are used in this determination, including, but not limited to, the status of the species or stock relative to OSP (if known), whether the recruitment rate for the species or stock is increasing, decreasing, stable or unknown, the size and distribution of the population, and existing impacts and environmental conditions.

Several commenters concurred with the Service's analytical framework for depleted species, with one commenter stressing the need to ensure that a depleted population will increase toward its OSP at an acceptable rate. However, one commenter stated that the Service's approach was not consistent with section 2(2) of the MMPA, which mandates that "[f]urther measures should be immediately taken to replenish any species or population stock which has already diminished below [its OSP]." Two commenters argued that the only way to satisfy these conservation goals of the MMPA is to establish that the level of incidental take has only a negligible impact on the rate of recovery for the species or stock. Contending that a distinction must be made among stocks that are increasing, decreasing, or stable in the level of recruitment, they stated that a negligible impact should involve effects that do not impede a stock from achieving OSP at the same rate and in the same manner that would occur in the absence of the proposed incidental take.

The Service agrees that distinctions need to be made among stocks that are increasing, decreasing, or stable when determining negligible impact. In order to make a negligible impact finding, the proposed incidental take must not prevent a depleted population from increasing toward its OSP at a biologically acceptable rate. Consistent with this view, the Service believes that insignificant reductions in the rate of the population increase (*i.e.*, net recruitment) do not become significant impacts on a depleted stock because the stock would not increase toward its OSP as rapidly as it would in the absence of the incidental take. To adopt the commenters' formulation, one would have to find that the impacts of incidental take have "no effect" on the rate of population growth for a depleted stock; *i.e.*, there would be "no effect" on the stock's "rate of recovery." The statutory standard does not require that the same recovery rate be maintained, rather that no significant effect on annual rates of recruitment or survival occurs. For stable or declining populations, a finding of negligible impact may be more difficult than for increasing populations. Section 101(a)(5) clearly indicates that some level of adverse effects involving the take of depleted marine mammals can be authorized as long as the impact is "negligible."

The plain language of section 2(2) does not suggest a more stringent standard. That section indicates a concern for the immediate initiation of steps to replenish a depleted species or stock—a concern which is addressed in the Service's analytical framework since significant reductions in recruitment rates are not considered negligible. Further, section 2(2) does not mandate the immediate taking of all steps to attain an OSP level for all depleted stocks; such a reading of the purposes and policies of the MMPA would displace the clear congressional intent behind section 101(a)(5), which was designed to alleviate conflicts, where the impacts are negligible, between activities (other than commercial fishing) that involve the incidental taking of marine mammals and the strict moratorium against taking.

One commenter suggested that a more appropriate standard for determining negligible impact for a depleted stock would be whether the level of incidental taking is likely to substantially reduce the rate of population growth. By substituting "substantial" for the Service's term "significant," the commenter argues that statistically measurable effects would not necessarily cause an applicant to be ineligible for a take under section 101(a)(5). The commenter further recommended that a level of acceptable take—within the range of 10 to 50 percent of annual recruitment—be prescribed in the regulations.

The Service does not share the commenter's concerns. The absence of substantial reductions in population growth does not automatically correspond with a negligible impact; significant adverse effects, although not substantial in nature, can prevent the Service from finding negligible impact. Further, the Service declines to prescribe acceptable taking levels. Such numerical limits would ignore the significant differences in the status and population dynamics among the various marine mammal stocks and the type of taking (*i.e.*, harassment versus mortality) or other impacts. The determination of negligible impact must take into account the status and the particular biological requirements of the species or stock, as well as the effects of the incidental taking on the rate of recruitment.

The second example presented in the preamble of the proposed rule involved the determination of negligible impact with respect to a non-depleted stock of marine mammals. If a particular stock were known to be within its OSP range, then the Service believes a finding of negligible impact can only be made if the permitted activities are not likely to reduce that stock below its OSP. However, not all takings that do not reduce the population below its OSP would be considered negligible.

The Service's analytical framework for non-depleted stocks recognizes that healthy marine mammal populations that have reached an equilibrium level usually experience fluctuations in population numbers within some normal range due to a variety of environmental and biological factors. Such fluctuations may involve short-term population declines that do not pose a risk to the stocks remaining within the limits of OSP. The Service believes that minimal impacts on a healthy stock caused by incidental taking can still be considered negligible if such taking does not cause the population to fluctuate beyond normal limits. In other words, for a population stock that is at its OSP level, slight impacts on the stock resulting from incidental take do not rise to the level of "adverse effects" on annual rates of recruitment or survival if the population stock is maintained at essentially the same level.

One commenter opposed the Service's approach to non-depleted stocks by arguing that it is too permissive. Contending that the Service's analytical framework could allow a stock to be reduced from 95 to 60 percent of carrying capacity in determining negligible impact, the commenter noted that such a significant population decrease would have to be evaluated through the waiver process in section 101(a)(3) of the MMPA.

The Service agrees that the commenter's extreme example would not be eligible for treatment under the "small take" provisions of section 101(a)(5) of the MMPA; such large takes should be instead considered under the waiver procedures in sections 101(a)(3) and 103 of the MMPA. As explained above, the key factor is the significance of the level of impact on rates of recruitment and survival. Only insignificant impacts on long-term population levels and trends can be treated as negligible.

Several commenters stated that the Service's "dual standard" for assessing negligible impact was inappropriate because Congress intended a uniform system.

The Service's examples in the proposed rule were intended to show how a negligible impact finding might be approached in different situations. This is not a dual standard, but, instead, the illustration of how to apply the rule in contrasting fact situations. Again, the formal determination of OSP is not a prerequisite to issuing specific regulations.

Cumulative impacts: In determining impact, the Service must evaluate the "total taking" expected from the specified activity in a specific geographic area. The estimate of total taking involves the accumulation of impacts from all anticipated activities that are expected to be covered by the specific regulations. In other words, the applicant's anticipated taking from its own activities is only one part of the story; the total takings expected from all persons conducting the activities to be covered by the regulations must be determined.

Several commenters asked that the Service clarify the concept of "total taking" by amending the definition of negligible impact.

The Service declines to do so because it believes that the definition of negligible impact is effective as written since it clearly states the impacts "resulting from the specified activity" as discussed above.

Two commenters asked how to assess the degree of impacts in the situation where, although separate activities by themselves pose negligible impacts, a combination of impacts poses a significant impact on the species or stock.

The Service agrees with the commenters that the impacts of incidental take from successive or contemporaneous activities must be added to the baseline of existing impacts to determine negligible impact. While the impacts of a particular activity may be fairly minor, they may in fact be more than negligible when measured against a baseline that includes a significant existing take of marine mammals from the other activities.

The commenter believed that the regulations should identify an order of priority for various types of taking (*e.g.*, subsistence taking and incidental taking) and describe how allowable takes will be allocated to each type of activity. Another commenter argued that the 1986 Amendments do not estabish a priority system for takings, incidental or intentional.

The Service notes that ongoing authorized activities are factored into the baseline of existing impacts to determine negligible impact of a requested activity. To the extent that subsistence is part of the baseline, subsistence takes are accommodated and allocation between subsistence and incidental taking is not necessary.

Some commenters asked the Service to limit the determination of negligible impact to direct impacts of the specified activity and to exclude cumulative effects resulting from future, unrelated activities.

As discussed previously, the Service must look at both direct and indirect effects, but not the cumulative effects, in making findings under section 101(a)(5) of the MMPA concerning negligible impact. The Service will consider cumulative effects that are reasonably foreseeable when preparing its analysis under the National Environmental Policy Act. Additionally, cumulative effects that are reasonably certain to occur and "effects of the action" will be considered in any necessary consultation under section 7(a)(2) of the ESA. 50 CFR 402.02, 402.14(g) (3), (4) (1987); 51 FR 19926, 19932–33 (June 3, 1986) (preamble discussion in the section 7 regulations). In view of the above, the Service does not believe it is necessary to add a discussion on cumulative effects to the definition of negligible impact.

Impact on individuals: As stated in the preamble of the proposed rule, the negligible impact finding is made with respect to impacts to the marine mammal species or stock and not with respect to impacts to individual animals. Some commenters believed that this should be clearly stated in the regulations, rather than just in the preamble.

The Service declines to add a statement to the regulatory definition of negligible impact because the preamble

discussion and the definition clearly state that only impacts that "adversely affect the species or stock" are considered.

One commenter noted that, in many cases, available scientific information on the size and population dynamics of a particular stock may be inadequate to assess the degree of impacts posed by incidental take. In those cases, the commenter suggested that the Service should assess impacts based upon a consideration of impacts to individual animals.

The Service disagrees. If information is lacking to define a particular population or stock of marine mammal, then impacts resulting from incidental take should be assessed with respect to the species as a whole. *See* 132 Cong. Rec. S16304–05 (Oct. 15, 1986).

Addressing the degree of information needed to assess the impacts of incidental take, one commenter noted that the Service may deny a request for specific regulations only if the record reflects a valid scientific basis for the conclusion that a more than negligible impact would be posed to the overall population.

Although the commenter is correct that the focus should be on impacts to the overall population, the burden will be on both the applicant and the Service to show that information exists in the administrative record to support a negligible impact finding. *See* earlier discussion on "Burden of Proof."

One commenter believed that the use of OSP as described in the preamble to the proposed rule would shift the focus away from consideration of population impacts.

The Service disagrees. As explained earlier, an OSP determination is not required to make a negligible impact finding. The Service will use all available information concerning a population, including its status relative to OSP (if known).

Speculative impacts: A variety of comments were received on the issue of how speculative impacts should be treated in determining negligible impact. Several commenters argued that the regulations should clearly state that speculative or conjectural effects will not be considered in evaluating impacts. One commenter added that negligible impact should be found when the probability of occurrence of an impact is low whereas the potential impact may be significant. However, other commenters, citing the lack of definitive data on the population dynamics of some marine mammal populations, suggested that the Service should err on the side of caution when labeling certain impacts as "speculative" or "conjectural." One commenter stated that the allowance of incidental taking of a depleted species when the impacts of such taking cannot presently be assessed would be in violation of both the MMPA and the ESA.

The Service believes that the discussion regarding speculative impacts in the preamble of the proposed rule accurately interpreted the legislative intent behind the 1986 Amendments:

> If potential effects of a specified activity are conjectural or speculative, a finding of negligible impact may be appropriate. A finding of negligible impact may also be appropriate if the probability of occurrence is low but the potential effects may be significant. In this case, the probability of occurrence of impacts must be balanced with the potential severity of harm to the species or stock when determining negligible impact. In applying this balancing test, the Service will thoroughly evaluate the risks involved and the potential impacts on marine mammal populations. Such determinations will be made based on the best available scientific information.

53 FR at 8474; *accord*, 132 Cong. Rec. S16305 (Oct. 15, 1986). The Service recognizes the tension that exists between development interests and wildlife resource interests when restrictions on development are predicated upon the existence of adverse impacts that are speculative in nature. To resolve these difficult situations, the legislative history of the 1986 Amendments endorsed the use of a balancing approach to weigh the likelihood of occurrence against the severity of the potential impact:

> The degree of certainty of occurrence required in these judgments should be inversely proportional to the resultant harm to the overall population.

132 Cong. Rec. S16305 (Oct. 15, 1986). In applying this balancing test, the Service must, of necessity, evaluate each request for specific regulations on a case-by-case basis.

Impact on Habitat

The amendments deleted the required finding that the specfied activity have only a negligible impact upon the marine mammal habitat. Under the previous standard, a minor impact on a small segment of habitat might be found to be more than negligible and the incidental take prohibited even if the overall impact on the species or stock utilizing the habitat was negligible. Nevertheless, impacts on rookeries, mating grounds, feeding areas and areas of similar significance could have adverse effects on the species or stock. As discussed in the "Impacts on Species or Stock" section above, impacts on habitat are part of the consideration in making the finding of negligible impact on the species or stock. Further, even if the impact is determined to be negligible, specific regulations must include measures to ensure the least practicable adverse impact on the habitat.

Definition: Commenters believed that the definition of negligible impact should specify that impacts on habitat will not be considered unless they have a greater than negligible impact on the marine mammal population as a whole.

The Service believes the definition of negligible impact reflects this and no changes are necessary.

Required information: Since impacts on habitat are considered only in the context of impacts on the species, one commenter believed that the Service should delete the requirement, in a request, for information concerning impacts on habitat (§ § 18.27(d) (iv), (v) and 228.4(a) (7), (8)). Commenters also believed that the information required should be restricted to impacts that can be expected to adversely affect the overall population through effects on rates of recruitment or survival or should be restricted to the impacts on exisiting rookeries, mating grounds, feeding areas, and areas of similar significance.

The Service believes the existing information required should be retained. A description of the impacts on the habitat and the effects of any loss or modification of habitat on the marine mammal populations is needed in the Service's evaluation of negligible impact. If the impacts on habitat are not likely to result in more than a negligible impact on the population, then they will not be a basis for denying a request. However, the Service still has an obligation to require measures to ensure the least practicable adverse impact on the habitat, whether or not it causes more than a negligible impact on the populations, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Relation to critical habitat: Commenters suggested that the preamble clarify that impacts on habitat are considered in the broad biological sense. They stated that effects on critical habitat would be considered in the ESA Section 7 consultation process.

Impacts on the population of the loss or modification of any part of the population's habitat are considered in determining negligible impact. "Critical habitat" is a regulatory determination under the ESA. Section 7 requires that Federal agencies ensure that their activities are not likely to jeopardize the continued existence of endangered or

threatened species or result in the destruction or adverse modification of their critical habitats. Only impacts on those areas designated as critical habitat are considered in the determination of destruction or adverse modification. However, impacts on the species of the loss or modification of any part of habitat is evaluated in the determination of jeopardy.

Impact on Subsistence Uses

The amendments changed the standard used to evaluate the impact on subsistence uses from "negligible impact" to "not having an unmitigable adverse impact." To determine that an unmitigable adverse impact on subsistence uses exists, two elements must be present. First, the impact resulting from the specified activity must be likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by (1) causing the marine mammals to abandon or avoid hunting areas, (2) directly displacing subsistence users, or (3) placing physical barriers between the marine mammals and subsistence hunters. Second, it must be an impact that cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

Those conducting the specified activity, the involved Federal agencies, and the affected subsistence users, are encouraged to meet and develop mutually agreeable conditions which satisfy the operational, scientific or other needs of the activity and the requirements of subsistence users.

Unmitigable adverse impact: One commenter suggested that, consistent with the legislative history of the amendments, the definition of "unmitigable adverse impact" should be clarified to specify that an impact must result from the specified activity rather than from environmental or other factors.

The Service agrees that only impacts on subsistence uses resulting from the specific activity should be considered in determining if an unmitigable adverse impact exists. Environmental and other factors not related to the specific activity are evaluated only in determining existing baseline conditions and availability. Since the regulatory definition clearly states that "unmitigable adverse impact" means an impact "resulting from the specified activity," no changes are warranted.

One commenter suggested that mitigation should not require the elimination of an impact. Rather, reducing the impact such that subsistence needs can be met would be sufficient in the commenter's opinion.

The new standard of "unmitigable adverse impact" does not require the elimination of adverse impacts, only mitigation sufficient to meet subsistence requirements. However, the amendments also require that the specific regulations governing an activity include measures to ensure the least practicable adverse impact on the availability of marine mammals for subsistence uses, even if the activity will not otherwise have an unmitigable adverse impact. Hence, any adverse impacts would have to be mitigated to the extent practicable.

Another commenter stated that to reflect congressional intent, the definition of "unmitigable adverse impact" should specify that animals would have to vacate a hunting area rather than just avoid it. In addition, the number of marine mammals that would have to abandon or avoid a hunting area to constitute an adverse impact should be a criterion in the regulations according to the commenter.

The legislative history of the amendments emphasizes the availability of "sufficient numbers" of marine mammals to meet the subsistence needs of the community. In this context, "vacate" was intended to connote both the temporary and permanent absence of marine mammals from subsistence hunting areas. Hence, the terms "abandon" and "avoid" are more precise than "vacate"—abandonment of habitat involves forsaking an area completely, while avoidance includes temporary absence from or bypassing an area.

Specifying the number, proportion, or some other quantification of animals avoiding or abandoning an area that would constitute an adverse impact is difficult. The value assigned such a criterion would vary depending on the specific circumstances, including actual subsistence needs, the extent of the area avoided by the marine mammals, and whether or not animals remain available in other areas. If appropriate and feasible, such a criterion will be established during the development of specific regulations for an activity. Since it may not be possible to establish such a criterion in all instances, it is not required in these regulations.

Cultural subsistence: A commenter suggested that cultural aspects of dependence on marine mammals should be reflected in the definition of subsistence needs in addition to the nutritional and other physical attributes usually associated with this term. This commenter added that since the cultural significance of subsistence harvests is to a great extent specific to individual communities, the impacts of a specified activity on subsistence uses must be assessed locally.

The finding of an unmitigable adverse impact considers the availability of the species for subsistence needs and is not based on cultural considerations. To the extent that opportunities to meet the subsistence needs of the community remain available, however, many of the cultural dimensions of subsistence use would be accommodated. "Availability" provides opportunities for traditional hunts and for the Native community to transmit its hunting-based culture to each new generation. In keeping with the emphasis in the legislative history, the definition of unmitigable adverse impact has been modified to emphasize "availability." Such emphasis will accommodate many of the cultural dimensions of subsistence uses of marine mammals. Although the amendments changed the standard for evaluating impacts on subsistence uses from "negligible impact" to "unmitigable adverse impact," the availability of marine mammals for subsistence harvest remains a central consideration.

Coordination with subsistence users: A commenter suggested the language from the preamble encouraging the agency, applicant and affected subsistence users to agree upon terms and conditions for activities which satisfy their subsistence, operational, scientific and other needs be incorporated into the regulations.

Such coordination could be effective in identifying and achieving consensus regarding subsistence mitigation measures to be incorporated in specific regulations. For instance, though not required under the regulations, affected native interests and applicants could agree that the availability of marine mammals could be achieved by means other than the traditional distribution of the animals. The Service encourages, and as appropriate will participate in, such cooperative ventures. Language has been added to §§ 18.27(d)(1)(vi) and 228.4(9) to encourage, but not require, such coordination.

Mitigating Measures

The preamble of the proposed rule discussed mitigating measures in three contexts. With regard to negligible impact determinations, if the impact of a specified activity would be rendered negligible by mitigating measures when that requirement would not otherwise be satisfied, the Service may make a negligible impact finding subject to successful implementation of those mitigating measures. In evaluating

impacts on subsistence uses of marine mammals, the Service must find that the specified activity will not have an unmitigable adverse impact. Finally, the amendments require that specific regulations governing a specified activity include measures to ensure the least practicable adverse impact on the species and its habitat and on the availability of the species for subsistence uses. Mitigating measures are intended to ensure the availability of enough animals to meet subsistence needs and to minimize impacts on the species or stock and subsistence users.

Support mitigating measures: One commenter endorsed the requirement for mitigating measures to reduce the impact of specific activities on marine mammal populations, habitats and subsistence uses to negligible levels. The commenter suggested that if it is determined that mitigating measures have been or could be effective, those measures should be required in specific regulations and as a condition for issuing any Letter of Authorization.

The Service agrees. The regulations require the inclusion of mitigating measures, as appropriate, in specific regulations and as a condition for issuing Letters of Authorization.

Service's responsibility to identify mitigating measures: A commenter suggested that the Service has the responsibility to identify mitigating measures. While the requester and the Service, in many instances, share responsibility for identifying mitigating measures, the commenter argued that the Service is vested with the ultimate responsibility to search for appropriate mitigating measures before denying a request for specific regulations.

The Service disagrees. Since the applicant is most familiar with the nature and extent of the activity contemplated and has the detailed knowledge of possible alternatives to that activity and the impacts on marine mammals, the applicant is in the best position to identify and assess mitigating measures. In addition, as the primary beneficiary of any incidental take authorization, the applicant should be ultimately responsible for identifying such measures. Nevertheless, the Service will consider all available information in assessing the adequacy and effectiveness of measures to mitigate the adverse impacts of the proposed taking and in developing specific regulations.

Required coordination with applicant: To facilitate coordination, a commenter proposed that requesters be advised of any mitigating measures contained in a proposed rule at least 10 days prior to publication in the **Federal Register**. Under this procedure, if the requester, within 10 days of such notification, finds the mitigating measures to be inappropriate or economically prohibitive, publication may be delayed to communicate these concerns to the Service.

The Service finds it unnecessary to delay the rulemaking process given the requirement for public comment on the proposed rule, including any mitigating measures. In addition, the applicant could always petition for further review.

Letters of Authorization

This rule makes technical modifications to two paragraphs in the existing regulations (50 CFR 18.27(f) and 228.6) related to Letters of Authorization. The changes are intended to make the language in those paragraphs consistent with the new definitions of "negligible impact" and "unmitigable adverse impact" and the use and interpretation of those terms elsewhere in the regulations. Although not discussed in the preamble to the proposed rule, there were several comments related to Letters of Authorization.

Modification of Letters of Authorization: One commenter suggested that the regulations should provide for modification of Letters of Authorization as an alternative to withdrawal or suspension. In particular, it was proposed that these authorization documents should not be suspended unless the Service finds there are no additional or alternative mitigating measures which would alleviate the need for such action.

Current procedures allow the modification of Letters of Authorization to reflect changed conditions through withdrawal and reissuance as long as the incidental take levels or other requirements of the specific regulations are not violated. If Letters of Authorization are withdrawn or suspended on a class basis, a rulemaking to establish new specific regulations can be initiated. In some cases this approach would be preferable since a comprehensive reevaluation would be required on whether the specified activity is still having a negligible impact.

Public comment on emergency withdrawal or suspension of Letters of Authorization: A commenter suggested that the emergency withdrawal or suspension authority in 50 CFR 18.27(f)(6) and 228.6(f) be curtailed by requiring that the Service, based on the best scientific information available, find that there is an immediate and substantial risk to the well-being of the marine mammal populations involved without such emergency action.

Such a finding is, in effect, required under present law and regulations. Moreover, due to the potentially serious consequences of withdrawal or suspension of Letters of Authorization, the Service would make every effort to provide notice and an opportunity where possible for public comment under the provisions of 50 CFR 18.27(f)(5) and 228.6(e). However, if an emergency exists, the Service is required by the provisions of section 101(a)(5)(C)(i) of the MMPA to take appropriate action to protect marine mammals. Hence, the Service must retain authority for emergency withdrawal or suspension to address situations where species or populations would be threatened by lack of prompt action.

ESA—Section 7 Process

As stated above, the regulations governing small takes of marine mammals now include depleted as well as non-depleted marine mammals. Consultation under section 7 of the ESA is also necessary if the issuance of regulations under section 101(a)(5) of the MMPA is a Federal action that involves the incidental taking of endangered or threatened marine mammals. In addition to satisfying the MMPA criteria, incidental take of endangered or threatened species also must comply with section 7 of the ESA.

Under section 7(a)(2) of the ESA, Federal agencies are required to consult with the Service to insure that any action they authorize, fund or carry out is not likely to jeopardize the continued existence of an endangered or threatened species or result in the destruction or adverse modification of critical habitat. Although this consultation is primarily between the Federal agency and the Service, applicants for Federal licenses, permits or funding are encouraged to participate. The Federal agency initiates formal consultation by a written request to the Service that includes detailed information concerning the potential effects of the proposed action. Consultation should be concluded within 90 days.

After consultation, the Service issues its biological opinion which includes an assessment of impacts and its conclusion on whether or not the action is likely to jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of critical habitat. In those cases where the Service concludes that an action (or the

implementation of reasonable and prudent alternative(s)) is not likely to result in jeopardy or adverse modification but may result in the incidental take of endangered or threatened species, the Service includes an incidental take statement in the biological opinion as required by section 7(b)(4). Compliance with the terms and conditions specified in the incidental take statement exempts the Federal agency and any permit or license applicant involved from the taking prohibitions of the ESA up to the level specified in the incidental take statement.

Coordination Between the ESA and MMPA

One of the purposes of the amendments to the MMPA and the ESA was to clarify the relationship between these statutes so that decision processes under each would be coordinated and integrated to the maximum extent practicable. The ESA alone does not provide authority for the incidental take of endangered or threatened marine mammals—the requirements of both the MMPA and ESA must be met. The incidental take statement issued under the authority of the ESA will include terms and conditions with which a Federal agency or applicant must comply. The amendment added a provision to section 7(b)(4) which directs that the provisions of section 101(a)(5) of the MMPA must be completed before the incidental take of endangered or threatened marine mammals is allowed. In addition to the reasonable and prudent measures to minimize the impact of the incidental take, an incidental take statement will include measures which are required to comply with section 101(a)(5) of the MMPA and applicable regulations. The difficulty of coordinating the ESA consultation and MMPA exemption processes is that section 7(b) of the ESA generally requires that consultation be completed within 90 days while the MMPA regulatory process is much longer.

Delay of section 7 process: One commenter stated that the preamble implied that initiation of section 7 consultation would be delayed until the MMPA process was well underway. They stated that the processes should be conducted simultaneously and that the ESA process should begin immediately upon submission of the MMPA request.

Because of the timing discrepancy between the two processes reflecting procedural differences maintained by Congress, the MMPA section 101(a)(5) process cannot be completed as expeditiously as the ESA process. However, the legislative history offers options on how to handle the timing discrepancies between the two Acts, two of which were summarized in the preamble to the proposed rule. The first is to consider initiating the MMPA section 101(a)(5) process in advance of the ESA section 7 process. In this way, the MMPA requirements can be incorporated into the ESA incidental take statement when the biological opinion is issued and subsequent revisions would not be necessary. Another option is to have the Federal agency and the Service agree to extend the consultation under section 7(b)(1)(A) to accommodate completion of the section 101(a)(5) regulations. The consent of any permit or license applicant is required for an extension of more than 60 days. An additional option involves early consultation under section 7(a)(3) of the ESA. Under this approach, a preliminary biological opinion could be issued on the prospective agency action. When the section 101(a)(5) process is completed, the biological opinion would be reviewed and the ESA section 7(b)(4) incidental take statement amended or added, as appropriate. These, or similar options, will be available to the agency and the applicant as appropriate.

Issuance of incidental take statements: One commenter pointed out the different approaches taken by NMFS and FWS in how they handle the incidental take statements included in the biological opinion, and urged that these regulations established a consistent policy. Another commenter argued that the ESA biological opinion should be completed within the required time limits and the incidental take statement added to the opinion upon completion of the MMPA process.

The Service agrees with these comments and, therefore, in the future, neither agency will issue an incidental take statement in the biological opinion if consultation is completed before the section 101(a)(5) regulations are issued. The biological opinion will later be amended to include the incidental take statement.

One commenter said that section 7 of the ESA requires the timely issuance of biological opinions and incidental take statements.

The Service agrees and will continue to issue biological opinions within the section 7 timeframe. However, the portion of the incidental take statement dealing with marine mammals will be added to the biological opinion after the MMPA requirements have been satisfied.

Section 7(o) of the ESA

Section 7(o) of the ESA, as amended, specifies that any taking in compliance with the terms and conditions of an incidental take statement is not a prohibited taking under the ESA. No other ESA permit or authorization is required of the Federal agency or applicant in carrying out the action if the incidental take statement applies and if the action complies with the terms and conditions of that statement. The biological opinion plus the incidental take statement operate as an exemption under section 7(o)(2) of the ESA. The new § 402.14(i)(5) clarifies this provision.

Private actions: In the preamble to the proposed rule, the Service cited the following example concerning private actions. Section 10(a) of the ESA allows the Service to issue permits for the taking of endangered species incidental to an otherwise lawful non-Federal action within the United States and its territorial sea, subject to certain conditions. In 1982, Congress added this provision to allow incidental taking associated with private actions that are not subject to the section 7 consultation process.

If an endangered or threatened marine mammal may be taken incidentally to a private action, regulations under section 101(a)(5) of the MMPA would be required. Consultation under section 7 of the ESA would be conducted since issuance of the MMPA regulations is a Federal action. The incidental take statement issued with the biological opinion would address taking concerns under the ESA, and a section 10 permit would not be required.

Two commenters disagreed with this interpretation, contending that it would allow wholly non-Federal activities to be relieved of section 10 requirements (except for the necessity of obtaining MMPA incidental taking authority), most notably the conservation plan obligations.

This implies that private activities are subject to stricter protection standards than activities with Federal involvement. This contention misconstrues the purpose and effect of section 10 provisions relating to private actions. These provisions were added by Congress to allow persons engaged in activities with no discretionary Federal involvement the same access to ESA exemptions and provisions as those engaged in activities requiring Federal approval or scrutiny. There is no indication in the ESA or its legislative history that Congress intended to set up substantially different or stricter protection standards for private

activities by requiring a conservation plan. In commenting on the standards to be used in granting section 10 permits for private activities, the House Report states the following:

> The [S]ecretary would base his determination on whether or not to grant the permit under the same standard as found in section 7(a)(2) of the Act, that is, whether or not the taking would jeopardize the continued existence of the species. To issue the permit, the Secretary would also have to find that the taking would be incidental to another activity and that the applicant would minimize the taking to the maximum extent practicable.

H.R. Rep. No. 567, 97th Cong., 2nd Sess. 31 (1982).

Section 7 and section 10 are designed to achieve the same objectives through different procedural means. The conservation plan requirement is the means for ensuring effective and timely Federal involvement in an otherwise private activity. For those activities already subject to such involvement through regulations or permits, there is no need for a separate conservation plan. Under both sections 7 and 10, the endangered and threatened species are afforded the same level of protection.

To require a separate section 10 permit in addition to section 101(a)(5) regulations and a section 7 consultation would serve only to increase the administrative burden on the applicant and the government with no corresponding benefit to endangered or threatened marine species.

Exceeding Take Limits

One commenter suggested that the regulations should specify what will happen when an incidental take level is exceeded, and that this be the same for all incidental take authorizations under both the MMPA and ESA.

The Service agrees that provisions for addressing excessive incidental take should be consistent for authorizations under MMPA regulations and ESA incidental take statements. The MMPA and ESA incidental take processes are similar in that when an incidental take authorization is exceeded, the activity must be reevaluated. However, if the activity continued during such a reevaluation, then any resultant taking would be subject to penalties under the ESA and/or the MMPA.

Under section 7 of the ESA, consultation must be reinitiated immediately by the Federal agency if the incidental take level is exceeded (*see* 50 CFR § 402.14(i)(4)). Exceeding the level of anticipated taking does not, by itself, require the stopping of an ongoing action during reinitiation of consultation. However, any further taking resulting from the activity would be illegal under the ESA. If formal consultation is reinitiated, section 7(d) of the ESA again takes effect. That provision prohibits the Federal agency or applicant from making any irreversible or irretrievable commitment of resources which has the effect of foreclosing the formulation or implementation of any reasonable or prudent alternatives which would avoid violating section 7(s)(2).

The parallel language in section 101(a)(5) of the MMPA requires withdrawal or suspension of Letters of Authorization either on an individual or class basis if, after notice and public comment, it is found that the impact of the authorized incidental take is more than negligible (*see* 50 CFR 18.27(f)(5) and 228.6(e)). The Southern Sea Otter Translocation Project, an issue raised by the commenter, involves a fundamentally different situation in that it is an experimental effort authorized by a special statute and by a scientific research permit.

Sea Otter Management Zone

In 1986, Public Law 99–625 was passed by Congress to govern the translocation of southern sea otters for research and recovery purposes. The FWS has established an experimental population of sea otters around San Nicolas Island, Ventura County, California.

One commenter stated that these regulations should not apply to activities within the management zone for the experimental population of the sea otter.

There are two zones established by the translocation project. The first area is the translocation zone around San Nicolas Island that has a baseline at the 15-fathom isobath with the boundaries extending 10 to 15 nautical miles from the baseline. The second zone surrounds the translocation zone and is an otter-free or management zone, encompassing all marine waters subject to U.S. jurisdiction from Point Conception south.

Within the translocation zone, except for defense-related actions and actions initiated prior to the passage of Public Law 99–625, the consultation provisions of section 7(a)(2) of the ESA and the provisions of the MMPA apply. Within the management zone, unless the proposed action may affect the "parent population" (see 50 CFR 17.84(d)(1)(iv), the provisions of section 7(a)(2) of the ESA and the restrictions on incidental taking under the MMPA do not apply. However, the section 7(a)(4) requirement to confer applies to Federal activities within the management zone and to defense-related activities in either zone.

Regulatory Changes

These regulations amend 50 CFR parts 18, 228 and 402 to implement the 1986 Amendments to section 101(a)(5) of the MMPA and sections 7(b)(4) and 7(o) of the ESA. Basic processes for authorizing incidental take under both ESA and MMPA remain the same; the primary changes are (1) allowing the incidental take of depleted marine mammals, and (2) changing the findings that must be made to allow a take.

Authority citation: Commenters noted that the authority citation for 50 CFR part 228 should be 16 U.S.C. 1371(a)(5), rather than the entire MMPA, since the criteria to be considered are entirely within section 101(a)(5).

The Service disagrees. Although the criteria are all contained within section 101(a)(5), the enforcement and penalty provisions of the MMPA also apply to activities conducted under section 101(a)(5).

Classification

The Department of the Interior, as lead agency, has prepared an environmental assessment on this rule. On the basis of this assessment, it has been determined that this is not a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA). Therefore, an environmental impact statement need not be prepared. The regulations are procedural and, by themselves, do not authorize the taking of depleted marine mammals. Issuance of specific regulations under section 101(a)(5) of the MMPA allowing a taking would require compliance with NEPA, including the preparation of a separate environmental assessment or impact statement if required.

NEPA compliance: One commenter believed that the issuance of specific regulations allowing an incidental take should not require the preparation of a separate environmental assessment or impact statement. It was stated that given the thresholds of negligible impact on a species or stock and no unmitigable adverse impact on subsistence users, requests under section 101(a)(5) would appear to qualify for categorical exclusion treatment under the Council for Environmental Quality's regulations, and the Service should amend its NEPA regulations accordingly.

Since the Service must analyze the proposal for specific regulations to make the determination that the proposal has only a negligible impact on a species or stock and does not have an unmitigable

adverse impact on subsistence users, the NEPA process will be used to facilitate those determinations. The issuance of specific regulations allowing incidental take would normally only require the preparation of an environmental assessment. Thus, the Service does not believe a categorical exclusion is warranted or that its NEPA regulations need to be amended.

It has been determined that these regulations do not constitute a major rule as defined in Executive Order 12291. The Department of the Interior has certified under the terms of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that the regulations will not have a significant economic impact on a substantial number of small entities. The amendments of rules governing the take of small numbers of marine mammals incidental to specified activities will have little, if any, economic effect. Direct costs will be those associated with subsequent preparation of applications for "Specific Regulations" and "Letters of Authorization." However, those costs are not likely to approach the $100 million annual threshold for these rules to be considered a major rule in accordance with E.O. 12291. As most of the applicants under the revised rule, as at present, are likely to be oil and gas corporations and their contractors, they would not be considered small entities under the Regulatory Flexibility Act.

The regulations in 50 CFR parts 18 and 228 contain a collection of information requirement subject to Office of Management and Budget (OMB) clearance under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The information collection requirement in 50 CFR 18.27 is approved under OMB control number 1018–0070 and the information requirement in 50 CFR part 228 is approved under OMB control number 0648–0151. Public reporting burden for this collection of information is estimated to average 80 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910; the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, Department of the Interior, Mail Stop—220 ARLSQ, 18th and C Streets, NW., Washington, DC 20240; and to the Paperwork Reduction Project, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

The amendment of part 402 does not contain information collection requirements requiring OMB approval under the Paperwork Reduction Act.

The analyses under NEPA, E.O. 12291 and the Regulatory Flexibility Act are available for review (see **FOR FURTHER INFORMATION CONTACT**).

The primary authors of this final rule are Robert Peoples, Nancy Sweeney, and Michael Young, Department of the Interior, and Patricia Montanio and Gene Martin, Department of Commerce.

List of Subjects

50 CFR Part 18

Administrative practice and procedure, Alaska, Exports, Imports, Intergovernmental relations, Marine mammals, Transportation.

50 CFR Part 228

Administrative practice and procedure, Marine mammals, Outer continental shelf oil and gas exploration.

50 CFR Part 402

Endangered and threatened wildlife, Fish, Intergovernmental relations, Plants (agriculture).

Regulation Promulgation

Accordingly, the Service amends 50 CFR parts 18, 228 and 402 as shown below.

PART 18—MARINE MAMMALS

1. The authority citation for 50 CFR part 18 is revised to read as follows:

Authority: 16 U.S.C. 1461 *et seq.*

2. In § 18.27, paragraph (a) is amended by removing the words "Pub. L. 97–58" and "non-depleted"; paragraph (b), including the note following that paragraph, is revised; in paragraph (c), the definition of "negligible impact" is revised, the definition of "specified activity" is amended by removing the word "non-depleted" wherever it occurs, and a new definition for "unmitigable adverse impact" is added in alphabetical order; paragraph (d) is amended by removing the word "non-depleted" wherever it appears; the second sentence of the introductory text to paragraph (d)(1) is revised; a sentence is added to the end of paragraph (d)(1)(vi); a new paragraph (d)(4) is added; and paragraphs (d)(3), (e)(1), (f)(2), and (f)(5)(ii) are revised, to read as follows:

§ 18.27 Regulations governing small takes of marine mammals incidental to specified activities.

* * * * *

(b) *Scope of Regulations.* The taking of small numbers of marine mammals under section 101(a)(5) of the Marine Mammal Protection Act may be allowed only if the Director of the Fish and Wildlife Service (1) finds, based on the best scientific evidence available, that the total taking during the specified time period will have a negligible impact on the species or stock and will not have an unmitigable adverse impact on the availability of the species or stock for subsistence uses; (2) prescribes regulations setting forth permissible methods of taking and other means of effecting the least practicable adverse impact on the species and its habitat and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance; and (3) prescribes regulations pertaining to the monitoring and reporting of such taking.

Note: The information collection requirement contained in this § 18.27 has been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance No. 1018–0070. The information is being collected to describe the activity proposed and estimate the cumulative impacts of potential takings by all persons conducting the activity. The information will be used to evaluate the application and determine whether to issue Specific Regulations and, subsequently, Letters of Authorization. Response is required to obtain a benefit.

The public reporting burden from this requirement is estimated to vary from 2 to 200 hours per response with an average of 10 hours per response including time for reviewing instructions, gathering and maintaining data, and completing and reviewing applications for specific regulations and Letters of Authorization. Direct comments regarding the burden estimate or any other aspect of this requirement to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, Department of the Interior, Mail Stop—220 ARLSQ, 18th and C Streets NW., Washington, DC 20240, and the Office of Management and Budget, Paperwork Reduction Project (Clearance No. 1018–0070), Washington, DC 20503.

(c) * * *

"Negligible impact" is an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

"Unmitigable adverse impact" means an impact resulting from the specified activity (1) that is likely to reduce the

availability of the species to a level insufficient for a harvest to meet subsistence needs by (i) causing the marine mammals to abandon or avoid hunting areas, (ii) directly displacing subsistence users, or (iii) placing physical barriers between the marine mammals and the subsistence hunters; and (2) that cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

(d) * * *

(1) * * * Requests shall include the following information on the activity as a whole, which includes, but is not limited to, an assessment of total impacts by all persons conducting the activity:

* * * * *

(vi) * * * (The applicant and those conducting the specified activity and the affected subsistence users are encouraged to develop mutually agreeable mitigating measures that will meet the needs of subsistence users.);

* * * * *

(3) The Director shall evaluate each request to determine, based on the best available scientific evidence, whether the total taking will have a negligible impact on the species or stock and, where appropriate, will not have an unmitigable adverse impact on the availability of such species or stock for subsistence uses. If the Director finds that mitigating measures would render the impact of the specified activity negligible when it would not otherwise satisfy that requirement, the Director may make a finding of negligible impact subject to such mitigating measures being successfully implemented. Any preliminary findings of "negligible impact" and "no unmitigable adverse impact" shall be proposed for public comment along with the proposed specific regulations.

(4) If the Director cannot make a finding that the total taking will have a negligible impact in the species or stock or will not have an unmitigable adverse impact on the availability of such species or stock for subsistence uses, the Director shall publish in the **Federal Register** the negative finding along with the basis for denying the request.

(e) * * *

(1) Specific regulations will be established for each allowed activity which set forth (i) permissible methods of taking, (ii) means of effecting the least practicable adverse impact on the species and its habitat and on the availability of the species for subsistence uses, and (iii) requirements for monitoring and reporting.

* * * * *

(f) * * *

(2) Issuance of a Letter of Authorization will be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under the specific regulations.

* * * * *

(5) * * *

(ii) The taking allowed is having, or may have, more than a negligible impact on the species or stock, or where relevant, an unmitigable adverse impact on the availability of the species or stock for subsistence uses.

* * * * *

PART 228—REGULATIONS GOVERNING SMALL TAKES OF MARINE MAMMALS INCIDENTAL TO SPECIFIED ACTIVITIES

3. The authority citation for 50 CFR part 228 is revised to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

§ 228.1 [Amended]

4. Section 228.1 is amended by removing the words "Pub. L. 97–58" and "non-depleted."

5. Section 228.2 is revised to read as follows:

§ 228.2 Scope.

The taking of small numbers of marine mammals under section 101(a)(5) of the Marine Mammal Protection Act may be allowed only if the National Marine Fisheries Service (a) finds, based on the best scientific evidence available, that the total taking during the specified time period will have a negligible impact on the species or stock and will not have an unmitigable adverse impact on the availability of the species or stock for subsistence uses; (b) prescribes regulations setting forth permissible methods of taking and other means of effecting the least practicable adverse impact on the species and its habitat and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance; and (c) prescribes regulations pertaining to the monitoring and reporting of such taking. The specific regulations governing specified activities are contained in subsequent subparts to this part 228.

6. In § 228.3, the definition of "negligible impact" is revised; the definition of "specified activity" is amended by removing the word "non-depleted" wherever it occurs; and a new definition for "unmitigable adverse impact" is added in alphabetical order, to read as follows:

§ 228.3 Definitions.

* * * * *

"Negligible impact" is an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

* * * * *

"Unmitigable adverse impact" means an impact resulting from the specified activity (1) that is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by (i) causing the marine mammals to abandon or avoid hunting areas, (ii) directly displacing subsistence users, or (iii) placing physical barriers between the marine mammals and the subsistence hunters; and (2) that cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

7. In § 228.4, paragraph (a)(1) is amended by removing the word "non-depleted"; the second sentence of paragraph (a) introductory text is revised; a sentence is added to the end of paragraph (a)(9); paragraph (c) is revised; and a new paragraph (d) is added, to read as follows:

§ 228.4 Submission of requests.

(a) * * * Requests shall include the following information on the activity as a whole, which includes, but is not limited to, an assessment of total impacts by all persons conducting the activity:

* * * * *

(9) * * * (The applicant and those conducting the specified activity and the affected subsistence users are encouraged to develop mutually agreeable mitigating measures that will meet the needs of subsistence users.);

* * * * *

(c) The Assistant Administrator shall evaluate each request to determine, based on the best available scientific evidence, whether the total taking will have a negligible impact on the species or stock and, where appropriate, will not have an unmitigable adverse impact on the availability of such species or stock for subsistence uses. If the Assistant Administrator finds that mitigating measures would render the impact of the specified activity negligible when it would not otherwise satisfy that requirement, the Assistant Administrator may make a finding of negligible impact subject to such mitigating measures being successfully implemented. Any preliminary findings

of "negligible impact" and "no unmitigable adverse impact" shall be proposed for public comment along with the proposed specific regulations.

(d) If the Assistant Administrator cannot make a finding that the total taking will have a negligible impact on the species or stock or will not have an unmitigable adverse impact on the availability of such species or stock for subsistence uses, the Assistant Administrator shall publish in the **Federal Register** the negative finding along with the basis for denying the request.

8. In § 228.5, paragraph (a) is revised to read as follows:

§ 228.5 Specific regulations.

(a) Specific regulations will be established for each allowed activity which set forth (1) permissible methods of taking, (2) means of effecting the least practicable adverse impact on the species and its habitat and on the availability of the species for subsistence uses, and (3) requirements for monitoring and reporting.

* * * * *

9. In § 228.6, paragraphs (b) and (e)(2) are revised to read as follows:

§ 228.6 Letters of Authorization.

* * * * *

(b) Issuance of a Letter of Authorization will be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under the specific regulations.

* * * * *

(e) * * *

(2) the taking allowed is having, or may have, more than a negligible impact on the species or stock, or, where relevant, an unmitigable adverse impact on the availability of the species or stock for subsistence uses.

* * * * *

PART 402—INTERAGENCY COOPERATION—ENDANGERED SPECIES ACT OF 1973, AS AMENDED

10. The authority citation for part 402 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

11. In § 402.14, paragraph (i)(1) is revised, the second sentence of paragraph (i)(3) is revised, and a new paragraph (i)(5) is added, to read as follows:

§ 402.14 Formal consultation.

* * * * *

(i) * * *

(1) In those cases where the Service concludes that an action (or the implementation of any reasonable and prudent alternatives) and the resultant incidental take of listed species will not violate section 7(a)(2), and, in the case of marine mammals, where the taking is authorized pursuant to section 101(a)(5) of the Marine Mammal Protection Act of 1972, the Service will provide with the biological opinion a statement concerning incidental take that:

(i) Specifies the impact, i.e., the amount or extent, of such incidental taking on the species;

(ii) Specifies those reasonable and prudent measures that the Director considers necessary or appropriate to minimize such impact;

(iii) In the case of marine mammals, specifies those measures that are necessary to comply with section 101(a)(5) of the Marine Mammal Protection Act of 1972 and applicable regulations with regard to such taking;

(iv) Sets forth the terms and conditions (including, but not limited to, reporting requirements) that must be complied with by the Federal agency or any applicant to implement the measures specified under paragraph (i)(1)(ii) and (i)(1)(iii) of this section; and

(v) Specifies the procedures to be used to handle or dispose of any individuals of a species actually taken.

* * * * *

(3) * * * The reporting requirements will be established in accordance with 50 CFR 13.45 and 18.27 for FWS and 50 CFR 220.45 and 228.5 for NMFS.

* * * * *

(5) Any taking which is subject to a statement as specified in paragraph (i)(1) of this section and which is in compliance with the terms and conditions of that statement is not a prohibited taking under the Act, and no other authorization or permit under the Act is required.

* * * * *

Dated: July 10, 1989.

Susan Recce Lamson,

Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior.

Dated: August 8, 1989.

James W. Brennan,

Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration.

[FR Doc. 89-23067 Filed 9-28-89; 8:45 am]

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federal register

Friday
September 29, 1989

Part XI

Department of Transportation

Federal Aviation Administration

14 CFR Parts 25 and 121
Design Standards for Fuel Tank Access Covers; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 25 and 121

[Docket No. 25614; Amdts Nos. 25–69 and 121–208]

RIN 2120–AC58

Design Standards for Fuel Tank Access Covers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment requires that fuel tank access covers on transport category airplanes be designed to minimize penetration by likely foreign objects, and be fire resistant. This amendment also requires that all turbine powered airplanes operated in air carrier service after October 30, 1991 meet these new standards.

EFFECTIVE DATE: October 30, 1989.

FOR FURTHER INFORMATION CONTACT: Iven D. Connally, Airframe and Propulsion Branch (ANM–112), Transport Airplane Directorate, Aircraft Certification Service, FAA, 17900 Pacific Highway South, C–68966, Seattle, Washington, 98168; telephone (206) 431–2120.

SUPPLEMENTARY INFORMATION:

Background

These amendments are based on Notice of proposed rulemaking (NPRM) No. 88–10, which was published in the **Federal Register** on May 23, 1988 (53 FR 18526). The notice proposed to require that the fuel tank access panels on transport category airplanes be designed to minimize penetration by likely foreign objects, and be fire resistant. It also proposed to require all turbine powered airplanes operated in air carrier service after October 30, 1991 meet these new standards. Since then, the terminology has been changed from "Access Panels" to "Access Covers" to more accurately describe the parts and to avoid confusion with wing panels.

Several fuel tank access covers have failed in service due to impact with high energy objects such as failed tire tread material and engine debris following engine failures. The amendments to part 25 will ensure that all access covers on all fuel tanks are designed or located to minimize penetration by likely foreign objects and are fire resistant.

In addition, part 121 is amended to require that the fuel tank access covers on all turbine-powered transport category airplanes used in air carrier service meet these new standards. Airplanes powered with reciprocating engines are not included since service experience does not indicate that fuel tank access covers on those airplanes have been a safety problem.

Discussion of Comments

The public response to the request for comments on Notice 88–10 was generally supportive of the new requirements.

One commenter believes it can be successfully argued that the present fuel tank access covers satisfy the general requirements of the rule since the FAA has not adopted testing standards for either impact or fire resistance. The commenter further states that unless the amendment is strenghened to require that the access covers be identical in material and at least equal to the lower wing panels with regard to all physical and thermal properties, the amendment will fall short of its stated purpose.

Specific rigid standards for impact resistance were not considered practical because of the wide range of likely debris which could impact the fuel tank access covers. The size, speed, and mass of tires vary greatly depending on the size and landing gear configuration of the airplane. Also, the size and energy level of engine debris are dependent on the size, location, and failure mode of the engine. (Advisory Circular 20–128 and available service history with airplanes of similar size and configuration provide guidance in that regard.) Furthermore, it may not be practical, or even necessary, to provide access covers with properties which are identical to those of the adjacent wing lower skin panels since the wing panels usually vary in thickness from station to station and may, at certain stations, have impact resistance far in excess of that needed for any likely impact. Since it is not practical to establish specific testing standards, the phrase, "* * * minimize penetration and deformation * * *," is used in § 25.963(e)(1). This means that an applicant must design access covers which are resistant to penetration and deformation to the greatest extent that is feasible, taking into account costs and other factors anticipated in actual service. It would, of course, not be considered feasible to design the access covers to be more impact resistant than the nominal impact resistance of the surrounding wing surfaces.

Although the proposed rule does not dictate the specific means to show that the fuel tank access covers "minimize penetration and deformation," an applicant would probably choose to do so by testing covers using debris of a type, size, trajectory, and velocity that represent conditions anticipated in actual service for the airplane model involved. This would include consideration of available materials, construction methods, and attachment methods, as well as the resistance of the surrounding surfaces to penetration and deformation.

Under the provisions of Airworthiness Directive (AD) 87–02–07 (52 FR 518; January 7, 1987), operators of Boeing 737–100 and 737–200 series airplanes are required to replace existing access covers located within the engine debris strike zone with improved covers which are more resistant to impact. (This proposed rule would require replacement of any other fuel tank access covers on airplanes of these models that are subject to tire debris damage.) Airworthiness Directive 88–12–10 (54 FR 23643; June 2, 1989) requires similar replacement of the access covers of Boeing 747 airplanes. The redesigned covers required to comply with those ADs are specified thicknesses of aluminum plate. Those are examples of access covers which "minimize" penetration and deformation.

"Fire resistant" is used as the standard for resistance of the access covers to flame penetration because it is already defined in Part 1 of the Federal Aviation Regulations (FAR) and is well-understood by the aircraft industry.

The FAA does not concur that all fuel tank access covers of transport category airplanes presently in service will meet the new standards with regard to either impact resistance or fire resistance. While it is correct that many of these airplanes have no fuel tank access covers located in areas which are vulnerable to five or debris impact, there are others in service which do have covers which are located in such areas and are not designed to "minimize" penetration and deformation, as described above.

Several commenters question the accuracy of the cost analysis. They believe that the total number of access covers which must be replaced is less than the number quoted in the cost analysis and that many of those have already been replaced. They also state, on the other hand, that the actual cost per cover is much higher than that quoted in the analysis.

Subsequent to the completion of the regulatory evaluation for this final rule, one commenter provided a late estimate of the cost of the required replacement access covers. The FAA reviewed the additional data and found that there may be a small additional cost which would not substantially affect the conclusion of the regulatory estimate.

The commenter's estimate of the number of affected airplanes is not relevant to the proposed amendment to Part 121 because it addresses the number of airplanes in operation worldwide rather than those operated by U.S. air carriers under the provisions of part 121.

The cost analysis has been reviewed in light of the comments received. Due to the many variable factors involved, the actual cost may vary somewhat. Nevertheless, the FAA considers the analysis to be within the range of accuracy necessary to show the overall cost impact of this rule.

One commenter requests the two years compliance period be extended to five years to coincide with an operator's extended check of the internal fuel tanks.

The FAA considers that a compliance period of two years from the effective date of this amendment is adequate considering the extent of coordination with the industry in developing this rule and the modifications already accomplished on the Model 737 under the requirements of Airworthiness Directive (AD) 87-02-07. Furthermore, the commenter provided no evidence that compliance prior to the next check of the internal fuel tanks would present an undue hardship.

Several commenters believe that the proposed rule is vague as to which airplanes and which covers on those airplanes would have to be retrofitted. Also, they believe that the likely strike areas are not adequately defined.

As discussed above, because of the large number of relevant factors, the FAA has determined that it is not possible to establish specific objective criteria to define the term "minimize" in the proposal. However, based on analyses of service experience, the FAA has determined that currently certificated Boeing model airplanes do not "minimize" penetration and deformation. All turbine powered transport category airplanes must be assessed for possible retrofit with new covers. Covers located within the strike zone from engine or auxiliary power unit debris, as defined in Advisory Circular 20-128, Design Considerations for Minimizing Hazards Caused by Uncontained Turbine Engine and Auxiliary Power Unit Rotor and Fan Blade Failures, and covers located within the strike zone from tire fragments must meet the new requirements. For the purpose of showing compliance with this rule, access covers located within 15 degrees of the plane of rotation of any tire must meet the new requirements. Minor editorial changes have been made in this regard.

Regulatory Evaluation Summary

Six comments which specifically address the costs and benefits of this rulemaking were submitted to the FAA by air carriers, and representative air carrier and manufacturer industry organizations, following publication of Notice 88-10. The FAA has revised its evaluation of the costs and benefits of this rulemaking in response to these comments.

Costs

The initial regulatory evaluation of Notice 88-10 projected that 26,812 access covers, at a material cost of $210 and an installation cost of $270 per cover, would require replacement in the current fleet of Boeing airplanes subject to part 121 of the Federal Aviation Regulations (FAR). Total costs were projected to be $12.9 million.

Several commenters suggest that these initial projections underestimate the total cost of cover replacement. One commenter states that fuel tank access covers cost $591 each. Another commenter, representing aerospace manufacturers, provides a range of manufacturer-supplied cost estimates for retrofitting individual types of airplane. According to this commenter, the projected cost of retrofit kits ranges from $3,300 for a Boeing Model 727, with 2 covers requiring replacement, to $36,200 for a Boeing Model 707, with 18 covers requiring replacement. These estimates can be recalculated to show that the material cost per access cover will range from $800 for a Boeing Model 767 to $2,000 for a Boeing Model 707, and average $1,500 for the total affected fleet of airplanes. (Although the commenter also cited the cost of retrofitting a Boeing Model 720, it is actually irrelevant because no airplanes of that model remain in U.S. air carrier service.)

Since the latter cost estimates are provided by the manufacturer of the affected airplanes, and project the cost of replacement covers that have been designed and are in production, the FAA concurs with these estimates and has revised its cost analysis accordingly.

Revised compliance cost estimates for the final rule are $19.7 million in 1988 dollars, and $17.1 million discounted present value (employing a 10 percent discount rate).

Additional assumptions employed in this analysis include the following:

- This rule will affect 2,225 Boeing airplanes in part 121 service.
- Retrofit costs will be incurred over a two year period following the effective date of this rule.
- Manufacturer-supplied estimates of required labor hours range from 14 on the Boeing Model 727 to 30 on the Model 707. In this analysis, aircraft mechanic labor hours are valued at $35 per hour.

The FAA acknowledges concerns expressed by some commenters that the initial regulatory evaluation of Notice 88-10 may have overestimated the number of access covers requiring replacement (26,812 covers). In this analysis of the final rule, the FAA has employed the manufacturer-supplied estimates of the number of access covers requiring replacement on each affected airplane type (12,356 covers). It must be noted that these projections represent a worst-case scenario. The total costs may be even lower than estimated for this final rule because fewer covers may require replacement in actual practice.

The FAA disagrees with the concern expressed by commenters that the two-year compliance period will force air carriers to pull their airplanes out of service, thus incurring additional lost opportunity costs. Since replacement covers are already in production, a lack of available parts should not be a factor in preventing carriers from meeting the compliance deadline. Furthermore, the FAA expects that the mandated retrofits can easily be accomplished during an aircraft's regularly-scheduled "C"-check maintenance and inspection period.

Benefits

Several commenters indicate that the FAA's initial regulatory evaluation overestimates the benefits of this rulemaking. The FAA disagrees with these comments. Although penetrations of fuel tank access covers by foreign objects or debris have caused only one catastrophic accident in the last 20 years, the 1985 Boeing Model 737 crash in Manchester, England (with 55 fatalities), the FAA has identified a total of 24 incidents of access cover penetrations during that period. If such incidents continue to occur, the probability remains that failure of an access cover to contain such a strike could result in the loss of an airplane and its passengers. This analysis therefore estimates benefits of requiring installation of penetration and fire-resistant fuel tank access covers based on the prevention of one such incident.

In the FAA's final regulatory evaluation of these amendments, expected benefits remain as estimated in the initial regulatory evaluation: A minimum of $29.0 million (discounted present value), based on the probability of preventing at least one accident over the next 20 years of a magnitude similar to the Manchester accident.

Based on this analysis, the FAA believes this rule to be cost-effective: the minimum expected benefit of $29.0 million (discounted present value) exceeds the expected cost of $17.1 million (discounted present value) by approximately $11.9 million.

International Trade Impact Assessment

This amendment will have little or no impact on trade for both U.S. firms doing business in foreign countries and foreign firms doing business in the United States.

There will be no advantage with respect to future type designs for airplanes manufactured either in the United States or foreign countries, since U.S. certification rules are applicable to both foreign and domestic manufacturers selling aircraft in the United States.

With respect to existing designs, the disadvantage to U.S. air carriers vis-a-vis foreign carriers is minimal because the cost of compliance is a relatively small amount for most airplanes. Only 9 percent of the affected airplanes are expected to require one-time expenditures greater than $16,000 per airplane. Boeing Model 727's, representing 54 percent of the affected airplanes, will require total expenditures of less than $4,000 per airplane. Furthermore, it is common for foreign airworthiness authorities to adopt regulations similar to those issued by the Federal Aviation Administration. Therefore, it is possible that foreign operators of Boeing airplanes will be required to modify their airplanes as well.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The RFA requires government agencies to review rules which may have "a significant economic impact on a substantial number of small entities."

FAA Order 2100.14 defines a "substantial number of small entities" as more than one-third, and no fewer than eleven, of the small entities subject to the proposed rule. The order also indicates that an operator owning nine or fewer aircraft for hire is considered to be a "small entity."

This final rule has a cost impact only on air carriers which operate airplanes under Part 121 of the Federal Aviation Regulations. The FAA has identified approximately 82 air carriers that own airplanes subject to Part 121, and two carriers which operate a total of nine or fewer aircraft. Of these 82 operators, only 20 (less than one-third), operate with at least one of the Boeing airplanes affected by this final rule.

The FAA therefore estimates that this final rule will not have an adverse economic impact on a substantial number of small entities.

The FAA has not identified a positive economic impact on a substantial number of small entities. The only small entities that could benefit economically from this rule are manufacturers of replacement panels. The best available information suggests that fewer than eleven outside suppliers would be contracted by Boeing to produce the required access covers.

Federalism Implications

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

Conclusion

For the reasons given earlier in the preamble, the FAA has determined that this is not a major regulation as defined in Executive Order 12291. In addition, the FAA certifies that this rule does not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act, since none are affected. Since the regulatory document concerns a matter on which there is substantial public interest, the FAA has determined that this document is significant as defined in Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

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 Amendments

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); and 49 CFR 1.47(a).

2. By amending § 25.963 by adding paragraph (e) to read as follows:

§ 25.963 Fuel tanks: general.

* * * * *

(e) Fuel tank access covers must comply with the following criteria in order to avoid loss of hazardous quantities of fuel:

(1) All covers located in an area where experience or analysis indicates a strike is likely must be shown by analysis or tests to minimize penetration and deformation by tire fragments, low energy engine debris, or other likely debris.

(2) All covers must be fire resistant as defined in part 1 of this chapter.

* * * * *

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

3. 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).

4. By amending part 121 by adding a new § 121.316 to read as follows:

§ 121.316 Fuel tanks.

Each turbine powered transport category airplane operated after October 30, 1991, must meet the requirements of § 25.963(e) of this Chapter in effect on October 30, 1989.

Issued in Washington, DC, on September 25, 1989.

James B. Busey,

Administrator.

[FR Doc. 89–22988 Filed 9–28–89; 8:45 am]

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Federal Register

Friday
September 29, 1989

Part XII

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Juvenile Justice Statistics and Systems Development Program; Notice

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Juvenile Justice Statistics and Systems Development Program

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of reissuance of a solicitation for applications to establish a Juvenile Justice Statistics and Systems Development Program.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP), pursuant to sections 241 and 242 of the Juvenile Justice and Delinquency Prevention Act, as amended, is sponsoring a program to establish a Juvenile Justice Statistics and Systems Development Program. The purpose of this program is to develop and implement strategies for improving:

- The quality and utility of national and subnational (state and local) statistics on juvenile justice; and
- Decision making and management information systems within the juvenile justice system.

This effort will assist OJJDP in implementing the recommendations from the Assessment of National Juvenile Justice Statistics. This requires formulating and implementing a program of national and subnational juvenile justice statistics that promotes the development and effective use of statistics for system wide and individual agency planning and management; policy and program development and, research and evaluation at the Federal, state and local level. The scope of the program related to improving national and subnational statistics includes Federally sponsored national surveys of individuals regarding their experience as victims and/or offenders as well as Federally-sponsored administrative surveys that involve the collection of data from local reporting units regarding some aspect of the justice system response to these juveniles.

In addition to performing the tasks related to planning and improving national and subnational statistical networks and products, the recipient will be responsible for:

- Assessing operational juvenile justice agencies' decision making and related management information systems;
- Developing prototypes for decision making and related management information systems and promoting the effective use of the information generated by the systems for planning, management and resource allocation development;
- Developing training and technical assistance materials to promote the adoption of the prototype systems for test sites; and
- Providing intensive training and technical assistance to implement the prototypes in the test sites.

It is expected that these two tracks: National Statistics and Systems Development, will complement each other and will improve the capability of Federal, state and local, public and private juvenile justice agencies to understand the needs of the juvenile population they serve and as a result more effectively manage their resources for delinquents and other juveniles in need of services.

Eligibility: Applications are invited from public agencies and private organizations which can demonstrate the capability to effectively carry out the mission of the Juvenile Justice Statistics and Systems Development Program to enter into a cooperative agreement with OJJDP. The project period will be five years, with incremental budget periods. OJJDP has allocated up to $800,000 for the initial budget period of 18 months. Based on successful completion of the first budget period, the recipient of the cooperative agreement will be eligible for several non-competing awards that are anticipated over the program period. Applicants are encouraged to submit cost-competitive proposals.

DATE: The deadline for receipt of applications in the OJJDP Office is January 15, 1990. No application material delivered after that date will be considered. For further information contact: Barbara Allen-Hagen, Research and Program Development Division (202/724–5929), or John Dawson, Special Emphasis Division (202/724–5911), Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Ave., NW., Washington, DC 20531. In order to provide clarification and guidance to prospective applicants, within 45 days of publication of this program announcement, not later than November 17, 1989, OJJDP will hold a meeting to answer any questions regarding the program and application procedures.

SUPPLEMENTARY INFORMATION:

JUVENILE JUSTICE STATISTICS AND SYSTEMS DEVELOPMENT PROGRAM

I. Definitions

The following definitions are offered to clarify terms and concepts frequently used in this solicitation. Because one of the purposes of this program is to help OJJDP further define the parameters of a national statistical program and a model decision making system(s), these definitions are subject to change.

Juvenile—any person under the age of 18 in the United States (1) who is or may be, for statutorily determined conduct or circumstances (e.g. delinquency noncriminal misbehavior and abuse/neglect), subject to the adjudication and supervision processes of the juvenile court, or (2) who, although not described by criterion (1) above, is under the age of 18 and is either under criminal court jurisdiction or is a victim of a criminal offense.

Juvenile and Criminal Justice System Response—any official action (arrest/taking into custody, filing a petition, detention order, diversion, waiver/transfer, adjudication, disposition, probation order, commitment/placement, release from custody/jurisdiction, etc.) made in response to acts committed by or again a juvenile (delinquency, status offense, or abuse/neglect or criminal victimization) that may come before the juvenile or criminal court for adjudication, disposition or judicial review. These actions may be taken by local and/or state agencies depending on the locus of the authority.

National Juvenile Justice Statistics Program—a series of routinely administered data collection efforts that are designed to produce current, reliable, nationally representative data regarding the extent and nature of juvenile offending and victimization and the juvenile or criminal justice system response.

Subnational Statistics—data routinely gathered on juvenile or criminal justice system response generated or maintained by any local or state agency or organization with the appropriate statutory or delegated authority to perform such a function.

Assessment Recommendations—a series of recommendations contained in a draft document entitled, "The Assessment of National Juvenile Justice Statistics: An Agenda for Action", (hereinafter referred to as "Agenda"), James P. Lynch, based on a jointly-sponsored OJJDP/Bureau of Justice Statistics assessment of Federally-sponsored national data collection

efforts regarding juveniles as victims and offenders. Copies of this document can be obtained by calling Barbara Allen-Hagen, at 202/724–5929.

Management Information System (MIS) Prototype—a proposed set (the minimum number) of variables and data elements with standardized definitions for juvenile or criminal justice system responses that meet local or state agency information needs, as well as national information system requirements for developing national estimates regarding juvenile justice system response to juvenile victims and offenders. Model or prototype management information systems will be developed for each component agency of the juvenile justice system or, where applicable, the criminal justice system.

Decision Making System Prototype—a systematic approach to decision making which delineates the range of juvenile or criminal justice system responses that can be made by local/state agencies regarding the processing of juveniles through each decision point in the juvenile or criminal justice system from initial contact with law enforcement or referral to juvenile or family court or court of similar jurisdiction through disposition and release from jurisdiction.

II. Introduction and Background

OJJDP and the Bureau of Justice Statistics (BJS) undertook the first major assessment of the quality and utility of existing national statistics on juveniles as victims and offenders. The overwhelming conclusion of this assessment was that critical information on the extent and nature of juvenile crime and victimization was seriously deficient for both policy and research purposes. In addition, national, state, and local data on important aspects of the justice system response are fragmented, non-comparable, or non-existent. Further, if significant improvements were to be made, the current inadequacies of the existing system would have to be approached systematically. The product of this effort, "The Assessment of National Juvenile Justice Statistics: An Agenda for Action", outlines a comprehensive series of recommendations for improving the quality, utility and accessibility of data for national, state and local uses. Incorporated in the discussion of the recommendations are steps to be taken to achieve a particular information goal. For national and subnational statistics these steps range from conducting secondary analysis of existing data to initiating new data collection efforts.

There is general consensus that there is a need to improve juvenile justice decision making related to planning, policy and program development and management within and across juvenile justice agency lines. Often decisions are not guided by explicit policies or criteria. These decisions are ferquently made in the absence of critical information that is often not available within a single agency or is not shared between agencies. Both of these inadequacies need to be addressed simultaneously for effective management of juvenile justice resources. For example, in order to determine the need for additional detention beds, a jurisdiction needs to specify the policies/screening criteria used to make detention decisions; to identify where the decisions are made; and, to develop information on the number and types of youth detained as well as their lenghts of stay. Without this type of information, population projections that may form the basis for expenditure of funds will be flawed. There are a host of basic policy and information needs, such as those identified in the above example, that are common to almost any juvenile justice "system" that should be identified, and, around which a model decision making system(s) should be developed. Therefore, it is necessary to assess decision making policies and procedures, delineating agency-level activities at each critical decision point in juvenile justice system. In addition, the assessment should document agencies use of currently collected data; and from this assessment develop a prototypical decision making and related complementary management information system(s). The local management information system(s) must be designed to contribute to the development of a national base of information on critical aspects of the juvenile justice system response to juvenile crime and victimization.

The Juvenile Justice Statistics and Systems Development Program is an integral part of the strategy to implement the recommendations to improve national and subnational statistics, as well as to improve the decision making capability of local juvenile justice agencies. The program is being established to guide choices regarding the future direction of national statistics and methods for assisting the development of local decision making and information systems data collection efforts. Finally it will focus on integrating these two activities to ensure that local and state information systems can become the building blocks for a national juvenile justice statistics program. This is the beginning of a long term commitment which is needed to document and monitor trends in the level and nature of delinquency and victimization, as well as the juvenile justice system's response to these problems. One of the major functions of this program will be the dissemination of existing information for policy-making purposes as well as to provide greater access of existing data sets to the research community for policy analysis and program evaluation.

III. Program Goal and Objectives

There are two major goals of this program:

- To create a national juvenile justice statistics program that is responsive to Federal, state and local information needs; and
- To improve systemwide decisionmaking and management information capabilities of juvenile justice system and component agencies.

A national juvenile justice statistics program must be developed that produces useful and reliable national and subnational statistics on juveniles that inform the public about the extent and nature of juvenile delinquency and victimization, their correlates and consequences, as well as juvenile justice system response to these social problems. This program must yield data on these phenomena that are useful for policy and program development and evaluation at the Federal, state and local level.

A concurrent goal of this program is to improve the capability of the juvenile justice system and its component agencies to respond to the problems of juvenile crime and victimization, through the development and testing of prototypical decisionmaking and management information systems. The program is designed to promote the understanding and the use of prototypical systemwide juvenile justice decisionmaking policies and practices to assess, monitor and improve the administration of juvenile justice. In addition to supporting systems improvement, the program also is intended to contribute to building a national statistical system which promotes the effective use of statistics for planning, resource allocation and other juvenile justice system management decisions at the Federal, state and local level.

In order to achieve these goals, a comprehensive program to improve the quality and utility of national and subnational statistics, and decisionmaking must be developed and

implemented. The Assessment of National Juvenile Justice Statistics has outlined a broad agenda for making needed improvements in national and subnational statistics. The establishment of the Juvenile Justice Statistics and Systems Development Program is intended to build upon this work. The recipient will be responsible for providing the necessary technical and substantive resources to achieve the following objectives during the first 18-month phase of the program's operation:

National Statistics Objectives

- Assist in formulating long-term and short-term plans for systematically improving juvenile statistics, including prioritizing information needs; choosing which Assessment Recommendations to pursue; and carrying out the necessary steps to implement these plans;
- Assess the potential of existing subnational statistical systems/networks for contributing data to a national statistical reporting system; and
- Develop a strategy for the analysis, publication and dissemination of existing national and subnational data on juveniles and the justice system;

Systems Development Objectives

- Assess operational juvenile justice agencies' decisionmaking and related management information activities, policies, and procedures;
- Develop prototypical decisionmaking systems and complementary management information systems as well as model output reports pertaining to planning, management, resource development and allocation, and intra- and inter-agency coordination;
- Develop training and technical assistance materials to transfer prototypes;
- Develop and implement a strategy for testing the effectiveness of the prototypical decisionmaking and management information systems; and
- Determine the feasibility of building a network of jurisdictions to contribute to a national juvenile justice statistical reporting program on juvenile justice system response.

IV. Program Strategy

OJJDP planning and program development activities are guided by a framework which specifies four sequential phases: research, development, demonstration and dissemination. The framework guides the decisionmaking process regarding the funding of future phases of the program.

This program falls within the research and development phases. The purpose of the research phase is to develop new knowledge and to monitor trends to inform and assess policy and program development. The national/subnational statistics objective fall under this phase. The purpose of the development phase is to develop prototypes and, to determine their effectiveness through a testing process, and to disseminate the prototypes to the field. The systems development objectives fall within this phase.

This initiative is designed to evolve along two tracks. The first involves developing strategies to improve the quality and utility of federally sponsored national data collection efforts, including surveys of individuals regarding their experience as victims and/or offenders as well as administrative surveys that involve the collection of data from local reporting units regarding some aspect of the justice system response. The second track involves efforts to improve the quality and utility of state and local decisionmaking and related management information systems. While each track has its defined objectives and expected results, the two tracks are clearly interdependent. Therefore, although the activities of each track require somewhat different skills, strategies and schedules, it is critical that the grantee structure an approach to ensure that the development of the two tracks is closely coordinated and that the results of each track complement the work of the other.

Each track will involve several basic stages of development. As will be described below, it is anticipated that stages one through three of the national statistics track, and stages one and two of the systems development track will be completed during the first 18-month project period. Each stage of the process detailed below is designed to result in complete and publishable products, and a dissemination strategy to inform the field of the development of the program and the results and products of each stage.

A project advisory committee, consisting of knowledgeable survey methodologists; statisticians; data users and suppliers; practitioners and experts in juvenile justice policy, systems and resource management will be appointed to provide direction, guidance and oversight to the program in carrying out its functions, reviewing plans, and products. Two subcommittees, supplemented by technical consultants as necessary, should be formed to advise the development of each track. The role of the advisory board is viewed as critical to the success of the program.

National Statistical Track

Stage 1—Assessment

During this stage the recipient will review the recommendations of the "Agenda", and other relevant literature, and assist OJJDP in selecting those recommendations that should be adopted and in what priority order they should be pursued. It is anticipated that this will require an intensive process involving the participation of OJJDP, the recipient, and the project advisory board. This stage will also involve preliminary identification of national data system requirements that will inform the development of local management information system prototypes under the Systems Development Track.

To assist in the prioritization and selection of recommendations to be pursued, the recipient will provide the necessary background information on the resources, technology and agency cooperation that would be required to implement the recommendations. Based on the approval by OJJDP of the first set of recommendations to be adopted, the recipient will identify the steps involved in implementing each selected recommendation. Finally, the recipient will develop a detailed, comprehensive plan for the implementation of the selected recommendations focused on improvement of national and subnational statistics, and on the asnalysis and dissemination of existing information.

Activities

The major activities of this stage are:

- Establishment and convening of the project advisory committee board;
- Development of an Assessment Plan specifying the approach for each step of the assessment stage;
- Identification of the national data system information requirements that should be incorporated into the development of the prototype local management information systems under the System Development Track;
- Review of the National Justice Statistics Assessment and prioritization of recommendations; specifying the approach for developing long-term and short-term objectives for improving juvenile justice statistics,
- Specifications of the steps required to implement selected recommendations; and,
- Development of an Assessment report detailing plans to design and implement the selected national/

subnational statistical programs and to analyze and disseminate existing data. (It should be recognized that each of the data collection activities which are selected for implementation will likely proceed at a different pace through the next three stages of development, depending on the specific nature of the activity.)

Products

The products to be completed during this stage are:

1. Assessment Plan for carrying out the Program;

2. Recommendations for prioritization of Statistics Assessment recommendations;

3. Report specifying the resources, technology, agency cooperation, and the implementation activities for each of the priority recommendations;

4. Recommendations for assessing quality and utility of subnational statistical systems/networks for contributing to national information on juvenile justice system response;

5. An Assessment Report summarizing the results of the assessment stage, including a plan for developing selected national/subnational statistical programs; and

6. Dissemination strategy to inform the field of the development of the program, and the products and results of this stage.

Stage 2—Analysis and Dissemination

Upon successful completion of stage one, the recipient will conduct those activities in the plan developed during the assessment stage which involve analysis and dissemination of existing national and/or subnational data sets to inform policy and program development. This will involve the development of a dissemination strategy to: (1) Make available to the field statistical information from existing national and subnational data sets; and (2) to examine the utility of existing data sets for addressing selected policy issues.

The first task will be accomplished by preparing a national report on juvenile offending and victimization, which will be updated bi-annually by the program.

The second task will involve the preparation of papers based on analysis of one or, more data sets to address particular policy or program issues in juvenile justice. The topics will be selected by OJJDP in consultation with the recipient and the program advisory committee. The analysis will also include an examination of the utility of a particular data set for meeting information needs in the field.

Activities

The major activities of this stage are:

- Development of a plan for the analysis and dissemination activities;
- Selection of topics for issue papers;
- Preparation of a draft and final national report on results of juvenile offending and victimization;
- Preparation of issue papers based on analysis of existing data sets; and,
- Development and implementation of a dissemination strategy.

Products

The products to be completed during this stage are:

1. Plan for conducting the analysis and dissemination activities;

2. Draft and final national report on juvenile offending and victimization;

3. A minimum of three papers on selected policy or program issues;

Stage 3—New Survey Design and Feasibility Studies

During this stage, the recipient will initiate the design of new data collection activities included in the plan developed during the assessment stage. These may consist of revisions to existing national data collection efforts, or the design and implementation of new efforts. This stage will involve three steps as appropriate. For those data collection efforts that are to be revised, the first step consists of secondary analysis of the relevant national data set. For new data collection initiatives, the first step will consist of evaluating existing data collection efforts and conducting secondary analyses of these, if available, to determine the potential for collecting the desired information through an existing survey mechanism. The second step will be the conduct of feasibility studies to develop more definitive information on the viability of particular approaches to data collection for addressing a particular issue.

Third, based upon the results of the secondary analyses and/or feasibility studies, the recipient will prepare a recommendation regarding the viability of the proposed new or revised data collection activity. As appropriate, the recommendation should include a proposed survey design, specifying the substantive, strategic costs and methodological requirements, and projected costs for full implementation of the data collection activity. It must provide an indepth statement of the rationale for each effort; an articulation of the specific policy, programmatic, and/or research purposes that the particular effort is designed to address; and a justification for the proposed design based on the experience of the secondary analyses phase and/or the feasibility studies.

Should OJJDP choose to implement a new national data collection effort, most likely it will be supported through an interagency agreement, or a competitively awarded cooperative agreement or contract. For the latter options, it is anticipated that the recipient will be excluded from competition. The recipient will however, provide the necessary consultation to assure that the survey(s) is implemented in a manner consistent with the proposed design and the direction of the project advisory board.

Activities

The major activities to be conducted during this stage are:

- Development of a plan for the design of new data collection efforts; including the steps for each effort;
- Conduct of secondary analyses of existing relevant data sets and write reports;
- Conduct of feasibility studies;
- Coordination of the design of new national activities with the local systems;
- Preparation of draft and final recommendations for each new data collection effort; and
- Development and implementation of a dissemination strategy.

Products

The products to be completed during this stage are:

1. Plan for the design of new data collection efforts;

2. Draft and final recommendations for new data collection efforts; and,

3. Dissemination strategy to inform the field of the development of the program and products of this stage.

Stage 4—Implementation of New Data Collection Efforts

During this stage the recipient will provide methodological advice and oversight of newly initiated data collection efforts. Program staff and consultants who have been involved in the design stage will serve in a consultant capacity to organizations selected to conduct these efforts. The program's Advisory Committee will also review these efforts as appropriate. Additional ongoing activities under this stage include the refinement of plans, re-analysis of relevant data sets for policy or program development purposes, conduct of additional feasibility or pilot tests, as needed, and the production and dissemination of recurring and ad hoc reports resulting from the program's work.

Activities

The major activities of this stage are:

- Development of a plan for implementation of new data collection efforts;
- Technical Assistance to new data collection activities;
- Advisory Committee review of new data collection activities, and on-going OJJDP data collection projects;
- Preparation of reports based on existing and new data collection activities; and,
- Identification of new priorities.

Products

1. Plan for implementation of new data collection efforts;
2. Reports on the status of new data collection activities; and
3. Recommendations for new priority areas.

Systems Development Track

Stage 1—Assessment

The recipient will be responsible for designing and conducting an assessment of selected state and local decision making systems; existing management information systems and the current or potential analytical uses of operational data for juvenile justice system management, policy development, planning and evaluation; and the potential of local data collection activities for contributing to a national data collection program on juvenile justice system response. The assessment must be designed to provide OJJDP with specific recommendations for optimal operation of both decision making and complementary management information systems that will be the basis for the prototype development activities occurring in the next stage as well as the development of a strategy for a national program for collection of data on juvenile justice system response.

During this stage the recipient will conduct a review of the literature on juvenile justice decision making policies, procedures and practices at the system as well as the individual agency level, and on management information systems that gather and analyze data that are designed to support decision making activities. Based on the review, and the guidance from the advisory committee and OJJDP, the recipient will develop criteria to select and conduct onsite assessments of existing state and local agency decision making and management information systems.

The assessment will focus on system design and operation, by examining the decision making and information activities of the individual component agencies as well as activities involved in referring youth from one component of the system to another. It will examine who makes decisions regarding the handling of different types of youthful offenders and nonoffenders, what types of decisions are made, and the subsequent resources expended in responding to those decisions. It will also examine the type of information that is collected by component agencies, who collect it, how it is collected, how it is analyzed and how it is used. This will include a review of the purpose and usefulness of output reports generated for use by juvenile justice agencies. In order to monitor trends and to make critical management decisions on an agency and systemwide basis in the areas of planning, policy formulation, program development, resources allocation, research evaluation and budget development and control. Particular attention will be paid to the potential contribution of various management information systems to a national data collection system.

Activities

The major activities of this stage are:

- Convening the project advisory committee;
- Development of an assessment plan specifying the approach for each step of the assessment stage;
- Review of the literature;
- Development of the criteria for site assessment activities;
- Implementation of the site assessment;
- Development of preliminary testing design guidelines;
- Development of recommendations for the national reporting program on juvenile justice system response based on an assessment of existing management information systems;
- Development of a draft and final assessment report; and
- Development of a dissemination strategy.

Products

The products to be completed during this stage are:

1. Project Advisory Committee Recommendations;
2. Assessment Plan;
3. Literature Review;
4. Criteria for Site Assessment Activities;
5. Recommendations with regard to Preliminary Guideline for Test Design;
6. Preliminary strategy for developing a national reporting program on juvenile justice system response based on local/state reporting units;
7. Draft and Final Assessment Report; and
8. Dissemination strategy to inform the field of the development of the program and products and results of this stage.

Stage 2—Prototype Development

Upon successful completion of stage one, the recipient will develop one or more prototypes of a juvenile justice decision making and complementary management information system for implementation at the state and local level. The prototypes will explain how to operationalize and assess agency policy through the implementation of a well-defined decision making system and a supportive management information system. The prototype information will be detailed in operational manuals which contain detailed specifications for the development, implementation and operation of the prototypical state and local decision making and management information systems. The prototypes will describe, for each component agency of the juvenile justice system, how to define policy and implement it through the establishment of decision making criteria, practices and procedures for processing juveniles; and the establishment of a management information system that will provide the information specified by the decision criteria, as well as data on the flow of juveniles through the system.

In developing the prototype management information systems, the requirements of a natural data system must be addressed. This must include recommendations regarding: the scope of initial program, sampling issues related to implementation, identification of both incentives and necessary assurances regarding the use and disclosure of data in order to ensure participation in the program, and the identification of specific products or reports that the system would be capable of generating for national purposes.

Because of the need to demonstrate the potential utility of both the decision making model and the management information system, the prototypes must include the identification of the practical uses and potential benefits to an agency as well as to the overall juvenile justice system that may adopt the prototype system. Model output reports that would result from the implementation of the prototypes should be designed. The recipient will prepare examples of such reports and include those for: planning (e.g., development of population or personnel projections); policy formulation (e.g., establishing criteria for use of secure detention, or for setting

dispositional/release guidelines); program development (e.g., determining the need for a urinalysis program to monitor probationers, or the need for runaway shelter); budgeting (e.g., setting per diem rates for contract services, determining juvenile justice system annual expenditures by agency); program and policy evaluation (e.g., determining the effectiveness of jail removal policies and alternatives, or the impact of a truancy reduction program on reported daytime burglaries); and research (e.g., documenting trends in the percentage of personal crimes involving juvenile gangs, or the percentage of violent crimes in which kidnapping of a juvenile was a corollary offense). This will involve identifying necessary decision making activities and corresponding data elements, minimum requirements regarding the data collection procedures, for each use.

Activities

The major activities of this stage are:

- Participation of the Advisory Committee;
- Development of a plan for prototype development;
- Development of the decision making and information system prototypes and related materials;
- Development of recommendations regarding the scope, content and approach to developing a national reporting program on juvenile justice system response based on data generated by the management information system prototypes; and,
- Development of a dissemination strategy.

Products

1. Prototype Development Plan;
2. Dissemination Strategy to inform the field of the development of the program, and the products and results of this stage;
3. Draft and Final Prototype Designs and Operation Manuals; and
4. Draft and Final Design for the National Reporting Program on Juvenile Justice System Response.

Stage 3—Training, and Technical Assistance

While a decision to develop training and technical assistance materials and to test the prototype design(s) will be made during or following the completion of the prototype system development stage, the applicant is expected to explain the methods and approaches that would be employed to implement all of the stages. As noted, funds for this stage will be provided in the initial award period. Funds for the testing stage will be provided through noncompetitive continuation awards. In order to ensure the applicant's understanding of the entire development effort, however, the initial application must address and explain the implementation and coordination of all four stages of the initiative (i.e., assessment, prototype development, training and technical assistance development, and testing).

Upon successful completion of stage 3 and with the approval of OJJDP, the grantee will transfer the prototype decision making and management information system design(s), including policies and procedures, into a training and technical assistance package. A comprehensive training manual which outlines the major issues that need to be addressed in developing programs for state and local subnational policy level decision makers, and detail program prototypes, must be developed to encourage and facilitate implementation of prototypes. The training manual should be the focal point of the entire training and technical assistance package. The major audience will be policy makers and practitioners involved in resource allocation and program development at the state and local subnational levels. The manual must be designed for a formal training setting, and for independent use in jurisdictions that do not participate in formal training sessions. Therefore, the manual should include a complete description of the decision making prototype and incorporate related policies and procedures to operationalize the prototypes. The manual should contain instructions and supplementary materials for trainers to facilitate presentation, and ensure understanding and successful adaptation and implementation of the prototypes.

Activities

The major activities of this stage are:

- Preparation of a plan for developing the training and technical assistance package;
- Development of the training and technical assistance materials;
- Recruitment and preparation of the training and technical assistance personnel;
- Testing of the training curriculum manual;
- Participation and review by the advisory committee; and,
- development and implementation of a dissemination strategy which may include workshops or seminars for national and subnational level decision markers.

Products

The products to be completed during this stage are:

1. Plan for the development of the training and technical assistance package;
2. Identification of training and technical assistance personnel;
3. Draft and final training and technical assistance package-including the training curriculum manual and information materials; and,
4. Dissemination strategy to inform the field of the development of the program, and the products and results of this stage.

Stage 4—Prototype Implementation and Testing

This stage of the program consists of a test, in selected jurisdictions, of the prototypes developed in Stage II. The recipient will be required to assist the OJJDP in developing a solicitation to make awards to test sites. It will also be required to provide intensive training and technical assistance to help test sites implement the decision making and management information system prototypes on an experimental basis. Finally, the grantee will be expected to work cooperatively with an independent evaluator to ensure the integrity of the data collection and feedback activities.

Activities

The major activities of this stage are:

- Develop recommendations for a program announcement to select test sites;
- Assist OJJDP in review and selection of test sites;
- Provide intensive training and technical assistance to test sites regarding the implementation of prototypes on an experimental basis;
- Develop procedures for working cooperatively with the program evaluator, particularly in the areas of data collection and feedback; and
- Develop and implement a dissemination strategy.

Products

The major products for this stage are:

1. Recommendations for the program announcement for test sites;
2. Plan for providing training and technical assistance to test sites; and,
3. Dissemination strategy to inform the field of the development of the program, and the products and results of this stage.

V. Dollar Amount and Duration

A cooperative agreement will be awarded to the successful applicant. The project period is five (5) years.

OJJDP has allocated up to $600,000 for the first budget period of 18 months. Funds for noncompeting continuation awards within the approved five-year project period may be withheld for justifiable reasons. They include, but are not limited to:

1. There is no continued need for program activity;

2. Failure to comply with agency fiscal integrity requirements, including but not limited to:

(a) The grantee is delinquent in submitting required reports;

(b) Adequate funds of the grantor agency are not available to support the project;

(c) The grantee has failed to show satisfactory progress in achieving the objectives of the project or otherwise failed to meet the terms and conditions of award;

(d) A grantee's management practices have failed to provide adequate stewardship of grantor agency's funds;

(e) Outstanding audit exceptions have not been cleared; or

3. Any other reason which indicates that continued funding would not be in the best interest of the Federal government.

VI. Eligibility Requirements

Applications are invited from public agencies and private organizations. Applicant organizations may choose to submit joint proposals with other eligible organizations as long as one organization is designated in the application as the applicant and any coapplicants are designated as such. Coapplicants must demonstrate they have the capability to work together effectively in order to be considered as co-applicants for this program. In order to expand the pool of eligible candidates, applications will be accepted from for-profit agencies as long as they agree to waive their profit fee and accept only actual allowable costs. Applicants and co-applicants must demonstrate that they have prior experience in the design, conduct and implementation of multijurisdictional surveys; demonstrated knowledge of issues associated with juvenile justice statistics; prior experience in the development and delivery of training or technical assistance; and research and evaluation of the juvenile justice system.

Applicants must also demonstrate that they have the management capability, fiscal integrity and financial responsibility, including but not limited to and acceptable accounting system and internal controls, compliance with grant fiscal requirements, such capability to effectively implement a project of this size and scope. Applicants who fail to demonstrate that they have the capability to manage this program will be ineligible for funding consideration. Applicant organizations may choose to submit proposals with other eligible organizations, as long as one organization is designated in the application as the applicant and any coapplicants are designated as such. In order to be eligible for consideration the applicant, together with any co-applicant, must have experience in each of the following areas specified in A–C below.

A. Design, development, or implementation of national or subnational (multijurisdictional) data collection efforts regarding crime and delinquency or the criminal or juvenile justice system; or, the maintenance of a data archive for the promotion of secondary analysis of data for research, policy or program evaluation;

B. Applied research or policy analysis regarding crime, delinquency, or the criminal/juvenile justice system; and,

C. The development of decision making and management information systems, and the development and delivery of training and technical assistance to state and local criminal or juvenile justice agencies.

VII. Application Requirements

All applicants must submit a completed Standard Form 424, Application for Federal Assistance (SF–424), including a program narrative, a detailed budget, and budget narrative. All applications must include the information outlined in this section of the solicitation (section VI) in part IV, Program Narrative of the application (SF–424).

In accordance with Executive Order 12549, 28 CFR 67.510, applicants must also provide a certification they have not been debarred (voluntarily or involuntarily) from the receipt of Federal funds. Form 4662/2 which will be supplied with the application package must be submitted with the application. Pursuant to the regulations implementing the Drug-Free Workplace Act of 1988, 28 CFR part 67, subpart F, applicants must submit a certification regarding Drug-Free Workplace Requirements. The certification form will be provided in the application kit.

In submitting applications that contain more than one organization, the relationships among the parties must be set forth in the application. As a general rule, organizations that describe their working relationship in the development of products and the delivery of services as primarily cooperative or collaborative in nature will be considered co-applicant's. In the event of a co-applicant submission, one co-applicant must be designated as the payee to receive and imburse project funds and be responsible for the supervision and coordination of the activities of the other co-applicant. Under this arrangement, each organization would agree to be jointly and severally responsible for all project funds and services. Each co-applicant must sign the SF–424 and indicate their acceptance of the conditions of joint and several responsibility with the other co-applicant.

Applications that include non-competitive contracts for the provision of specific services must include a sole source justification for any procurement in excess of $25,000. The following information must be included in the application (SF–424) part IV Program Narrative:

A. Organizational Capability

Applicants must demonstrate that they are eligible to compete for this cooperative agreement on the basis of eligibility criteria established in section VI. of this solicitation.

1. Organizational Experience

Applicants must concisely describe their organizational experience with respect to the eligibility criteria specified in Section VI. above. Applicants must demonstrate how their organizational experience and current capabilities will enable them to achieve the goals and objectives of this initiative. Applicants should highlight significant organizational accomplishments which demonstrate their responsiveness to the needs of the field, reliability in terms of producing quality products in a timely fashion, and having the ability to work effectively with operational justice agencies.

2. Project Staffing

Applicants must provide a list of key personnel responsible for managing and implementing the program. Applicants must present detailed position descriptions, qualifications and selection criteria for each position, whether they are salaried or staff, hired by contractor(s) of the grantee. In addition, if key functions or services are to be provided by consultants on a contractual basis, the applicant must indicate the individuals to be hired for specific tasks, or the specific skills that would be needed to perform these tasks and the means of acquiring them. Resumes must be provided and may be submitted as appendices to the application. Applicants must demonstrate that the proposed staff

complement have the requisite background and experience to accomplish the major responsibilities outlined in Section IV above. Applicants should highlight significant accomplishments of the proposed staff in relation to their respective roles in the project. In addition, the percentage of each staff person's time committed to the project must be clearly indicated in the budget narrative.

3. Financial Capability

In addition to the assurances provided in Part V, Assurances (SF424), applicants must also demonstrate that their organization has or can establish fiscal controls and accounting procedures which assure that Federal funds available under this agreement are disbursed and accounted for properly. Applicants who have not previously received federal funds will be asked to submit a copy to the Office of Justice Assistance, Research and Statistics (OJARS) Accounting System and Financial Capability Questionnaire (OJARS From 7120/1). Other applicants may be requested to submit this form. All questions are to be answered regardless of instructions (Section C.I.B. note). The CPA certification is required only of those applicants who have not previously received Federal funding.

B. Program Strategy and Goals

Applicants must demonstrate their understanding of the goals and objectives of the overall program as well as each track. They must also articulate their specific approaches to implementing the program strategy outlined in the solicitation. They must explain how they will address all the activities and develop all of the products for each stage contained in both tracks and propose a strategy for coordinating the activities of both tracks.

C. Program Implementation Plan

Applicants must prepare a plan that outlines the major activities involved in implementing the program, describe how they will allocate available resources to implement the program, and how the program will be managed.

1. The plan must include:

a. An annotated organizational chart depicting the roles and describing the responsibilities of key organizational/functional components related to the National Statistics and Systems Development Tracks and their respective phases.

b. The implementation plan must clearly indicate how staff and other resources (such as consultants, project advisory board) will be utilized for each of the major activities.

c. A concise discussion of the coordination and administration issues related to the program strategy and how the grantee's organizational structure and management strategy would address these issues.

2. Applicants must develop a detailed time-task plan for the first 18 month budget period, clearly identifying major milestones related to each phase. This must include designation of organizational and staff responsibility, and a schedule for the completion of the tasks and products identified in Section IV. In preparing the time task plan, applicants should be mindful of the OMB Clearance procedures pursuant to 5 CFR part 1320, Controlling Paperwork Burdens on the Public.

D. Program Budget

Applicants shall provide an 18-month budget with a detailed justification for the first budget period for all costs by object class category as specified in the SF 424. Costs must be reasonable and the bases for these costs must be well documented in the budget narrative. Applications submitted by co-applicants and/or those containing contract(s) must include detailed budgets and budget narratives for each organization's expenses. The applicant must also budget for the costs of convening at least three project advisory board meetings during the initial budget period.

Applicants must also estimate the costs to complete the remaining stages of the program (and any recurring activities, such as preparing the bi-annual Report to the Nation on Juveniles as Victims and Offenders) by stage for each track. Cost estimates should be broken down into two subsequent budget periods of 18 months and 24 months each. These estimates must be recorded on Section E, Budget Estimates of Federal Funds, on the SF 424.

VIII. Procedures and Criteria for Selection

In general, all applications received will be reviewed in terms of their responsiveness to this solicitation and the specific program application requirements set forth in Section VII. Applications will be evaluated by a peer review panel in a meeting according to the OJJDP Competition and Peer Review Policy, 28 CFR part 34, subpart B, published August 2, 1985, at 50 FR 31366–31367. Site visits may be conducted by peer review panelists and/or OJJDP staff to verify information provided by the applicant(s) ranked through peer review as best qualified for further consideration.

Specifically, applications will be rated according to the following criteria and point values (weights):

A. The Problem to be Addressed by the Project is Clearly Stated. This criterion includes a clear, concise, well justified statement of the problem, and evidence of knowledge of relevant literature, potential impediments to and opportunities for establishing a national statistical program on juveniles as victims and offenders and the justice system response. The applicant demonstrates knowledge of the need for, as well as the problems and issues related to, the development of statistical programs and prototypical decision-making and management information systems. (10 Points)

B. The Objectives of the Proposed Project are Clearly Defined. This criterion includes a clear and definitive statement of applicant's understanding of the goals and objectives of the overall program as well as both the national statistics and the systems development tracks. Special attention will be paid to the applicant's articulation of the anticipated benefits of this program for the field. (10 Points)

C. The Project Design is Sound and Contains Program Elements Directly Linked to the Achievement of Project Objectives. This criterion includes—appropriateness, conceptual clarity and technical adequacy of the approach to the activities and products of each stage of the program for meeting the goals and objectives; and potential utility of proposed products. (30 Points)

D. The Project Management Structure is Adequate to the Successful Conduct of the Project. (Total 30 Points) This criterion includes:

(1) adequacy and appropriateness of the project management structure and activities specified in the project implementation plan, and the feasibility of the time-task plan. (15 Points)

(2) the qualifications of staff identified to manage and implement the program including research team staff, project advisory board members, and working group members. This criterion also includes the clarity and appropriateness of position descriptions, required qualifications and staff selection criteria relative to the specific functions set out in the project implementation plan. (15 Points)

E. Organizational Capability is Demonstrated at a Level Sufficient to Successfully Support the Project. This criterion includes the extent and quality of organizational experience in juvenile justice research and statistics and in the development, delivery and coordination of large, multi-site programs to improve

the efficiency and effectiveness of juvenile justice decision-making. (10 Points)

F. Budgeted Costs are Reasonable, Allowable and Cost Effective for the Activities Proposed to be Undertaken. This criterion includes completeness, reasonableness, appropriateness and cost-effectiveness of the proposed costs, in relationship to the proposed strategy and tasks to be accomplished. (10 Points)

Applications will be evaluated by a peer review panel. The results of peer review will be a relative aggregate ranking of applications in the form of "Summary of Ratings." These will be based on numerical values assigned by individual peer reviewers. Peer review recommendations, in conjunction with the results of internal review and any necessary supplementary reviews, will assist the Administrator in considering competing applications and in selection of the application for funding. The final award decision will be made by the OJJDP Administrator.

IX. Submission of Applications

All applicants responding to this solicitation should be aware of the following requirements for submission:

1. Organizations which plan to respond to this announcement are requested to submit written notification of their intent to apply to OJJDP by October 15, 1989. Such notification should specify: the name of the application organization, mailing address, telephone number, and primary contact person. In the event that organizations intend to apply as co-applicants, each of the coapplicants are to provide the above information. The submission of this notification is requested to assist OJJDP in estimating the workload associated with the review of applications and for notifying potential applications of any supplemental information related to the preparation of their applications. OJJDP plans to convene an applicant's conference to provide guidance to prospective applicants on any aspect of this program and notification of meeting will be mailed to those who have submitted a letter of intent to apply.

2. Applicants must submit the original signed application and four copies to OJJDP. The necessary forms for applications (Standard Form 424) will be provided upon request. Applications must be received by mail or hand delivered to the OJJDP by 5:00 p.m. e.s.t. on January 15, 1990. Those applications sent by mail should be addressed to Research and Development Program: Juvenile Justice Statistics Resource and Development Program, Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice, 633 Indiana Avenue, NW., Washington, DC 20531. Hand delivered applications must be taken to the OJJDP, Room 782, 633 Indiana Avenue, NW., Washington, DC between the hours of 8:00 a.m. and 5:00 p.m. except Saturdays, Sundays or Federal holidays. No application materials that are delivered after the deadline date will be considered.

X. Civil Rights Compliance

A. All recipients of OJJDP assistance including any contractors, must comply with the non-discrimination requirements of the Juvenile Justice and Delinquency Prevention Act of 1974 as amended: Title VI of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973 as amended; Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; and the Department of Justice Non-Discrimination Regulations (28 CFR part 42, subparts C, D, E, and G).

B. In the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin or sex against a recipient of funds, the recipient will forward a copy of the finding to the Office of Civil Rights Compliance (OCRC) of the Office of Justice Programs.

C. Applicants shall maintain such records and submit to the OJJDP upon request timely, complete and accurate data establishing the fact that no person or persons will be or have been denied or prohibited from participation in benefits of, or denied or prohibited from obtaining employment in connection with any program activity funded in whole or in part with funds made available under this program because of their race, national origin, sex, religion, handicap or age. In the case of any program under which a primary recipient of Federal funds extend financial assistance to any other recipient or contracts with any other person(s) or group(s), such other recipient, person(s) or group(s) shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to assure its civil rights compliance obligations under any award.

Terrence S. Donahue,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 89-23229 Filed 9-28-89; 8:45 am]

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federal register

Friday
September 29, 1989

Part XIII

Environmental Protection Agency

40 CFR Part 35

State and Local Assistance; Interim Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 35

[FRL-3622-3]

State and Local Assistance

AGENCY: Environmental Protection Agency.

ACTION: Interim final rule.

SUMMARY: The Environmental Protection Agency (EPA) is promulgating an interim final rule on the award of financial assistance under the Safe Drinking Water Act as amended (SDWA) for the Public Water Systems Supervision (PWSS) Program. This rule amends 40 CFR 35.115(e) by providing that to the extent fiscal year appropriations for the PWSS program beginning after fiscal year 1989 exceed the amount of the fiscal year 1989 appropriation, States will no longer be guaranteed a 1% minimum share of such excess. Instead, States, other than insular areas, will receive an allotment of 1% of an amount equivalent to the FY 1989 appropriation plus, if there is an excess, a proportionate share of the excess based upon the grant formula in effect for fiscal years after fiscal year 1989.

Additionally, this rule amends 40 CFR 35.115(e) to add the Trust Territory of the Pacific Islands (Republic of Palau) to those States which may be allotted less than 1% of the total annual appropriation for fiscal years after fiscal year 1989. Palau's allotment (and that of the other insular areas) shall be a minimum of ⅓% of the FY 1989 appropriation plus, if there is an excess, a proportionate share of the excess based upon the grant formula in effect for fiscal years after fiscal year 1989.

DATES: *Effective Date:* This interim final rule is effective on September 29, 1989. *Comments:* EPA will accept public comments on this rule until October 30, 1989.

ADDRESS: Comments may be mailed to Mr. Craig Damron, Office of Drinking Water (WH-550E), U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460.

The docket for this rule and copies of the public comments submitted will be available for public inspection and copying at a reasonable fee at EPA Headquarters Library, Public Information Reference Unit, Room 2904, 401 M Street SW., Washington, DC 20460. Telephone (202) 382-5926.

FOR FURTHER INFORMATION CONTACT: Mr. Craig Damron (202) 382-5556.

SUPPLEMENTARY INFORMATION:

Background:

The Safe Drinking Water Act of 1974 as amended in 1986 (Pub. L. 99-339, June 19, 1986) provides for the safety of drinking water supplies throughout the United States, and its territories, by requiring establishment and enforcement of national primary drinking water regulations under the Public Water System Supervision (PWSS) Program. The Act provides EPA with the authority to provide financial assistance to States to support their drinking water programs through Federal grants awarded annually out of appropriated funds for each fiscal year.

The dollar amount of Federal grant assistance for which each State has been eligible has been determined by applying a grant formula, consisting of a number of weighted factors, to the amount of grant dollars appropriated for the specific fiscal year. Since fiscal year 1980, the factors comprising the grant formula are population (weight factor 30%), land area (weight factor 10%), the number of community water systems (weight factor 48%), and the number of non-community water systems (weight factor 12%) (44 FR 7143, February 6, 1979). The SDWA directs that no State or Territory allotment, except Guam, American Samoa, and the Virgin Islands, shall be less than 1% of the total annual grant appropriation unless EPA reduces such percentage by regulation, which it has not done until today's rulemaking. For example, if the total appropriation for a fiscal year was $33,450,000 (as is the case for FY 1989), then no State or Territory allotment, except for Guam, American Samoa, or the Virgin Islands, could be less than $334,500, regardless of what amount was computed by the weighted factors. Although no minimum was established by Congress for Guam, American Samoa, or the Virgin Islands, EPA previously has determined that these territories' allotments shall be not less than ⅓%. Additionally, EPA previously has determined that the allotment for the Northern Mariana Islands also shall be not less than ⅓%.

By this rule EPA is no longer guaranteeing States a 1% minimum share of the amount that fiscal year appropriations for the PWSS program exceed the fiscal year 1989 appropriation. Instead, States will receive an allotment of 1% of an amount equivalent to the FY 1989 appropriation plus, if there is an excess, a proportionate share of the excess based upon the grant formula in effect for fiscal years after fiscal year 1989.

By this rule EPA also is adding the Trust Territory of the Pacific Islands (Republic of Palau), which is included in the term "State" under section 1401(13) of the SDWA, to those States which may be allotted less than 1% of the total annual appropriation for fiscal years after fiscal year 1989. For PWSS grants the Trust Territory of the Pacific Islands has consisted of Micronesia, the Marshall Islands and Palau; its minimum annual allotment has been 1%. The Trust Territory of the Pacific Islands now only consists of the Republic of Palau as the other two have entered into a relationship of Free Association with the United States. EPA, pursuant to section 104(c) of the Compact of Free Association, Approval (Pub. L. 99-658), has phased out funding for the Federated States of Micronesia and the Marshall Islands for FY 1989. EPA has determined as a matter of policy that the Republic of Palau's allotment shall be a minimum of ⅓% of the FY 1989 appropriation plus, if there is an excess, a proportionate share of the excess based upon the grant formula in effect for fiscal years after fiscal year 1989. If Palau adopts the Compact, its grant funding will be phased out in a manner similar to that used for the Federated States of Micronesia and the Marshall Islands.

I. Rationale for Change

EPA is initiating this rule change to achieve a more equitable distribution of grant resources to the States because there is a great disparity of funding caused by the 1% minimum requirement. Although every State must shoulder increased workload to meet new Federal drinking water mandates, the "minimum" States in FY 1989 are receiving an average of nearly three times as many grant dollars per public water system as do the non-minimum States. EPA believes that 1% of the FY 1989 appropriation is a reasonable allotment to operate effective State drinking water programs. If future fiscal year appropriations increase after fiscal year 1989, EPA will provide that every State share any increase proportionately based upon the grant formula in effect in such fiscal years.

In FY 1988, EPA's Inspector General's (IG) Office conducted an audit for certain program areas within the Office of Drinking Water (Report of Audit-Elhw7-03-0171-81928—Non-Community Water System Program). One of its concerns centered upon the PWSS grant allocation formula and, specifically, the required 1% minimum allotment of appropriated funds per State. Its audit concluded that the 1% minimum exceeded an acceptable base level, considering the limited amount of

Federal funds. The IG recommendation was that EPA should issue regulations, as allowed by the SDWA, reducing the 1% minimum funding for all States, in order to direct more of the available funds to the States with the greatest need.

The Assistant Administrator for Water advised the IG that other alternatives to the 1% minimum funding for States would be considered, along with the possibility of revising the factor weights. The preamble and the regulation promulgated today reflect the Agency's decision concerning these matters.

II. Changes in Formula

40 CFR 35.115(e), Public Water System Supervision Allotment (Safe Drinking Water Act, section 1443(a)), currently provides that a State's allotment is to be based upon the State's population, geographic area, numbers of community and non-community water systems, and other relevant factors. However, no State except American Samoa, Guam, the Northern Mariana Islands, or the Virgin Islands may be allotted less than 1% of the total.

The PWSS grant formula for FY 1990 and beyond reflects several changes from the fiscal year 1989 formula. The first modification requires changing the regulatory provision cited above dealing with the minimum allotment available to States. In previous years the minimum was 1% of the annual PWSS appropriation. After careful consideration of many State and EPA viewpoints expressed on this subject, EPA has determined that a more equitable allotment of resources would be to guarantee States an allotment of 1% of the FY 1989 appropriation, except for American Samoa, Guam, the Northern Mariana Islands, the Virgin Islands, and the Trust Territory of the Pacific Islands which shall each receive a minimum of ⅓% of the FY 1989 appropriation plus, if there is an excess, a proportionate share of the excess based upon the grant formula in effect for fiscal years after fiscal year 1989. If the appropriations increase above the FY 1989 level ($33,450,000), then any increase would be allotted to the States and insular areas by grant formula in effect for fiscal years after fiscal year 1989. States would not be guaranteed a 1% minimum of the entire annual appropriation. Insular areas would not be guaranteed a ⅓% minimum of the entire annual appropriation. All State and insular area allotments would increase if an increase in the PWSS grant appropriation for FY 1990 occurs. Should there be a decrease in the annual appropriation below the FY 1989 level, the 1% minimum would remain in effect. In such event, States would receive a minimum allotment of 1% of the annual appropriation except for American Samoa, Guam, the Northern Mariana Islands, the Virgin Islands, and the Trust Territory of the Pacific Islands which would each receive a minimum of ⅓%.

The second modification to the grant formula, which does not require a revision to 40 CFR subpart A, concerns the factor weights. The current PWSS grant formula consists of four weighted factors:

(1) Number of Community Water Systems (48%)
(2) Number of Non-Community Water Systems (12%)
(3) Population (30%)
(4) Land Area (10%)

EPA has concluded that for fiscal years beginning after FY 1989 it is appropriate to revise the grant formula to reflect the following weights and factors:

(1) Number of Community Water Systems (56%)
(2) Number of Non-Community Water Systems (14%)
(3) Population (20%)
(4) Land Area (10%)

A study conducted for the Office of Drinking Water in 1988 was designed to determine whether the current grant formula adequately reflected the existing State workloads. The study concluded that where States had equivalent population totals, those with more public water systems had the greater workload. The study also concluded that the ratio of State resources required for a community water system (CWS) versus a non-community water system (NCWS) should remain at 4 to 1. The study recommended that more emphasis be placed upon the number of public water systems within the State, and less emphasis on the population totals within the State. EPA has decided to adopt those recommendations. As a result, the weighting factor for population is being reduced from 30% to 20%. The weighting factor for a CWS is being increased from 48% to 56% and the weighting factor for a NCWS is being increased from 12% to 14%. The weighting factor for land area remains unchanged at 10%.

The final modification concerns the treatment of non-transient, non-community Water Systems (NTNCWS). A NTNCWS is a public water system that is not a CWS and regularly serves at least 25 of the same persons over six months per year. These systems used to be classed simply as NCWSs and were subject to very few regulatory requirements. As EPA promulgates new and revised National Primary Drinking Water Regulations over the next few years, the NTNCWSs will be subject to many more requirements than will other NCWSs. State oversight efforts will necessarily shift as the NTNCWSs become subject to more of the drinking water regulations over the coming years. EPA believes that the grant allotment formula should reflect this shift in oversight and should change the grant weighting of the NTNCWSs from the current NCWS to that of a CWS. EPA plans to phase in this weighting shift over the next three years. For each State in FY 1990, one-third of its NTNCWSs will be weighted as a CWS, and two-thirds will be weighted as a NCWS. In FY 1991, two-thirds of the NTNCWSs will be weighted as a CWS, and one-third as a NCWS. By FY 1992, all NTNCWSs will be weighted as a CWS.

III. Effective Date

This regulation is effective September 29, 1989. The sole purpose of this rule is to codify policies and procedures for financial assistance awarded by EPA under the SDWA. Accordingly, this is a grants-related rule and the Administrative Procedure Act, 5 U.S.C. 553(a), does not require that it be published, in proposed form, prior to promulgation.

IV. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a new regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. These amendments do not satisfy any of the criteria the Executive Order specifies for major rulemaking. Therefore, this is not subject to a Regulatory Impact Analysis.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any comments from OMB and EPA response to those comments are available for public inspection at the EPA Public Information Reference Unit, Room 2904, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

V. Paperwork Reduction Act

There are no information collection requirements contained in this rule, as defined by the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

VI. Regulatory Flexibility Act

EPA did not develop a Regulatory

Flexibility Analysis for this regulation because interim final grant regulations are not subject to the analytical requirements of sections 603 and 604 of the Regulatory Flexibility Act.

Dated: September 22, 1989.

William K. Reilly,

Administrator.

List of Subjects in 40 CFR part 35

Administrative practices and procedures, Grant programs—environmental protection, Indians, Intergovernmental relations, Reporting and record keeping requirements, and Water supply.

Therefore, For the reasons set out in the preamble, title 40, chapter I, subchapter B, part 35 of the Code of Federal Regulations, is amended as follows:

PART 35—STATE AND LOCAL ASSISTANCE

1. The authority citation for part 35, subpart A is revised to read as follows:

AUTHORITY: Secs. 105 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7405 and 7601(a); Secs. 106, 205(g), 205(j), 208, 319, 501(a), and 518 of the Clean Water Act, as amended (33 U.S.C. 1256, 1285(g), 1285(j), 1288, 1361(a) and 1377); secs. 1443, 1450, and 1451 of the Safe Drinking Water Act (42 U.S.C. 300j–2, 300j–9 and 300j–11); secs. 2002(a) and 3011 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6912(a), 6931, 6947, and 6949); and secs. 4, 23, and 25(a) of the Federal Insecticide, Fungicide and Rodenticide Act, as amended (7 U.S.C. 136(b), 136(u) and 136w(a).

2. Section 35.115 is amended by revising paragraph (e) to read as follows:

§ 35.115 State allotments and reserves.

* * * * *

(e) *Public Water System Supervision Allotment* (Safe Drinking Water Act, section 1443(a)): The State's population, geographic area, numbers of community and non-community water systems, and other relevant factors. However, no State, except American Samoa, Guam, the Northern Mariana Islands, the Virgin Islands, or the Trust Territory of the Pacific Islands may be allotted less than one percent of the total, except that for fiscal years beginning after fiscal year 1989, to the extent that fiscal year appropriations exceed the amount of fiscal year 1989 appropriations, States shall share in any excess based upon the grant formula in effect for such fiscal years.

* * * * *

[FR Doc. 89–23011 Filed 9–29–89; 11:15 am]

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H.R. 2136/Pub. L. 101-97

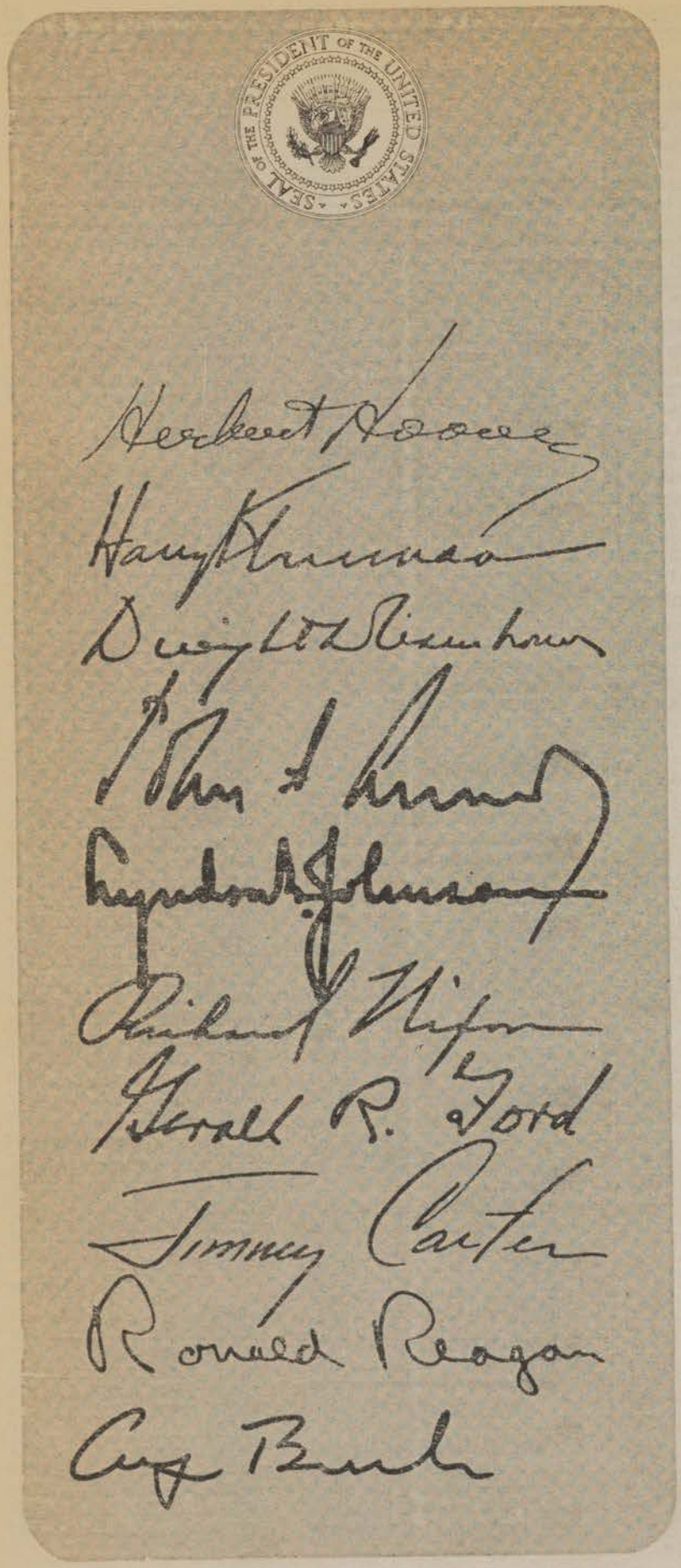
District of Columbia Civil Contempt Imprisonment Limitation Act of 1989. (Sept. 23, 1989; 103 Stat. 633; 3 pages) Price: $1.00

H.J. Res. 133/Pub. L. 101-98

Designating the week beginning September 17, 1989, as "Emergency Medical Services Week." (Sept. 26, 1989; 103 Stat. 636; 1 page) Price: $1.00

S. 1075/Pub. L. 101-99

To authorize appropriations for the American Folklife Center for fiscal years 1990, 1991, and 1992. (Sept. 26, 1989; 103 Stat. 637; 1 page) Price: $1.00



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