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# federal register

Friday
October 27, 1989

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# federal register

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For information on briefings in San Francisco, CA, and Seattle, WA, see announcement on the inside cover of this issue.

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**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.

### SAN FRANCISCO, CA

**WHEN:** November 29; at 9:00 a.m.
**WHERE:** Room 15138,
450 Golden Gate Avenue,
San Francisco, CA.
**RESERVATIONS:** Call Mary Walters at the San Francisco Federal Information Center,
415–556–6600.

### SEATTLE, WA

**WHEN:** November 30; at 1:00 p.m.
**WHERE:** South Auditorium, 4th Floor,
915 2nd Avenue,
Seattle, WA.
**RESERVATIONS:** Call Carmen Meler or Peggy Groff at the Portland Federal Information Center on the following numbers:
Seattle: 206–442–0570,
Tacoma: 206–383–7970,
Portland: 503–326–2222.

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**Separate Parts In This Issue**



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**Reader Aids**
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

## CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

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# Presidential Documents

Title 3—

The President

**Proclamation 6054 of October 25, 1989**

## Polish American Heritage Month, 1989

By the President of the United States of America

A Proclamation

This month, we Americans honor the millions of men and women of Polish descent who have helped build our Nation and keep it strong and prosperous. Many important chapters in American history—and even the story of hope now unfolding in their ancestral homeland—provide moving testimony to the faith, courage, and hard work of Polish Americans.

During the Revolutionary War, courageous Poles such as General Casimir Pulaski and Tadeusz Kosciuszko helped to win the American struggle for independence. These two men clearly understood that liberty is the God-given right of all men, and the cause of freedom is universal. Like many of their contemporaries, they knew that the hopes of freedom-loving peoples around the world were invested in our Nation's great experiment in self-government.

Today, we pay tribute to the millions of Polish immigrants who—even though they arrived in this country with little more than the clothes on their backs—have built strong families and thriving communities across the United States. With great faith in God and in America's promise of freedom and opportunity for all, they have worked with pride and diligence. All of us have been enriched by their success.

Polish Americans have not only prospered, they have also become responsible citizens and true patriots. Many Polish Americans were among the thousands of men and women who served our Nation with distinction during World Wars I and II. As we gratefully remember their courage and selflessness, we also recall the contributions of our Polish allies in the defeat of Nazi Germany.

Throughout our Nation's history, the people of the United States and Poland have been united not only by cultural and familial ties, but also by our common love for freedom and representative government. Poland's history chronicles the struggles of a people who would not be deterred in their fight for liberty and the right to self-determination. The Polish Constitution of May 3, 1791, drafted only a few years after our Nation's own, was one of the first written national constitutions in the world. Its creation vividly demonstrated the Poles' determination to secure a free and just system of government.

Despite years of repression by ruling officials, military invasion by Nazi Germany and the Soviet Union in 1939, and the declaration of martial law in 1981, that resolve has remained unshaken. Indeed, after years of struggle and sacrifice, the persistence of the Polish people is finally being rewarded. For the first time since World War II, Poland is being led by a non-Communist government.

Today, all Americans join their friends and neighbors of Polish descent in celebrating recent political reforms in Poland, for these changes represent even more than a great victory for the Polish people—they also bear witness to the power of faith and the triumph of democratic ideals.

The Congress, by Public Law 101–64, has designated October 1989 as "Polish American Heritage Month" and has authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim October 1989 as Polish American Heritage Month. I urge all Americans to join their fellow citizens of Polish descent in observance of this month.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fifth day of October, 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.

George Bush

[FR Doc. 89-25536
Filed 10-25-89; 4:27 pm]
Billing code 3195-01-M

# Presidential Documents

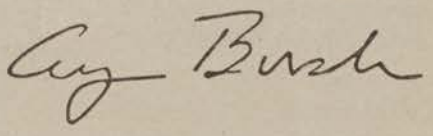
**Presidential Determination No. 90–1 of October 5, 1989**

## Determination Pursuant to Section 620E(e) of the Foreign Assistance Act of 1961, as Amended

**Memorandum for the Secretary of State**

Pursuant to Section 620E(e) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2375(e), I hereby certify that Pakistan does not possess a nuclear explosive device and that the proposed United States assistance program will reduce significantly the risk that Pakistan will possess a nuclear explosive device.

You are authorized and directed to publish this determination and certification in the **Federal Register.**



THE WHITE HOUSE,
*Washington, October 5, 1989.*

[FR Doc. 89–25509
Filed 10–25–89; 2:46 pm]
Billing Code 3195–01–M

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 910

**[Lemon Regulation 689]**

### Lemons Grown in California and Arizona; Limitation of Handling

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** Regulation 689 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 310,160 cartons during the period October 29 through November 4, 1989. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

**DATES:** Regulation 689 (7 CFR part 910) is effective for the period October 29 through November 4, 1989.

**FOR FURTHER INFORMATION CONTACT:** Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 475–3861.

**SUPPLEMENTARY INFORMATION:** 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 has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action 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 Agricultural Marketing Agreement 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 subject to regulation under the lemon marketing order and approximately 2500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose average gross annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR part 910), regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601–674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee (Committee) and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the California-Arizona lemon marketing policy for 1989–90. The Committee met publicly on October 24, 1989, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and unanimously recommended a quantity of lemons deemed advisable to be handled during the specified week. The Committee reports that overall demand for lemons is good.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declare purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

### 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.

**§ 910.989 [Amended]**

2. Section 910.989 is added to read as follows:

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

**§ 910.989 Lemon Regulation 689.**

The quantity of lemons grown in California and Arizona which may be handled during the period October 29, 1989, through November 4, 1989, is established at 310,160 cartons.

Dated: October 25, 1989.

**William J. Doyle,**

*Acting Director, Fruit and Vegetable Division.*

[FR Doc. 89–25496 Filed 10–26–89; 8:45 am]
BILLING CODE 3410–02–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 89–NM–94–AD; Amendment 39–6374]**

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

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to Airbus Industrie Model A300, A310, and A300–600 series airplanes, which requires repetitive inspections of the nose landing gear (NLG) barrel for cracks, and repair, if necessary; and requires eventual modification of the NLG barrel, which terminates the need for the repetitive inspections. This amendment is prompted by results of the manufacturer's fatigue testing, which revealed cracks in the lower area of the NLG barrel. This condition, if not corrected, could lead to collapse of the nose landing gear.

**EFFECTIVE DATE:** December 4, 1989.

**ADDRESSES:** The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Greg Holt, Standardization Branch, ANM–113; telephone (206) 431–1918. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to certain Airbus Industrie Model A300, A310 and A300–600 series airplanes, which requires repetitive inspections of the nose landing gear (NLG) for cracks, and repair, if necessary; and requires eventual modification of the NLG barrel, which terminates the need for the repetitive inspections; was published in the **Federal Register** on July 13, 1989 (54 FR 29577).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Two comments were received in response to the proposal.

One commenter questioned the need for the rule since the referenced service bulletins will become a part of the Significant Structural Inspection Program (SSIP). The FAA acknowledges that the service bulletins may be part of the SSIP; however, the SSIP document is under preparation and its date of issuance is not known. Once the SSIP is finalized and issued, the FAA may consider further, separate rulemaking to address it. Since some operators may currently have airplanes which are approaching the specified number of cycles where the actions described in the service bulletins are necessary, the FAA has determined that it is appropriate to proceed with this rulemaking to require those actions.

One commenter requested that Airbus Service Bulletin A300–32–385, Revision 1, be reflected in the rule, since it describes procedures for the installation of a reinforced nose landing gear and does not require repetitive inspections of the lower section. The FAA agrees that the procedures specified in that service bulletin should be made mandatory, but does not concur that they need to be a part of this AD. That service bulletin, along with Service Bulletins A300–32–6022 and A310–32–2039, is addressed in French Airworthiness Directive 88–185–090, and the FAA has issued a separate proposed AD, Docket Number 89–NM–118–AD, which was published in the **Federal Register** on July 26, 1989 (54 FR 31047), addressing these service bulletins. After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 90 airplanes of U.S. registry will be affected by this AD, that it will take approximately 5 manhours per airplane to accomplish the required inspections, and that the average labor cost will be $40 per manhour. It will require approximately 11 manhours to accomplish the modification at an average labor charge of $40 per manhour and $2,500 parts cost per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $282,600.

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

For the reasons discussed above, I certify that this action (1) is not a "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) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### Adoption of the Amendment

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

## PART 39—[AMENDED]

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

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

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Airbus Industrie:** Applies to Model A300, A310, and A300–600 series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent collapse of the nose landing gear, accomplish the following:

A. Perform an ultrasonic inspection of the nose landing gear barrel, in accordance with Airbus Industrie Service Bulletin A300–32–388, Revision 1, dated January 24, 1989 (for Model A300 series airplanes); A310–32–2040, dated July 15, 1988 (for Model A310 series airplanes); or A300–32–6023, dated July 15, 1988 (for Model A300–600 series airplanes); as follows:

1. For airplanes with nose landing gears having less than 11,500 cycles accumulated as of the effective date of this AD, perform the inspection prior to the accumulation of 12,000 cycles.

2. For airplanes with nose landing gears with 11,500 or more cycles accumulated as of the effective date of this AD, perform the inspection within 500 cycles or 3 months after the effective date of this AD, whichever occurs first.

B. If no ultrasonic echo is observed, or the echo amplitude is lower than or equal to ten percent (10%) of ultrasonic generator screen height, repeat the inspection required by paragraph A., above, at intervals not to exceed 1,250 cycles.

C. If an echo amplitude higher than ten percent (10%) and below eighty percent (80%) of ultrasonic generator screen height is observed during the inspection required by paragraphs A. and B., above, prior to further flight, perform a visual inspection to determine if the crack is visible, in accordance with Airbus Industrie Service Bulletin A300–32–388, A310–32–2040, or A300–32–6023, as appropriate.

Note: The above-listed service bulletins reference Messier-Hispano-Bugatti (MHB) Service Bulletin No. 470–32–641 for additional inspection instructions.

1. If no crack is visible from the outside of the barrel, repeat the visual inspection prior to each flight. Replace the nose landing gear barrel within 100 cycles after discovery of first echo, in accordance with Airbus Industrie Service Bulletin A300–32–389 (for Model A300 series airplanes), A310–32–2041 (for Model A310 series airplanes), or A300–32–6024 (for Model A300–600 series airplanes), each dated October 15, 1988, as appropriate. (Reference: MHB Service Bulletin 470–32–642.)

2. If a crack is visible from the outside of the barrel, replace the nose landing gear barrel prior to further flight, in accordance with Airbus Industrie Service Bulletin A300–32–389, A310–32–2041, or A300–32–6024, as appropriate. (Reference: MHB Service Bulletin 470–32–642.)

3. After replacement is accomplished, the repetitive inspections required by paragraphs A. and B., above, may be discontinued.

D. If an echo amplitude equal to or higher than eighty percent (80%) of ultrasonic generator screen height is observed during the inspections required by paragraphs A. and B., above, prior to further flight, perform a visual inspection to determine if the crack is visible, in accordance with Airbus Industrie Service Bulletin A300–32–388, A300–32–2040, or A310–32–6023, as appropriate. (Reference: MHB Service Bulletin 470–32–641).

1. If no crack is visible from the outside of the barrel, one ferry flight for return to the main base is allowed before the barrel must be replaced.

2. If a crack is visible from the outside of the barrel, the barrel must be replaced prior to further flight, in accordance with Airbus Industrie Service Bulletin A300–32–389, A310–32–2041, or A300–32–6024, as appropriate. (Reference: MHB Service Bulletin 470–32–642).

3. After replacement is accomplished, the repetitive inspections required by paragraphs A. and B., above, may be discontinued.

E. Within 18 months after the initial inspection for cracks, modify the nose landing gear barrel, in accordance with Airbus Industrie Bulletin A300–32–389, A310–32–2041 or A300–32–6024, as appropriate. (Reference: MHB Service Bulletin 470–32–642.)

F. The inspections required by paragraphs A. and B., above may be terminated following modification of the nose landing gear barrel, in accordance with Airbus Industrie Bulletin A300–32–389, A310–32–2041 or A300–32–6024, as appropriate. (Reference: MHB Service Bulletin 470–32–642.)

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

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

H. Special Flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective December 4, 1989.

Issued in Seattle, Washington, on October 18, 1989.

**Darrell M. Pederson,**

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

[FR Doc. 89–25332 Filed 10–26–89; 8:45 am]

BILLING CODE 4910–13–M

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## 14 CFR Part 39

**[Docket No. 89–NM–63–AD; Amendment 39–6376]**

## Airworthiness Directives; Boeing Model 747 Series Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which requires visual inspection of certain H–11 steel bolts for cracks or fracture, and replacement, if necessary; and eventual replacement of H–11 steel bolts with bolts made of Inconel 718 material. This amendment is prompted by reports of fracture or cracking of H–11 steel bolts at several critical locations. This condition, if not corrected, could result in severe structural damage.

**EFFECTIVE DATES:** December 4, 1989.

**ADDRESSES:** The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Dan R. Bui, Airframe Branch, ANM–120S; telephone (206) 431–1919. Mailing address: FAA Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Boeing Model 747 series airplanes, which would require visual inspection of certain H–11 steel bolts for cracks or fracture, and replacement, if necessary; and eventual replacement of H–11 steel bolts with bolts made of Inconel 718 material; was published in the **Federal Register** on June 6, 1989 (54 FR 24187).

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

The commenters requested that the proposed compliance period for bolt replacement be extended from 36 months to 48 or 60 months after the effective date of the final rule. One commenter noted that 60 months is recommended in the referenced Boeing service bulletin. Another commenter pointed out that 240 to 260 manhours per airplane are actually required for bolt replacement and a program of this magnitude should, therefore, only be scheduled during a heavy maintenance check (a period which would be beyond the proposed compliance time). The FAA agrees that the compliance period can be extended somewhat. Taking into account the 14 months that have elapsed since the release date of the service bulletin, the FAA has determined that the compliance period for bolt replacement may be extended to 48 months after the effective date of the AD, and that such an extension will not have a derogatory effect on safety as long as the repetitive inspections are continued. The final rule has been revised accordingly. Additionally, the economic impact information, below, has been revised to reflect 240 manhours as the number of manhours required to accomplish the actions required by this AD. The manufacturer has verified this figure.

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

adoption of the rule with the change previously described. This change will neither increase the economic burden on any operator, nor will it increase the scope of the rule.

There are approximately 648 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 165 airplanes of U.S. registry will be affected by this AD, that it will take approximately 240 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Parts are estimated at $7,000 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,739,000.

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

For the reasons discussed above, I certify that this action (1) is not a "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) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### Adoption of the Amendment

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

## PART 39—[AMENDED]

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

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

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Boeing:** Applies to Model 747 series airplanes, listed in Boeing Service Bulletin 747-51-2043, dated June 30, 1988, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent structural damage caused by cracked or fractured H-11 steel bolts, accomplish the following:

A. Prior to the accumulation of 4 years total time-in-service, or within the next 15 months after the effective date of this AD, whichever occurs later, visually inspect H-11 steel bolts for cracks or fractures, in accordance with Boeing Service Bulletin 747-51-2043, dated June 30, 1988, at the following locations:

1. Body landing gear inboard and outboard trunnion vertical support.
2. Wing landing gear beam upper chord to longeron attachment.
3. Wing landing gear beam lower chord to crease beam attachment.
4. Body station (BS) 2598 horizontal stabilizer hinge attachment.
5. BS 2598 longeron splice fitting attachment at stringers 11 and 23.
6. Fin to body attachment.
7. The horizontal stabilizer front spar jack screw attachment.

B. If a cracked or fractured bolt is found, replace with an Inconel 718 bolt, prior to further flight, in accordance with Boeing Service Bulletin 747-51-2043, dated June 30, 1988.

C. If a cracked or fractured bolt is found and if Inconel 718 bolts are unavailable, replace the cracked or fractured bolt with an H-11 steel bolt, prior to further flight, in accordance with Boeing Service Bulletin 747-51-2043, dated June 30, 1988. Repeat the visual inspection required by paragraph A., above, at intervals not to exceed 18 months.

D. If no cracking or fracture is found, repeat the visual inspection required by paragraph A., above, at intervals not to exceed 18 months.

E. Within the next 48 months after the effective date of this AD, replace all affected H-11 steel bolts with Inconel 718 bolts, in accordance with Boeing Service Bulletin 747-51-2043, dated June 30, 1988.

F. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

**Note:** The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

G. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective December 4, 1989.

Issued in Seattle, Washington, on October 18, 1989.

**Darrell M. Pederson,**

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

[FR Doc. 89-25331 Filed 10-26-89; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 39**

**[Docket No. 88-NM-212-AD; Amendment 39-6375]**

## Airworthiness Directives; Boeing Model 737-300 and -400 Series Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to Boeing Model 737-300 and -400 series airplanes, which requires revision of the engine operation procedures in icing conditions. This amendment is prompted by reports of an ice ingestion incident involving a Model 737-300 that resulted in a marked increase in the vibration levels of both engines. This condition, if not corrected, could jeopardize continued safe flight and landing.

**EFFECTIVE DATES:** December 4, 1989.

**ADDRESSES:** The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard N. Simonson, Propulsion Branch, ANM-140S; telephone (206) 431-1965. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Boeing Model 737-300 and -400 series airplanes, which requires incorporation

of Boeing Operations Manual Bulletin 737–300–89–1 or 737–400–89–1, as appropriate, into the Airplane Operations Manual, was published in the **Federal Register** on April 12, 1989 (54 FR 14657).

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

One commenter questioned the appropriateness of revising the Airplane Operations Manual by AD action, and stated that it would be more appropriate to withdraw the proposed rule and to issue an FAA Action Notice to the various principal operations inspectors (POI). The FAA disagrees. The mechanism that exists to rectify a finding by the FAA that an unsafe condition exists, is an amendment to Federal Aviation Regulations (FAR) part 39. In addition, under existing bilateral airworthiness agreements, the FAA is obligated to advise foreign airworthiness authorities of unsafe conditions relating to products produced in the United States, and the means of doing this is an amendment to FAR part 39. The effect of this AD is to ensure that flightcrews are advised of the potential hazard and of the procedures to address it.

One commenter stated that some of the information about damage to the engine due to ice ingestion in the DISCUSSION portion of the Notice was incorrect and should be revised prior to the issuance of a final rule. The FAA disagrees. A careful review of the preamble to the Notice confirms that the finding of the existence of an unsafe condition was related to a dual engine event which jeopardized continued safe flight and landing within the scope of FAR 25.901(c). The preamble also presented concerns in support of this finding, which remain valid even though they may not have played a part in the incident cited.

The same commenter stated that the wording of the purpose of the proposed AD should be revised to read: "To reduce the risk of jeopardizing continued safe flight and landing due to high indicated engine vibration while operating in icing conditions, or due to engine ice ingestion, accomplish the following." The FAA disagrees in that consideration must be given to the possibility that high engine vibration may not be the only threat to continued safe flight and landing associated with ice ingestion.

One commenter stated that test stand data show that blade shingling and ice accretion do not pose a threat to the engine, and that the statement in the preamble to the Notice which read, "the engines were not exposed to the maximum icing anticipated in service and that such exposure could cause extensive engine damage that would result in power loss in both engines," was not technically correct. The FAA disagrees. The fact that a given engine exhibits acceptable performance on a test stand does not imply that there is not a flight condition that is more severe than the test stand conditions. Whether the engine performance deteriorates or the flightcrew is inhibited from using that performance due to engine/airframe vibration, etc., is immaterial in terms of continued safe flight and landing. The possibility of an ice ingestion incident that results in extensive engine damage and performance deterioration must be considered by the FAA; this AD action accomplishes that.

One commenter noted that revisions to Boeing Operational Bulletins 737–300–89–1 and 737–400–89–1 were being prepared and should be specified in the final rule. As of this date, the FAA has neither received nor approved revisions to the above operations bulletins. If at some future date, revisions to these operations bulletins are generated, the FAA may consider them under the alternate means of compliance provision of paragraph B. of the final rule.

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

The FAA is currently considering further rulemaking to incorporate the warnings and procedures of Operations Manual Bulletin 737–300–89–1 and 737–400–89–1 into the Airplane Flight Manual (AFM) in order to make these procedures mandatory.

There are approximately 600 Model 737–300 and –400 series airplanes of the affected design in the worldwide fleet. It is estimated that 175 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 manhour per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $7,000.

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

For the reasons discussed above, I certify that this action (1) is not a "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) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

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

Air transportation, Aircraft, Aviation safety, Safety.

**Adoption of the Amendment**

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

**PART 39—[AMENDED]**

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

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

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Boeing:** Applies to Model 737–300 and –400 series airplanes, certificated in any category. Compliance required within 10 days after the effective date of this AD, unless previously accomplished.

To reduce the risk of jeopardizing continued safe flight and landing due to engine ice ingestion, accomplish the following:

A. Incorporate Boeing Operations Manual Bulletin 737–300–89–1 or 737–400–89–1, both dated February 14, 1989, as appropriate, into the Airplane Operations Manual.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

**Note:** The request should be forwarded through an FAA Principal Operations Inspector (POI), who will either concur or comment and then send it to the Manager, Seattle Aircraft Certification Office.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle,

Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective December 4, 1989.

Issued in Seattle, Washington, on October 18, 1989.

**Darrell M. Pederson**

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

[FR Doc. 89-25333 Filed 10-26-89; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 39**

**[Docket No. 89-ANE-20; Amendment 39-6345]**

## Airworthiness Directives; Allison Gas Turbine Division, General Motors Corporation, Allison Model 250-C28 Series Engines.

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new Airworthiness Directive (AD) which requires modification of the second stage turbine nozzle, P/N 689852, on certain Allison Model 250-C28 series engines. The AD is needed to prevent failure of the nozzle which causes rubbing contact with the second stage turbine wheel which could result in an uncontained turbine wheel failure.

**DATES:** *Effective* October 29, 1989.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 29, 1989.

*Compliance:* As indicated in the body of the AD.

**ADDRESSES:** The applicable Commercial Engine Bulletin (CEB) may be obtained from Allison Gas Turbine Division, General Motors Corporation, P.O. Box 420, Indianapolis, Indiana 46206-0420, or may be examined in the Regional Rules Docket, Room 311, Office of the Assistant Chief Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01830.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ty Krolicki, Chicago Aircraft Certification Office, Propulsion Branch, ACE-140C, Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018; telephone (312) 694-7032.

**SUPPLEMENTARY INFORMATION:** The FAA has determined that the second stage turbine nozzle, Part Number (P/N) 6898952, used on certain Allison Model 250-C28 series engines can fail at a brazed joint between the nozzle casting and the periphery of the nozzle diaphragm. Failure of the nozzle at this joint has led to instances of rubbing contact between the diaphragm and the second stage turbine wheel resulting in an uncontained failure of the wheel. Allison Commercial Engine Alert Bulletin CEB-A-72-2044 which corrects this problem by modifying the second stage turbine nozzle was issued as a standard CEB in 1980. A 1988 incident highlighted the fact that some unmodified turbine nozzles are still in service. It also showed that the life limit is not always adhered to. This may be partially attributable to the fact that life limits are somewhat uncommon for non-rotating engine parts.

Since this condition is likely to exist or develop on other engines of the same type design, an AD is being issued which requires modification and reidentification of the second stage turbine nozzle on certain Allison Model 250-C28 series engines. This AD does not address Allison Model 250-C30 series engines with the same design because the affected second stage turbine nozzles in those engines have already been removed from service in connection with other AD actions.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

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

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the rules docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the rules docket.

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

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

**Adoption of the Amendment**

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

**PART 39 [AMENDED]**

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

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

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive (AD):

**Allison Gas Turbine Division, General Motors Corporation (Allison, formerly Detroit Diesel Allison):** Applies to Allison Model 250-C28B and -C28C engines, with P/N 6898952 second stage turbine nozzle assembly, installed in aircraft certificated in any category except those with the following turbine assembly serial numbers:

| Engine model | Turbine serial number |
|---|---|
| 250-C28B | CAT 70498, CAT 70499, CAT 70502, CAT 70513 and subsequent |
| 250-C28C | CAT 28010 and subsequent |

Compliance is required as indicated, unless already accomplished.

To prevent failure of the second stage turbine nozzle which can lead to rubbing contact between the nozzle diaphragm and the second stage turbine wheel possibly resulting in an uncontained turbine wheel failure, accomplish the following:

(a) Within the next 100 hours time-in-service after the effective date of this AD, or at the next turbine repair or overhaul, whichever occurs first, but not later than November 30, 1989, perform the following:

Modify and reidentify second stage turbine nozzle, P/N 6898952, into P/N 23001942, in accordance with Allison Commercial Engine

Alert Bulletin CEB–A–72–2044, Revision 4, dated May 1, 1989.

Note.—Existing Model 250–C28B and –C28C engines which have incorporated Allison Commercial Engine Alert Bulletin CEB–A–72–2044, Revision 4, dated May 1, 1989, or prior issues of CEB–72–2044, or engines which have incorporated P/N 23001942 are already in compliance with this AD.

(b) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(c) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, an alternate method of compliance with the requirements of this AD or adjustments to the compliance schedule specified in this AD may be approved by the Manager, Chicago Aircraft Certification Office, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The second stage turbine nozzle modification shall be done in accordance with Allison Commercial Engine Alert Bulletin CEB–A–72–2044, Revision 4, dated May 1, 1989. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Allison Gas Turbine Division, General Motors Corporation, P.O. Box 420, Indianapolis, Indiana 46206–0420. Copies may be inspected at the Regional Rules Docket, Office of the Assistant Chief Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Room 311, Burlington, Massachusetts 01803, or at the Office of the Federal Register, 1100 L Street, NW., Room 8301, Washington, DC 20591.

This amendment becomes effective on October 29, 1989.

Issued in Burlington, Massachusetts, on September 18, 1989.

**Jay J. Pardee,**

*Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 89–25506 Filed 10–26–89; 8:45 am]

BILLING CODE 4910–13–M

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**14 CFR Part 39**

**[Docket No. 89–NM–89–AD; Amdt. 39–6372]**

## Airworthiness Directives; Empresa Brasileira de Aeronautica, S.A. (EMBRAER) Model EMB–120 Series Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to EMBRAER Model EMB–120 series airplanes, which requires the modification of the landing gear aural warning system in order to alert the crew on approach that the landing gear is not down. This amendment is prompted by two recent inadvertent gear-up landings, wherein the aural warning device did not sound. This condition, if not corrected, could result in an inadvertent gear-up landing.

**EFFECTIVE DATE:** December 1, 1989.

**ADDRESSES:** The applicable service information may be obtained from EMBRAER, 276 SW. 34th Street, Fort Lauderdale, Florida 33315. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. William H. Trammell, Aerospace Engineer, ACE–130A, FAA, Central Region, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349; telephone (404) 991–3020.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to EMBRAER Model EMB–120 series airplanes, which requires modification of the landing gear aural warning system, was published in the Federal Register on June 23, 1989 (54 FR 26388).

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

One commenter fully supported the rule.

One commenter requested that the compliance time be extended from the proposed 50 days to one year because of a parts availability problem. The FAA concurs that the compliance time may be extended somewhat. Upon further investigation, the FAA has determined that modification kits for Service Bulletin 120–032–00–55 are available, but there is a 16-week delivery time for the modification kits for Service Bulletin 120–032–0052. In view of the fact that the accidents that led to this action occurred over two years ago and were training flights involving simulation of aircraft emergencies, the FAA has determined that the compliance time may be extended to 180 days without adversely affecting safety. The final rule has been revised accordingly.

One commenter suggested that Service Bulletin 120–032–0052, which would inhibit warning above 1500 feet above ground level (AGL) may degrade the safety level of the current warning system and may not comply with Federal Aviation Regulations (FAR) 25.729(e)(2). The FAA does not concur, since inhibiting warning above 1,500 AGL is intended to remove nuisance warnings above a flight level which would permit ample time to lower the landing gear. This feature is currently approved on most large transport aircraft.

The manufacturer commented that the modification to the landing gear warning system described in EMBRAER Service Bulletin 120–032–0052 is essentially the same modification described in EMBRAER Service Bulletin 120–032–0055, but was offered as a production enhancement to operators who desire a radio altimeter feature capability. The commenter suggested that the rule be revised to require installation of the modification in accordance with Service Bulletin 120–032–0055, and that the modification in accordance with Service Bulletin 120–032–0052 be considered an equivalent means of compliance at the operators' discretion. After further review, the FAA concurs that both modifications are comparable as far as addressing the unsafe condition. Accordingly, paragraph A of the final rule has been revised to permit operators to modify the landing gear warning system in accordance with either service bulletin.

The manufacturer also noted that the cost for the modification specified in Service Bulletin 120–032–0052 is considerably more than the estimated cost stated in the economic analysis. After further review, the FAA concurs that a revision of the economic impact of this rule, as related to parts and labor costs, is warranted. Since the final rule has been revised to provide operators the option of modifying their airplanes in accordance with one of two different service bulletins, the costs related to each modification have been specified in the economic analysis paragraph, below.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes noted above. The FAA has determined that this change will neither increase the scope of the AD nor impose an additional economic burden on any operator.

It is estimated that 60 airplanes of U.S. registry will be affected by this AD. Accomplishing the modification in accordance with EMBRAER Service Bulletin 120–032–0055 will require approximately 24 manhours at an average labor cost of $40 per manhour, and $480 for required parts. Based on these figures, the total cost impact of the

AD on U.S. operators selecting this modification is estimated to be $1,440 per airplane. Accomplishing the modification in accordance with EMBRAER Service Bulletin 120–032–0052 will require approximately 50 manhours at an average labor cost of $40 per manhour, and $4,200 for required parts. Based on these figures, the total cost impact of the AD on U.S. operators selecting this modification is estimated to be $6,200 per airplane.

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

For the reasons discussed above, I certify that this action (1) is not a "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) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

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

Air transportation, Aircraft, Aviation safety, Safety.

**Adoption of the Amendment**

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

**PART 39—[AMENDED]**

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

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

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Empresa Brasileira de Aeronautica, S.A. (EMBRAER):** Applies to Model EMB–120 series airplanes; Serial numbers 120004, 120006 through 120070, 120072 through 120080, and 120082 through 120099; certificated in any category. Compliance is required within 180 days after the effective date of this AD, unless previously accomplished.

To prevent a gear-up landing due to malfunction of the landing gear aural warning system, accomplish the following:

A. Modify the landing gear aural warning system and calibrate new switches, in accordance with either EMBRAER Service Bulletin No. 120–032–0055 dated March 16, 1989, or EMBRAER Service Bulletin No. 120–032–0052, dated March 15, 1989.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Atlanta Aircraft Certification Office, FAA, Central Region.

**Note:** The request for an alternate means of compliance or an adjustment of compliance time should be forwarded through an FAA Maintenance Inspector, who will either concur or comment and then send it to the Atlanta Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to EMBRAER, 276 S.W. 34th Street, Fort Lauderdale, Florida 33315. These documents may be examined at the FAA Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the FAA, Central Region, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia.

This amendment becomes effective December 1, 1989.

Issued in Seattle, Washington, on October 17, 1989.

**Darrell M. Pederson,**

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

[FR Doc. 89–25330 Filed 10–26–89; 8:45 am]

BILLING CODE 4910–13–M

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**DEPARTMENT OF COMMERCE**

**Bureau of Export Administration**

**15 CFR Part 799**

**[Docket No. 90803–9203]**

## Editorial Corrections to the Commodity Control List: GFW Eligibility Paragraphs

**AGENCY:** Bureau of Export Administration, Commerce.

**ACTION:** Final rule.

**SUMMARY:** A number of recent revisions to the Export Administration Regulations amended certain entries in the Commodity Control List (CCL) by revising or eliminating the Advisory Notes for Country Groups QWY (the Soviet Bloc). These Advisory Notes describe items that are more likely to be approved for export to destinations in the Soviet Bloc. This final rule makes conforming changes related to the eligibility of such items for export to certain free world destinations under General License GFW.

Section 771.23 of the Export Administration Regulations permits exports, under General License GFW, of certain low level commodities to destinations listed in supplement Nos. 2 and 3 to part 773, except Ethiopia, Lebanon, and Nicaragua. Items eligible for export under General License GFW are described in certain Advisory Notes for Country Groups QWY. When a CCL entry contains items that are eligible for export under General License GFW, the "Controls for ECCN" section in that entry will include a "GFW Eligibility" paragraph identifying the Advisory Notes that describe the eligible items.

This rule does not amend any of the Advisory Notes that describe items eligible for export under General License GFW—it merely revises or eliminates a number of "GFW Eligibility" paragraphs to conform with recent revisions to the Advisory Notes. Accordingly, the "GFW Eligibility" paragraphs for Export Control Commodity Numbers (ECCNs) 1501A, 1510A, 1531A, 1533A, 1537A, 1555A, 1558A, 1565A, and 1567A are revised and the "GFW Eligibility" paragraphs for ECCNs 1091A, 1519A, 1548A, 1549A, and 1754A are removed.

**EFFECTIVE DATE:** This rule is effective October 27, 1989.

**FOR FURTHER INFORMATION CONTACT:** Willard Fisher, Regulations Branch, Bureau of Export Administration, Telephone: (202) 377–3856.

**SUPPLEMENTARY INFORMATION:**

**Rulemaking Requirements**

1. This rule complies with Executive Order 12291 and Executive Order 12661.

2. This rule does not involve a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and

604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. Section 13(a) of the Export Administration Act of 1979 (EAA), as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Therefore, this regulation is being issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Willard Fisher, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

**List of Subjects in 15 CFR Part 799**

Exports, Reporting and recordkeeping requirements.

Acordingly, part 799 of the Export Administration Regulations (15 CFR parts 730 through 799) is amended as follows:

1. The authority citation for 15 CFR part 799 continues to read as follows:

**Authority:** Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981, by Pub. L. 99–64 of July 12, 1985, and by Pub. L. 100–418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

**PART 799—[AMENDED]**

**Supplement No. 1 to § 799.1 [Amended]**

2. In supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group O (Metal-Working Machinery), ECCN 1091A is amended by removing the *GFW Eligibility* paragraph.

**Supplement No. 1 to § 799.1 [Amended]**

3. In supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1501A is amended by revising the *GFW Eligibility* paragraph, as follows:

**1501A Navigation, direction finding, radar and airborne communication equipment.**

* * * * *

**Controls for ECCN 1501A**

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*GFW Eligibility:* Commodities that meet technical specifications described in paragraphs (a) and (b) of the Advisory Note under this entry regardless of end-use, subject to the prohibitions contained in § 771.2(c).

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**Supplement No. 1 to § 799.1 [Amended]**

4. In supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1510A is amended by revising the *GFW Eligibility* paragraph, as follows:

**1510A Marine or terrestrial acoustic or ultrasonic systems or equipment specially designed for positioning surface vessels or underwater vehicles, or for detecting or locating underwater or subterranean objects or features, and specially designed components of such systems or equipment, including but not limited to hydrophones, transducers, beacons, towed hydrophone arrays, beamformers and geophones (except moving coil or moving magnet electro-magnetic geophones), except those systems or equipment listed below.**

* * * * *

**Controls for ECCN 1510A**

* * * * *

*GFW Eligibility:* Commodities that meet technical specifications described in Advisory Note 8 under this entry regardless of end-use, subject to the prohibitions contained in § 771.2(c).

* * * * *

**Supplement No. 1 to § 799.1 [Amended]**

5. In supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1519A is amended by removing the *GFW Eligibility* paragraph.

**Supplement No. 1 to § 799.1 [Amended]**

6. In supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1531A is amended by revising the *GFW Eligibility* paragraph, as follows:

**1531A "Frequency synthesizers" (and equipment containing such "frequency synthesizers").**

**Controls for ECCN 1531A**

* * * * *

*GFW Eligibility:* Commodities that meet technical specifications described in Advisory Note 2 under this entry regardless of end-use, subject to the prohibitions contained in § 771.2(c).

* * * * *

**Supplement No. 1 to § 799.1 [Amended]**

7. In supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1533A is amended by revising the *GFW Eligibility* paragraph, and by redesignating note 3 at the end of the ECCN entry as (Advisory) Note 3, as follows:

**1533A Signal analyzers (including spectrum analyzers), with any of the following characteristics, and specially designed components, and accessories therefore.**

**Controls for ECCN 1533A**

* * * * *

*GFW Eligibility:* Commodities that meet technical specifications described in Advisory Note 3 under this entry regardless of end-use, subject to the prohibitions contained in § 771.2(c).

* * * * *

**Supplement No. 1 to § 799.1 [Amended]**

8. In supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1537A is amended by revising the *GFW Eligibility* paragraph, as follows:

**1537A Microwave, including millimetric wave, equipment, including parametric amplifiers, capable of operating at frequencies over 1 GHz (other than microwave equipment controlled for export by ECCNs 1501A, 1517A, 1520A, or 1529A).**

**Controls for ECCN 1537A**

* * * * *

*GFW Eligibility:* Commodities that meet technical specifications described in Advisory Note 1 under this entry, regardless of end-use, subject to the prohibitions contained in § 771.2(c).

* * * * *

**Supplement No. 1 to § 799.1 [Amended]**

9. In supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1548A is amended by removing the *GFW Eligibility* paragraph.

**Supplement No. 1 to § 799.1 [Amended]**

10. In supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1549A is amended by removing the *GFW Eligibility* paragraph.

**Supplement No. 1 to § 799.1 [Amended]**

11. In supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1555A is amended by revising the *GFW Eligibility* paragraph, as follows:

**1555A Electron tubes and specially designed components therefor.**

**Controls for ECCN 1555A**

* * * * *

*GFW Eligibility:* Commodities that meet technical specifications described in Advisory Note 2 under this entry, regardless of end-use, subject to the prohibitions contained in § 771.2(c).

* * * * *

**Supplement No. 1 to § 799.1 [Amended]**

12. In supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1558A is amended by revising the *GFW Eligibility* paragraph, as follows:

**1558A Electronic vacuum tubes (valves) and cathodes and other components specially designed for those tubes.**

**Controls for ECCN 1558A**

* * * * *

*GFW Eligibility:* Commodities that meet technical specifications described in Advisory Note 3 under this entry regardless of end-use, subject to the prohibitions contained in § 771.2(c).

* * * * *

**Supplement No. 1 to § 799.1 [Amended]**

13. In supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1565A is amended by revising the *GFW Eligibility* paragraph and the *Special G–COM Note for Advisory Note 9* that follows Advisory Note 8, as follows:

**1565A Electronic computers, "related equipment", equipment or systems containing electronic computers; and specially designed components and accessories therefor.**

**Controls for ECCN 1565A**

* * * * *

*GFW Eligibility:* Commodities that meet technical specifications described in Advisory Notes 5, 7, or 9 under this entry regardless of end-use, subject to the prohibitions contained in § 771.2(c). With regard to Advisory Note 9, the limitations imposed by paragraphs (a)(3), (b)(5)(i) and (b)(5)(iii), (b)(6)(iii), (b)(7)(iv), (b)(7)(v), and (b)(7)(vi), (b)(8)(i), (b)(9), and (c) are waived. However, Winchester disk drives exceeding a capacity of 130 Mbytes ARE EXCLUDED from GFW eligibility.

* * * * *

**[Special G–COM Note for Advisory Note 9:** For the purposes of General License G–COM, the limitations imposed in Advisory Note 9 by paragraphs (a)(3), (b)(5)(i) and (b)(5)(iii), (b)(6)(iii), (b)(7)(iv), (b)(7)(v), and (b)(7)(vi), (b)(8)(i), (b)(9), and (c) are waived.]

* * * * *

**Supplement No. 1 to § 799.1 [Amended]**

14. In supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1567A is amended by revising the *GFW Eligibility* paragraph, as follows:

**1567A Stored program controlled communication switching equipment or systems, and specially designed components therefor the use of these equipment or systems.**

* * * * *

**Controls for ECCN 1567A**

* * * * *

*GFW Eligibility:* Commodities that meet technical specifications described in Advisory Notes 2 or 4 under this entry regardless of end-use, subject to the prohibitions contained in § 771.2(c).

* * * * *

**Supplement No. 1 to § 799.1 [Amended]**

15. In supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 7 (Chemicals, Metalloids, Petroleum Products and Related Materials), ECCN 1754A is amended by removing the *GFW Eligibility* paragraph.

Dated: October 23, 1989.

**James M. LeMunyon,**

*Deputy Assistant Secretary for Export Administration.*

[FR Doc. 89–25344 Filed 10–26–89; 8:45 am]

BILLING CODE 3510–DT–M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 117

**[CGD7–89–40]**

### Temporary Drawbridge Operation Regulations; Okeechobee Waterway, FL

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary rule.

**SUMMARY:** The Coast Guard is temporarily changing the regulations governing the Sanibel Causeway drawbridge at Punta Rassa, Florida, by changing the hours of the existing regulation to provide draw openings on 15-minute intervals. This temporary change is being made to ease severe traffic congestion caused by back to back openings and to further evaluate proposed permanent regulations.

**DATES:** These temporary regulations become effective October 14, 1989 and terminate on December 13, 1989. Comments are solicited during this 60-day temporary regulation period.

**ADDRESSES:** Comments should be mailed to Commander (oan), Seventh Coast Guard District, Brickell Plaza Federal Building, 909 SE. 1st Avenue, Miami, Florida 33131–3050. The comments and other materials referenced in this notice will be available for inspection and copying on the 4th Floor, of the Brickell Plaza Federal Building, 909 SE. 1st Ave, Miami, Florida. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays. Comments also may be hand-delivered to this address.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ian Mac Cartney (305) 536–4103.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in this evaluation by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgement that their comments have been received

should enclose a stamped, self-addressed postcard or envelope.

Prompt implementation is necessary to alleviate a severe vehicular traffic problem and to evaluate a proposed permanent rule. The Commander, Seventh Coast Guard District, will evaluate all communications received, the overall effect of this temporary regulation change, and determine if a permanent regulation change is necessary. Because this is a temporary change to normal operations, this amendment will not appear in the Code of Federal Regulations.

**Drafting Information**

The drafters of this notice are Mr. Ian Mac Cartney, Bridge Administration Specialist, project officer, and Lieutenant Commander D.G. Dickman, project attorney.

**Discussion of Temporary Regulations**

The Sanibel Causeway drawbridge presently opens on signal, except that, from 3:45 p.m. to 5:15 p.m., Monday through Friday, except Federal holidays, the draw need open only at 4:15 p.m. and 4:45 p.m. On Saturdays, Sundays and federal holidays from 3:45 p.m. to 5:15 p.m., the draw need open only at 4 p.m., 4:30 p.m., 4:45 p.m. and 5 p.m. Exempt vessels shall be passed at any time.

This change to 15 minute scheduled openings from 11 a.m. to 6 p.m., daily, is intended to space draw openings and virtually eliminate "back to back" openings which can contribute significantly to vehicular traffic delays during these periods.

**List of Subjects in 33 CFR Part 117**

Bridges.

**Temporary Regulations**

In consideration of the foregoing, part 117 of title 33, Code of Federal Regulations, is temporarily amended as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); 33 CFR 117.43.

2. For the period October 14, 1989 through December 13, 1989, § 117.317 is amended by revising paragraph (k) to read as follows:

**§ 117.317 Okeechobee Waterway.**

* * * * *

(k) *Sanibel Causeway bridge, mile 151 at Punta Rassa.* The draw shall open on signal; except that, from 11 a.m. to 6 p.m., daily, the draw need open only on the hour, quarter-hour, half-hour, and three-quarter hour. Exempt vessels shall be passed at any time.

Dated: October 17, 1989.

**Martin H. Daniell,**

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

[FR Doc. 89–25301 Filed 10–26–89; 8:45 am]

BILLING CODE 4910–14–M

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**33 CFR Part 165**

**[COTP Southeast Alaska Reg. 89–05]**

## Safety Zone Regulation; Cape Decision Light, Sumner Straits, Alaska

**AGENCY:** U.S. Coast Guard, Department of Transportation.

**ACTION:** Emergency rule.

**SUMMARY:** The Coast Guard is establishing a safety zone 500 yards in radius centered on Cape Decision Light, Kuiu Island, Alaska. The safety zone is required to protect the public from a safety hazard posed by possible hazardous chemical contamination (polychorinated biphenyl(PCB)/dioxin) in the immediate area of Cape Decision light. Entry into this zone is prohibited unless authorized by the Captain of the Port, Southeast Alaska.

**EFFECTIVE DATE:** This regulation becomes effective on October 15, 1989. It terminates on November 30, 1989, unless sooner terminated by the Captain of the Port, Southeast Alaska.

**FOR FURTHER INFORMATION CONTACT:** Lt. Rick Janelle at (907)586–7288, 7:30 a.m. to 4:00 p.m., Monday through Friday.

**SUPPLEMENTARY INFORMATION:** In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest due to the limited duration of this safety zone, the limited effect on commerce, and the need to take immediate action to prevent injury to personnel transiting the area.

**Drafting Information**

The drafters of this regulation are ENS Joan McQueeney, project officer for the Captain of the Port, and Lt. Hollis, project attorney for the Seventeenth Coast Guard District Legal Office.

**Discussion of Regulation**

The circumstances requiring this regulation resulted from a fire which destroyed the boathouse at Cape Decision Light. Stored inside the boathouse were a number of capacitors possibly containing PCB contaminated oil. Some of this oil may have burned in the fire, possible releasing dioxin, a carcinogenic by-product from the burning of PCB. If PCB/dioxin was released, the surrounding area may be contaminated, posing a substantial health hazard. A safety zone around the area is, therefore, necessary pending assessment and removal of any contamination.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Vessels, and Waterways.

**Regulation**

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

## PART 165—[AMENDED]

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

Authority: 33 U.S.C. 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. A new section is added to read as follows:

**§ 165. T 1705 Safety Zone: Cape Decision Light, Sumner Straits, Alaska.**

(a) *Location.* The safety zone is an area 500 yards in radius centered on the Cape Decision Light, located at Cape Decision, Kuiu Island in Sumner Straits, Alaska.

(b) *Effective Date.* This regulation became effective on October 15, 1989. It terminates on November 30, 1989, unless sooner terminated by the Captain of the Port, Southeast Alaska.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, Southeast Alaska.

Dated: October 15, 1989.

**R.J. Morris,**

*Lieutenant Commander, U. S. Coast Guard, Captain of the Port, Southeast Alaska.*

[FR Doc. 89–25302 Filed 10–26–89; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[COTP Phila., Pa Reg. 89-08]

## Safety Zone Regulations: Marcus Hook Anchorage, Mantua Creek Anchorage, and Deepwater Point Anchorage

**AGENCY:** Coast Guard, DOT.

**ACTION:** Emergency rule.

**SUMMARY:** The Coast Guard is establishing a safety zone on the Delaware River to include the Marcus Hook Anchorage (Anchorage 7), Mantua Creek Anchorage (Anchorage 9), and Deepwater Point Anchorage (Anchorage 6). The safety zone is needed to protect vessels from safety hazards associated with the laying of dredge pipeline in Marcus Hook Anchorage and to minimize temporary port congestion.

The Marcus Hook Anchorage north of Buoy "C" is closed from 8:00 a.m., October 21, 1989 to 8:00 a.m., October 28, 1989, or until completion of the pipelaying. Anchorage restrictions will apply to the Marcus Hook Anchorage south of Buoy "C", Mantua Creek Anchorage, and Deepwater Point Anchorage.

**EFFECTIVE DATES:** This regulation is effective from 8:00 a.m., October 21, 1989 to 8:00 a.m., October 28, 1989, unless sooner terminated by the Captain of the Port, Philadelphia, Pennsylvania.

**FOR FURTHER INFORMATION CONTACT:** Lt. P. A. Jensen, at the Captain of the Port, Philadelphia, (215) 271-4892.

**SUPPLEMENTARY INFORMATION:** In accordance with 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication.

Publishing an NPRM and delaying its effective date would be contrary to the public interest, since immediate action is needed to respond to potential hazards to vessel traffic.

### Drafting Information

The drafters of this regulation are Lt. P. A. Jensen, project officer for the Captain of the Port, Philadelphia, and Capt. M. K. Cain, project attorney, Fifth Coast Guard District Legal Staff.

### Discussion of the Regulation

The hazards requiring this regulation result from preparations for maintenance dredging of the Marcus Hook Range ship channel. The Marcus Hook Anchorage must be closed north of Buoy "C" to facilitate the laying of dredge pipeline. The pipeline will be used in dredging operations in Marcus Hook Range ship channel, which is scheduled to commence on or about October 21, 1989. Anchorage restrictions in Mantua Creek Anchorage and Deepwater Point Anchorage are being imposed to accommodate those vessels that may be prevented from anchoring in Marcus Hook Anchorage due to the partial closure.

### List of Subjects in 33 CFR Part 165

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

### Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

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

### PART 165—[AMENDED]

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. A new § 165.T5100 is added to read as follows:

**§ 165.T5100 Safety Zone: Marcus Hook Anchorage (Anchorage 7), Mantua Creek Anchorage (Anchorage 9), Deepwater Point Anchorage (Anchorage 6), Delaware River.**

(a) *Location.* The following areas are a safety zone: The Marcus Hook Anchorage (Anchorage 7), Mantua Creek Anchorage (Anchorage 9), and Deepwater Point Anchorage (Anchorage 6), located in the Delaware River, as described in § 110.157 of this title.

(b) *Regulations:* (1) With the exception of vessels operated by Norfolk Dredging Company, no person may enter, remain in, or anchor in the Marcus Hook Anchorage north of Anchorage Buoy "C" unless authorized by the Captain of the Port, Philadelphia, or his designated representative.

(2) Before anchoring in the Marcus Hook Anchorage south of Anchorage Buoy "C" a vessel shall obtain permission to anchor from the Captain of the Port, Philadelphia at least 24 hours in advance.

(3) The Captain of the Port will permit only one vessel to anchor at a time. Permission to anchor will be given on a "first come-first served" basis. Permission to anchor will be for a 12 hour period, with consideration given for six hour extensions, depending on the number of vessels waiting to anchor.

(4) In addition to the general regulations contained in § 110.157(b) of this title, before anchoring in the Mantua Creek and Deepwater Point Anchorages (Anchorages 9 and 6) a vessel shall:

(i) If over 700 feet in length, obtain permission to anchor from the Captain of the Port, Philadelphia.

(ii) If 700-750 feet in length, have one tug alongside at all times while in the anchorage.

(iii) If greater than 750 feet in length, have two tugs alongside at all times while in the anchorage.

(5) Each tug required by paragraph (b)(4) of this section shall have a minimum rating of 1000 shaft horsepower.

(6) Any vessel operating within this zone shall comply with the directions of the Captain of the Port, Philadelphia, or his designated representative.

(c) *Effective date.* This regulation is effective from 8:00 a.m., October 21, 1989 to 8:00 a.m., October 28, 1989, unless sooner terminated by the Captain of the Port, Philadelphia.

Dated: October 16, 1989.

**L. A. Murdock,**

*Captain, U.S. Coast Guard, Captain of the Port, Philadelphia.*

[FR Doc. 89-25303 Filed 10-26-89; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[COTP Phila., PA Reg. 89-09]

## Safety Zone Regulations: Marcus Hook Range Ship Channel, Marcus Hook Anchorage Mantua Creek Anchorage and Deepwater Point Anchorage

**AGENCY:** Coast Guard, DOT.

**ACTION:** Emergency rule.

**SUMMARY:** The Coast Guard is establishing a safety zone on the Delaware River that includes the Marcus Hook Range ship channel, Marcus Hook Anchorage (Anchorage 7), Mantua Creek Anchorage (Anchorage 9), and Deepwater Point Anchorage (Anchorage 6). The safety zone is needed to protect vessels from safety hazards associated with dredging operations in Marcus Hook Range ship channel and to minimize temporary port congestion while the dredging operations are ongoing.

The Marcus Hook Range ship channel in the vicinity of the dredging operation is closed to vessel traffic. Marcus Hook Anchorage (Anchorage 7) is closed to anchoring to permit vessel traffic to transit the anchorage in lieu of using the Marcus Hook Range ship channel. Vessels over 700 feet in length are

subject to anchorage restrictions in Deepwater Point and Mantua Creek Anchorages (Anchorages 6 and 9).

**EFFECTIVE DATES:** This regulation is effective from 8:00 a.m., October 23, 1989 or upon termination of the safety zone described in the § 165.T5100 of this part, whichever occurs later. This regulation terminates at 8:00 a.m., January 31, 1990, unless sooner terminated by the Captain of the Port, Philadelphia.

**FOR FURTHER INFORMATION CONTACT:** Lt. P. A. Jensen, at the Captain of the Port, Philadelphia, (215) 271–4892.

**SUPPLEMENTARY INFORMATION:** In accordance with 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. The Coast Guard was not officially informed of the date dredging operations would commence until early October, 1989. Publishing an NPRM and delaying its effective date would be contrary to the public interest, since immediate action is needed to respond to potential hazards to vessel traffic caused by the presence of the dredge in the ship channel.

**Drafting Information**

The drafters of this regulation are Lt. P.A. Jensen, project officer for the Captain of the Port, Philadelphia, and Capt. M.K. Cain, project attorney, Fifth Coast Guard District Legal Staff.

**Discussion of the Regulation**

The hazards requiring this regulation result from maintenance dredging of the Marcus Hook Range ship channel. The Marcus Hook Range ship channel must be closed and traffic diverted through Marcus Hook Anchorage (Anchorage 7) to reduce the hazards associated with dredging of the channel. Anchorage restrictions in Mantua Creek Anchorage and Deepwater Point Anchorage are being imposed to accommodate those vessels that will be prevented from anchoring in Marcus Hook Anchorage. This regulation takes effect at 8:00 a.m., October 23, 1989 or upon completion of the preliminary pipelaying operation, whichever occurs later.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine Safety, Navigation (water), Security Measures, Vessels, Waterways.

**Regulation**

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

**PART 165—[AMENDED]**

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

**Authority:** 33 U.S.C. 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. A new § 165.T5101 is added to read as follows:

**§ 165.T5101 Safety Zone: Marcus Hook Range ship channel, Marcus Hook Anchorage (Anchorage 7), Mantua Creek Anchorage (Anchorage 9), Deepwater Point Anchorage (Anchorage 6), Delaware River.**

(a) *Location.* The following areas are a safety zone: The Marcus Hook Range ship channel, as delineated on National Ocean Survey Chart 12312, within 150 yards of dredging operations, Marcus Hook Anchorage (Anchorage 7), Mantua Creek Anchorage (Anchorage 9), and Deepwater Point Anchorage (Anchorage 6), located in the Delaware River, as described in § 110.157 of this title.

(b) *Regulations.* (1) No vessel may enter or remain in the Marcus Hook Range ship channel within 150 yards of dredging operations. Vessels transiting the area shall pass through the Marcus Hook Anchorage (Anchorage 7).

(2) No vessel may anchor in Marcus Hook Anchorage (Anchorage 7).

(3) In addition to the general regulations contained in § 110.157(b) of this title, before anchoring in the Mantua Creek or Deepwater Point Anchorage (Anchorage 9 and 6):

(i) Vessels over 700 feet in length shall obtain permission from the Captain of the Port to anchor in Deepwater Point or Mantua Creek Anchorage (Anchorage 6 or 9).

(ii) Vessels between 700 and 750 feet long shall have one tug alongside while anchored in either Deepwater Point or Mantua Creek Anchorage (Anchorage 6 or 9).

(iii) Vessels greater than 750 feet long shall have two tugs alongside while anchored in either Deepwater Point Mantua Creek Anchorage (Anchorage 6 or 9).

(4) Each tug alongside a vessel meeting the restrictions in either paragraph (b)(3) (ii) or (iii) of this section must have a minimum rating of 1000 shaft horsepower.

(5) Any vessel operating within this zone shall comply with the directions of the Captain of the Port, Philadelphia, or his designated representative.

(c) *Effective Date.* This regulation is effective from 8:00 a.m., October 23, 1989 or upon termination of the safety zone described in § 165.T5100 of this part, whichever occurs later. This regulation terminates on 8:00 a.m., January 31, 1990, unless sooner terminated by the Captain of the Port, Philadelphia.

Dated: October 16, 1989.

**L.A. Murdock,**

*Captain, U.S. Coast Guard, Captain of the Port, Philadelphia.*

[FR Doc. 89–25304 Filed 10–26–89; 8:45 am]

BILLING CODE 4910–14–M

## DEPARTMENT OF EDUCATION

### 34 CFR Parts 668 and 682

### Student Assistant General Provisions and Guaranteed Student Loan and PLUS Programs; Correction

**AGENCY:** Department of Education.

**ACTION:** Final regulation; correction.

**SUMMARY:** This document corrects final regulations for the Student Assistance General Provisions and Guaranteed Student Loan and PLUS Programs, published in the **Federal Register** on June 5, 1989 (54 FR 24114).

**FOR FURTHER INFORMATION CONTACT:** Patricia Newcombe or Pamela A. Moran, Policy Section, Guaranteed Student Loan Branch, Division of Policy and Program Development, Department of Education (room 4310, ROB–3), 400 Maryland Avenue, SW., Washington, DC 20202, telephone 202–732–4242.

**SUPPLEMENTARY INFORMATION:** The following corrections are made in the final regulations published in the June 5, 1989 issue of the **Federal Register:**

**§ 682.606 [Corrected]**

1. On page 24121, in the third column, in the last line under § 682.606(b)(2), the phrase "withdrawal date" is corrected to read "last recorded day of attendance".

**§ 682.607 [Corrected]**

2. On page 24122, in the first column, under § 682.607(c)(1)(i), "detreminded" is corrected to read "determined".

**Authority:** 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

Dated: October 18, 1989.

**James B. Williams,**

*Acting Assistant Secretary for Postsecondary Education.*

[FR Doc. 89–25399 Filed 10–26–89; 8:45 am]

BILLING CODE 4000–01–M

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[FRL-3672-3]**

## Approval and Promulgation of Implementation Plans; State of Kansas

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency gives notice that the final rule approving certain Kansas new source permitting regulations published on July 17, 1989 (54 FR 29893) is being removed. This action is required by the direct-final rulemaking procedures when adverse comments are received during the comment period.

**DATE:** This action will become effective on October 27, 1989.

**ADDRESSES:** Documents relevant to this submittal are available for public inspection during normal business hours at: the Environmental Protection Agency, Region VII, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

**FOR FURTHER INFORMATION CONTACT:** Wayne A. Kaiser at (913) 236–2893 (FTS 757–2893).

**SUPPLEMENTARY INFORMATION:**

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

Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Lead, Nitrogen oxides, Ozone, Particulate matter, Sulfur dioxide.

Dated: September 18, 1989.

Morris Kay,

*Regional Administrator.*

40 CFR part 52, subpart R, is amended as follows:

**PART 52—[AMENDED]**

**Subpart R—Kansas**

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

Authority: 42 U.S.C. 7401–7642.

**§ 52.870 [Amended]**

2. Section 52.870 is amended by removing paragraph (c)(25).

[FR Doc. 89–25146 Filed 10–26–89; 8:45 am]

BILLING CODE 6560–50–M

**40 CFR Part 52**

**[FRL-3675-5]**

## Approval and Promulgation of Air Quality Implementation Plans, Louisiana; Disapproval of Exemption to Louisiana Air Quality Regulation 22.8 for Sid Richardson & Carbon Gasoline Co., Carbon Black Plant in Addis, LA

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

**ACTION:** Final rule.

**SUMMARY:** This notice disapproves a request to revise the Louisiana State Implementation Plan (SIP) that would exempt the Sid Richardson Carbon and Gasoline Company (Sid Richardson), Addis, West Baton Rouge Parish, Louisiana, carbon black plant from further control of its acetylene emissions as is now required by Louisiana Air Quality Regulation (LAQR) 22.8.[1] EPA disapproves this request for the following reasons:

1. The revision involves a major source of volatile organic compounds (VOC) that must be controlled to meet the standard of reasonably available control technology (RACT), because the source is located in an urban ozone nonattainment area;

2. The request did not adequately support the contention that the emission limitation now in the Louisiana SIP for this source are *not* RACT;

3. The Agency's review of Sid Richardson's RACT analysis report showed that alternative controls are economically and technically feasible; and,

4. EPA considers acetylene to be a reactive compound that has not been excluded from SIP demonstrations and thus, must be controlled.

**EFFECTIVE DATE:** This final rule becomes effective November 27, 1989.

**ADDRESSES:** Copies of documents related to today's notice are available for public inspection during normal business hours at the following locations:

Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733;

Louisiana Department of Environmental Quality, 625 N. 4th Street, 8th Floor, Baton Rouge, Louisiana 70804–4096; and,

Please contact the person named below to arrange a time to inspect the documents.

**FOR FURTHER INFORMATION CONTACT:** Barbara Durso, (214) 655–7214 or FTS 255–7214.

**SUPPLEMENTARY INFORMATION:** On December 5, 1988, at 53 FR 48939, EPA proposed to disapprove a revision to the Louisiana SIP that would exempt the Sid Richardson carbon black plant at Addis, West Baton Rouge Parish, Louisiana, from further control of its acetylene emissions as is now required under LAQR 22.8. That notice discusses at length the background for today's rule.

To briefly recount the history of this notice, one must note that EPA requires Reasonably Available Control Technology (RACT) for all major sources of VOCs [2] in urban ozone nonattainment areas as part of its policy to reduce ground level ozone formation. The State of Louisiana adopted LAQR 22.8 as RACT for major VOC sources, such as Sid Richardson's carbon black facility in West Baton Rouge Parish, that were not covered by other control methods. In 1986, Sid Richardson requested that the State exempt its West Baton Rouge facility from the requirements of LAQR 22.8 based on its claim that compliance was economically and technically infeasible. The State granted Sid Richardson's request and then in May 1987, the State requested that EPA approve a revision to the Louisiana SIP to exempt Sid Richardson from the requirements of LAQR 22.8.

**A. Response to Public Comment**

Since the publication of that notice, EPA has received one letter commenting on the issue. This letter, from Sid Richardson, criticized EPA's proposed disapproval on a number of points, and the Agency will respond to those remarks today. The letter also incorporated comments made in regard to the effect on Sid Richardson of another proposed rulemaking, published on September 2, 1987, at 52 FR 33250.

*Comment:* In both letters, Sid Richardson objects to EPA's not combining the State of Louisiana's request to exempt four other carbon black plants from further control of acetylene emissions with its request to exempt Sid Richardson. Furthermore, Sid Richardson contends that separating the action on its facility from that on the other plant gives the impression that the actions are unrelated.

[1] The State of Louisiana recodified its air quality regulations and 22.8 is now found at LAC:33:III:2115; however, this new codification is not yet approved as part of the SIP. Therefore, this notice will reference LAQR 22.8 rather than LAC:33:III:2115.

[2] Sources that emit 100 tons or more of VOCs per year.

*Response:* In EPA's opinion, the dissimilarity between Sid Richardson and the other four Louisiana carbon black plants is of greater consequence than the similarities. Although both actions concern carbon black plants seeking exemptions from further control of acetylene emissions under LAQR 22.8, EPA stands by its decision to address Sid Richardson separately because Sid Richardson is in an *urban* ozone nonattainment area and the other four plants are in either a *rural* ozone nonattainment area or a *rural* ozone attainment/unclassified area. As explained in the proposed notice of disapproval, EPA policy [3] requires that a major source of VOCs (i.e., one that has the potential to emit at least 100 tons of VOCs per year) for which the Agency has not issued a Control Techniques Guideline (CTG) document implement Reasonably Available Control Technology (RACT), if that source is located in an *urban* ozone nonattainment area. If the same source were located in a rural area, whether nonattainment or attainment/unclassified, it would not have to implement RACT under EPA policy, since it is not covered by a CTG document. Thus, the Sid Richardson facility in West Baton Rouge Parish, an urban ozone nonattainment area, is required to implement RACT, while the other four plants, located in rural St. Mary and Evangeline parishes, are not required to implement RACT. Given the two sets of requirements, EPA believes it justifiably considered Sid Richardson apart from the other four carbon black plants seeking the same type of exemption.

*Comment:* Sid Richardson asserts that by not ruling on all five carbon black plants in one notice, EPA fails to provide the public with a critical comparison of Sid Richardson's acetylene emissions to the other four plants' acetylene emissions. Sid Richardson made a similar comment in its other letter that EPA did not give enough consideration to the difference in the volume of emissions among the five carbon black plants and that EPA did not give consideration to the impact of the emissions on air quality in St. Mary.

*Response:* Below is a table listing all five Louisiana carbon black plants' acetylene emissions:

| Facility | Parish | Total acetylene emissions (tons/year) |
|---|---|---|
| Cabot | Evangeline | 2,151 |
| Cabot | St. Mary | 5,481 |
| Columbian | St. Mary | 9,139 |
| Ashland | St. Mary | 3,300 |
| Sid Richardson | W. Baton Rouge | 1,514 |

This table, based on information provided by the State of Louisiana in its May 1987 amended request to exempt Sid Richardson shows that the acetylene emissions from the four rural plants total 20,070 tons per year (tpy), while the acetylene emissions from Sid Richardson total 1,514 tpy.

What such a simple comparison fails to show is that the air quality in West Baton Rouge Parish does not attain the national ambient air quality standard (NAAQS) for ozone, while the air quality in Evangeline Parish attains that standard and the most recent monitoring data seem to indicate that air quality in St. Mary has improved since it was designated nonattainment in 1978. At the time EPA approved the exemption of the rural carbon black plants, the Agency recognized that the status of attainment was unclear in St. Mary Parish, because the last time the State monitored there was in the summer of 1984. At that time, the State found no violations of the ozone NAAQS. In response to Sid Richardson's earlier comment the Agency decided that it needed to better evaluate the impact of an exemption on the three carbon black plants in St. Mary. At EPA's request, the State of Louisiana resumed monitoring ozone levels there in October 1988. At this time there is not enough data to indicate a trend.

*Comment:* Sid Richardson complains that the public was further prohibited from comparing the emissions from the four rural plants with the emissions from its Addis facility, because EPA published the two proposed rulemakings "months apart."

*Response:* The Agency and Congress recognize that there have been unacceptable delays in processing SIP actions in the past, and EPA has initiated reforms to aid the timely processing of such actions.[4] EPA did not deliberately publish the two rulemaking notices months apart; regrettably, personnel turnover caused delays in processing this particular action.

*Comment:* In both its letters, Sid Richardson implies that EPA improperly applied its rural ozone policy in regard to the carbon black plants. Sid Richardson asserts that the rural ozone policy does not apply to Evangeline and St. Mary parishes, because these parishes do not, in Sid Richardson's opinion, have "negligible hydrocarbon emissions." Furthermore, Sid Richardson hypothesizes that the emissions from these two parishes "probably [contribute] to the ozone nonattainment of the *Baton Rouge area*" (emphasis Sid Richardson's).

*Response:* EPA counters Sid Richardson's allegation that the Agency is improperly applying the rural ozone policy to the four rural carbon black plants by noting that, although each of these four plants individually emits more acetylene than Sid Richardson, the total amount of VOC emissions in the two affected rural parishes is a fraction of the total amount of VOC emissions in the Baton Rouge area. Again, a simple comparison of the emissions from each of the four plants fails to show the complete picture. According to the inventory conducted in 1985 for the National Acid Precipitation Assessment Program, an extensive and intensive survey of emission sources in the U.S., the total amount of VOC emissions in Evangeline Parish at that time was about one-tenth (11%) of the total amount of VOC emissions in the Baton Rouge Metropolitan Statistical Area (MSA). The total amount of VOC emissions in St. Mary was less than half (45.6%) of the total amount of VOC emissions in the Baton Rouge MSA.

As for Sid Richardson's conjecture that the emissions from St. Mary and Evangeline parishes are responsible for the ozone violations in the Baton Rouge area through the phenomenon of ozone transport, EPA notes that the company offers no evidence or research to support its hypothesis. Furthermore, EPA notes that the State of Louisiana has never offered this hypothesis as a reason for the continuing ozone violations in the Baton Rouge area. This is not to say that EPA does not believe that emissions points from outside the Baton Rouge MSA may affect air quality in the MSA. In fact, in an effort to deal with the problem of ozone transport, EPA's most recently proposed policy [5] for nonattainment areas requires the State to inventory major sources of VOCs, carbon monoxide and nitrogen oxides up to 25 miles from the MSA and to control major sources in nonattainment parishes adjacent to the

[3] See 44 FR 20372 (April 4, 1979), 46 FR 7182 (January 22, 1981), and EPA Guidance Document for Post-1982 SIPs (January 27, 1984).

[4] See 54 FR 2138 and 54 FR 2214 (January 19, 1989).

[5] See 52 FR 45044, November 24, 1987.

MSA. Neither the carbon black plant in Evangeline Parish nor the three plants in St. Mary Parish are within 25 miles of the Baton Rouge MSA nor are these parishes adjacent to the MSA.

*Comment:* In its earlier letter, Sid Richardson restated its belief that the State's air quality modeling demonstrated that its emissions "have no adverse impact on reasonable further progress toward attainment of the ozone standard in the Baton Rouge urban area by December 31, 1987."

*Response:* As stated in the December 5, 1988, proposed rulemaking, EPA was not surprised by the results of the State's efforts, because the State used an EKMA model that is not sufficiently sensitive to small changes in emissions and will not produce significant changes in ambient ozone levels for the resulting control target (i.e., Sid Richardson). EPA notes that Sid Richardson did not reassert its confidence in the modeling results in its second letter, which was written after the December 5, 1988, notice. It is also worthwhile to note that the State never submitted the modeling to support its action; thus it is not part of the official record before EPA.

### B. Bases for Action

Neither Sid Richardson nor the State of Louisiana commented on EPA's analysis of the EKMA model used by the State as being insufficiently sensitive to small changes in emissions and thus, not able to produce significant changes in ambient ozone levels for the resulting control target. It is EPA's determination that even if the modeling were before EPA as part of the record, the modeling could not be used to support a position that acetylene emissions from Sid Richardson would have no adverse effect upon attainment of the ozone standard in the Baton Rouge area.

The proposal notice discusses in depth Sid Richardson's RACT analysis and EPA's evaluation of it. The RACT analysis addresses three methods for controlling the waste gases. While Sid Richardson rejected all three methods on economic, social, safety, and environmental grounds, EPA finds no support for technical infeasibility or adverse economic impact. In fact, the cost of control is reasonable and is lower than for many other regulated sources. Furthermore, each of the options for control of acetylene is economically viable and one control option, cogeneration, would result in a net savings. Sid Richardson did not contest EPA's review nor did it submit any new information during the comment period.

EPA finds that the installation of flares will burn more waste gas than what is being combusted now and that flares can be designed and located in such a way as to prevent a safety hazard to plant personnel and process equipment. EPA also finds that the installation of a thermal combustor is technically feasible with proper engineering safeguards and that cogeneration is economically and technically feasible. Cogeneration does not consume as much energy as a combustor and can produce electricity useful to the local power company (given a rate increase) or for the plant itself. There are no potential hazards to plant personnel or process equipment from cogeneration.

Finally, neither Sid Richardson nor the State protested EPA's finding in the proposed notice that acetylene is not an agent exempt from VOC control under current EPA policy. Acetylene is a VOC subject to regulation, and EPA has never exempted it nor proposed to exempt it. Recent studies show acetylene to be more photochemically reactive than originally thought. Neither the company nor the State presented any new or contradictory studies.

### Final Action

EPA disapproves the request from the State of Louisiana to revise the Louisiana SIP to exempt Sid Richardson Carbon and Gasoline Company, Addis, West Baton Rouge Parish, Louisiana, from further control of its acetylene emissions as required under LAQR 22.8. The request is denied because major sources in urban ozone nonattainment areas must meet RACT for nonexempt VOC emissions; Sid Richardson is a major source in an urban ozone nonattainment area; the existing SIP requirement for Sid Richardson was determined to be RACT upon approval of the 1979 part D SIP; EPA does not find RACT to be 41% combustion in pellet dryers for the carbon black industry; acetylene is a nonexempt VOC that must be controlled pursuant to the 1979 SIP; and there are economically and technically feasible alternative RACT controls available to Sid Richardson.

Under Executive Order 12291, this action is not "Major." This rule was submitted to the Office of Management and Budget for review pursuant to the requirements of Section 3 of Executive Order 12291.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from date of publication). This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

### List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbon, Ozone.

Authority: 42 U.S.C. 7401–7642.

Dated: October 20, 1989.

William K. Reilly,

*Administrator.*

[FR Doc. 89–25383 Filed 10–26–89; 8:45 am]

BILLING CODE 6560-50-M

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**40 CFR Part 52**

**[FRL–3675–6]**

## Approval and Promulgation of Air Quality Implementation Plans; Arizona Public Service Variance From New Mexico Regulation 603 for Nitrogen Dioxide

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

**ACTION:** Final rule.

**SUMMARY:** EPA today approves a revision to the New Mexico State Implementation Plan (SIP). The revision grants Arizona Public Service (APS) a variance from Regulation 603 (*Coal Burning Equipment—Nitrogen Dioxide*) for three electric generating units. A variance is granted through September 30, 1989 for Unit 4, September 30, 1990 for Unit 3, and September 30, 1991 for Unit 5. This revision is approved on the basis that it will not interfere with attainment or maintenance of the National Ambient Air Quality Standards (NAAQS) in New Mexico.

**DATES:** This action will be effective on December 26, 1989, unless notice is received on or before November 27, 1989 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register.**

**ADDRESSES:** Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. Those interested persons wanting to examine these documents should make an appointment with the appropriate office at least twenty-four hours before visiting day.

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T–AN), 1445 Ross Avenue, Dallas, Texas 75202–2733

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

New Mexico Environmental Improvement Division, Air Quality Bureau, 1190 St. Francis Drive, Harold

Runnels Building, Sante Fe, New Mexico 87504–0968.

*Comments:* Submit comments to Mr. Thomas Diggs, Chief (6T–AN), SIP/NSR Section, Air Programs Branch, U.S. Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733, on or before November 27, 1989.

**FOR FURTHER INFORMATION CONTACT:** Mr. Joe Winkler, SIP/NSR Section, Air Programs Branch, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733, Telephone: (214) 655–7214 or (FTS) 255–7214, Reference Docket File Number NM–88.

**SUPPLEMENTARY INFORMATION:**

## Background

On November 16, 1988, the U.S. EPA received documentation from the Governor of New Mexico which completed a SIP revision submittal that would grant APS a variance from New Mexico Air Quality Control Regulation (NMAQCR) 603.B, *Coal Burning Equipment—Nitrogen Dioxide,* for Units 3, 4 and 5 of the Four Corners Power Plant. NMAQCR 603 is currently an approved regulation of the New Mexico SIP. The variance would expire on September 30, 1989 for Unit 4, September 30, 1990 for Unit 3, and September 30, 1991 for Unit 5. NMAQCR 603.B deals with coal burning equipment which was fully constructed and operational or under construction before September 1, 1971. The emission limitation in NMAQCR 603.B of 0.7 pounds of $NO_x$ per million BTU of heat input is required for coal burning equipment having the power generating capacity/heat input in the size range of the APS units. APS's Four Corners Power Plant is located in an area where air quality is classified as better than the NAAQS for nitrogen dioxide under Section 107 of the Clean Air Act (CAA).

On February 18, 1986, APS filed a petition with the New Mexico Environmental Improvement Division (NMEID) requesting a variance through May 31, 1987, to allow operation of Units 3, 4 and 5 at $NO_x$ emission rates above the level required at NMAQCR 603.B. At the conclusion of a public hearing held before the New Mexico Environmental Improvement Board (NMEIB) on August 7, 1986, the NMEIB granted APS the variance through May 31, 1987 based on its findings which called into question the technical feasibility of controlling these pre-1971 units within the AQCR 603.B limit. The variance was based on an air quality impact analysis submitted by the NMEID which assessed $NO_x$ emissions from the Four Corners Power Plant. As a condition of the variance, APS was required to evaluate technical feasibility by conducting a burner test program.

The Governor of New Mexico formally submitted the NMEIB's variance order to EPA as a revision to New Mexico's SIP on February 4, 1987. Due to delays which were incidental to the burner test program, on March 31, 1987, APS requested an extension to the variance term through October 15, 1987. The extension was granted by the NMEIB at its public meeting on April 10, 1987. The Governor of New Mexico formally submitted the extension to EPA as an amended SIP revision on October 26, 1987.

On October 15, 1987, APS informed the NMEID that burner test program had been completed. Based on the results of the program, APS concluded that a retrofit of Units 3, 4 and 5 with low $NO_x$ burners would achieve compliance with NMAQCR 603.B. On December 18, 1987, the NMEIB approved a variance term for completion of installation of the low $NO_x$ burners extending to September 30, 1991. Specifically, a variance was granted by the NMEIB through September 30, 1989 for Unit 4, September 30, 1990 for Unit 3 and September 30, 1991 for Unit 5. The Governor of New Mexico formally submitted the variance order to EPA as a revision to New Mexico's SIP on February 16, 1988. A retrofit schedule over this variance term was found to be acceptable to the NMEIB because (1) the extent of the modifications required for the retrofit is substantial (2) moving from pilot-scale to full-scale is most effectively accomplished by building on the experience gained in a phased approach, and (3) air quality analysis results showed that neither the NAAQS nor the State ambient air quality standards for $NO_x$ would be threatened in the Four Corners area.

The air quality impact analysis originally submitted to EPA in support of the NMEIB's variance order received by EPA on February 4, 1987, did not satisfy the requirements in EPA's Guideline on Air Quality Models (EPA–450/2–78–027R). Because alternative modeling approaches were applied without the level of evaluation required by EPA's modeling guideline, the air quality impact analysis of February 4, 1987, was considered inadequate. On November 16, 1988, the Governor of New Mexico submitted an air quality impact analysis consisting of an initial screen assuming total conversion of $NO_x$ to $NO_2$. The modeling demonstrated that the variance would not interfere with attainment or maintenance of the $NO_2$ NAAQS.

The State also submitted an air quality impact analysis using the ozone limiting method which demonstrated compliance with New Mexico's 24-hour $NO_2$ ambient air quality standard. There is no 24-hour $NO_2$ NAAQS.

## Final Action

EPA has reviewed this SIP revision and supporting documentation and has determined that no violations of the National Ambient Air Quality Standard for $NO_2$ will result from this revision. Based on this finding, EPA is today approving the revision to Regulation 603 of the New Mexico SIP.

EPA's review of the materials submitted has shown that they are noncontroversial, nonmajor SIP revisions. Because EPA does not anticipate that this rulemaking will generate adverse public comments, the revisions are being approved today without a prior proposed rulemaking. The public should be advised that these actions will be effective December 26, 1989. However, if notice is received on or before November 27, 1989 that someone wishes to submit adverse or critical comments on this action, it will be withdrawn before the effective date and a new notice of rulemaking announcing a proposal of the action and establishing a comment period will be published in the **Federal Register.**

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

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

This action has been classified as a Table 3 action 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.

Under section 307(b)(1) of the Clean Air Act, judicial review of this action is available only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of October 27, 1989. Under section 307(b)(2) of the Clean Air Act the requirements which are the subject of today's action may not be

challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

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

Air pollution control, Nitrogen dioxide, Incorporation by reference.

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

Dated: September 29, 1989.

Robert E. Layton Jr.,
*Regional Administrator.*

**PART 52—[AMENDED]**

40 CFR part 52, subpart GG, is amended as follows:

**Subpart GG—New Mexico**

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

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1620 is amended by adding new paragraph (c)(38) to read as follows:

**§ 52.1620 Identification of plan.**

* * * * *

(c) * * *

(38) Revisions to the New Mexico SIP for the Arizona Public Service Units 3, 4 and 5 at the Four Corners Generating Station were submitted by the Governor on February 4, 1987, October 26, 1987, and February 16, 1988.

(i) Incorporation by Reference.

(A) An Order dated and effective August 7, 1986, issued by the Chairman of the New Mexico Environmental Improvement Board in the matter of Arizona Public Service Company, Fruitland, New Mexico for Units 3, 4 and 5 of the Four Corners Power Plant granting a variance through May 31, 1987, from Air Quality Control Regulation 603.B.

(B) A Memorandum and Order dated and effective April 10, 1987, issued by the Chairman of the New Mexico Environmental Improvement Board in the matter of Arizona Public Service Company, Fruitland, New Mexico for Units 3, 4 and 5 of the Four Corners Power Plant extending the term of the variance from May 31, 1987 through October 15, 1987.

(C) An Order dated and effective December 18, 1987, issued by the Chairman of the New Mexico Environmental Improvement board in the matter of Arizona Public Service Company, Fruitland, New Mexico for Units 3, 4 and 5 of the Four Corners Power Plant extending the term of the variance through September 30, 1989 for Unit 4, September 30, 1990 for Unit 3, and September 30, 1991 for Unit 5.

(ii) *Additional material.* (A) Modeling Protocol, The Four Corners Power Plant, prepared by Bruce Nicholson of the New Mexico Environmental Improvement Division, November 6, 1987.

(B) Amendment to Modeling Protocol, letter of August 17, 1988, from Bruce Nicholson of the New Mexico Environmental Improvement Division to Gerald Fontenot of EPA Region 6.

(C) Modeling Report, letter of October 27, 1988 to C. V. Mathai (Arizona Public Service Company) and Bruce Nicholson (New Mexico Environmental Improvement Division) from Mark Yocke of Systems Applications Inc.

(D) An air quality impact analysis dated November 16, 1988, submitted by the Governor of New Mexico which demonstrated that the variance would not interfere with attainment or maintenance of the $NO_2$ NAAQS.

[FR Doc. 89–25403 Filed 10–26–89; 8:45 am]
BILLING CODE 6560–50–M

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**40 CFR Part 52**

**[SC–0126; FRL–3652–7]**

## Approval and Promulgation of Implementation Plans for South Carolina; Volatile Organic Compound Emissions

**AGENCY:** Environmental Protection Agency.

**ACTION:** Disapproval of State plans.

**SUMMARY:** EPA is disapproving the May 24, 1985, submittal of revisions made by South Carolina in its Air Pollution Control Regulations and Standards and submitted to EPA on June 5, 1985. These revisions contained deficiencies within the State's Volatile Organic Compound (VOC) regulations. EPA is disapproving the following regulations that have been identified as being deficient: regulation 62.1, section I, 39., regulation 62.5, standard No. 5, section I, parts A.9., A.22., A.39., A.51. and A.75., section II, parts A. through H. and parts N. through T. and section I, parts F. and E. The deficiencies identified within each regulation are discussed in detail in the proposed disapproval notice (54 FR 25592, June 16, 1989). Upon further review, regulation 62.5, standard No. 5, section I, parts A.1. and A.38. do not contain deficiencies and are not a part of this final disapproval notice. These regulations will be approved in a separate notice. Today's disapproval action provides the basis for correcting the deficiencies identified within South Carolina's State Implementation Plan (SIP) as stated in a September 9, 1988, letter from EPA to the State of South Carolina.

**DATE:** This disapproval is effective on November 27, 1989.

**ADDRESSES:** Copies of the materials submitted by South Carolina may be examined during normal business hours at the following locations:

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

South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201

**FOR FURTHER INFORMATION CONTACT:** Brenda Johnson, EPA Region IV, Air Programs Branch, at the Atlanta address above or call 404/347–2864 or FTS/ 257–2864.

**SUPPLEMENTARY INFORMATION:** On June 5, 1985, the South Carolina Department of Health and Environmental Control submitted to EPA for approval revisions to the volatile organic compound (VOC) provisions of the South Carolina Air Pollution Control Regulations and Standards. These revisions were adopted by the South Carolina Board of Health and Environmental Control on December 20, 1984, and were forwarded to the State Legislature for approval. The revisions became State-effective on May 24, 1985.

Based on the information submitted, EPA disapproved the revisions without prior proposal (54 FR 15181, April 17, 1989) in a direct final notice. In this notice, EPA advised the public that the effective date of the action was deferred for 60 days (until June 16, 1989) so that comments, if any, could be submitted. EPA announced that the final action would be withdrawn if adverse or critical comments were received and a new rulemaking would be proposed with a 30-day comment period. On September 4, 1981 (46 FR 44477), EPA published a general notice explaining this special procedure.

Adverse comments were received on the 54 FR 15181 notice (April 17, 1989). Accordingly, EPA withdrew the direct-final notice (54 FR 25582, June 16, 1989) and simultaneously proposed disapproval of the South Carolina regulations (54 FR 25592, June 16, 1989). This notice represents EPA's final disapproval action and is based on the following considerations. On May 3, 1988, EPA released data on the ozone attainment status of areas throughout

the nation. On May 26, 1988, a letter notified the Honorable Carroll A. Campbell that the South Carolina SIP needed revising to achieve the ozone NAAQS, pursuant to section 110(a)(2)(H) of the Clean Air Act, 42 U.S.C. 7410(a)(2)(H). This SIP call in part required South Carolina to prepare an updated emission inventory and correct regulatory deficiencies and deviations between EPA's federal requirements and the State's SIP or pending SIP submittal. The correction of deviations is necessary for the State to continue progress in achieving attainment for ozone.

On September 9, 1988, EPA requested that South Carolina correct the identified deviations within their SIP. On October 12, 1988, South Carolina notified EPA that regulatory revisions within the SIP could only be accomplished under a State initiative or to comply with federal requirements.

Adverse comments were received on the disapproval notice (54 FR 25592, June 16, 1989). The comments and responses are given below.

*Comment:* Objections were raised by the South Carolina Chamber of Commerce Technical Committee concerning the proposed regulation disapproval on the basis that EPA is attempting to regulate by policy and guideline, rather than through a rulemaking procedure. They state that most of the cited deficiencies are not deviations from federal laws or regulations but are deviations from federal guidelines and policy.

*Response:* The proposed disapproval of the May 24, 1985 version of the South Carolina VOC regulations is consistent with section 110(a)(2)(H) of the Clean Air Act since the Administrator may call for such revision when, based on the information available to him, he finds that the SIP is substantially inadequate to achieve the NAAQS or to otherwise comply with any additional requirements established under the Clean Air Act Amendments of 1977. Adequate regulations governing VOC emissions are necessary for the South Carolina SIP since such regulations help assure that the SIP will be adequate to achieve and maintain the NAAQS for ozone in South Carolina. Therefore, the deficient regulations are proposed for disapproval to maintain compliance with federal law.

A May 25, 1988, document ("Issues Relating to VOC Regulation Cutpoints, Deficiences, and Deviations") cited in the proposed disapproval notice (54 FR 25592) is one of the commenter's concerns. This document provides specific information for correcting deficiencies and inconsistencies in VOC regulations. It is an interpretive rule which does not have to be promulgated pursuant to a rulemaking proceeding. *See* Administrative Procedure Act (APA), 5 U.S.C. 553(b). Interpretive rules need not be published in the **Federal Register**. For purposes of the APA, interpretive rules like general statements of policy and rules of organizations, procedures, or practice, are excluded from notice and comment procedures.

*Comment:* Changes in the VOC definition were questioned, especially, EPA's objection to the use of a 0.1 millimeter of Mercury (mm Hg) vapor pressure cutoff to define a VOC. The commenters state that just because an organic chemical can be volatilized under certain conditions does not mean that it will participate in atmospheric photochemical reactions, even if it possesses a high reactivity index.

*Response:* The definition of a volatile organic compound (VOC) as given in the May 25, 1988, document includes "any organic compound which participates in atmospheric photochemical reactions" and omits the 0.1 mm Hg vapor pressure cutoff. This has caused concern among some States which previously had incorporated a 0.1 mm Hg vapor pressure cutoff in their definition of VOC. A memorandum ("Definition of VOC: Rationale" by G.T. Helms, June 8, 1989) explains the rationale for revising the VOC definition to make all VOC definitions consistent with EPA's reactivity rationale. This memo is briefly summarized in this notice. For more information, please refer to the Technical Support Document.

The Volume II Control Technique Guideline (CTG), "Surface Coating of Cans, Coils, Paper, Fabrics, Automobiles and Light-Duty Trucks" published in May 1977, uses 0.1 mm in the definition of VOC given in appendix C, "Regulatory guidance." Within a year of the CTG publication, it was recognized that inclusion of any restriction based on vapor pressure presupposed either of two things: (1) That because the vapor pressure of a compound is low the compound can never become airborne to participate in a photochemical reaction or, (2) even if it is airborne, the compound remains a liquid (does not evaporate), or if it does become vaporized it quickly condenses. These two suppositions are not necessarily true at the 0.1 mm Hg vapor pressure level. Vapor pressure would provide some indication of the rate of evaporation of material sitting at room temperature, but would have less meaning if the high boiling material is emitted as part of exhaust stack gases, especially at elevated temperature.

Organic compounds may be volatilized in a variety of industrial processes and emitted with stack gas exhausts. If these compounds remain in the vapor state they will be available to participate in photochemical reactions. Organic compounds with high carbon numbers and low vapor pressure can volatilize under certain conditions and even compounds with very low vapor pressure can have enough molecules in the gas phase to form appreciable quantities of ozone.

The conditions under which an organic material is actually used must be looked at to determine if it is, in fact, emitted to the atmosphere in any appreciable quantity. This will usually be done by applying the test method which is used to determine compliance with the regulation for a particular source category. Recognizing that EPA is attempting to control all VOC that eventually contributes to ozone formation, the test method is the ultimate arbiter of what is or is not a VOC for a particular industrial process.

*Final Action:* EPA is disapproving regulation 62.1, section I, 39., regulaton 62.5, standard No. 5, section I, parts A.9, A.22, A.39., A.51. and A.75., section II, parts A. through H. and parts N. through T. and section I, parts F. and E.

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.

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 December 26, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

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

Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone.

**Authority:** 42 U.S.C. 7401–7642.

Dated: September 18, 1989.

**Lee A. DeHihns, III,**

*Acting Regional Administrator.*

[FR Doc. 89–25024 Filed 10–26–89; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 261

[SW-FRL-3675-4]

## Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA or Agency) today is granting a final exclusion from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32 for specified waste generated by Mason Chamberlain, Incorporated, Bay St. Louis, Mississippi. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 268, 124, 270, and 271 of title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists.

**ADDRESSES:** The public docket for this final rule is located at the 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. in room M2427, Monday through Friday, excluding Federal holidays. Call (202) 475–9327 for appointments. The reference number for this docket is "F–89–MCEF–FFFFF." The public may copy material from any regulatory docket at a cost of $0.15 per page.

**FOR FURTHER INFORMATION CONTACT:** For general information, contact the RCRA Hotline, toll free at (800) 424–9346, or at (202) 382–3000. For technical information concerning this notice, contact Linda Cessar, Office of Solid Waste (OS–343), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 (202) 475–9828.

**SUPPLEMENTARY INFORMATION:**

### I. Background

*A. Authority*

Under 40 CFR 260.20 and 260.22, facilities may petition the Agency to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained at 40 CFR 261.31 and 261.32. Petitioners must provide sufficient information to EPA to allow the Agency to determine that (1) the waste to be excluded is not hazardous based upon the criteria for which it was listed, and (2) that no other hazardous constituents are present in the wastes at levels of regulatory concern.

*B. History of this Rulemaking*

Mason Chamberlain, Incorporated (Mason), located in Bay St. Louis, Mississippi, petitioned the Agency to exclude from hazardous waste control a specific waste that it generates. After evaluating the petition, EPA proposed, on December 13, 1988, to exclude Mason's waste from the lists of hazardous waste under 40 CFR 261.31 and 261.32. See 53 FR 50040.

This rulemaking addresses public comments received on the proposal and finalizes the proposed exclusion.

### II. Disposition of Petition

*Mason Chamberlain, Incorporated, Bay St. Louis, Mississippi*

1. Proposed Exclusion

Mason petitioned the Agency for an exclusion of its wastewater treatment sludge filter cake, presently listed as EPA Hazardous Waste No. F019. Mason based its petition on the claim that the constituents of concern, although present in the waste, were in an essentially immobile form. To support its claim that both the non-listed and listed constituents of concern are not present in the wastewater treatment sludge filter cake above health-based levels of concern, Mason submitted results from total constituent, EP toxicity analyses, and Oily Waste EP (OWEP) toxicity analyes for all the EP toxic metals, nickel and cyanide. Mason also submitted results from priority pollutant analyses. All of the analyses were performed on representative samples of Mason's wastewater treatment sludge filter cake.

The Agency evaluated the information and analytical data provided by Mason in support of its petition and determined that the hazardous constituents found in the petitioned waste would not pose a threat to human health and the environment. Specifically, the Agency used its Vertical and Horizontal Spread (VHS) model and Organic Leachate Model (OLM) to predict the potential mobility of the hazardous constituents found in the petitioned waste. Based on this evaluation, the Agency determined that the constituents in Mason's waste would not leach and migrate at concentrations above the health-based levels used in delisting decision-making. See 53 FR 50040, December 13, 1988, for a more detailed explanation of why EPA proposed to grant Mason's petition for its wastewater treatment sludge filter cake.

2. Agency Response to Public Comments

The Agency received comments on the proposed rule from one interested party. The commenter opposed the Agency's proposed decision for the reasons discussed below.

*Petition-Specific Comments.* The commenter stated that the wastewater treatment sludge filter cake still exhibits one of the criteria for which it was listed—the presence of total chromium in excess of the 1,000 ppm level considered significant justification for listing F019 wastes as hazardous. The commenter, therefore, believed that the petition should be denied because Mason did not meet the regulatory requirements of 40 CFR 260.20(d) and 261.11(a)(3)–(iii). Specifically, the commenter asserted that because the waste contains a listed constituent (*i.e.*, chromium), the petitioner must make a demonstration showing that the petitioned waste, under all plausible types of mismanagement scenarios, is non-hazardous.

First, the Agency considered in its analysis of the petitioned waste all of the factors listed in 40 CFR 261.11(a)(3), including all plausible mismanagement scenarios (see 53 FR 50043, December 13, 1988). EPA, therefore, disagrees with the commenter's assertion that granting this petition would be inconsistent with the regulations.

In regards to the presence of a listed constituent in the petitioned waste, the Agency agrees that the presence in F019 wastes of significant concentrations of the inorganic constituents of concern (including total chromium) was one of the reasons for listing F019 wastes as "T" (toxic) waste. See 40 CFR 261.11(a)(3)(ii) and "Background Document, Resource Conservation and Recovery Act, Subtitle C, Hazardous Waste Management, Section 3001, Identification and Listing of Hazardous Waste—Electroplating and Metal Finishing Operations," 1980. The Agency also believes that the data presented in the Background Document broadly characterize the physical/chemical nature of conversion coating wastes (hydroxide sludges). EPA, therefore, used elevated concentrations of constituents as an indicator of potential hazard as it is reasonable to expect that, as the concentration of an unbound or loosely bound metal present in a waste increases, the potential for the metal to leach from the waste also increases. (Generally, the higher the total concentration of an unbound or loosely bound metal, the higher the potential EP leachate concentration.) Thus, wastes having significant concentrations of

unbound or loosely bound metals are more likely to impact the underlying ground water than wastes having lower concentrations of unbound or loosely bound metals. However, in this specific case, the metals in Mason's waste are tightly bound within the waste matrix. The Agency's conclusion that chromium is bound in the waste matrix and thus is not available for leaching is supported by the results of the OWEP leachate analyses, which showed that only 0.13 mg/l of chromium would leach from Mason's waste under conditions similar to those found in municipal waste landfills. See 53 FR 50043, December 13, 1988. As a result, the Agency believes that the level of chromium present in Mason's waste, in this specific case, is not an appropriate indicator of hazard to human health and the environment.

Furthermore, EPA evaluated the waste's potential impact on human health using the maximum EP leachate concentration and the vertical and horizontal spread (VHS) model. For the volume of waste generated by Mason (1,262 cubic yards/year), the VHS model predicts a dilution factor of approximately 12.8. The VHS model analysis provides a conservative and reasonable worst-case evaluation of the behavior of the leachate from the waste in an underlying aquifer. The predicted compliance-point concentrations resulting from this conservative analysis were below the levels of concern used for delisting purposes. See 53 FR 50043, December 13, 1988, for a description of the modeling analysis of Mason's waste.

As indicated above, the commenter believed that the Agency failed to consider all plausible mismanagement scenarios in its evaluation of the petitioned waste. Specifically, the commenter asserted that because the Agency based its evaluation exclusively on the "worst-case scenario" of land disposal, the proposed rule provides no basis for determining if the waste would be hazardous under other plausible mismanagement scenarios. The commenter, therefore, believed that EPA only considered the leachable levels of hazardous constituents and did not consider the waterborne dispersal, airborne dispersal, or direct dermal contact with the waste potentially occurring through other plausible mismanagement scenarios.

The Agency does not believe that it is likely for other mismanagement scenarios to occur. Nonetheless, with regard to possible airborne dispersal, the Agency believes that direct contact from airborne exposure to hazardous contaminants from Mason's filter cake is not probable because the waste exhibits an average moisture content of 60 percent. The Agency, therefore, believes that the waste's moisture content is sufficient to prevent dust formation and dispersion.

With regard to waterborne dispersal of the waste, it is important to note that the VHS model analysis described in the proposal shows that leachate from the waste that travels through ground water will not exceed health-based levels. The Agency acknowledges that it may also be possible for surface water runoff to transport contaminants from the waste to a nearby surface water body. However, the Agency does not believe that analysis of such overland transport of contaminants as a reasonable exposure route for the petitioned waste would compel a different result for this petition. As described in the proposed rule, the Agency believes that landfill disposal is a reasonable worst-case management scenario for Mason's waste. Contamination of surface water might occur, therefore, through runoff from the petitioned waste. However, EPA believes that the concentrations of any hazardous constituents in that runoff will tend to be lower than the levels in the EP leachate analyses reported in the proposal, due to the acidic medium of the EP test. Furthermore, any transported constituents would be further diluted in the surface water body.

Finally, the Agency believes that, in general, the leachate derived from this waste will not directly enter a surface water body without first travelling through the saturated (subsurface) zone where dilution and attenuation of hazardous constituents may occur. The VHS model takes this saturated zone into account as it predicts the ultimate fate and transport of hazardous constituents.

*EPA's Modeling Approach.* The commenter objected to EPA's use of the VHS model in analyzing Mason's wastewater treatment sludge filter cake. The commenter believed that the VHS model could not be assumed to predict a reasonable worst-case when applied to Mason's waste and may result in significant underestimation of actual ground-water concentrations for the reasons discussed below.

The commenter believed that the VHS model cannot accurately predict the behavior of waste volumes in excess of 2,000 cubic yards because the VHS model, above approximately 2,000 cubic yards, predicts virtually no further reduction in the expected dilution. The commenter noted that EPA has previously stated: "Since the quantity of leachate from a larger quantity of waste will be greater, the [VHS] model predicts that a large waste volume will tend to have a greater impact on an underlying aquifer" and "waste in excess of 2,000 cubic yards probably would have a greater than predicted impact at the compliance point." See 50 FR 48886 and 48899, November 27, 1985.

The initial version of the VHS model, presented on February 26, 1985, calculated dilution factors ranging from 10 to 50, with the minimum dilution factor (*i.e.*, 10) resulting at a waste volume approaching approximately 2,000 cubic yards. See 50 FR 7896. On November 27, 1985, the Agency both modified the values used for several of the VHS model variables and responded to public comments regarding the February 26, 1985 model. See 50 FR 48896. The November 27, 1985 version (present version) of the VHS model calculates dilution factors ranging from 6.3 to 32.3. In the present version, the calculated dilution factor steadily falls as the waste volume increases from 475 cubic yards, with the minimum dilution factor resulting at waste volumes equal to or exceeding 8,000 cubic yards.

Unfortunately, the Agency's November 27, 1985, response (cited by the commenter) failed to consistently reflect both the technical modifications made to the VHS model computer code and the resulting change in the range of calculated dilution factors. Due to the technical modifications incorporated into the final version that is now being used, the statement noted by the commenter, that the VHS model predicts virtually no further dilution above a waste volume of 2,000 cubic yards, was an inadvertent error in the text and is not accurate. Specifically, the present version of the model predicts a dilution factor of approximately 8.9 for 2,000 cubic yards and a dilution factor of approximately 6.3 for 8,000 cubic yards. The Agency continues to believe that the VHS model performs a reasonable, worst-case analysis and provides dilution factors that are fully protective of human health and the environment.

The commenter also believed that the VHS model, as applied, considered the impact of only one year of waste disposal, rather than the cumulative impact of continuing disposal of Mason's waste. The commenter noted that after a decade of such generation, the total amount of waste would exceed the VHS model's upper limit by more than six-fold. The commenter also stated that nowhere in the development of the VHS model does EPA justify the use of an annual, rather than cumulative, waste quantity as the appropriate input into the VHS model.

Nor did the commenter see any possible justification for such an application of the model.

First, the Agency believes that the commenter is incorrect in concluding that a decade of waste generation would yield a waste volume that exceeds the VHS model upper limit by six-fold because the VHS model does not have an "upper limit". Rather, the VHS model incorporates a sliding-scale which allows the Agency to take into account the different impact that various waste volumes would have on ground water. As stated above, the VHS model calculates the maximum and minimum dilution factors at waste volumes of less than or equal to 475 cubic yards, and equal to or greater than 8,000 cubic yards, respectively. Thus, as the waste volume increases above 8,000 cubic yards or even 12,620 cubic yards (*i.e.*, 10 years × Mason's maximum annual waste generation rate of 1,262 cubic yards/year), the dilution factor calculated by the VHS model would be 6.3. The reason that the dilution factor remains constant after the waste volume exceeds 8,000 cubic yards is a function of the assumptions made in the disposal unit dimensions for the VHS model. (For a discussion of the assumptions made in the disposal unit dimensions for the VHS model, see 53 FR 48900, November 27, 1985.) Due to the effects of unit construction/dimensions on dilution/attenuation of the leachable constituents occurring in the underlying aquifer, the dilution factor calculated for 8,000 cubic yards is appropriate for waste volumes exceeding 8,000 cubic yards (*i.e.*, at a specific volume, the length of the disposal trench is sufficiently large that the resultant contaminant plume is not completely intercepted by a downgradient ground-water well). Lastly, the Agency notes that the commenter has not provided any evidence to support its claim that the dilution factor calculated for 8,000 cubic yards is not appropriate for waste volumes in excess of 8,000 cubic yards.

The commenter is also incorrect in stating that the Agency has not justified the use of annual waste volumes, instead of cumulative waste volumes. The Agency considers the use of annual or one-time waste volumes to be sufficiently conservative since it is a reasonable worst-case for a petitioner to dispose of one year's accumulated volume of waste in a single landfill cell at one time. Based on routine landfill management practice, EPA believes that it is unreasonable to assume, even in a worst-case scenario, one-time disposal of waste continuously generated over ten years in the same landfill cell. Specifically, wastes continuously generated are not disposed of in the same landfill cell. Rather, continuously generated wastes (if disposed of at the same landfill) are periodically distributed throughout the entire landfill, as the landfill is filled. See 50 FR 7899, February 26, 1985.

The Agency believes that periodic disposal of a continuously generated waste over the course of time (*e.g.*, ten years) would likely increase mixing (*i.e.*, dilution) of the petitioned waste with other non-hazardous materials and fill materials (*e.g.*, native soils) at the subtitle D landfill, and the waste's effect on the underlying aquifer would be reduced. The Agency, therefore, believes the assumption that the annual waste volume is disposed in the same landfill cell is a reasonable worst-case and is protective of human health and the environment.

The commenter also stated that the Agency did not restrict the coverage of the exclusion to a specific amount of waste. The commenter noted that, although the preamble specified that the proposed exclusion would apply only to the processes covered by the original demonstration, Mason is not prevented from increasing its waste generation. See 53 FR 50044, December 13, 1988.

As stated in the proposal, the Agency believes that it is unlikely for Mason to significantly increase its waste generation without modifying its production processes and thereby trigger a re-evaluation of the exclusion. For this reason, specific volume limitations had not been formally incorporated into the proposed exclusion provision. In consideration of the concerns raised by the commenter, EPA has included an explicit volume limitation in today's final rule. This limitation further clarifies that the exclusion promulgated today is specific to the wastes covered in the petition which included an accurate estimation of its maximum annual waste generation rate.

The commenter further asserted that Mason's waste alone contributes amounts of phenol, bis(2-ethylhexyl)phthalate, chromium, lead, nickel, and silver that are substantial percentages of the regulatory levels of concern (*i.e.*, the predicted compliance-point concentrations for phenol, bis(2-ethylhexyl)phthalate, chromium, lead, nickel, and silver are close to their respective regulatory levels of concern). The commenter, therefore, stated that disposing of this waste with any other contaminant source within the same landfill could readily cause exceedences of the regulatory levels of concern.

The Agency believes that the commenter is implying that wastes should not be delisted unless the predicted at-the-well concentrations of the contaminants are significantly less than their respective regulatory levels of concern (*i.e.*, some unspecified percentage reduction of the regulatory level of concern) in order to safeguard against the impact of other potential contamination sources. Unfortunately, the Agency is not currently able to modify the VHS model to assess the effects of additional contaminant sources on the underlying aquifer within the same disposal site. The Agency, therefore, does not have any technical basis to support a determination of an appropriate percentage reduction and believes that some stipulated percentage reduction would be arbitrary. In light of the conservative nature of the VHS model (*e.g.*, no degradation, infinite source), EPA will continue to allow wastes to exhibit compliance-point concentrations up to 100 percent of the regulatory levels of concern.

Lastly, the commenter was concerned with the compliance-point concentration for lead since EPA is considering lowering the drinking water standard for lead to 0.005 mg/1. The commenter believes that the waste should be considered hazardous since, if the 0.005 mg/1 standard is adopted, the calculated compliance-point concentration would exceed the standard by a factor of four.

In making delisting decisions, the Agency uses the existing health-based levels cited in "Docket Report on Health-Based Levels and Solubilities Used in the Evaluation of Delisting Petitions," June 8, 1989 (located in the RCRA public docket). The Agency has no way of predicting the final drinking water standard until it is actually promulgated (the standard could be less than or greater than the proposed level or the 0.005 mg/1 level cited by the commenter). Neither can the Agency be certain exactly when a new standard might be promulgated. Without a new final drinking water standard, the Agency does not believe it is fair to the petitioner to postpone a final delisting decision until a new drinking water standard for lead is promulgated.

3. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that Mason's wastewater treatment sludge filter cake should be excluded from hazardous waste control. The Agency, therefore, is granting a final exclusion to Mason Chamberlain, Incorporated, located in Bay St. Louis, Mississippi, for its

wastewater treatment sludge filter cake, described in its petition as EPA Hazardous Waste No. F019. The exclusion only applies to 1,262 cubic yards of wastewater treatment sludge filter cake generated annually by the processes covered by the original demonstration. The facility would require a new exclusion if its manufacturing or treatment processes are significantly altered such that an adverse change in waste composition occurred. Accordingly, the facility would need to file a new petition for the altered waste. The facility must treat waste generated either in excess of 1,262 cubic yards per year or from changed processes as hazardous until a new exclusion is granted.

Although management of the waste covered by this petition is relieved from subtitle C jurisdiction, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation.

### III. Limited Effect of Federal Exclusion

The final exclusion being granted today is being issued under the Federal (RCRA) delisting program. States, however, are allowed to impose their own, non-RCRA regulatory requirements that are more stringent than EPA's, pursuant to section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a Federally-issued exclusion from taking effect in the State. Since a petitioner's waste may be regulated under a dual system (*i.e.*, both Federal (RCRA) and State (non-RCRA) programs), petitioners are urged to contact their State regulatory authority to determine the current status of their wastes under State law.

### IV. Effective Date

This rule is effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after promulgation and the fact that a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this rule should be effective immediately upon promulgation. These reasons also provide a basis for making this rule effective immediately, upon promulgation, under the Administrative Procedures Act, pursuant to 5 U.S.C. 553(d).

### V. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This rule to grant an exclusion is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling the facility to treat its waste as non-hazardous. There is no additional economic impact, therefore, due to today's rule.

### VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, 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 which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator or delegated representative may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse economic impact on small entities since its effect will be to reduce the overall costs of EPA's hazardous waste regulations and is limited to one facility. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

### VII. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this final rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

### List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

Dated: October 17, 1989.

Jeffery D. Denit,

*Deputy Director, Office of Solid Waste.*

For the reasons set out in the preamble, 40 CFR part 261 is amended as follows:

## PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6922.

2. In Table 1 of Appendix IX, add the following wastestream in alphabetical order:

### Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

| Facility | Address | Waste description |
|---|---|---|
| * | * * | * * |
| Mason Chamberlain, Incorporated. | Bay St. Louis, Mississippi. | Wastewater treatment sludge filter cake (EPA Hazardous Waste No. F019) generated (at a maximum annual rate of 1,262 cubic yards) from the chemical conversion coating of aluminum. This exclusion was published on October 27, 1989. |
| * | * * | * * |

[FR Doc. 89–25353 Filed 10–26–89; 8:45 am]

BILLING CODE 6560–50–M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 611

[Docket No. 90367–9165]

### Foreign Fishing

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

**ACTION:** Final notice to reassess fishery specifications.

**SUMMARY:** NOAA issues this final notice of reassessment of fishery specifications

and joint venture processing (JVP) amounts in the foreign fishing regulations for the Preliminary Fishery Management Plan for the Hake Fisheries of the Northwestern Atlantic (PMP). This notice addresses new scientific information in the fishery and recent developments that have occurred in the fishery. The intended effect of the new specifications is to allow continued development of the hake fisheries of the Northwestern Atlantic that will be conducted to support joint ventures (JV) involving U.S. hake fishermen to produce net benefit to the United States.

**EFFECTIVE DATE:** November 27, 1989.

**FOR FURTHER INFORMATION CONTACT:** E. Martin Jaffe, (Resource Management Specialist), 508–281–9272.

**SUPPLEMENTARY INFORMATION:** NOAA published a proposed rule to amend fishery specifications on April 5, 1989, to present the optimum yield (OY), domestic annual harvest (DAH), domestic annual processing (DAP), JVP, reserve, and the total allowable level of foreign fishing (TALFF) for the hake fisheries (54 FR 13704) with request for public comment.

A foreign fishing application for a silver hake JV with vessels of the Soviet Union was received after publication of the proposed rule. NOAA published a notice of extension of the comment period on May 2, 1989, (54 FR 18683) extending the comment period through May 15, 1989, to allow sufficient time for comments from industry and the public to address the recent interest in JVP. The JV application involves silver hake in the N. Georges/Gulf of Maine (GOM) area.

The NMFS reassessment affirms that the DAP for the N. Georges/GOM silver hake is appropriate to satisfy the domestic processing sector and that sufficient U.S. harvest is available to approve a JV. Based on this review, NMFS specifies an appropriate amount of JVP for N. Georges/GOM by transferring 3,000 metric tons of silver hake from reserve. While this specification increases the DAH by 3,000 metric tons, it does not modify the DAP.

The specifications for hake fisheries in the Northeast Region, Northwestern Atlantic Ocean, are revised to read as follows:

NORTHWESTERN ATLANTIC HAKE FISHERIES

[In metric tons (mt)]

| Species | Species code | Area | OY | DAH | DAP | JVP | Reserve | TALFF |
|---|---|---|---|---|---|---|---|---|
| Hake, Silver | 104 | S. Georges/MAtl | 14,000 | 12,000 | 12,000 | 0 | 1,750 | 250 |
| | | N. Georges/GOM | 13,000 | 10,000 | 7,000 | 3,000 | 2,750 | [1] 250 |
| Hake, Red | 105 | S. Georges/MAtl | 1,000 | 600 | 600 | 0 | 300 | 100 |
| | | N. Georges/GOM | 1,500 | 800 | 800 | 0 | 600 | 100 |

[1] This table is amended to show the change in silver hake in the reserve amount from 5,750 to 2,750 mt in the JVP amount and from 0 to 3,000 mt that was not included in the proposed rule published April 5, 1989, 54 FR 13704.

## Comments and Responses

Written comments were submitted by Mayflower International, Ltd., Cape Ann Vessel Association, and the Gloucester Fisheries Association. A group representing Gloucester, MA processors also commented in a meeting with the NMFS Northeast Regional Director. The Gloucester Fisheries Association and the group representing the local processors (the processors) oppose the JV while Mayflower International, Ltd. and the Cape Ann Vessel Association support it.

*Comment:* The processors asked if the silver hake purchased by the foreign JV partner would be sold in the United States.

*Response:* The vessels of the Soviet Union expect to process the fish into fillets and fishmeal. The application for JV states that the expected market is the Soviet Union and that the products are not expected to enter the United States.

*Comment:* The processors asked what will happen to the by-catch.

*Response:* Their application for JV states that the foreign fishing vessels will not exceed the incidental harvest limits established by the regulations. They further agreed to return any by-catch to the U.S. harvesting vessels if requested.

*Comment:* The processors and the Gloucester Fisheries Association expressed their concern with the possibility of the JV taking groundfish. The processors were concerned with effects of the JV on groundfishing in 1989, and the Gloucester Fisheries Association asked if there would be a JV next year for groundfish.

*Response:* As stated in 50 CFR 611.11(c), all species of fish which a foreign fishing vessel has not been allocated or authorized to retain, including fish caught or received in excess of any allocation or authorization, are prohibited species which must be returned promptly to the ocean. Further, it is unlikely that the foreign fishing vessels will encounter groundfish (e.g., cod or haddock) because of the known low concentration of multi-species groundfish in that portion of N. Georges Bank/GOM known as Cultivator Shoals. Also, there is no JVP for groundfish, nor is one expected given the capacity of the domestic processing sector. Thus, a JV for groundfish is not possible.

*Comment:* Some small boat fishermen fear that U.S. vessels participating in the JV will sell boxed whiting in the New York market.

*Response:* The Cape Ann Vessel Association and Mayflower, Ltd. have conditioned participation of interested vessels in the JV upon their agreement to refrain from boxing their catch and selling into the New York market.

## Classification

The Assistant Administrator for Fisheries, NOAA, determined that this action appears to be necessary for the conservation and management of the hake fisheries governed by the PMP prepared by the Secretary and that it is consistent with the Magnuson Fishery Conservation and Management Act (Magnuson Act) and other applicable law.

This action does not result in a significant change in the original environmental action and is categorically excluded from the requirement to prepare an environmental assessment pursuant to NOAA Directive 02–10.

The Under Secretary for Oceans and Atmosphere, NOAA, determined that this is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291 because it would not have an annual effect on the economy of $100 million or more; would not result in an increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic

regions; and would not result in significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. The General Counsel of the Department of Commerce certified to the Small Business Administration that this will not have a significant economic impact on a substantial number of small entities because it does not regulate domestic fishing interests. As a result, a regulatory flexibility analysis was not prepared.

This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act.

This rule will be implemented in a manner that does not directly affect the approved coastal zone management programs of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina and South Carolina.

Management measures in the PMP are not likely to affect endangered species or marine mammals.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

### List of Subjects in 50 CFR Part 611

Fisheries, Foreign relations, Reporting and recordkeeping requirements.

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

Dated: October 20, 1989.

**James E. Douglas, Jr.,**

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

[FR Doc. 89-25326 Filed 10-26-89; 8:45 am]

BILLING CODE 3510-22-M

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## 50 CFR Part 675

**[Docket No. 81131-9019]**

## Groundfish of the Bering Sea and Aleutian Islands Area

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

**ACTION:** Notice of closure.

**SUMMARY:** NOAA announces the closure of the Bering Sea and Aleutian Islands subareas to retention of Greenland turbot under provisions of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). This action is necessary to prevent the total allowable catch (TAC) for Greenland turbot in the Bering Sea and Aleutian Islands subareas from being exceeded before the end of the fishing year. The intent of this action is to assure optimum use of groundfish while conserving Greenland turbot stocks.

**DATES:** Effective from noon, Alaska Daylight Time (ADT), October 25, 1989, through December 31, 1989. Comments will be accepted through November 8, 1989.

**ADDRESS:** Comments should be mailed to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802, or be delivered to Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska.

**FOR FURTHER INFORMATION CONTACT:** Jessica A. Gharrett, Resource Management Specialist, NMFS, 907-586-7229.

**SUPPLEMENTARY INFORMATION:** The FMP governs the groundfish fishery in the exclusive economic zone under the Magnuson Fishery Conservation and Management Act. The FMP was developed by the North Pacific Fishery Management Council (Council) and implemented by rules appearing at 50 CFR 611.93 and part 675.

The current TAC for Greenland turbot is set at 8,000 metric tons (mt). Current apportionments of TAC to domestic annual processing (DAP) and joint venture processing (JVP) are 7,800 mt and 200 mt, respectively.

In the Bering Sea and Aleutian Islands subareas, the estimated catch through October 7, 1989, of Greenland turbot for DAP is 7,089 mt, and for JVP is 41 mt, for a total of 7,120 mt. Current daily catch rates are approximately 50 mt. When the Bering Sea and Aleutian Islands subareas Greenland turbot TAC is taken, current regulations require that all domestic vessels operating in those subareas discard Greenland turbot in the same manner as prohibited species, and that all foreign processors in those subareas are prohibited from receiving Greenland turbot. The Regional Director estimates that at current and anticipated catch rates the entire Bering Sea and Aleutian Islands subareas Greenland turbot TAC (8,000 mt) will be taken by DAP and JVP fisheries by October 25, 1989.

### Notice of Closure to Retention

Under § 675.20(a)(7), when the Regional Director determines that the entire TAC of any target species is taken, the Secretary will publish a notice in the **Federal Register** prohibiting retention of that species for the remainder of the fishing year. Therefore, in order to prevent exceeding the TAC for Greenland turbot, all retention of Greenland turbot in the Bering Sea and Aleutian Islands subareas must cease effective noon, ADT, October 25, 1989.

### Classification

The Assistant Administrator for Fisheries, NOAA, finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment. Immediate effectiveness of this notice is necessary to prevent the TAC for Greenland turbot from being exceeded. However, interested persons are invited to submit comments in writing to the address above for 15 days after the effective date of this notice.

This action is taken under the authority of 50 CFR 675.20(b) and 675.20(a)(7) and complies with Executive Order 12291.

### List of Subjects in 50 CFR Part 675

Fish, Fisheries, Reporting and recordkeeping requirements.

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

Dated: October 23, 1989.

**David S. Crestin,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 89-25325 Filed 10-24-89; 9:04 am]

BILLING CODE 3510-22-M

# Proposed Rules

Federal Register
Vol. 54, No. 207
Friday, October 27, 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 TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 89-NM-195-AD]**

### Airworthiness Directives; Boeing Model 747 Series Airplanes

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

**ACTION:** Notice of Proposed Rulemaking (NPRM).

**SUMMARY:** This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which would require modification of the body station 1241 bulkhead and the wing rear spar kick fitting joint, and repair of the bulkhead splice strap, if necessary. This proposal is prompted by a report of a cracked splice strap at the kick fitting location on one airplane. This condition, if not corrected, could lead to bulkhead forging cracks and result in the inability of the remaining structure to withstand fail-safe loads.

**DATE:** Comments must be received no later than December 18, 1989.

**ADDRESSES:** Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-195-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Satish Pahuja, Airframe Branch, ANM-120S; telephone (206) 431-1997. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-195-AD." The post card will be date/time stamped and returned to the commenter.

### Discussion

The manufacturer of Boeing Model 747 series airplanes recently reported that during production a bearing plate was not installed on the splice strap at the kick fitting location on airplanes, line numbers 676, 679, 685, and 690-699. This bearing plate is required to prevent fretting and corrosion, and subsequent splice strap cracking at the kick fitting location. This condition, if not corrected, could lead to bulkhead forging cracks and result in the inability of the remaining structure to withstand fail-safe loads

The FAA has reviewed and approved Boeing Service Bulletin 747-53-2299, Revision 1, dated June 29, 1989, which describes procedures for an interim modification to minimize fretting by reducing kick fitting fastener clamp up torque, and procedures for a permanent modification by installing a bearing plate between the strap and sliding joint bushings.

Since this condition is likely to exist or develop on other airplanes of this same type design an AD is proposed which would require an interim modification of the body station 1241 bulkhead, and an eddy current inspection for cracks of the bulkhead splice strap. If no cracking is found, a permanent modification would be required; if cracking is found repair would be required prior to further flight. Procedures for accomplishing these action would be in accordance with the service bulletin previously described.

There are approximately 13 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 1 airplane of U.S. registry would be affected by this AD, that it would take approximately 91 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $3,640.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a "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) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

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

**PART 39—[AMENDED]**

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

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

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 747 series airplanes, line position 676, 679, 685, and 690 through 699, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent cracking of the bulkhead splice strap, accomplish the following:

A. Within the next 1,000 flight cycles after the effective date of this AD, perform an interim modification of the body station 1241 bulkhead in accordance with Boeing Service Bulletin 747-53-2299, Revision 1, dated June 29, 1989.

B. Within the next 5,000 flight cycles after the effective date of this AD, perform an eddy current inspection for cracks of the splice strap in accordance with Boeing Service Bulletin 747-53-2299, Revision 1, dated June 29, 1989.

1. If no cracking is found, prior to further flight, perform a permanent modification in accordance with Boeing Service Bulletin 747-53-2299, Revision 1, dated June 29, 1989.

2. If cracking is found, prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Seattle Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on October 18, 1989.

**Darrell M. Pederson,**

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

[FR Doc. 89-25334 Filed 10-26-89; 8:45 am]

BILLING CODE 4910-13-M

**14 CFR Part 39**

**[Docket No. 89-NM-179-AD]**

## Airworthiness Directives; Airbus Industrie Model A320 Series Airplanes

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

**ACTION:** Notice of Proposed Rulemaking (NPRM).

**SUMMARY:** This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A320 series airplanes, which would require replacement of the existing standby transformer/rectifier (TR) with a TR identical to the main TR, and its installation in a different location with improved ventilation. This proposal is prompted by reports of false transitory electronic centralized aircraft monitor (ECAM) warnings occurring during cases of Auxiliary Power Unit (APU) shutdown. This condition, if not corrected, could result in unnecessary emergency action, such as an aborted takeoff.

**DATE:** Comments must be received no later than December 18, 1989.

**ADDRESSES:** Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-179-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Greg Holt, Standardization Branch, ANM-113; telephone (206) 431-1918. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-179-AD." The post card will be date/time stamped and returned to the commenter.

**Discussion**

The Direction Generale de L'Aviation Civile (DGAC), which is the airworthiness authority of France, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain Airbus Industrie Model A320 series airplanes. There have been reports of false electronic centralized aircraft monitor (ECAM) warnings at Auxiliary Power Unit (APU) shutdown due to the susceptibility of the standby transformer/rectifier (TR) to transitory electronic conditions. This condition, if not corrected, could result in unnecessary emergency action, such as an aborted takeoff.

Airbus Industrie has issued Service Bulletin A320-24-1028, dated July 7, 1989, which describes procedures to replace the standby TR with a TR identical to the main TR which is not susceptible to these conditions, and to relocate it to a position with improved ventilation. The relocation of the standby TR is to provide the best

environment for the proper operation of the standby TR. The DGAC has classified this service bulletin as mandatory.

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require replacement and relocation of the TR in accordance with the service bulletin previously described.

It is estimated that 8 airplanes of U.S. registry would be affected by this AD, that it would take approximately 5.5 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The required parts will be supplied by the manufacturer at no cost to the operator. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,760.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a "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) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

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

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

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

**PART 39—[AMENDED]**

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

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

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Airbus Industrie:** Applies to Model A320 series airplanes, Serial Numbers 005 through 039, and 042 through 049, certificated in any category. Compliance is required within 60 days after the effective date of this AD, unless previously accomplished.

To prevent possible false ECAM messages on APU shutdown, accomplish the following:

A. Replace the standby transformer/rectifier (TR) with one identical to the main TR, and relocate it to a position with improved ventilation, in accordance with Airbus Industrie Service Bulletin No. A320–24–1028, dated July 7, 1989.

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

**Note:** The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on October 17, 1989.

**Darrell M. Pederson,**

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

[FR Doc. 89–25335 Filed 10–26–89; 8:45 am]

BILLING CODE 4910–13–M

**DEPARTMENT OF THE TREASURY**

**Customs Service**

**19 CFR Part 12**

**The Definition of Switchblade Knives; Extension of Time for Comments**

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** Proposed rule; extension of time for comments.

**SUMMARY:** This notice extends the period of time within which interested members of the public may submit comments concerning the proposed amendment to the Customs Regulations relating to the definition of switchblade knives. A notice inviting the public to comment on the proposal was published in the **Federal Register** on August 18, 1989 (54 FR 34186), and comments were to have been received on or before October 17, 1989. A request has been received to extend the period of time for comments for an additional 60 days. The request points out that many individuals who might wish to comment on the proposal are not regular readers of the **Federal Register**. They are members of organizations and would only receive notice of the proposal through membership mailings from the organizations which cannot be accomplished within the original time period allowed for comments. In view of the arguments presented, the request is granted.

**DATE:** Comments will now be accepted if received on or before December 17, 1989.

**ADDRESSES:** Comments (preferably in triplicate) should be submitted to and may be inspected at the Regulations and Disclosure Law Branch, U.S. Customs Service, Room 2119, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229.

**FOR FURTHER INFORMATION CONTACT:** Samuel Orandle, Value, Special Programs and Admissability Branch, Commercial Rulings Division, (202) 566–5765.

Dated: October 20, 1989.

**Harvey B. Fox,**

*Director, Office of Regulations and Rulings.*

[FR Doc. 89–25282 Filed 10–26–89; 8:45 am]

BILLING CODE 4820–02–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3674-2]

## Approval and Promulgation of State Implementation Plans; PM-10 Plan for Group II and Group III Areas, Wyoming

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve the PM-10 State Implementation Plan (SIP) for the Wyoming Group III areas and the PM-10 Committal SIP for the Lander, Wyoming Group II area which were submitted by the State on March 14, 1989. The State has adequately incorporated the federal Group III and Croup II area PM-10 requirements into Wyoming's air pollution control program, which merits EPA's proposed approval of these SIP revisions. The Group III SIP makes numerous revisions related to PM-10 to the existing SIP, and the Group II Committal SIP commits the State to continue ambient air monitoring for PM-10 and to submit to EPA a full SIP if, through monitoring, violations of the PM-10 National Ambient Air Quality Standards (NAAQS) are detected. EPA's proposed approval of these SIPs is also based on Wyoming's commitment to adequately address deficiencies in the State's New Source Review (NSR) and Prevention of Significant Deterioration (PSD) regulations so that attainment and maintenance of the PM-10 NAAQS can be assured.

**DATE:** Comments must be received on or before November 27, 1989.

**ADDRESSES:** Written comments on this action should be addressed to: Chief, Air Programs Branch, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202-2405.

Copies of the applicable documentation 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.

Wyoming Department of Environmental Quality, Air Quality Division, Herschler Building, 4th Floor, 122 West 25th Street, Cheyenne, Wyoming 82002.

**FOR FURTHER INFORMATION CONTACT:** Michael Silverstein, Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, Suite 500, Denver, Colorado 80202-2405, (303) 293-1769, FTS 564-1769.

**SUPPLEMENTARY INFORMATION:** The 1977 amendments to the Clean Air Act require EPA to review periodically and, if appropriate, revise the criteria on which the NAAQS for each air pollutant are based, as well as review and revise the NAAQS themselves. In response to these requirements, EPA published a notice to promulgate revised NAAQS for particulate matter under ten microns in size (known as PM-10) on July 1, 1987 (52 FR 24634). As a result, states must revise their SIPs to attain and maintain the new NAAQS.

To implement the new SIP requirements, all areas in the country were divided into three groups, based on the probability that each of these areas would violate the PM-10 NAAQS. Group I areas have violated the PM-10 NAAQS or have air quality data showing high (greater than 95%) probabilities of violating the NAAQS. These areas must submit to EPA for approval full SIPs including control strategies and attainment demonstrations. Group II areas are estimated to have a moderate (20%-95%) probability of violating the PM-10 NAAQS, and must commit to monitor for PM-10 and submit a full SIP if a violation occurs. Group III areas are estimated to have a low (less than 20%) probability of violating the PM-10 NAAQS, and no new control strategy requirements apply.

### Group III Areas

Most of the State of Wyoming has been classified as Group III for PM-10. On March 14, 1989, the State submitted a Group III SIP for these areas. The requirements for Group III SIPs and the State's response to these requirements are described below.

*EPA Requirements for PM-10 Group III SIPs*

The following SIP requirements apply to all PM-10 Group III areas, and are also applicable to Group II and Group I areas:

A. All SIPs should provide for the attainment and maintenance of the PM-10 standards, and PM-10 should be regulated as a criteria pollutant.

B. Since the SIP must protect both the PM-10 standard and the total suspended particulates (TSP) increment for PSD, it must trigger preconstruction review for a new or modified source which would emit significant (as defined at 40 part CFR 51.166(b)(23)) amounts of either TSP or PM-10.

C. The significant harm level for particulate matter was revised in 40 CFR 51.151 to 600 ug/$m^3$ measured as PM-10, and the combined sulfur dioxide-particulate matter significant harm level was deleted. In addition, the example alert, warning, and emergency levels of particulate matter in Appendix L of Part 51 were also revised to reflect PM-10 concentrations. Therefore, State emergency episode plans must be revised to reflect these changes.

D. Revisions to 40 CFR part 58 set forth the requirements for design of national, state and local PM-10 air monitoring networks. The revised monitoring networks must be submitted for EPA approval. The required monitoring frequency varies with area grouping; Group I areas are required to monitor daily for at least one site in the area of expected maximum concentration, Group II areas are required to monitor every other day at such a site, and Group III areas are required to monitor every sixth day at such a site. Monitoring frequency in Group I and Group II areas can be reduced if the reduction is supported by at least one year of data.

*Wyoming PM-10 Group III Submittal*

The State has made revisions to section 2, Definitions, section 3, Ambient Particulate Standards, section 20, Air Pollution Emergency Episodes, section 21, Permit Requirements, and section 24, Prevention of Significant Deterioration of the Wyoming Air Quality Standards and Regulations (WAQSR) for PM-10 which satisfy the requirements of "A.", "B.", and "C.", above. In addition, the State submittal contains the following:

1. The State has adopted the "Wyoming Implementation Plan for PM-10 Ambient Air Quality Standards" which: (1) Outlines Group III requirements, (2) indicates standards and regulation revisions, (3) describes monitoring plans, (4) describes PM-10 monitoring activities in the Trona TSP nonattainment area (the Trona Industrial area was designated a nonattainment area for EPA's former TSP secondary 24-hour standard but was designated as a PM-10 Group III area by EPA), and (5) commits the resources necessary to implement the plan.

2. The State has adopted "The State of Wyoming State Implementation Plan on Air Quality Surveillance for Inhalable Particulate Matter (PM-10)" which describes, in detail, Wyoming's plan for adhering to EPA's requirements (found in 40 CFR part 58) for the monitoring of PM-10 particulate matter. The State-wide PM-10 monitoring network design and coverage have been reviewed, and were approved by EPA Region VIII's Environmental Services Division on

March 30, 1989. This plan satisfies the requirements of "D." above.

3. The State administers a NSR program for all stationary sources and modifications, including PSD sources. By adopting ambient air quality standards for PM–10, the State has triggered the requirement for preconstruction review of all PSD sources of PM–10.

EPA believes that the existing EPA-approved SIP along with the revisions identified above and the commitment to correct deficiencies in the NSR and PSD regulation (discussed below) are adequate to demonstrate and maintain compliance with the PM–10 NAAQS. However, EPA will request that the State re-identify, in detail, any other plans and regulations that are being relied upon by the PM–10 SIP to ensure continued compliance with the PM–10 NAAQS.

**Group II Areas**

The Lander, Wyoming area has been classified as a Group II area for PM–10. On March 14, 1989, the State submitted a Committal SIP for this area. The requirements for Group II Committal SIPs and the State's response to these requirements are described below.

*EPA Requirements for PM–10 Group II Committal SIPs*

Committal SIPs for Group II areas must contain enforceable commitments to:

A. Gather ambient PM–10 data, at least to an extent consistent with minimum EPA requirements and guidance.

B. Analyze and verify the ambient PM–10 data and report 24-hour PM–10 NAAQS exceedances to the appropriate Regional Office within 45 days of each exceedance.

C. When an appropriate number of verifiable 24-hour NAAQS exceedances becomes available or when an annual arithmetic mean above the level of the annual PM–10 NAAQS becomes available, acknowledge that a nonattainment problem exists and immediately notify the appropriate Regional Office.

D. Within 30 days of the notification referred to in "C.", above, or within 37 months of promulgation of the PM–10 NAAQS, whichever comes first, determine whether the measures in the existing SIP will assure timely attainment and maintenance of the primary PM–10 standards, and immediately notify the appropriate Regional Office. The following factors should be considered in determining the adequacy of the existing SIP: (1) Air quality data, (2) emissions data, and (3) the present control strategy.

E. Within six months of the notification referred to in "D.", above, adopt and submit to EPA a PM–10 control strategy that assures attainment as expeditiously as practicable but no later than three years from approval of the Committal SIP.

*Wyoming's PM–10 Group II Submittal for Lander*

The State submittal addresses EPA's requirements by committing Wyoming to the following actions:

A. Gather ambient PM–10 data, at least to an extent consistent with minimum EPA requirements and guidance. The State began to monitor for PM–10 in January 1985, and has committed to continue monitoring in the Committal SIP. There are two PM–10 monitoring sites and one TSP monitoring site operating in Lander. One of the PM–10 monitors is operated on an every-other-day schedule while the other PM–10 monitor is operated every sixth day. The TSP site is operated on an every sixth day schedule. The Lander PM–10 monitoring network design and coverage have been reviewed, and were approved by the Region VIII Environmental Services Division on March 30, 1989.

B. Analyze and verify the ambient PM–10 data and report 24-hour PM–10 NAAQS exceedances to the appropriate Regional Office within 45 days of each exceedance.

C. When an appropriate number of verifiable 24-hour NAAQS exceedances becomes available or when an annual arithmetic mean above the level of the annual PM–10 NAAQS becomes available, acknowledge that a nonattainment problem exists and immediately notify the EPA Regional Office.

D. Within 30 days of the notification referred to in "C." above, or by September 1, 1990, whichever comes first, detemine whether the existing SIP will assure timely attainment and maintenance of PM–10 standards, and immediately notify the EPA Regional Office.

E. Within six months of the notification referred to in "D." above (if necessary), adopt and submit to EPA a PM–10 control strategy that assures timely attainment and maintenance within a period of three years from approval of this committal SIP.

**EPA Required Revisions to the Wyoming NSR and PSD Regulations**

On August 3, 1988, EPA provided Wyoming with comments, for the public record, on the State's proposed PM–10 SIP revisions. Included were comments concerning the State's NSR and PSD programs found in sections 21 and 24 of the WAQSR. EPA had reviewed the Wyoming NSR and PSD programs in their entirety in order to ensure that the program would adequately protect the PM–10 NAAQS.

The State subsequently submitted to EPA the March 14, 1989, SIP submittal which adequately addressed and incorporated many of EPA's August 3, 1988, comments. However, numerous comments concerning the State's PSD regulations were not addressed in the subject SIP submittal.

On June 20, 1989, EPA informed Wyoming that the State must begin to rectify the PSD deficiencies noted in sections 21 and 24 in order for EPA to fully approve the PM–10 SIP revision. As a minimum, EPA sought a commitment from the State that revisions would be made to these sections which adequately address EPA's concerns. If a commitment were not provided by the State, EPA could not proceed to approve that portion of the PM–10 SIP revision pertaining to PSD. If necessary, EPA would call for a SIP revision, requiring the State to revise sections 21 and 24 to make them consistent with the federal PSD requirements of 40 CFR part 51.

Wyoming responded to EPA on July 27, 1989, stating that the State would commit to revising the PSD regulations in conformance with EPA's comments, with the exception of a few provisions. (The State estimated that it would take approximately nine months for the State to revise the PSD regulations and submit the changes to EPA as a SIP revision.) The State and EPA proceeded to rectify the differences in opinion as to which provisions in sections 21 and 24 must be revised, and on September 20, 1989, Wyoming provided EPA with a commitment to begin the process of revising sections 21 and 24.

**Proposed action**

EPA is proposing to approve the PM–10 SIP for the Wyoming Group III areas and the PM–10 Committal SIP for the Lander, Wyoming Group II area because these SIPs meet the appropriate EPA requirements. EPA's proposed approval of these SIPs is also based on Wyoming's commitment to adequately address deficiencies in the State's NSR and PSD regulations so that attainment and maintenance of the PM–10 NAAQS can be assured.

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, Particulate matter, Sulfur oxides.

Authority: 42 U.S.C. 7401–7642.

Dated: September 27, 1989.

**James J. Scherer,**

*Regional Administration.*

[FR Doc. 89–25354 Filed 10–26–89; 8:45 am]

BILLING CODE 6560–50–M

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**40 CFR Part 81**

**[FRL 3675–1]**

## Designation of Areas for Air Quality Planning Purposes; Oklahoma; Tulsa County Ozone

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

**ACTION:** Proposed rule; extension of public comment deadline.

**SUMMARY:** On September 7, 1989, at 54 FR 37132, EPA solicited public comment on its proposal to disapprove a request from the Oklahoma State Department of Health (OSDH) to revise the attainment status designation for Tulsa County from nonattainment to attainment for the Ozone National Ambient Air Quality Standard (NAAQS). At the request of the OSDH, McDonnell Douglas-Tulsa, and American Airlines, EPA is extending the deadline from October 10, 1989, to December 11, 1989, for receiving written comments on the Agency's proposed disapproval of the request. The above parites have requested the extension to allow sufficient time to prepare written comments. Interested parties are invited to submit written comments on all aspects of that proposal.

**DATE:** Written comments must be received on or before December 11, 1989.

**ADDRESS:** Written comments should be addressed to Mr. Thomas H. Diggs, Air Programs Branch (6T–AN), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733.

**FOR FURTHER INFORMATION CONTACT:** Gregg Guthrie, Air Programs Branch, Telephone (214) 655–7214 or (FTS) 255–7214.

Dated: October 16, 1989.

**Joe D. Winkle,**

*Deputy Regional Administrator (6).*

[FR Doc. 89–25298 Filed 10–26–89; 8:45 am]

BILLING CODE 6560–50–M

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**40 CFR Part 261**

**[SW–FRL–3675–3]**

## Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule and request for comment.

**SUMMARY:** The Environmental Protection Agency (EPA or Agency) today is proposing to grant a petition submitted by Philway Products, Incorporated, Ashland, Ohio, to exclude certain solid wastes generated at its facility from the lists of hazardous wastes contained in 40 CFR 261.31 and § 261.32. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 268, 124, 270, and 271 of title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, Which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists. Today's proposed decision is based on an evaluation of waste-specific information provided by the petitioner.

The Agency is also proposing the use of a fate and transport model and its application in evaluating the waste-specific information provided by the petitioner. This model has been used in evaluating the petition to predict the concentration of hazardous constituents released from the petitioned waste, once it is disposed of.

**DATES:** EPA is requesting public comments on today's proposed decision and on the applicability of the fate and transport model used to evaluate the petition. Comments will be accepted until December 11, 1989. Comments postmarked after the close of the comment period will be stamped "late".

Any person may request a hearing on this proposed decision and/or the model used in the petition evaluation by filing a request with Joseph Carra, whose address appears below, by November 13, 1989. The request must contain the information prescribed in 40 CFR 260.20(d).

**ADDRESSES:** Send three copies of your comments to EPA. Two copies should be sent to the Docket Clerk, Office of Solid Waste (OS–305), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. A third copy should be sent to Jim Kent, Variances Section, Assistance Branch, PSPD/OSW (OS–343), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Identify your comments at the top with this regulatory docket number: "F–89–PHEP–FFFFF".

Requests for a hearing should be addressed to Joseph Carra, Director, Permits and State Programs Division, Office of Solid Waste (OS–340), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

The RCRA regulatory docket for this proposed rule is located at the U.S. Environmental Protection Agency, 401 M Street SW. (Room M2427), Washington, DC 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475–9327 for appointments. The public may copy material from any regulatory docket at a cost of $0.15 per page.

**FOR FURTHER INFORMATION CONTACT:** For general information, contact the RCRA Hotline, toll free at (800) 424–9346, or at (202) 382–3000. For technical information concerning this notice, contact Chichang Chen, Office of Solid Waste (OS–343), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382–4671.

**SUPPLEMENTARY INFORMATION:**

### I. Background

*A. Authority*

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in subpart C of part 261 (*i.e.*, ignitability, corrosivity, reactivity, and extraction procedure (EP) toxicity) or meet the criteria for listing contained in 40 CFR 261.11(a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must show that wastes generated at their facilities do not meet any of the criteria for which the wastes were listed. See 40 CFR 260.22(a) and the background documents for the listed wastes. In addition, the Hazardous and Solid Waste Amendments (HSWA) of 1984 require the Agency to consider any factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (*i.e.*, ignitability, reactivity, corrosivity, and EP toxicity), and must present sufficient information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. See 40 CFR 260.22(a), 42 U.S.C. 6921(f), and the background documents for the listed wastes. Although wastes which are "delisted" (*i.e.*, excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of hazardous waste, generators remain obligated under RCRA to determine whether or not their waste remains non-hazardous based on the hazardous waste characteristics.

In addition to wastes listed as hazardous in 40 CFR 261.31 and 261.32, residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing hazardous wastes are also considered hazardous wastes. Such wastes are also eligible for exclusion and remain hazardous wastes until excluded. See 40 CFR 261.3(c) and (d)(2). The substantive standards for "delisting" a treatment residue or a mixture are the same as previously described for listed wastes.

*B. Approach Used to Evaluate This Petition*

This petition requests a delisting for a listed hazardous waste. In making the initial delisting determination, the Agency evaluated the petitioned waste against the listing criteria and factors cited in 40 CFR 261.11 (a)(2) and (a)(3). Based on this review, the Agency agreed with the petitioner that the waste is non-hazardous with respect to the original listing criteria. (If the Agency found, based on this review, that the waste remains hazardous based on the factors for which the waste was originally listed, EPA would have proposed to deny the petition.) EPA then evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. The Agency considered whether the waste is acutely toxic, and considered the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and any other additional factors which may characterize the petitioned waste.

For this delisting determination, the Agency used this information to identify plausible exposure routes for hazardous constituents present in the waste, and is proposing to use a particular fate and transport model to predict the concentration of hazardous constituents that may be released from the petitioned waste after disposal and to determine the potential impact of the unregulated disposal of Philway's petitioned waste on human health and the environment. Specifically, the model was used to predict compliance-point concentrations which will be compared directly to the levels of regulatory concern for particular hazardous constituents.

EPA believes that this fate and transport model represents a reasonable worst-case waste disposal scenario for the petitioned waste, and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA subtitle C. Because a delisted waste is no longer subject to hazardous waste control, the Agency is generally unable to predict and does not control how a waste will be managed after delisting. Therefore, EPA currently believes that it is inappropriate to consider extensive site-specific factors. For example, a generator may petition the Agency for delisting of a metal hydroxide sludge which is currently being managed in an on-site landfill and provide data on the nearest drinking water well, permeability of the aquifer, dispersivities, etc. If the Agency were to base its evaluation solely on these site-specific factors, the Agency might conclude that the waste, at that specific location, cannot affect the closest well, and the Agency might grant the petition. Upon promulgation of the exclusion, however, the generator is under no obligation to continue to manage the waste at the on-site landfill. In fact, it is likely that the generator will either choose to send the delisted waste off site immediately, or will eventually reach the capacity of the on-site facility and subsequently send the waste off site to a facility which may have very different hydrogeological and exposure conditions.

The Agency also considers the applicability of ground-water monitoring data during the evaluation of delisting petitions. In this case, the Agency determined that it would be inappropriate to request ground-water monitoring data because Philway sends the petitioned waste off site for disposal. For petitioners using off-site management, the Agency believes that, in most cases, the ground-water monitoring data collected would not be meaningful. Most commercial land disposal facilities accept wastes from numerous generators. Any ground-water contamination or leachate would be characteristic of the total volume of waste disposed of at the site. In most cases, the Agency believes that it would be impossible to isolate ground-water impacts associated with any one waste disposed of in a commercial landfill. Therefore, the Agency did not request ground-water monitoring data.

Finally, the Hazardous and Solid Waste Amendments of 1984 specifically require the Agency to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, a final decision will not be made until all public comments (including those at requested hearings, if any) on today's proposal are addressed.

**II. Disposition of Delisting Petition**

*A. Philway Products, Incorporated, Ashland, Ohio*

1. Petition for Exclusion

Philway Products, Incorporated (Philway) located in Ashland, Ohio manufactures printed circuit (PC) boards. Philway petitioned the Agency to exclude its filter press sludge, presently listed as EPA Hazardous Waste No. F006—"Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5)

cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum". The listed constituents for EPA Hazardous Waste No. F006 are cadmium, hexavalent chromium, nickel, and complexed cyanide (see 40 CFR part 261, appendix VII).

Philway petitioned to exclude its waste because it does not believe that the waste meets the criteria of the listing. Philway also believes that the waste does not contain appreciable amounts of the listed constituents. Philway further asserts that no other constituents are present or, if present, are in essentially immobile forms. Philway further believes that the waste is not hazardous for any other reason (*i.e.*, there are no additional hazardous constituents or factors that could cause the waste to be hazardous). Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments of 1984. See section 222 of the Amendments, 42 U.S.C. 6921(f), and 40 CFR 260.22(d) (2)–(4). Today's proposal to grant this petition for delisting is the result of the Agency's evaluation of Philway's petition.

2. Background

Philway petitioned the Agency to exclude its filter press sludge on November 12, 1985 and subsequently provided additional information to complete its petition. In support of its petition, Philway submitted (1) a detailed description of the manufacturing and treatment processes used in the fabrication of printed circuit boards; (2) a list of raw materials and material safety data sheets (MSDSs) for tradename materials used in its manufacturing and treatment processes; (3) results from total constituent and EP leachate analyses for the EP toxic metals and nickel on representative samples of the waste; (4) results from total constituent analyses for cyanide on representative samples of the waste; (5) results from total constituent analyses for acetone, acrylamide, formaldehyde, methylene chloride, thiourea, toluene, 1,1,1-trichloroethane, trichloroethylene, and xylene on representative samples of the waste; (6) results from total oil and grease analyses; and (7) test data and explanations regarding the characteristics of ignitability, corrosivity, and reactivity.

Philway manufactures PC boards. Philway's manufacturing procedure includes a number of electroplating and related process steps. Initially, the unilayer PC boards are sheared to proper size, sanded, and deburred. The boards then sequentially undergo electroless copper plating, dry film application, copper and tin/lead plating, photo resist strip application, copper etching, tin/lead fusing, tin/lead strip application, and nickel and gold plating. The boards are degreased and cleaned in the last step. For multilayer circuit boards, an additional oxide treatment sequence follows the shearing step in the manufacturing schematic. All except four process baths and rinses from these steps are discharged to the wastewater treatment system on a routine basis; minor bath dumps occur daily and major bath dumps occur every 7 days. The remaining four process baths (*i.e.*, baths utilizing Dynachem Electroless Copper 835, Dynachem Alkastrip SQ, Electrochemical 808A, and Electrochemical 808B) are treated prior to discharge to the wastewater treatment system. Solids generated from the treatment of these four baths are disposed of in an off-site solid waste landfill.

The water rinses and spent process fluids resulting from the manufacturing processes flow into two polypropylene-lined, concrete holding containers, referred to as pit 1 and pit 2. Wastewaters from these pits are combined in a 2,500 gallon neutralization tank and maintained at a pH between 8.2 and 9.0 using lime, sodium hydroxide, and ferric chloride. Metal hydroxides are formed during this neutralization stage.

From the neutralization tank, the wastewater flows into a clarifier where a polymer and flocculant are added to aid in precipitating the metal hydroxides. Sludge from the clarifier is pumped to a holding tank; the clarifier supernatant is dispensed to a publicly-owned treatment works (POTW). Twice a day the sludge is pumped from the holding tank to a filter press for dewatering. This generates a filter press sludge that is temporarily stored in a 12 cubic yard hopper prior to off-site disposal in a hazardous waste landfill. The wastewater treatment filter press sludge is the subject of today's proposed exclusion.

To collect representative samples from filter presses like Philway's, petitioners are normally requested to collect a minimum of four composite samples composed of independent grab samples collected over time (*e.g.*, grab samples collected every hour and composited by shift). See "Test Methods for Evaluating Solid Wastes: Physical/Chemical Methods," U.S. EPA, Office of Solid Waste and Emergency Response, Publication SW–846 (third edition), November 1986, and "Petitions to Delist Hazardous Wastes—A Guidance Manual," U.S. EPA, Office of Solid Waste, (EPA/530–SW–85–003), April 1985.

Philway presented analytical data on 17 samples collected from the filter press over four sampling events: September 1985, September 1986, June 1987, and August/September 1988. The samples collected during the September 1985 and 1986 sampling events were collected on four separate days during two separate seven-day periods. The samples collected during the June 1987 and August/September 1988 sampling events were collected on four separate days during an 18-day and a 22-day period, respectively. Each of the daily samples were composites composed of surface grabs from three sections of the filter press. Philway claims that the sampling events were designed such that samples collected represent filter press sludge generated during times when both minor and major bath dumps were impacting the wastewater treatment system (*i.e.*, pits 1 and 2 and subsequent treatment steps). Philway also claims that all samples collected are representative of any variation of the listed and non-listed constituent concentrations in the waste. Philway further claims that the manufacturing processes used at the facility are operated in a consistent manner and that the use of raw materials does not vary significantly over time.

The four 1985 filter press sludge samples were analyzed for total constituent concentrations (*i.e.*, mass of a particular constituent per mass of waste) of arsenic, cadmium, chromium, lead, mercury, nickel, selenium, and cyanide. In addition, these four samples were analyzed for the extraction procedure (EP) leachate concentrations (*i.e.*, mass of particular constituent per unit volume of extract) of the EP toxic metals and nickel; total oil and grease; and pH.

The four 1986 filter press sludge samples.were analyzed for total concentrations of barium and silver; whereas, the five 1987 samples were analyzed for total concentrations of acrylamide, formaldehyde, and thiourea. The four I988 filter press sludge samples were analyzed for total constituent concentrations of acetone, methylene chloride, toluene, 1,1,1-trichloroethane, trichloroethylene, and xylene.

3. Agency Analysis

Philway used EPA Publication SW–846 Methods 7061, 7080, 7130, 7190, 7420, 7471, 7520, 7741, and 7760, respectively, to quantify the total constituent

concentrations of arsenic, barium, cadmium, total chromium, lead, mercury, nickel, selenium, and silver. Philway used "Standard Methods for the Examination of Water and Wastewater" ("Standard Methods") Method 412D to quantify the total constituent concentration of total cyanide. SW–846 Method 1310 was used to determine the leachable concentrations of the EP toxic metals and nickel. "Standard Methods" Method 423 was used to obtain pH values of the filter sludge samples.

Philway utilized SW–846 Methods 8010 and 8015 to quantify total levels of acetone, methylene chloride, toluene, 1,1,1-trichloroethane, trichloroethylene, and xylene. Philway used SW–846 Method 8630 to quantify total acrylamide and formaldehyde levels. For total thiourea concentrations, SW–846 Method 8330 was employed.

Total constituent and EP leachate analyses for the EP toxic metals, nickel, and cyanide in the filter press sludge revealed the maximum concentrations reported in Table 1. The maximum total constituent concentrations for the hazardous organic compounds potentially (or suspected to be) present in the petitioned waste are presented in Table 2.

TABLE 1.—MAXIMUM TOTAL CONSTITUENT AND EP LEACHATE CONCENTRATIONS (PPM) FILTER PRESS SLUDGE

| Constituents | Total constituent concentrations | EP Leachate concentrations |
|---|---|---|
| Arsenic | 0.05 | <0.01 |
| Barium | 105 | 0.72 |
| Cadmium | 0.24 | 0.03 |
| Chromium | 36.8 | 0.04 |
| Lead | 3,200 | 0.20 |
| Mercury | <1 | <0.002 |
| Nickel | 240 | 0.15 |
| Selenium | <2 | <0.01 |
| Silver | 4.9 | 0.01 |
| Cyanide | 4.44 | [1]0.22 |

<: Denotes that the constituent was not detected at the detection limit specified in the table.

[1] Calculated by assuming a dilution factor of twenty times (based on 100 grams of sample and dilution with 2 liters of water) and a theoretical worst-case leaching of 100 percent.

TABLE 2.—MAXIMUM TOTAL CONSTITUENT CONCENTRATIONS OF HAZARDOUS ORGANICS (PPM) FILTER PRESS SLUDGE

| Constituents | Total constituent concentrations |
|---|---|
| Acetone | <0.1 |
| Acrylamide | <1.0 |
| Formaldehyde | <1.0 |
| Methylene chloride | <0.1 |
| Thiourea | <1.0 |
| Toluene | <0.1 |
| 1,1,1-Trichloroethane | <0.1 |
| Trichloroethylene | <0.1 |
| Xylene | <0.1 |

<: Denotes that the constituent was not detected at the detection limit specified in the table.

The detection limits in Tables 1 and 2 represent the lowest concentrations quantifiable by Philway, when using the appropriate analytical methods to analyze the petitioned waste. (Detection limits may vary according to the waste and waste matrix being analyzed, i.e., the "cleanliness" of waste matrices varies and "dirty" waste matrices may cause interferences, thus raising the detection limits.)

Using SW–846 Method 9070, Philway determined that its waste had a maximum oil and grease content of 0.096 percent; therefore, the EP analysis did not have to be modified in accordance with the Oily Waste EP methodology (i.e., wastes having more than one percent total oil and grease may either have significant concentrations of constituents of concern in the oil phase, which may not be assessed using the standard EP leachate procedure, or the concentration of oil and grease may be sufficient to coat the solid phase of the sample and interfere with the leaching of metals from the sample).

While the Agency requires petitioners to quantify concentrations of the EP toxic metals, nickel, and cyanide in the petitioned waste using analytical procedures, the Agency allows facilities to demonstrate that other hazardous constituents (*e.g.*, those listed in 40 CFR part 261, appendix VIII) are not present in the petitioned waste at hazardous levels through a variety of mechanisms. Philway made its demonstration regarding the presence of other hazardous constituents by reviewing the Material Safety Data Sheets (MSDSs) for all of the raw materials used in their process which could enter the petitioned waste. In addition, Philway contacted the material suppliers to determine whether any appendix VIII constituents are present in the raw materials but not identified on the MSDSs. Through this review of their processes and in conjunction with guidance from the Agency, Philway identified nine hazardous organic constituents that are potentially present in the petitioned waste. Philway subsequently provided analytical data for these nine hazardous organic constituents (see Table 2).

Philway provided test data indicating that the petitioned waste is not corrosive. The waste also was determined not to be ignitable or reactive. Philway substantiated its determination that the petitioned waste is not ignitable or reactive by explaining that the waste is composed of lime, metal hydroxides, and water. Furthermore, information presented in the petition indicates that sulfides are not used in the manufacturing or treatment processes generating the petitioned filter press sludge. See 40 CFR 261.21, 261.22, and 261.33.

Philway submitted a signed certification stating that, based on current annual waste generation, their maximum annual generation rate of filter press sludge is 96 cubic yards. The Agency reviews a petitioner's estimates and, on occasion, has requested a petitioner to re-evaluate estimated waste volume. EPA accepts Philway's certified estimate of 96 cubic yards of filter press sludge.

The Agency conducts a spot-check sampling and analysis program to verify the representative nature of the data for some percentage of the submitted petitions. As part of this program, the Agency conducted a spot-check sampling visit to Philway. The results of this visit are discussed later in this notice.

4. Agency Evaluation

The Agency considered the appropriateness of alternative disposal scenarios for filter press sludges and decided that disposal in a landfill is the most reasonable, worst-case scenario for this waste. Under a landfill disposal scenario, the major exposure route of concern for any hazardous constituents would be ingestion of contaminated ground water. The Agency, therefore, evaluated the petitioned waste using its vertical and horizontal spread (VHS) landfill model which predicts the potential for ground-water contamination from wastes that are landfilled. See 50 FR 7882 (February 26, 1985), 50 FR 48896 (November 27, 1985), and the RCRA public docket for these notices for a detailed description of the VHS model and its parameters. This modeling approach, which includes a ground-water transport scenario, was used with conservative, generic parameters to predict reasonable worst-case contaminant levels in ground water at a hypothetical receptor well or

compliance point (*i.e.*, the model estimates the dilution of a toxicant within the aquifer for a specific volume of waste). The Agency requests comments on the use of the VHS model as applied to the evaluation of Philway's waste.

Specifically, the Agency used the VHS model to evaluate the mobility of the hazardous inorganic constituents detected in the EP extract of Philway's filter press sludge. The Agency's evaluation, using Philway's estimate of 96 cubic yards per year and the maximum reported EP leachate concentrations, generated the compliance-point concentrations shown in Table 3. The Agency did not evaluate the mobility of the remaining inorganic constituents (*i.e.*, arsenic, mercury, and selenium) from Philway's waste because they were not detected in the EP extract using the appropriate SW-846 analytical test methods (see Table 1). The Agency believes that it is inappropriate to evaluate non-detectable concentrations of a constituent of concern in its modeling efforts if the non-detectable value was obtained using the appropriate analytical method. Specifically, if a constituent cannot be detected (when using the appropriate analytical method), the Agency assumes that the constituent is not present and therefore does not present a threat to either human health or the environment.

TABLE 3.—VHS MODEL: COMPLIANCE-POINT CONCENTRATIONS (PPM) FILTER PRESS SLUDGE

| Constituents | Compliance-point concentrations | Levels of regulatory concern[1] |
|---|---|---|
| Barium | 0.022 | 1.0 |
| Cadmium | .0009 | 0.01 |
| Chromium | .0012 | .05 |
| Lead | .0062 | .05 |
| Nickel | .0046 | .7 |
| Silver | .0003 | .05 |
| Cyanide | .0069 | .7 |

[1] See "Docket Report on Health-based Regulatory Levels and Solubilities Used in the Evaluation of Delisting Petitions," June 8, 1988, located in the RCRA public docket.

As seen in Table 3, the petitioned waste exhibited barium, cadmium, chromium, lead, nickel, silver, and cyanide levels at the compliance-point below the health-based levels used in delisting decision-making. As reported in Table 1, the maximum concentration of total cyanide in Philway's waste is 4.44 ppm. Because reactive cyanide is a specific subcategory of the general class of cyanide compounds, the Agency believes that the maximum level of reactive cyanide in the petitioned waste also will not exceed 4.4 ppm. Thus, the Agency concludes that the concentration of reactive cyanide will be below the Agency's interim standard of 250 ppm. See "Interim Agency Thresholds for Toxic Gas Generation," July 12, 1985, Internal Agency Memorandum in the RCRA public docket.

The Agency did not evaluate the mobility of the hazardous organic constituents listed in Table 2 because they were not detected in samples analyzed using appropriate analytical test methods. As discussed above in conjunction with Table 3, the Agency believes that it is inappropriate to evaluate non-detectable concentrations of a constituent of concern in its modeling efforts if the non-detectable value was obtained using the appropriate analytical method. Specifically, if a constituent cannot be detected (when using the appropriate analytical method), the Agency assumes that the constituent is not present and therefore does not present a threat to either human health or the environment.

The Agency concluded, after reviewing Philway's processes and raw materials list, that no other hazardous constituents of concern other than those tested for are being used by Philway, and that no other constituents of concern are likely to be present or formed as reaction products or by-products in Philway's waste. On the basis of test results and information submitted by the petitioner, pursuant to 40 CFR 260.22, the Agency concludes that the filter press sludge does not exhibit any of the characteristics of ignitability, corrosivity, or reactivity. See 40 CFR 261.21, 261.22, and 261.23, respectively.

On March 9, 1987, staff under contract to the Agency conducted a site visit to Philway as part of the Agency's spot-check sampling and analysis program. On October 14, 1987, Philway notified the Agency that their chemist had instituted a process change without direction or approval from the management personnel in charge of Philway's delisting efforts. (The process change entailed the substitution of caustic soda for lime as a neutralizing agent and precipitant. The filter press sludge generated using caustic soda proved to be two-thirds lower in volume than the lime-treated waste.) Philway has since resumed the use of lime during wastewater treatment because it did not wish to modify its process. Philway further noted in the October 14, 1987 letter that the samples collected during the Agency's spot-check visit were samples of the caustic-treated waste. Thus, because neither Philway management nor EPA personnel were aware of the change at the time of the spot-check visit, the Agency chose to invalidate the spot-check data and the results of the Agency's site visit were not used in the evaluation of Philway's waste. The Agency believes that Philway's management was unaware of the process change until its discovery and that Philway has taken sufficient action to return the process operations to those described in the petition. As such, the Agency believes that Philway acted in good faith even though the spot-check data had to be disregarded. To ensure there is no misunderstanding however, the proposed exclusion has been written to specify that the delisting refers only to the lime treated wastewaters. (See the RCRA public docket for today's notice for a copy of the Agency's draft report on the spot-check visit.)

5. Conclusion

The Agency believes that Philway has successfully demonstrated that its filter press sludge is not hazardous. Philway's manufacturing and waste treatment processes are believed to be consistent because the facility does not perform as a job shop or have seasonal product variations. Furthermore, the Agency believes that the samples collected by Philway over three years adequately reflect the temporal variations in manufacturing and treatment processes intended to be used thereafter. The Agency, therefore, is proposing that Philway's waste be considered non-hazardous, as it should not present a hazard to either human health or the environment. The Agency proposes to grant an exclusion to Philway Products, Incorporated, located in Ashland, Ohio, for its wastewater treatment filter press sludge described in its petition as EPA Hazardous Waste No. F006. If the proposed rule becomes effective, the filter press sludge would no longer be subject to regulation under 40 CFR Parts 262 through 268 and the permitting standards of 40 CFR Part 270.

If made final, the exclusion will apply only to the processes and waste volume covered by the original demonstration. The exclusion is only valid for lime treated waste and does not cover any wastes produced by the substitution of caustic soda for lime as a neutralizing agent and precipitant. The facility would require a new exclusion if either its manufacturing or treatment processes are significantly altered such that an adverse change in waste composition or increase in waste volume occurred. The facility would need to file a new petition

for the altered waste. The facility must treat waste generated from changed processes as hazardous until a new exclusion is granted.

Although management of the waste covered by this petition would be relieved from Subtitle C jurisdiction upon final promulgation of an exclusion, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation.

### III. Effective Date

This rule, if finally promulgated, will become effective immediately upon such final promulgation. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existinq requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after promulgation and the fact that a six-month deadline is not necessary to achieve the purpose of Section 3010, EPA believes that this exclusion should be effective immediately upon final promulgation. These reasons also provide a basis for making this rule effective immediately, upon promulgation, under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

### IV. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This proposal to grant an exclusion is not major, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling this facility to treat its waste as non-hazardous. There is no additional impact, therefore, due to today's rule. This proposal is not a major regulation, therefore, no Regulatory Impact Analysis is required.

### V. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 USC §§ 601–612, 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 which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator or delegated representative may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment, if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

### VI. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (P.L. 96–511, 44 USC § 3501 *et. seq.*) and have been assigned OMB Control Number 2050–0053.

### List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

Dated: October 6, 1989.

**Jeffery D. Denit,**

*Deputy Director, Office of Solid Waste.*

For the reasons set out in the preamble, 40 CFR part 261 is proposed to be amended as follows:

## PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6922).

2. In Table 1 of Appendix IX, add the following wastestream in alphabetical order:

**Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22.**

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

| Facility | Address | Waste description |
|---|---|---|
| • | • | • |
| Philway Products, Incorporated. | Ashland, Ohio. | Filter press sludge generated (at a maximum annual rate of 96 cubic yards) during the treatment of electroplating wastewaters using lime (EPA Hazardous Waste No. F006). This exclusion was published on [insert date of final rule's publication in the Federal Register.] |
| • | • | • |

[FR Doc. 89–25355 Filed 10–26–89; 8:45 am]

BILLING CODE 6560–50–M

## FEDERAL MARITIME COMMISSION

### 46 CFR Parts 580 and 581

**[Docket No. 89–20]**

### Definition of Shipper and Availability of Mixed Commodity Rates

**AGENCY:** Federal Maritime Commission.

**ACTION:** Availability of finding of no significant impact.

**SUMMARY:** The Commission has completed an environmental assessment of a proposed rule in Docket No. 89–20 and found that its resolution of this proceeding will not have a significant impact on the quality of the human environment.

**DATE:** Petitions for review are due November 6, 1989.

**ADDRESS:** Petitions for review (Original and 15 copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573–0001.

**FOR FURTHER INFORMATION CONTACT:** Edward R. Meyer, Office of Special Studies, 1100 L Street, NW., Washington, DC 20573–0001.

**SUPPLEMENTARY INFORMATION:** Upon completion of an environmental assessment, the Federal Maritime Commission's Office of Special Studies has determined that Docket No. 89–20 will not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq., and that preparation of an

environmental impact statement is not required.

In Docket No. 89–20, 54 FR 40891 (October 4, 1989), the Commission proposes to amend its tariff and service contract rules in 46 CFR parts 580 and 581 to: (1) Amend the definition of "shipper" to clarify the scope of the term, and (2) require that mixed commodity rates be made available only to a "shipper," as proposed, and to "shippers' associations" as presently defined in the Commission rules. A shipper using a mixed commodity rate would be required to furnish the ocean common carrier a listing of commodities. If the shipper is a non-vessel-operating common carrier ("NVOCC"), it would also have to indicate its FMC tariff number on the ocean carrier's bill of lading and on any service contracts to which it is a party. The proposed rule is intended to preclude untariffed NVOCC operations and to otherwise ensure that persons acting as shippers pursuant to the 1984 Act qualify to do so.

This Finding of No Significant Impact ("FONSI") will become final within 10 days of publication of this notice in the **Federal Register** unless a petition for review is filed pursuant to 46 CFR 504.6 (b).

The FONSI and related environmental assessment are available for inspection on request from the Office of the Secretary, room 11101, Federal Maritime Commission, Washington, DC 20573–0001, telephone (202) 523–5725.

By the Commission.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 89–25351 Filed 10–26–89; 8:45 am]

BILLING CODE 6730–01–M

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### 49 CFR Part 23

**[OST Docket No. 64; Notice 89–21]**

**RIN Number 2105–AA03**

### Minority Business Enterprise Program

**AGENCY:** Office of the Secretary, Department of Transportation.

**ACTION:** Notice of proposed rulemaking; withdrawal.

**SUMMARY:** This notice withdraws a regulatory proposal concerning direct Department of Transportation (DOT) contracting in regard to programs for minority business enterprises (MBEs). The rulemaking proposal has become unnecessary in view of other programs to assist small and disadvantaged firms in Federal procurement.

**EFFECTIVE DATE:** October 27, 1989.

**FOR FURTHER INFORMATION CONTACT:** Robert C. Ashby, Office of the General Counsel, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, (202) 366–9306.

**SUPPLEMENTARY INFORMATION:** On May 17, 1979, the Office of the Secretary of the Department of Trasnportation (DOT) published a Notice of Proposed Rulemaking (44 FR 28928) proposing to establish a uniform Departmental program for participation by firms owned and controlled by minorities and women (MBEs) in contracts and programs funded by the Department. The proposal would have applied to any direct or DOT-assisted contract or program where funds are made available for accomplishing the mission of DOT. "Direct contract" meant a contract or any modification thereof between the Department and a contractor or lessee.

The final rule resulting from this proposal (49 CFR part 23) covers only financial assistance programs. When the final rule became effective in 1980, the Department contemplated the addition of a direct contracts subpart (subpart B) to the rule at a later date. This subpart was to implement amendments to the Small Business Act, as amended (Pub. L. 95–507). This subpart was not implemented and this final rule does not address direct DOT procurement activities.

The Department has decided that an MBE program based on the 1979 proposal for direct contracting is not necessary in view of the developments in the small and disadvantaged business programs during the interim period. Some examples of DOT programs that help minority-owned, women-owned and disadvantaged enterprises are the Short Term Lending Program, the Bonding Assistance Program, the Women-Owned Business Enterprise Program, and the Public Information Program. These are in addition to provisions in Federal government and DOT procurement rules and procedures that carry out small and disadvantaged business subcontracting plan requirements of Public Law 95–507.

For these reasons, those portions of the 1979 proposal relating to direct contracts are withdrawn.

Issued this 17th day of October 1989, at Washington, DC.

**Samuel K. Skinner,**

*Secretary.*

[FR Doc. 89–25322 Filed 10–26–89; 8:45 am]

BILLING CODE 4910–62–M

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 17

**RIN 1018–AB36**

### Endangered and Threatened Wildlife and Plants; Proposed Threatened Status for the Inflated Heelsplitter, Potamilus inflatus

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Service proposes the inflated heelsplitter mussel, *Potamilus inflatus*, to be a threatened species under the authority of the Endangered Species Act of 1973, as amended (Act). This freshwater mussel is currently known from only the Amite River, Louisiana, and the Tombigbee and Black Warrior Rivers, Alabama. Habitat modification by gravel dredging and for flood control and navigation represent major threats to this species. This proposal, if made final, would implement the protection of the Act for the inflated heelsplitter. The Service seeks relevant data and comments from the public.

**DATES:** Comments from all interested parties must be received by December 26, 1989. Public hearing requests must be received by December 11, 1989.

**ADDRESSES:** Comments and materials concerning this proposal should be sent to Complex Field Supervisor, U.S. Fish and Wildlife Service, Jackson Mall Office Center, 300 Woodrow Wilson Avenue, Suite 316, Jackson, MS 39213. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** James H. Stewart at the above address, (telephone 601/965–4900 or FTS 490–4900).

**SUPPLEMENTARY INFORMATION:**

#### Background

The inflated heelsplitter was first described as *Symphynota inflata* by Lea in 1831. While the taxonomic status of this species has not been questioned in the literature, there has been considerable discussion of the genus. It has been placed in *Unio, Lampsilis, Metaptera, Margarita, Margaron,* and *Proptera,* in addition to the other names discussed here (Simpson 1914, Clarke 1986, Hartfield 1988). *Potamilus* is accepted as the correct generic name by numerous authors (Morrison 1969.

Valentine and Stansbery 1971, Clark 1986, Tergeon *et al.* 1988). The common name in general usage for this species has been the Alabama heelsplitter. This rule follows the common names as used in Turgeon *et al.* (1988) in support of the effort to standardize nomenclature of mussels.

The inflated heelsplitter was known historically from the Amite and Tangipahoa Rivers, Louisiana; the Pearl River, Mississippi; and the Tombigbee, Black Warrior, Alabama, and Coosa Rivers, Alabama (Hurd 1974, Stern 1976, Hartfield 1988). The presently known distribution is limited to the Amite River, Louisiana, and the Tombigbee and Black Warrior Rivers, Alabama (Stern 1976, Hartfield 1988). The collection of this species from the Pearl River by Hinckley was reported by Frierson (1911) and a single valve collected by Parker is curated in the National Museum of Natural History (Dr. James Williams, U.S. Fish and Wildlife Service, pers. comm. 1988). There are no other reported collections from the Pearl River (Hartfield 1988). A single specimen was collected from the Tangipahoa River, Louisiana, in 1964 by Stein and Stansbery (Dr. David Stansbery, Ohio State University, pers. comm. 1985). Hartfield (1988) did not find the species in the Tangipahoa River during his survey. Hurd (1974) doubted the occurrence of this species in the Coosa River based upon the single lot available in museums. The species has not been reported from the Coosa or Alabama Rivers in over 20 years (Hurd 1974, Hartfield 1988).

The inflated heelsplitter has an oval, compressed to moderately inflated, thin shell. The valves may gape anteriorly, the umbos are low, and there is a prominent posterior wing that may extend anterior to the beaks in young individuals. The shell is brown to black and may have green rays in young individuals. The umbonal cavity is very shallow and the nacre is pink to purple. Shell length reaches 140 millimeters (5½ inches) in adults (Stern 1976). It is most similar to the pink papershell (*Potamilus ohioensis*), yet is easily distinguished by shell morphology (Hartfield 1988). The shell and teeth of the inflated heelsplitter are more delicate, and the shell is darker and has a pointed posterior, whereas the pink papershell has a rounded posterior. The inflated heelsplitter appears more inflated due to a more developed and rounded posterior ridge. The posterior wing of the inflated heelsplitter is more pronounced and abruptly rounded over the dorsum. The pink papershell may lack much of a wing, and when pronounced, it may be only slightly rounded and extend scarcely above the dorsum (Hartfield 1988). Lending further taxonomic strength to this species distinction is the occurrence of the pink papershell in lakes and sloughs, while the inflated heelsplitter has not been found in this habitat.

The preferred habitat of this species is soft, stable substrates in slow to moderate currents (Stern 1976). It has been found in sand, mud, silt and sandy-gravel, but not in large gravel or armored gravel (Hartfield 1988). It is usually collected on the protected side of bars and may occur in depths over 20 feet. The occurrence of this species in silt may not indicate that the life cycle can be successful in that substrate (Hartfield 1988). Adult mussels may survive limited amounts of silt where juveniles would suffocate. The occurrence of this species in silt may be because it was established prior to deposition of the silt.

The inflated heelsplitter, *Potamilus inflatus*, was listed as a category 2 candidate (a taxon for which data in the Service's possession indicate listing is possibly appropriate) in the notice of review published in the **Federal Register** on May 22, 1984 (49 FR 21664) and January 6, 1989 (54 FR 554).

**Summary of Factors Affecting the Species**

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 set forth the procedures for adding species to the Federal lists. 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 inflated heelsplitter (*Potamilus inflatus*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The inflated heelsplitter historically occurred in the Amite and Tangipahoa Rivers, Louisiana; the Pearl River, Mississippi; and the Tombigbee, Black Warrior, Alabama, and Coosa Rivers, Alabama (Hurd 1974, Stern 1976, Hartfield 1988, 1989). It is currently known from only the Amite, Tombigbee and Black Warriors Rivers. Only one specimen has been collected from the Tangipahoa River, and in a recent survey by Hartfield (1988) no additional specimens were found. Hartfield found the upper Tangipahoa River to be much smaller than areas where this species occurs in other rivers. The stretch of the Tangipahoa River where the one specimen was collected has been severely eroded in recent years, presumably by gravel mining (Hartfield 1988).

The inflated heelsplitter has been reported from two areas on the Pearl River, Mississippi. One site was in the lower Pearl downstream of Bogalusa, Louisiana (Williams pers. comm. 1988) and the other site was near Jackson, Mississippi (Frierson 1911). The exact collecting site is unknown for both of these records. The Pearl River near Jackson has been impacted by pollution, channelization, and flood control levees and by an impoundment for recreation and a municipal water supply. The lower Pearl River near Bogalusa has been impacted by channel erosion, habitat modification for navigation, and industrial and urban pollution (Hartfield 1988). Based upon the scarcity of records from the Coosa River, Hurd (1974) doubted the historic occurrence of this species in that system. It has not been reported from that system since the construction of impoundments for flood control and hydropower.

The type specimen was reported from the Alabama River by Lea (1831) and has been reported from this same river by others (Conrad 1834, Simpson 1914). However, it has not been collected from the Alabama River in many years, presumably due to the impoundment of that system for navigation, flood control, and hydropower (Hartfield 1989).

The only known site for this species in the Black Warrior River is below Warrior Dam near Eutaw, Alabama. A single specimen was collected by Grace in the mid-1970's (Williams, pers. comm. 1985). A survey by Service divers in 1989 found two fresh dead shells but no live individuals. The species undoubtedly continues to survive in the Black Warrior River below Warrior Dam. The remainder of the Black Warrior River has been impacted by impoundment for navigation sedimentation from surface mining.

The species continues to survive in the Tombigbee River in at least two localities, Gainesville Bendway and downstream of Jackson Dam. Most of the Tombigbee River was modified by construction of the Tennessee-Tombigbee Waterway. This resulted in the loss of riverine habitat by impoundment, channelization, and flow diversion. Habitat that was originally believed would continue to support mussel populations has been destroyed by heavy accumulations of sediment. The only known population of the inflated heelsplitter in the Waterway is below Gainesville Spillway where the normal river flow, with the exception of

navigation lockages, is released from this impoundment (Paul Hartfield, Mississippi Department of Wildlife Conservation, pers. comm. 1989). This has maintained a relatively clean and stable habitat suitable to this species.

The only other known population in the Tombigbee River occurs downstream of Jackson Dam. In this stretch, the species has been collected by Service and Mississippi Department of Wildlife Conservation biologists at four sites over a 12-river-mile area. Below the lowermost of these collection sites, no mussels were found by surveys in 1985 and 1986 by Service and Department biologists, possibly due to impacts from industrial effluents. The entire Tombigbee River has been modified for navigation by impoundment and channelization, and frequent dredging is required to maintain the navigation channel. Navigation dredging threatens this population by the deposition of spoil on bars along the sides of the river channel (Hartfield 1988). This material washes onto mussel habitat below the bars and may suffocate mussels and make conditions unfavorable for recruitment.

This species continues to exist in the Amite River with major threats being gravel mining and proposed channel modification for flood control. Hartfield (1989) concluded that 30 percent of the range of this species in the Amite River had been lost since 1976, primarily due to gravel mining. Without protection, this loss is expected to continue with the intensive gravel mining and resulting headcutting that is ongoing. The Corps of Engineers and Louisiana Department of Transportation and Development are studying methods of flood control on the Amite River. The proposed Darlington Reservoir would be constructed upstream of existing inflated heelsplitter habitat, and the actual impoundment of the stream may not impact this population of the species. The impact of this reservoir will likely be determined by the type and method of water releases incorporated. A deep water release would result in colder water temperatures, which may interrupt the life cycle of this mussel. The control of water flows, especially during low water levels, could strand mussels on dry bars and may reduce the capacity of the river to flush sediments from mussel habitat. An alternative flood control measure under consideration is the widening and channelization of the Amite River. This potential action would likely eliminate the inflated heelsplitter from the Amite River, leaving the only population in the Tombigbee and Black Warrior system.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* The species is not of commercial value at this time and any collecting is likely to be for scientific purposes. Over collection is not considered a threat.

C. *Disease or predation.* Diseases are not known for mussels, although unexplained dieoffs have occurred. Predation may exist to a limited extent when muskrats and raccoons prey on mussels. This would have a minimal effect since this species seems to prefer deeper water.

D. *The inadequacy of existing regulatory mechanisms.* Existing laws are inadequate to protect this species. It is not recognized by Alabama or Louisiana as needing any special protection, although both States require a scientific collector's permit. Collection, however, is likely to go undetected due to the limited enforcement personnel available and higher priority demands on their time. The species is not given any special consideration under other environmental laws when project impacts are reviewed.

E. *Other natural or manmade factors affecting its continued existence.* The known populations are isolated from each other and apparently are limited in extent. This could result in low genetic variation and make these populations more susceptible to environmental disturbance due to loss of adaptability.

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 propose this rule. Based on this evaluation, the preferred action is to list the inflated heelsplitter as threatened. Threatened status was chosen because the species still exists in three rivers, and the range within two of these rivers consists of reproducing populations that are widely distributed and not subject to single event impacts.

## Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for this species due to the lack of benefit from such designation. All Federal and State agencies likely to be involved have been notified of the location and importance of protecting this species' habitat. No additional benefits would accrue from a critical habitat designation that would not accrue from the listing. Precise locality data are available to appropriate agencies through the Service office described in the ADDRESSES section. Protection of this species' habitat will be addressed through the recovery process and through the Section 7 jeopardy standard. Therefore, it would not now be prudent to determine critical habitat for the inflated heelsplitter.

## 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 prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species, or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a 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.

Federal involvement is expected to include the Environmental Protection Agency in consideration of the Clean Water Act, pesticide registration, and waste management actions. The Corps of Engineers will include this species in project planning and operation and during the permit review process. The Federal Highway Administration will consider impacts of bridge and road

construction at points where known habitat is crossed. Continuing urban development within the drainage basins may involve the Farmers Home Administration and their loan programs.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), 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 threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23, and 17.32. 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. For threatened species, there are also permits for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act.

### Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size 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 this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to 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 received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to Complex Field Supervisor (see ADDRESSES section).

### 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).

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Valentine, B.D., and D.H. Stansbery. 1971. An introduction to the naiades of the Lake Texoma region, Oklahoma, with notes on the Red River fauna (Mollusca, Unionidae). Sterkiana. pp. 1–40.


### Author

The primary author of this proposed rule is James H. Stewart (see ADDRESSES section).

### 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.

2. It is proposed to amend § 17.11(h) for animals 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: | | | | | | | |
| Heelsplitter, inflated (=Alabama) | *Potamilus inflatus* | U.S.A. (AL, LA, MS) | NA | T | | NA | NA |

Dated: October 3, 1989.

**Richard N. Smith,**

*Acting Director, Fish and Wildlife Service.*

[FR Doc. 89-25369 Filed 10-26-89; 8:45 am]

BILLING CODE 4310-55-M

# Notices

Federal Register
Vol. 54, No. 207
Friday, October 27, 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.

## DEPARTMENT OF AGRICULTURE

### Farmers Home Administration

### Limitation to the Redelegation of Authority To Approve Debt Settlements and Releases of Liability in Connection With Voluntary Liquidations

**AGENCY:** Farmers Home Administration, USDA.

**ACTION:** Notice of redelegation of authority.

**SUMMARY:** On October 6, 1988, The Farmers Home Administration (FmHA) Administrator redelegated certain authorities to all State Directors dealing with the settlement of and/or release of liability on FmHA debts, owed by borrowers, who made application to settle their FmHA debts or request release of liability. Notice of this redelegation was published in 53 FR 40247 (October 14, 1988). The redelegation authority granted on October 6, 1988, expires on September 30, 1989, and the Acting Administrator now gives notice to extend that redelegation through September 30, 1990, but reduces the State Directors approval authority not to exceed $1,000,000 (including principal, interest and other charges). All debt settlements/release of liability cases in excess of $1,000,000 must be submitted to the National Office for approval by the Administrator. This action is taken to expedite the processing of debt settlement applications/requests, of borrowers who are unable to repay all of their FmHA debts. The effect of the extension of the redelegation of the Administrator's authority is the continued expediting of the administrative review process for debt settlements and releases of liability permitting more timely debt relief to FmHA borrowers, and to correspondingly reduce the Agency's portfolio of inactive uncollectable accounts.

**EFFECTIVE DATES:** October 1, 1989, through September 30, 1990.

**FOR FURTHER INFORMATION CONTACT:** Thomas B. Baden, Senior Loan Officer, Farmer Programs Loan Servicing Division, Farmers Home Administration, USDA, Room 5437, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250, Telephone 202–475–4008.

**SUPPLEMENTARY INFORMATION:** The Catalog of Federal Domestic Assistance programs affected by this notice are:

10.404 Emergency Loans
10.406 Farm Operating Loans
10.407 Farm Ownership Loans
10.410 Very Low and Low Income Housing Loans
10.416 Soil and Water Loans
10.417 Very Low-Income Housing Repair Loans and Grants
10.428 Economic Emergency Loans

#### Notice

The notice of the delegation of authority for approving debt settlement/release of liability cases reads as follows:

This extends the authority given under the unnumbered memorandum dated October 6, 1988, entitled "Delegation of Authority for Approving Debt Settlement/Release of Liability Cases" but reduces the approval authority not to exceed $1,000,000 (including principal, interest and other charges). All debt settlement/release of liability cases in excess of $1,000,000 must be submitted to the National Office for approval by the Administrator.

Pursuant to authority delegated to me as Acting Administrator, Farmers Home Administration, I hereby redelegate to State Directors approval authority not to exceed $1,000,000 (including principal, interest and other charges) for the following:

1. Debt settlement cases in accordance with section 1956.58(a) of FmHA Instruction 1956–B, "Debt Settlement—Farmer Programs and Single Family Housing," (Revised 7–29–87, PN 59).

2. Release of liability cases in accordance with sections 1955.10(f)(2), and 1955.20(b)(2) of FmHA Instruction 1955–A, "Liquidation of Loans Secured by Real Estate and Acquisition of Real and Chattel Property."

3. Release of liability cases in accordance with section 1962.34(h) of FmHA Instruction 1962–A, "Servicing and Liquidation of Chattel Security," and sections 1965.26(f)(5)(ii) and 1965.27(f) of FmHA Instruction 1965–A, "Servicing of Real Estate Security for Farmer Programs Loans and Certain Note-Only Cases."

This authority does not extend to debt settlement of Non-Program loans, Economic Opportunity loans, and claims against third party converters.

This extension of the redelegation shall be effective through September 30, 1990, unless revoked or otherwise modified, in writing. The authority delegated to the State Director cannot be further delegated.

Dated: October 20, 1989.

**Neal Sox Johnson,**

*Acting Administrator, Farmers Home Administration.*

[FR Doc. 89–25299 Filed 10–26–89; 8:45 am]

BILLING CODE 3410–07–M

### Food and Nutrition Service

### State Processing Program Meeting

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Notice.

**SUMMARY:** A meeting to discuss proposed changes to the State Processing Program regulations is scheduled for Wednesday, December 13, 1989. The meeting will serve as an open forum to solicit recommendations from the general public for changes to be proposed in the State processing regulations.

**DATE:** The meeting will take place on Wednesday, December 13 from 9:00 a.m. to 5:00 p.m.

**ADDRESS:** The meeting will be held in the Park Office Center, 3101 Park Center Drive, Alexandria, Virginia 22302 in the fourth floor conference room.

**FOR FURTHER INFORMATION CONTACT:** Susan E. Proden, Chief, Program Administration Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Alexandria, Virginia 22302, (703) 756–3660.

**SUPPLEMENTARY INFORMATION:** The purpose of this meeting is to give the U.S. Department of Agriculture the opportunity to seek the advice of State, local and industry representatives as well as the general public prior to formulating proposed regulations to amend the current State processing

regulations found at 7 CFR 250.30. The National Association of State Agencies for Food Distribution and the National Advisory Council on Commodity Distribution have recommended that the Food and Nutrition Service (FNS), through a joint "partnership" effort, discuss potential improvements to the regulations prior to issuing proposed regulations. Although this is not always possible, FNS agrees that in this case public involvement would be very helpful. Topics to be discussed during the meeting include: (1) Timeframes for processors to pay refunds; (2) The requirement that distributors be required to state the amount of the rebate due on sales invoices to recipient agencies; (3) Clarification of the definition of a Food Service Management Company; (4) Fee-for-Service processing policy; (5) Agreement renewal versus annual approval; (6) Use of alternative value return systems; and (7) Additional substitution for donated foods.

The agenda will be available 15 days prior to the meeting. Requests for the agenda should be sent to Susan E. Proden, Chief, Program Administration Branch, Food Distribution Division, 3101 Park Center Drive, Room 506, Alexandria, Virginia 22302. Comments may be sent to Susan E. Proden before or within 30 days after the meeting.

Dated: October 17, 1989.

**G. Scott Dunn,**

*Acting Administrator.*

[FR Doc. 89-25294 Filed 10-26-89; 8:45 am]

BILLING CODE 3410-30-M

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**Forest Service**

## Revision of Black Hills National Forest Land and Resource Management Plan (Forest Plan); Black Hills National Forest; Custer, Fall River, Meade, Lawrence, Pennington Counties, SD; Crook and Weston Counties, WY

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare environmental impact statement.

**SUMMARY:** Pursuant to 36 CFR 219.10(g), the Forest Supervisor of the Black Hills National Forest gives notice of the agency's intent to prepare an environmental impact statement for the revision of the Black Hills National Forest Land and Resource Management Plan (Forest Plan).

**DATE:** Comments concerning the scope of the analysis should be in writing and received by February 15, 1990.

**ADDRESS:** Send written comments to Forest Supervisor, Black Hills National Forest, RR 2, Box 200, Custer, SD 57730.

**FOR FURTHER INFORMATION CONTACT:** John Rupe, Forest Plan Interdisciplinary Team Leader, 605-673-2251.

**SUPPLEMENTARY INFORMATION:** According to 36 CFR 219.10(g), Forest Plans are ordinarily revised on a 10-year cycle. The current Black Hills National Forest Land and Resource Management Plan was approved on August 19, 1983. The Black Hills National Forest is scheduled to issue its revised Forest Plan and FEIS in August, 1993.

The Forest Plan revision will focus on changed conditions or demands in the area covered by the Plan. Those sections of the Forest Plan which continue to be responsive to issues and demands, and which meet requirements for resource protection, will not be revised.

Through monitoring and evaluation of the Forest Plan, the Forest Supervisor of the Black Hills National Forest has determined that the following topics should be reexamined during Forest Plan revision:

1. The mix of vegetation types and ages and the management practices needed to achieve the desired mix.
2. The demand for increased water yield.
3. Management requirements for mineral exploration and mining.
4. Management and protection of caves in coordination with other agencies.
5. Determination of lands not suitable for timber production and the allowable sale quantity of timber.
6. Management of the approximately 5,000 acre Beaver Park area located south of Sturgis, South Dakota.
7. Management of National Forest land near private land.

Federal, state, and local agencies, Native American tribes, individuals and organizations are invited to submit comments on these and other topics which are relevant to management of the Black Hills National Forest. Comments should be sent in writing to the address above by February 15, 1990.

Public involvement in the Plan revision process will be sought by: (1) Sending newsletters and requests for comment to agencies, organizations and individuals, and (2) holding open houses in Black Hills communities. Dates, locations, and times for the open houses will be announced in local news media and in newsletters.

The responsible official for approving the Forest Plan revision is the Regional Forester, Rocky Mountain Region, USDA Forest Service, 11177 West 8th Avenue, P.O. Box 25127, Lakewood, CO 80225. The Forest Supervisor, Black Hills National Forest, is delegated responsibility for preparing the revision.

Revision of the Forest Plan is expected to take 3 years; the draft environmental impact statement and proposed Forest Plan revision should be available for public review in August 1992. The final environmental impact statement, Record of Decision, and Forest Plan revision are scheduled to be completed by August 1993.

The comment period on the draft environmental impact statement will be a minimum of 90 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

Two recent court rulings related to public participation in the environmental review process are pertinent to those interested in participating in the revision of the Black Hills National Forest Land and Resource Management Plan. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts *Wisconsin Heritages, Inc.* v. *Harris*, 490 F.Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the comment period on the draft environmental impact statement so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality regulations for implementing the

procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

Dated: October 18, 1989.

Darrel L. Kenops,

*Forest Supervisor.*

[FR Doc. 89-25306 Filed 10-26-89; 8:45 am]

BILLING CODE 3410-11-M

## Bagdad Mine; Lolo National Forest; Granite County, MT

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice; cancellation of notice of intent to prepare an environmental impact statement.

**SUMMARY:** On March 31, 1988, notice was published in the **Federal Register** (53 FR 10413) that an environmental impact statement would be prepared to identify the specific operating stipulations under which the Bagdad Mine would be developed. That notice is hereby cancelled.

Mark V. Mines, owner, has suspended its plan to develop the Bagdad Mine, located in Williams Gulch, a tributary of Rock Creek and located in Granite County, Montana.

**EFFECTIVE DATE:** This action is effective October 27, 1989.

**FOR FURTHER INFORMATION CONTACT:** Dave Stack, District Ranger, Missoula Ranger District, Lolo National Forest, Building 24–A, Fort Missoula, Missoula, MT 59801; telephone (406) 329–3814 or (406) 329–3948.

Dated: October 16, 1989.

Orville L. Daniels,

*Forest Supervisor.*

[FR Doc. 89-25317 Filed 10-26-89; 8:45 am]

BILLING CODE 3410-11-M

## Bender/ReTie Timber Sale

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** The Forest Service will prepare an Environmental Impact Statement (EIS) to analyze and disclose the environmental impacts of a proposal to harvest and regenerate timber stands, reconstruct existing roads and construct new roads in portions of the Bender, Johnson and Tie Creek drainages on the Wisdom Ranger District, Beaverhead National Forest, Beaverhead County, Montana. The proposed action is located within portions of the Beaver Lake Roadless Area 1–003B and the North Big Hole Roadless Areas A1–001 and C1–001. This EIS will tier to the Beaverhead National Forest Land and Resource Management Plan EIS of April 1986, which provides overall guidance in achieving the desired future condition for the area. The purpose and goal of the proposed action is to help satisfy the short-term demands for timber, maintain a continuous supply of timber for the future, and produce a distribution of size and age classes of timber stands that more fully realize site potential, are healthier, and are more resistant to disease and insect infestations. The Forest Service is seeking additional information and comments from Federal, State, and local agencies and other individuals or organizations who may be interested in and or affected by the proposed action. This input will be used in preparing the Draft Environmental Impact Statement (DEIS). This process will include:

1. Identification of Potential Issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Identification of additional reasonable alternatives.
5. Identification of potential environmental effects of the alternatives.

The agency invites written comments and suggestions on the issues and management opportunities in the area being analyzed.

**DATE:** Comments should be received by December 1, 1989 to receive timely consideration in preparation of the Draft EIS.

**ADDRESS:** Submit written comments to the District Ranger, Wisdom Ranger District, Box 238, Wisdom, Montana 59761.

**FOR FURTHER INFORMATION CONTACT:** Dennis Havig, District Ranger, Wisdom Ranger District, Beaverhead National Forest, telephone (406) 869–3243.

**SUPPLEMENTARY INFORMATION:** The proposed action is designed to fulfill the goals and objectives of the Land and Resource Management Plan for the Beaverhead National Forest which provides the overall guidance for management activities in the potentially affected area.

The areas of proposed timber harvest, regeneration, and associated road reconstruction and construction activities within the Bender, Johnson and Tie Creek drainages are located in Forest Plan Management Areas, 13, 16, 19, 20 and 21.

### Management Area Descriptions

*Management Area 13:* Areas suitable for timber management on moist sites characterized by springs, seeps and wet areas. Usually requires selection systems and cable yarding.

*Management Area 16:* Areas that are available and suitable for timber management.

*Management Area 19:* Areas with high wildlife values such as summer range, security cover, elk calving areas, or limited winter range; generally on slopes less than 45 percent on existing livestock grazing allotments. Classified as suitable for timber management at low intensity levels with no planned cultural treatments.

*Management Area 20:* Same as Management Area 19 except that timber management will be at moderate levels permitting cultural treatments.

*Management Area 21:* A variety of forested lands with high wildlife values such as summer range, elk calving areas, security cover or limited winter range; outside of existing range allotments; classified as suitable for timber management.

The analysis will consider a range of alternatives. One of these will be the "no action" alternative, in which none of the proposed harvest, regeneration, road reconstruction and road construction activities would be implemented. Other alternatives will examine varying levels and locations for the proposal in response to issues and objectives.

Three RARE II roadless areas are located within the Bender, Johnson, and Tie Creek area and could be affected by the proposed timber harvest, regeneration, and road construction. The Beaver Lake Roadless Area 1–003B totals 5548 acres. The North Big Hole Roadless Area is comprised of several parcels of which two, A1–001 and C1–001 could be affected. Parcel A1–001 totals 24,332 acres and parcel C1–001 totals 1521 acres.

The EIS will analyze and document the direct, indirect and cumulative environmental effects of the alternatives. Past, present and projected activities on both private and National Forest Lands will be considered. In addition, the EIS will disclose the analysis of site-specific mitigation measures and their effectiveness.

The DEIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review by February 1, 1990. At that time, the EPA will publish a Notice of Availability of the DEIS in the **Federal Register.** After a 45-day public comment period, the comments received will be analyzed and considered by the Forest Service in the Final Environmental Impact Statement (FEIS). The FEIS is scheduled to be completed by June 1, 1990. The Forest

Service will respond in the FEIS to the comments received on the DEIS.

Public participation will be important in the analysis and in the review of the DEIS. People are invited and encouraged to contract and or visit with Forest Service officials at any time during the analysis and prior to the decision.

The Forest Supervisor for the Beaverhead National Forest, Ronald Prichard, who is the responsible official for the EIS, will make a decision regarding this proposal considering the comments, responses, environmental consequcnes discussed in the FEIS and applicable laws, regulations and policies. The decision and reasons for the decision will be documented in a Record of Decision.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency published the notice of availability in the **Federal Register.** The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of the draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement may be waived or dismissed by the courts. *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that administrative comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: October 19, 1989.

**Ronald Prichard,**

*Forest Supervisor, Beaverhead National Forest.*

[FR Doc. 89-25291 Filed 10-26-89; 8:45 am]

BILLING CODE 3410-11-M

## Snowbasin Land Exchange/Snowbasin Ski Area Master Plan, Wasatch-Cache National Forest, Weber County Utah

**AGENCY:** Forest Service, USDA.

**ACTION:** Amendment to the notice of intent to prepare an environmental impact statment.

**SUMMARY:** A notice of Intent to prepare an environmental impact statement for a proposal to exchange acquired private land for 1320 acres of National Forest land adjacent to the Snowbasin Ski Area was published in the **Federal Register** July 21, 1989 (54 FR 30583).

The scoping process and the environmental analysis have progressed to the point where it was determined that the proper decision is the approval of the Master Plan for the ski area development. The Master Plan approval will determine if, and how much, National Forest lands should be made available for exchange. A subsequent analysis and decision will be made on any site specific land exchange proposal.

The responsible official is changed from Stan Tixier, Regional Forester, Intermountain Region to Dale N. Bosworth, Forest Supervisor, Wasatch-Cache National Forest.

Dated: October 18, 1989.

**Susan Giannettino,**

*Deputy Forest Supervisor.*

[FR Doc. 89-25289 Filed 10-26-89; 8:45 am]

BILLING CODE 3410-11-M

## Soil Conservation Service

## Honey Creek Watershed, Indiana

**AGENCY:** Soil Conservation Service, USDA.

**ACTION:** Notice of a finding of no significant impact.

**SUMMARY:** Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Honey Creek Watershed, Vigo and Clay Counties, Indiana.

**FOR FURTHER INFORMATION CONTACT:** Robert L. Eddleman, State Conservationist, Soil Conservation Service, 6013 Lakeside Boulevard, Indianapolis, Indiana 46278, telephone 317-290-3200.

**SUPPLEMENTARY INFORMATION:** The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Robert L. Eddleman, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for flood protection. The planned works of improvement include 12.0 miles of dikes, a storage basin, and relocation of the outlet (1,000 feet) of a small (370 acre drainage area) intermittent tributary.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Robert L. Eddleman. No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: October 18, 1989.

**Robert L. Eddleman,**

*State Conservationist.*

[FR Doc. 89-25292 Filed 10-26-89; 8:45 am]

BILLING CODE 3410-16-M

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## Coastal Zone Management: Federal Consistency Appeal by José R. Pérez-Villamil from Objections by the Puerto Rico Planning Board

**AGENCY:** National Oceanic and Atmospheric Administration, Commerce.

**ACTION:** Notice of appeal and request for comments.

On August 16, 1989, the Secretary of Commerce received a notice of appeal from José R. Pérez-Villamil (Villamil). Villamil is appealing to the Secretary under section 307(c)(3)(B) of the Coastal Zone Management Act (CZMA) and the Department's implementing regulations, 15 CFR part 930, subpart H. The appeal is taken from an objection by the Puerto Rico Planning Board (PRPB) to Villamil's consistency certification for a U.S. Army Corps of Engineers permit to construct in Tamarindo Bay on Culebra Island, Puerto Rico, a 125-foot-long and 6-foot-wide wooden pier with a "T" end that is 25 feet long and 6 feet wide.

The CZMA provides that a timely objection by a state to a consistency certification precludes any Federal agency from issuing licenses or permits for the activity unless the Secretary of Commerce finds that the activity is either "consistent with the objectives" of the CZMA (Ground I) or "necessary in the interest of national security" (Ground II). Section 307(c)(3)(B). To make such a determination, the Secretary must find that the proposed project satisfies the requirements of 15 CFR 930.121 or 930.122.

Villamil requests that the Secretary override the PRPB's consistency objections based on Ground I. To make the determination that the proposed activity is "consistent with the objectives" of the CZMA, the Secretary must find that (1) the proposed activity furthers one or more of the national objectives or purposes contained in sections 302 or 303 of the CZMA; (2) the adverse effects of the proposed activity do not outweigh its contribution to the national interest; (3) the proposed activity will not violate the Clean Air Act or the Federal Water Pollution Control Act; and (4) no reasonable alternative is available that would permit the activity to be conducted in a manner consistent with Puerto Rico's coastal management program. *See* 15 CFR 930.121.

Public comments are invited on the findings that the Secretary must make as set forth in the regulations at 15 CFR 930.121. Comments are due within thirty days of the publication of this notice and should be sent to Susan K. Auer, Attorney-Advisor, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, 1825 Connecticut Avenue, NW., Suite 603, Washington DC 20235. Copies of comments should also be sent to Linda M. Dueño, Puerto Rico Planning Board, Minillas Governmental Center, North Building, De Diego Ave., Stop 22, P.O. Box 41119, San Juan, P.R. 000940–9985.

All nonconfidential documents submitted or received in this appeal are available for public inspection during business hours at the offices of the PRPB and the Office of the Assistant General Counsel for Ocean Services, NOAA.

**FOR ADDITIONAL INFORMATION CONTACT:** Susan K. Auer, Attorney-Advisor, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, 1825 Connecticut Avenue, NW., Suite 603, Washington, DC 20235, (202) 673–5200.

Dated: October 19, 1989.

**John A. Knauss,**

*Under Secretary for Oceans and Atmosphere.*

[FR Doc. 89–25340 Filed 10–26–89; 8:45 am]

BILLING CODE 3510-08-M

## Western Pacific Fishery Management Council; Public Meetings

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council's Plan Monitoring Teams (PMTS) for the Bottomfish/Seamount Groundfish, Crustaceans, and Pelagic fisheries, will hold separate public meetings on November 1, 2, and 3, 1989, at the National Marine Fisheries Service, Honolulu Laboratory, conference room, 2570 Dole Street, Honolulu, HI.

The *Bottomfish and Seamount Groundfish fisheries PMT* will meet at 8:30 a.m., on November 2 to discuss development of a fishery management plan (FMP) which complies with the new 50 CFR part 602 guidelines on National Standards 1 and 2.

The *Crustaceans PMT* will meet at 10 a.m., on November 1 to discuss compliance of the FMP with the new 50 CFR part 602 guidelines.

The *Pelagic PMT* will meet on November 3 at 9 a.m., to: (1) Approve the May 31, 1989, PMT meeting minutes; (2) finalize the second annual report; (3) redefine the FMP monitoring process as to: (a) overfishing (apply for exemption or rewrite the FMP), (b) fishery interaction and managing the fishery, and (c) the Stock Assessment and Fishery Evaluation (SAFE) requirement and the third annual report; and (4) discuss pelagic fishery data.

For more information contact Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Suite 1405, Honolulu, HI 96813; telephone: (803) 523–1368.

Dated: October 23, 1989.

**David S. Crestin,**

*Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 89–25401 Filed 10–26–89; 8:45 am]

BILLING CODE 3510-22-M

## Marine Mammals; Issuance of Permit; Center for Coastal Studies (P444)

On March 27, 1989, notice was published in the **Federal Register** (54 FR 12470) that an application had been filed by Center for Coastal Studies, Box 826, Provincetown, MA 02657, for a permit to take three hundred (300) humpback whales (*Megaptera novaeangliae*), eighty (80) fin whales (*Balaenoptera physalus*), and fifty (50) right whales (*Eubalaena glacialis*) for scientific purposes.

Notice is hereby given that on October 19, 1989, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) and Endangered Species Act of 1973 (16 U.S.C. 1531–1543), the National Marine Fisheries Service issued a Permit for the above taking, subject to certain conditions set forth therein.

Issuance of this Permit, as required by the Endangered Species Act of 1973, is based on the finding that such Permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of the Permit; and (3) will be consistent with the purposes and policies set forth in section 2 of the Act. This Permit was also issued in accordance with and is subject to parts 220–222 of the National Marine Fisheries Service regulations governing endangered fish and wildlife permits.

Documents submitted in connection with this permit are available in the following offices:

Office of Protected Resources, Permits Division, National Marine Fisheries Service, 1335 East West Highway, Suite 7324, Silver Spring, Maryland 20910; and

Director, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, Massachusetts 01930.

Dated: October 19, 1989.

**Nancy Foster,**

*Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 89–25327 Filed 10–26–89; 8:45 am]

BILLING CODE 3510-22-M

### Marine Mammals; Issuance of Permit; The Cetacean Research Unit P418

On April 5, 1988, notice was published in the **Federal Register** (53 FR 11110) that an application had been filed by The Cetacean Research Unit, P.O. Box 159, Gloucester, Massachusetts 01930, to take humpback whales (*Megaptera novaeangliae*), fin whales (*Balaenoptera physalus*), right whales (*Eubalaena glacialis*), and sei whales (*Balaenoptera borealis*), for scientific research.

Notice is hereby given that on October 19, 1989 as authorized by the provisions of the Marine Mammal Protection Act (16 U.S.C. 1361–1407) and the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

Issuance of this Permit as required by the Endangered Species Act of 1973 is based on a finding that such Permit: (1) was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which are the subject of this Permit; (3) and will be consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973. This Permit was also issued in accordance with and is subject to parts 220–222 of title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

The Permit is available for review by interested persons in the following offices:

Permit Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East West Highway, Suite 7324, Silver Spring, Maryland 20910; and

Director, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, Massachusetts, 01930.

Dated: October 19, 1989.

**Nancy Foster,**

*Director, Office of Protected Resources and Habitat Programs.*

[FR Doc. 89–25328 Filed 10–26–89; 8:45 am]

BILLING CODE 3510-22-M

## COMMISSION OF FINE ARTS

### Meeting; Washington, DC

The Commission of Fine Arts' next scheduled meeting is Wednesday, November 15, 1989, at 10 a.m. at the Commission's offices at 708 Jackson Place NW., Washington, DC 20006 to discuss various projects affecting the appearance of Washington, DC, including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the Government. Handicapped persons should call the office at 566–1066 for details concerning access to meetings.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Mr. Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC, October 20, 1989.

**Charles H. Atherton,**

*Secretary.*

[FR Doc. 89–25387 Filed 10–26–89; 8:45 am]

BILLING CODE 6330-01-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 and a military resale commodity to be produced and services to be provided by workshops for the blind or other severely handicapped.

**EFFECTIVE DATE:** November 27, 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 July 28, August 11, September 1 and 8, 1989, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (54 FR 31357, 33051, 36369 and 37356) of proposed additions to Procurement List 1989, which was published on November 15, 1988 (53 FR 46018).

After consideration of the material presented to it concerning capability of qualified workshops to produce the commodities and military resale commodity and provide the services at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities, military resale commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

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, military resale commodity and services listed.

c. The actions will result in authorizing small entities to produce the commodities, military resale commodity and provide the services procured by the Government.

Accordingly, the following commodities, military resale commodity and services are hereby added to Procurement List 1989:

**Commodities**

Cap, Utility, Camouflage
8405–01–246–4176
8405–01–246–4177
8405–01–246–4178
8405–01–246–4179
8405–01–246–4180
(50 percent of Government's Requirement)

**Military Resale Item No. and Name**

M.R. 929 Mop, Stick, Foam/Nonwoven

**Services**

Janitorial/Custodial, Naval Air Facility, El Centro, California
Janitorial/Custodial, Kirkwood U.S. Army Reserve Center, Wilmington, Delaware
New Castle U.S. Army Reserve Center, New Castle, Delaware
Janitorial/Custodial, 910 Tactical Airlift Group (AFRES), Except Building 540, Youngstown Municipal Airport, Vienna, Ohio
Packaging of Solicitations, Little Rock District, U.S. Army Corps of Engineers, Little Rock, Arkansas.

**Beverly L. Milkman,**

*Executive Director.*

[FR Doc. 89–25397 Filed 10–26–89; 8:45 am]

BILLING CODE 6820-33-M

### Procurement List 1989; Proposed Addition

**AGENCY:** Committee for Purchase from the Blind and Other Severely Handicapped.

**ACTION:** Proposed addition to procurement list.

**SUMMARY:** The Committee has received a proposal to add to Procurement List 1989 a service to be provided by workshops for the blind or other severely handicapped.

**DATE:** Comments must be received on or before November 27, 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 action.

If the Committee approves the proposed addition, all entities of the Federal Government will be required to procure the service listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following service to Procurement List 1989, which was published on November 15, 1988 (53 FR 46018):

Janitorial/Custodial, Boston National Historical Park Building, 15 State Street, Boston, Massachusetts.

**Beverly L. Milkman,**

*Executive Director.*

[FR Doc. 89–25398 Filed 10–26–89; 8:45 am]

BILLING CODE 6820–33–M

## COMMODITY FUTURES TRADING COMMISSION

### Advisory Committee on CFTC–State Cooperation; Meeting

This is to give notice, pursuant to Section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. I, 10(a), that the Commodity Futures Trading Commission's Advisory Committee on CFTC–State Cooperation will conduct a public meeting in the Fifth Floor Hearing Room at the Commission's Washington, DC, headquarters located at Room 532, 2033 K Street, NW., Washington, DC 20581, November 14, 1989, beginning at 9:30 a.m. and lasting until 3:00 p.m. The agenda will consist of:

Agenda

1. Opening remarks—Wendy L. Gramm, Chairman, CFTC; Fowler C. West, Commissioner, CFTC and Chairman, Advisory Committee on CFTC–State Cooperation;

2. Discussion about potentially misleading investment advertising carried by broadcast media;

3. Discussion of ways to enhance the education of public school children on the dangers of securities and commodities fraud, and the possibility of a joint education effort with other organizations;

4. Report from the CFTC Division of Enforcement regarding cooperative enforcement activities and the exchange of information between state and federal enforcement entities;

5. Report on the current activities of the Department of Justice's Securities and Commodities Fraud Working Group; and

6. Discussion of other questions of concern to Advisory Committee members.

The Advisory Committee was created by the Commodity Futures Trading Commission for the purpose of receiving advice and recommendations on matters of joint concern to the States and the Commission arising under the Commodity Exchange Act, as amended. The purposes and objectives of the Advisory Committee on CFTC–State Cooperation are more fully set forth in the March 31, 1988 Sixth Renewal Charter of the Advisory Committee.

The meeting is open to the public. The Chairman of the Advisory Committee, Commissioner Fowler C. West, is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee should mail a copy of the statement to the attention of: The Advisory Committee on CFTC–State Cooperation c/o Commission Fowler C. West, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, before the meeting. Members of the public who wish to make oral statements should also inform Commissioner West in writing at the foregoing address at least three business days before the meeting. Reasonable provision will be made, if time permits, for an oral presentation of no more than five minutes each in duration.

Issued by the Commission in Washington, DC, on October 23, 1989.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 89–25295 Filed 10–26–89; 8:45 am]

BILLING CODE 6351–01–M

### Chicago Mercantile Exchange Proposed Option Contract

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of Availability of the Terms and Conditions of Proposed Commodity Option Contract.

**SUMMARY:** The Chicago Mercantile Exchange ("CME" or "Exchange") has applied for designation as a contract market in options on physical gold, with a European exercise provision. The Director of the Division of Economic Analysis ("Division") of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

**DATE:** Comments must be received on or before November 27, 1989.

**ADDRESS:** Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the CME physical gold option.

**FOR FURTHER INFORMATION CONTACT:** Richard Shilts, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, (202) 254–7303.

**SUPPLEMENTARY INFORMATION:** Copies of the terms and conditions of the proposed contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the CME in support of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed option contract, or with respect to other materials submitted by the CME in support of the application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, by the specified date.

Issued in Washington, DC, on October 23, 1989.

Steven Manaster,

*Director, Division of Economic Analysis.*

[FR Doc. 89-25296 Filed 10-26-89; 8:45 am]

BILLING CODE 6351-01-M

## DEPARTMENT OF DEFENSE

### Department of the Army

### Intent To Prepare a Draft Environmental Impact Statement on Relocation, Upgrade and Operation of Certain Electromagnetic Pulse Simulators (EMP), Woodbridge Research Facility, Woodbridge, VA, and Construction and Operation of New EMP Simulator, Vertical Electromagnetic Pulse Simulator (VEMPS) II

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice of intent to prepare an environmental impact statement to relocate, upgrade and operate certain electromagnetic pulse simulators now located at the Woodbridge Research Facility, Woodbridge, VA, and the construction and operation of a new EMP simulator, VEMPS II.

1. The U.S. Army Laboratory Command, Harry Diamond Laboratories intends to prepare an Environmental Impact Statement (EIS) for the relocation, upgrade and operation of certain electromagnetic pulse (EMP) simulators from the Woodbridge Research Facility, Woodbridge, VA, and the construction and operation of a new EMP simulator, VEMPS II. The U.S. Army Laboratory Command has terminated EMP simulator operations at the Woodbridge Research Facility, Woodbridge, VA. This notice supercedes the Notice of Intent to Prepare an Environmental Impact Statement (EIS) for the operation of Electromagnetic Pulse Simulators (EMP) at the Harry Diamond Laboratories, Woodbridge Research Facility, Woodbridge, VA, published by the Department of the Army on January 12, 1989, in 54 FR 994.

The U.S. Army Laboratory Command, Department of the Army, is responsible for research, test, and evaluation of the effects of EMP on Army equipment. EMP is generated by the employment of nuclear weapons at high altitude and can render equipment inoperative because of its effect on electrical circuits and electronic components. EMP simulators produce only the EMP portion of a nuclear detonation without the use of any nuclear weapons, nuclear material, or nuclear radiation. Possible alternatives include:

a. Cease this type of testing, or

b. Conduct such testing by other means of simulation, or

c. Have other military, Federal departments or contractors conduct such testing, or

d. Relocate and operate those simulators at a number of undetermined, reasonable sites.

It is anticipated that the Army's EIS effort will be augmented by the services of contractors, consultants, and advisors with demonstrated expertise and experience to accumulate the necessary information to make the appropriate analysis.

2. The environmental impact analysis process will be in accordance with the National Environmental Policy Act of 1969, Army Regulation 220-2, 32 CFR part 651 and the regulations of the Council on Environmental Quality, 40 CFR part 1500. The purpose of this analysis is to determine the extent of any significant impacts, and in the event significant impacts exist, to analyze those impacts under the terms of the National Environmental Policy Act of 1969 and to explore mitigation for any significant impacts.

3. The Army will initiate a scoping process to discuss reasonable siting alternatives and to determine the significant issues related to the proposed action. Following the development of a list of alternate sites, the EIS process will begin with public scoping meetings, which will be announced in the **FEDERAL REGISTER** at least two weeks in advance of the meetings. Public as well as Federal, State, and local agency participation and input are desired. To provide an opportunity for public input to the scoping process, interested individuals, governmental agencies and private organizations are invited to submit information and comments for consideration by the Army and possible incorporation into the EIS. Particularly solicited is information on other environmental studies, issues and alternatives which the EIS should consider, major impacts and recommended mitigating measures associated with the proposed action.

4. Individuals or agencies may offer information relevant to the environmental impacts or aspects of the environment that should be considered by writing to or participating in pubiic scoping meetings which will be held in January 1990. Notice will also be mailed to groups and individuals, agencies and anyone responding to this Notice of Intent desiring to be informed on the details of the upcoming public participating meetings. Questions and comments regarding the scope of the environmental analysis and documentation should be submitted to the Harry Diamond Laboratories Public Affairs Officer: Director, U.S. Army Laboratory Command, Harry Diamond Laboratories, ATTN: Public Affairs Officer, 2800 Powder Mill Road, Adelphi, MD 20783-1145; Area Code (202) 39402208.

Comments and suggestions should be received no later than 15 days following the public scoping meetings to be considered in the Draft EIS (DEIS).

Dated: October 24, 1989.

Lewis D. Walker,

*Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA (I&L).*

[FR Doc. 89-25402 Filed 10-26-89; 8:45 am]

BILLING CODE 3710-08-M

### Corps of Engineers

### Intent To Prepare a Draft Supplemental Environmental Impact Statement (DSEIS) for the Western Long Island Sound Dredged Material Disposal Site

**AGENCY:** U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice of intent.

**SUMMARY:** In 1982 the New England Division (NED) of the U.S. Army Corps of Engineers prepared a Final Environmental Impact Statement (FEIS) and Record of Decision for a dredged material disposal site in Western Long Island Sound named WLIS III. Disposal began at the site in 1982. Pursuant to the lawsuit Town of Huntington, et al. v. Marsh, the United States District Court, Eastern District of New York found the 1982 FEIS deficient in its discussion of the nature, quantities, and cumulative effects of disposal from site use. The Court also found that in accordance with a 1980 amendment (33 U.S.C. Sec. 1416(f)) to the Ocean Dumping Act (ODA) the FEIS should have specifically applied the site selection criteria of the ODA (33 U.S.C. Sec. 1412) and Ocean Dumping Regulations (40 CFR part 228) to this Clean Water Act site selection. the Court has ordered NED to Supplement the 1982 FEIS to remedy these deficiencies.

**FOR FURTHER INFORMATION CONTACT:** Dr. Thomas J. Fredette, Regulatory Branch, New England Division, U.S. Army Corps of Engineers, 424 Trapelo

Road, Waltham, MA 02254–9149. Telephone: 617/647–8563.

**SUPPLEMENTARY INFORMATION:** The DSEIS will address the deficiencies identified by the Court by analyzing (1) sediment testing and volume data from permitted and Federally managed disposal projects that have used the site since 1982 and (2) results from over six years of environmental monitoring conducted by NED in and around the site. The Final Environmental Impact Statement for Western Long Island Sound was published in February 1982 and a Notice of Availability was published in the **Federal Register** in Vol. 47, No. 30, page 6483.

Copies of the DSEIS will be sent to recipients listed on the mailing list for the FEIS and any other interested parties providing requests.

The Draft Supplemental Environmental Impact Statement will be available on or after 16 October 1989.

Dated: October 6, 1989.

**Daniel M. Wilson,**

*Colonel, Corps of Engineers, Division Engineer.*

[FR Doc. 89–25290 Filed 10–26–89; 8:45 am]

BILLING CODE 3710–24–M

## DEPARTMENT OF ENERGY

### Assistant Secretary for International Affairs and Energy Emergencies

### Proposed Subsequent Arrangement With Australia

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 Australia concerning Peaceful Uses of Nuclear Energy, 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/EU(AU)–7, for the return of a damaged unirradiated fuel element to the United Kingdom from Australia for repair and eventual return to Australia. The element contains 280.32 grams of uranium enriched to approximately 60 percent in the isotope uranium-235.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this 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: October 24, 1989.

**Richard H. Williamson,**

*Deputy Assistant Secretary for International Affairs.*

[FR Doc. 89–25390 Filed 10–26–89; 8:45 am]

BILLING CODE 6450–01–M

### Proposed Subsequent Arrangement With Taiwan

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" to be carried out in Taiwan under the Agreement for Cooperation Concerning Civil Uses of Atomic Energy, signed April 4, 1972, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves the joint determination that safeguards may be effectively applied to the Hot Laboratory at the Institute of Nuclear Energy Research in Taiwan and approval of the alteration in form or content of irradiated fuel elements from the Chinshan, Kuosheng, and Maanshan reactors. The aforementioned determination will be made, and the approval for the post-irradiation examination for the agreed upon program from the Chinshan, Kuosheng, and Maanshan reactors will be granted, for the period ending December 31, 1992.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this 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: October 24, 1989.

**Richard H. Williamson,**

*Deputy Assistant Secretary for International Affairs.*

[FR Doc. 89–25391 Filed 10–26–89; 8:45 am]

BILLING CODE 6450–01–M

## Federal Energy Regulatory Commission

**[Docket Nos. QF90–4–000, et al.]**

### The City and County of Honolulu, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

October 20, 1989.

Take notice that the following filings have been made with the Commission:

**1. The City and County of Honolulu**

[Docket No. QF90–4–000]

On October 5, 1989, The City and County of Honolulu (Applicant), of 650 South King Street, Honolulu, Hawaii 96285, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Oahu, Hawaii and will consist of two traveling grate waterwall boilers and a steam turbine generator. the net electric power production capacity of the facility will be 50 MW. The primary source of energy will be biomass in the form of municipal solid waste.

*Comment date:* Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

**2. Commonwealth Cogeneration Partners, L.P.**

[Docket No. QF90–10–000]

On October 12, 1989, Commonwealth Cogeneration Partners, L.P. (applicant), of 2800 Post Oak Blvd., P.O. Box 1396, Houston, Texas 77251–1396, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Hurt, Virginia. The facility will consist of two units each consisting of a boiler and an extraction/condensing steam turbine generator. Thermal energy recovered from the facility will be utilized by the Klopman Fabrics Divsion plant of the Burlington Industries, Inc. for process use such as fabric preparation, dying and cleaning, and for space heating and humidifcation. The maximum net electric power production capacity of the facility will be 123.6 MW. The primary source of energy will be coal.

Construction of the facility is scheduled to begin during the last quarter of 1990.

*Comment date:* Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraph:**

E. Any person desiring to be heard or to protext said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89-25308 Filed 10-26-89; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. RP89-86-000]**

## Chandeleur Pipe Line Co.; Informal Settlement Conference

October 23, 1989.

Take notice that an informal settlement conference will be convened in the above-proceeding on Tuesday, November 7, 1989, at 10:00 a.m. in a hearing room of the Federal Energy Regulatory Commission, 810 First Street, N.E., Washington, DC 20426.

Any party, as defined by 18 CFR 285.102(c), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact John J. Keating (202) 357-5762.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89-25309 Filed 10-26-89; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. RP90-14-000]**

## National Fuel Gas Supply Corp.; Proposed Tariff Changes

October 20, 1989.

Take notice that on October 19, 1989, National Fuel Gas Supply Corporation (National) tendered for filing Twenty-Third Revised sheet No. 4 to its FERC Gas Tariff, First Revised Volume No. 1, with a proposed effective date of November 1, 1989, subject to refund.

National states that the purpose of its filing is to revise National's FERC Gas Tariff, to the limited extent necessary, to reflect in National's base rates the costs which result from converting firm sales service provided by its pipeline-suppliers to firm transportation service.

Further, National tendered for filing this rate change and requested that this proceeding be consolidated with Docket No. RP89-49-000, since the test period in Docket No. RP89-49-000 closed on July 1, 1989, and these costs will commence on November 1, 1989.

National states that copies of this filing were served on National's jurisdictional customers and on interested state commissions.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 27, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motions to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89-25313 Filed 10-26-89; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. CP90-76-000]**

## United Gas Pipe Line Co.; Request Under Blanket Authorization

October 23, 1989.

Take notice that on October 18, 1989, United Gas Pipeline Company (United), P.O. Box 1478, Houston, Texas 77251, filed in Docket No. CP90-76-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United proposes to transport natural gas on an interruptible basis for Transco Energy Marketing Company (TEMCO). United explains that service commenced September 5, 1989, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-4859. United explains that the peak day quantity would be 360,500 MMBtu, the average daily quantity would be 360,500 MMBtu, and that the annual quantity would be 131,582,500 MMBtu. United explains that it would receive natural gas for TEMCO's account at various receipt points located in Offshore Texas. United states that it would redeliver the gas at existing interconnections in Offshore Texas.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89-25310 Filed 10-26-89; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket Nos. CP90-71-000, et al]**

## Southern Natural Gas Co., et al.; Natural Gas Certificate Filings

October 20, 1989.

Take notice that the following filings have been made with the Commission:

### 1. Southern Natural Gas Company

[Docket No. CP90-71-000]

Take notice that on October 17, 1989, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP90-71-000 a request pursuant to §§ 157.205 and 284.223(b) of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service for Texican Natural Gas Company (Texican), a marketer, under its blanket certificate issued in Docket No. CP88-316-000 pursuant to section 7

of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Southern states that the maximum daily, average daily and annual quantities that it would transport for Texican would be 1,000 MMBtu equivalent of natural gas, 100 MMBtu equivalent of natural gas and 36,500 MMBtu equivalent of natural gas, respectively.

Southern states that it would transport natural gas for Texican from various receipt points in Louisiana, offshore Louisiana, Texas, offshore Texas, Mississippi and Alabama to various delivery points in Mississippi.

Southern indicates that in a filing made with the Commission in Docket ST89-4742, it reported that transportation service for Texican commenced on September 1, 1989 under the 120-day automatic authorization provisions of § 284.223(a).

*Comment date:* December 4, 1989, in accordance with Standard Paragraph G at the end of this notice.

**2. United Gas Pipe Line Company**

[Docket No. CP90-74-000]

Take notice that on October 18, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP90-74-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Phoenix Gas Pipeline Company (Phoenix), an intrastate pipeline company, under the blanket certificate issued in Docket No. CP88-6-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

United states that pursuant to a transportation agreement dated December 6, 1988, as amended on July 20, 1989, under its Rate Schedule ITS, it proposes to transport up to 103,000 MMBtu per day equivalent of natural gas for Phoenix. United states that it would transport the gas from multiple receipt points as shown in Exhibit "A" of the transportation agreement and would deliver the gas to multiple delivery points shown in Exhibit "B" of the agreement.

United advises that service under § 284.223(a) commenced August 14, 1989, as reported in Docket No. ST90-32-000 (filed October 3, 1989). United further advises that it would transport 103,000 MMBtu on an average day and 37,595,000 MMBtu annually.

*Comment date:* December 4, 1989, in accordance with Standard Paragraph G at the end of this notice.

**3. Transcontinental Gas Pipe Line Corporation**

[Docket No. CP90-54-000]

Take notice that on October 13, 1989, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP90-54-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide transportation service for South Energy Company (Shipper) under the blanket certificate issued in Docket No. CP88-328-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Transco states that it proposes to transport up to 200,000 dekatherms (dt) per day equivalent of natural gas for Shipper. Transco states that it would transport the gas from receipt points located offshore and onshore Louisiana, onshore and offshore Texas, and onshore Mississippi and would deliver the gas at a delivery point in New Jersey.

Transco advises that service under § 284.223(a) commenced September 8, 1989, as reported in Docket No. ST90-25. Transco further advises that it would transport 50,000 dt on an average day and 18,250,000 dt annually.

*Comment date:* December 4, 1989, in accordance with Standard Paragraph G at the end of this notice.

**4. United Gas Pipe Line Company**

[Docket No. CP90-77-000]

Take notice that on October 18, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP90-77-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to provide interruptible transportation service on behalf of Texaco Inc., a producer of natural gas, under United's blanket certificate issued in Docket No. CP88-6-000, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United states that the interruptible gas transportation agreement, dated May 11, 1988, as amended on July 26, 1989, proposes to transport a maximum daily quantity of 51,500 MMBtu, an average day quantity of 51,500, and an annual quantity of 18,797,500, and that service commenced on August 22, 1989, as reported in Docket No. ST89-4839-000, pursuant to section 284.223(a) of the Commission's Regulations. United would receive gas from various points of receipt in Texas, and redeliver at various points of delivery in Texas. United further states that existing facilities would be used to provide this transportation service.

*Comment date:* December 4, 1989, in accordance with Standard Paragraph G at the end of this notice.

**5. United Gas Pipe Line Company**

[Docket No. CP90-75-000]

Take notice that on October 18, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP90-75-000, a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and Natural Gas Policy Act (18 CFR 284.223) for authorization to provide a transportation service for Ames Financial Incorporated (Ames), a marketer of natural gas, under United's blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United proposes to transport, on an interruptible basis, up to 2,060 MMBtu of natural gas equivalent per day for Ames pursuant to a transportation agreement dated July 14, 1989, between United and Ames. United would receive natural gas at an existing receipt point in Louisiana and redeliver equivalent volumes of gas at an existing delivery point in Louisiana.

United further states that the estimated average daily and annual quantities would be 2,060 MMBtu and 751,900 MMBtu respectively. Service under § 284.223(a) commenced August 25, 1989, as reported in Docket No. ST90-90-000, it is stated.

*Comment date:* December 4, 1989, in accordance with Standard Paragraph G at the end of this notice.

**6. Columbia Gas Transmission Corporation**

[Docket No. CP90-60-000]

Take notice that on October 16, 1989, Columbia Gas Transmission Corporation (Columbia Gas), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP90-60-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon sales service to Pendelton County Water District (Pendelton) Kentucky, all as more fully set forth in the application

which is on file with the Commission and open to public inspection.

Columbia Gas states that Pendelton, a wholesale customer, has been acquired by Union Light Heat and Power Company (Union) also an existing customer of Columbia Gas. It is indicated by Columbia Gas that Pendelton and Union requested that Columbia Gas abandon the existing sales service of 1,600 Dth of gas per day being rendered to Pendelton under Columbia Gas' Rate Schedule SGS.

Upon receipt of the requested abandonment authorization, Columbia Gas proposes to terminate its existing service agreement with Pendelton and add to Union's service agreement the Wesley Chapel delivery point at which gas service is presently being rendered by Columbia Gas to Pendelton. The application states that Columbia Gas has entered into an ageement dated May 14, 1987, with Pendelton and Union whereby Pendelton's existing service will be absorbed under Union's existing service agreement with no increase in volumes under Columbia Gas' Rate Schedule CDS.

*Comment date:* November 13, 1989, in accordance with Standard Paragraph F at the end of this notice.

**7. Great Lakes Gas Transmission Company**

[Docket No. CP89–55–000]

Take notice that on October 13, 1989, Great Lakes Gas Transmission Company (Great Lakes), 2100 Buhl Building, Detroit, Michigan 48226, file in Docket No. CP90–55–000 an application pursuant to section 7(b) of the Natural Gas Act (NGA) for permission and approval authority to abandon natural gas transportation service for Michigan Consolidated Gas Company (MichCon), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Great Lakes states that by order issued May 6, 1987 in Docket No. CP86–696–000, 39 FERC ¶62,147 (1987), the Commission authorized Great Lakes to provide firm transportation service under Rate Schedule T–15 for MichCon from the Emerson Interconnection to the following measuring stations located within Michigan on Great Lakes' system: Crystal Falls, Rapid River, Rudyard, Sault Ste. Marie, Mackinaw City, Pellston, Boyne City/Petoskey, Gaylord, and Belle River Mills. Great Lakes states that this transportation service replaced prior sales service authorized in Dockets Nos. CP66–110, 37 FPC 1070 (1976), and CP70–19, 43 FPC 635 (1970).

Great Lakes states that the underlying Transportation Service Agreement provides for up to 59,578 Mcf per day of firm transportation until October 31, 1990, and for up to 57,000 Mcf of firm transportation from November 1, 1990 through November 1, 1991. Great Lakes states that by its terms, the Transportation Service Agreement terminates on November 1, 1991, and that the agreement does not provide for continuation after the termination date.

Great Lakes states that the daily volumes transported by MichCon vary from extensive overrun interruptible volumes to daily usage of less than 1,000 Mcf, and that MichCon's contracted Rate Schedule T–15 volumes represent only four percent of Great Lakes' total firm contracted system volumes. Further, Great Lakes states that Great Lakes-transported volumes represent only 1.6% of the projected system-supply mix included within MichCon's 1990 Gas Cost Recovery Plan filed with the Michigan Public Service Commission, Docket No. U–9434, and that MichCon's projected utilization of Great Lakes' system during the period of 1990 through 1994 reflects less than 15% of MichCon's contracted capacity on Great Lakes' system.

Great Lakes states that in two Commission proceedings, Docket Nos. CP89–892–000 and CP89–1898–000, it is presently proposing to expand its system to permit the movement of Western Canadian natural gas to serve the Northeast United States markets; and that MichCon has intervened in and protested those proceedings, arguing that incremental costs should be used to set rates. Great Lakes states that, in its intervention in Docket No. CP89–892–000, MichCon requested the Commission to permit it to reduce its Rate Schedule T–15 contract entitlements because of Great Lakes' expansion proposals. In MichCon's view, any relinquished capacity could be used to reduce the proposed expansion.

Given MichCon's stated desire to reduce or to eliminate its firm contracted capacity on Great Lakes' system and the small percentage of MichCon's system supply that the Great Lakes-transported volumes represent, Great Lakes states that it is hereby offering to abandon MichCon's firm transportation service prior to the existing Transportation Service Agreement's November 1, 1991 termination date.

Great Lakes agrees with MichCon that any relinquished firm capacity may be used to reduce the planned system expansion. Further, Great Lakes states that the public convenience and necessity will be served by releasing existing capacity that will permit either a reduction in planned system capacity additions, or increased firm capacity availability under Great Lakes' recently-filed open access tariff, Docket No. CP89–2198–000, for those shippers needing firm transportation service through Great Lakes' system. Great Lakes request that the Commission grant it authority to abandon Rate Schedule T–15 firm transportation service for MichCon effective November 1, 1990. Great Lakes request the Commission to issue its order authorizing the abandonment on or before May 1, 1990 to provide MichCon, if necessary, the opportunity to arrange for alternatives, and to also allow Great Lakes some lead time to determine an appropriate utilization of the released capacity. Great Lakes states that, if MichCon desires, it will establish a new maximum daily contract level to provide service to certain small communities served by MichCon that physically rely upon Great Lakes for transportation of a natural gas supply. Great Lakes states that only a transportation service obligation will be abandoned and that facilities will not be abandoned.

*Comment date:* November 13, 1989 in accordance with Standard Paragraph F at the end of the notice.

**8. ANR Pipeline Company**

[Docket No. CP90–58–000]

Take notice that on October 13, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP90–58–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Entrade Corporation, under the blanket certificate issued in Docket No. CP88–532–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission.

ANR states that pursuant to a Transportation Agreement dated October 21, 1988, it proposes to transport, on an interruptible basis, up to a maximum of 10,000 dth of natural gas for Entrade under Rate Schedule ITS. ANR states that it would receive the gas at ANR's existing points of receipt located in Oklahoma, Texas, Louisiana, Kansas, Kentucky, Ohio, Wisconsin, Michigan, and Illinois and offshore Louisiana and Texas gathering areas and redeliver the gas for the account of Entrade at existing interconnections located in Ohio.

ANR states that it will transport approximately 100,000 dth on an average

day and approximately 36,500,000 dth on an annual basis.

ANR further states it commenced this service on August 19, 1989, as reported in Docket No. ST90–46–000.

*Comment date:* December 4, 1989, in accordance with Standard Paragraph G at the end of this notice.

**9. Southern Natural Gas Company**

[Docket No. CP90–72–000]

Take notice that on October 17, 1989, Southern Natural Gas Company (Southern) P.O. Box 2563, Birmingham, Alabama 35303–2563, filed in Docket No. CP90–72–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Centran Corporation (Centran) under the authorization issued in Docket No. CP88–316–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Southern would perform the proposed transportation service for Centran, a marketer of natural gas, pursuant to a service agreement dated August 25, 1989, under Southern's Rate Schedule IT (Service Agreement No. 851960). It is stated that the term of the service agreement is effective from August 25, 1989, and shall be in full force and effect for a primary term of one month and shall continue and remain in force and effect for successive terms of one month thereafter until cancelled by either party giving five days written notice to the other party. Southern proposes to transport on a peak day up to 1,500 MMBtu; on an average day 1,000 MMBtu; and on an annual basis 365,000 MMBtu of natural gas for Centran. Southern proposes to receive the gas at various receipt points in offshore Texas, offshore Louisiana, Texas, Louisiana, Mississippi, and Alabama for delivery to various points in Alabama. Southern asserts that no new facilities are required to implement the proposed service.

Southern states that it would perform such transportation service for Centran pursuant to its Rate Schedule IT. It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Regulations. Southern commenced such self-implementing service on September 1, 1989, as reported in Docket No. ST89–4743–000.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest

*Comment date:* December 4, 1989, in accordance with Standard Paragraph G at the end of this notice.

**10. United Gas Pipeline Company**

[Docket No. CP90–64–000]

Take notice that on October 10, 1989, United Gas Pipeline Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP90–64–000 a request pursuant to §§ 157.205 and 284.223 (18 CFR 157.205 and 284.223) of the Commission's Regulations under the Natural Gas Act for authority to provide interruptible transportation service for American Central Gas Companies, Inc. (American) a marketer of natural gas, under United's blanket transportation certificate which was issued by Commission order on January 15, 1988, in Docket No. CP88–6–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United indicates that it will receive the gas from American at various existing interconnections in the States of Louisiana, Texas and Mississippi and deliver the gas for the account of American at various interconnections in the States of Louisiana, Texas, Mississippi and Alabama. United will transport the gas pursuant to its Rate Schedule ITS.

United proposes to transport up to 185,000 MMBtu of gas per peak and average day and approximately 67,671,000 MMBtu of gas annually. United indicates that the transportation service commenced under the 120-day automatic authorization of § 284.223(a) of the Commission's Regulations on September 5, 1989, pursuant to a transportation agreement dated November 9, 1988. United notified the Commission of the commencement of the transporation service in Docket No. ST89–4861–000 on September 29, 1989.

*Comment date:* December 4, 1989, in accordance with Standard Paragraph G at the end of this notice.

**Standard Paragraphs**

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89–25311 Filed 10–26–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM90-2-7-000]

## South Georgia Natural Gas Co.; Proposed Changes in FERC Gas Tariff

October 20, 1989.

Take notice that South Georgia Natural Gas Company (South Georgia) on October 13, 1989, tendered for filing Thirteenth Revised Sheet Nos. 76 and 106 to the First Revised Volume No. 2 of its FERC Gas Tariff. The proposed revised tariff sheets would flow through to South Georgia's two gas storage customers reduced storage transportation charges billed to South Georgia by Southern Natural Gas Company (Southern).

South Georgia states that the Commission's August 22, 1980 order in the captioned proceeding permits South Georgia to flow through to its two storage customers any changes in the amounts which the Commission authorizes Southern to charge South Georgia for storage transportation services. South Georgia further states that the Commission recently accepted for filing to be effective September 1, 1989, subject to refund, revised tariff sheets filed by Southern which reduced Southern's storage transportation charges to South Georgia.

South Georgia requests waivers of § 154.51 of the Commission's Regulations and any other waivers necessary to make the revised tariff sheets effective as of September 1, 1989, the date of the decrease in Southern's charges to South Georgia.

Copies of this filing were served on the two jurisdictional customers affected by the filing, interested state commissions and all parties in the captioned proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such petitions or protests should be filed on or before October 30, 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. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89-25314 Filed 10-26-89; 8:45 am]

BILLING CODE 6717-01-M

## Office of Fossil Energy

[ERA Docket No. 81-04-NG]

## Boundary Gas, Inc.

**AGENCY:** Office of Fossil Energy, Department of Energy.

**ACTION:** Notice of final order to import natural gas from Canada.

**SUMMARY:** The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it has issued a final order to Boundary Gas, Inc. (Boundary) removing a condition imposed on Boundary's authorization to import natural gas from Canada. On August 9, 1982, Boundary was conditionally authorized in DOE/ERA Opinion and Order No. 45 (Order 45), 1 ERA Para. 70,539, to import up to 185,000 Mcf of Canadian natural gas per day. The authorization was conditioned upon completion of an environmental review of Boundary's import arrangements. Boundary subsequently reduced the scope of its import project and divided it into two phases. The first phase, Boundary Phase I, involved importing 40,000 Mcf per day commencing November 1, 1984, and continuing until facilities were available for Phase II, at which time 92,500 Mcf per day would be imported. The DOE, after reviewing the environmental impact of Phase I, reaffirmed its decision in Order 45 and removed the condition for the Phase I volumes on February 8, 1984, in DOE/ERA Opinion and Order No. 45-B, 1 ERA Para. 70,560. After reviewing the entire record of the Boundary proceedings, including an environmental analysis of the Phase II project, the DOE determined that the Boundary Phase II import arrangement is not inconsistent with the public interest and, therefore, removed the condition from Order 45 for the Phase II volumes.

A copy of the order is available for inspection and copying in the Office of Fuels Programs Docket Room, Room 3F-056, Forrestal Building, U.S. Department of Energy, 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, October 19, 1989.

**Clifford P. Tomaszewski,**

*Acting Director, Natural Gas Office, Office of Fuels Programs, Office of Fossil Energy.*

[FR Doc. 89-25392 Filed 10-26-89; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 89-51-NG]

## Harbert Energy Corp.; Order Granting Blanket Authorization To Import and Export Natural Gas

**AGENCY:** Office of Fossil Energy, Department of Energy.

**ACTION:** Notice of order granting blanket authorization to import natural gas from Canada and Mexico, and to export natural gas to Mexico and Canada.

**SUMMARY:** The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Harbert Energy Corporation (Harbert) blanket authorization in FE Docket No. 89-51-NG to import up to 100 Bcf of Canadian and Mexican natural gas and to export to Canada and Mexico up to 100 Bcf of domestically-produced natural gas for a term of two-years beginning on the dates of first deliveries.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, U.S. Department of Energy, 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, October 13, 1989.

**Constance L. Buckley,**

*Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.*

[FR Doc. 89-25393 Filed 10-26-89; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 89-53-NG]

## Valero Industrial Gas, L.P.; Order Amending and Extending Blanket Authorization To Export Natural Gas to Mexico

**AGENCY:** Office of Fossil Energy, Department of Energy.

**ACTION:** Notice of order amending and extending blanket authorization to export natural gas to Mexico.

**SUMMARY:** The Office of Fossil Energy (FE) of the Department of Energy gives notice that it has issued an order amending and extending Valero Industrial Gas, L.P.'s (Vigas) existing blanket authorization to export natural gas to Mexico. The order authorizes Vigas to export up to 150 Bcf of natural gas for a two-year period beginning November 1, 1989, through November 1, 1991.

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, October 23, 1989.

**Constance L. Buckley,**

*Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.*

[FR Doc. 89–25394 Filed 10–26–89; 8:45 am]

BILLING CODE 6450–01–M

**[Docket No. FE C&E 90–02; Certification Notice—50]**

## Filing Certification of Compliance: Coal Capability of New Electric Powerplant

**AGENCY:** Office of Fossil Energy, Department of Energy.

**ACTION:** Notice of filing.

**SUMMARY:** Title II of the Powerplant and Industrial Fuel Use Act of 1978, as amended ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*) provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source (section 201(a), 42 U.S.C. 8311 (a), Supp. V. 1987). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the **Federal Register** a notice reciting that the certification has been filed. Two owners and operators of proposed new electric base load powerplants have filed self certifications in accordance with section 201(d).

Further information is provided in the **SUPPLEMENTARY INFORMATION** section below.

**SUPPLEMENTARY INFORMATION:** The following companies have filed self certifications:

| Name | Date received | Type of facility | Megawatt capacity | Location |
|---|---|---|---|---|
| Megan-Racine Associates Inc., Tampa, FL | 10–11–89 | Combined cycle | 49 | Canton, NY |
| Lee Mass Cogeneration Co., Omaha, NE | 10–16–89 | Combined cycle | 108 | Lee, MA. |

Amendments to the FUA on May 21, 1987, (Pub. L. 100–42) altered the general prohibitions to include only new electric base load powerplants and to provide for the self certification procedure.

Copies of this self certification may be reviewed in the Office of Fuels Programs, Fossil Energy, Room 3F–056, FE–52, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, phone number (202) 586–6769.

Issued in Washington, DC, on October 23, 1989.

**Constance L. Buckley,**

*Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.*

[FR Doc. 89–25395 Filed 10–26–89; 8:45 am]

BILLING CODE 6450–01–M

## Office of Hearings and Appeals

## Issuance of Decisions and Orders, Week of June 26 Through June 30, 1989

During the week of June 26 through June 30, 1989, the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

*Appeal*

*Benedetto Enterprises, Inc., 06/30/89, KFA–0288*

Benedetto Enterprises, Inc., (Benedetto) filed an Appeal from a determination issued by the Manager of the Chicago Operations Office of the Department of Energy (DOE). The determination denied, in part, a Request for Information which Benedetto had filed with the DOE's Brookhaven National Laboratory (BNL) under the Freedom of Information Act. Benedetto requested from the BNL the reasons why a solicitation for proposals for the operation of an on-site gas station at BNL was cancelled copies of the submitted proposals and copies of documents relating to the decision to cancel the solicitation. In considering the Appeal, the DOE found that the Director had properly applied Exemption 5 to the majority of the documents in question, because they were predecisional. However, the DOE released redacted copies of two documents that contained non-deliberative and segregable factual material.

*Request for Exception*

*North Georgia Petroleum, Company, 06/29/89, KEE–0172*

The North Georgia Petroleum Company (NGPC) filed an Application for Exception from the Energy Information Administration (EIA) reporting requirements in which the firm sought relief from filing Form EIA–782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report." In considering the request, the DOE found that the firm was not adversely affected by the reporting burden in a way that is significantly different from the burden borne by similar reporting firms. Accordingly, exception relief was denied.

*Motion for Discovery*

*Southwestern Refining Co., Inc., the Crude Company Economic Regulatory Administration, 06/30/89, KRD–0490, KRD–0491, KRZ–0490*

The Economic Regulatory Administration (ERA) filed a motion to amend the Proposed Remedial Order (PRO) issued to the Southwestern Refining Co., Inc. (SRCI) and The Crude Company (TCC) on December 15, 1986. The DOE granted the ERA's motion to add the legal finding that TCC was liable for the alleged overcharges on the basis of its tortuous conduct as an animating force in the alleged regulatory violations. Both SRCI and TCC filed Motions for Discovery in connection with their Statements of Objections to the PRO. The DOE denied SRCI's and TCC's requests for contemporaneous construction discovery of Section 211.67(e), finding that the firms had not demonstrated that the regulation was

ambiguous with respect to prohibiting the receipt of Smaller Refiner Bias (SRB) Entitlements for crude oil refined pursuant to certain types of processing agreements. Similarly, the DOE denied TCC's requests for contemporaneous construction discovery of key terms in the processing agreement definition and concerning the application of 10 CFR 205.202 to entitlements violations. The DOE also denied TCC discovery regading the ERA's legal positions that small refiners must direct the flow of crude oil in order to have been eligible for SRB benefits, (ii) TCC was liable as an animating force in the entitlements violations of SRCI, and (iii) certain amounts of interest should be added to the firms' refund obligation. Accordingly, the SRCI and TCC discovery requests were denied.

*Interlocatory Order*

*Economic Regulatory Administration/ Kern Oil & Refining Company, 06/30/89, KRZ–0527*

The Office of Hearings and Appeals considered a Motion filed by the Economic Regulatory Administration to formally amend a Proposed Remedial Order (PRO) issued to Kern Oil & Refining Company to include an additional theory of liability. The OHA found first that it had authority to consider additional theories irrespective of whether the PRO is formally amended to include them. It is also rejected the firm's arguments that the proposed amendment was prejudicial and barred by the statute of limitations contained in the Petroleum Overcharge Distribution and Restitution Act of 1986. Accordingly, the ERA's Motion was granted.

*Refund Applications*

*Andalex Resources et al., 06/29/89, RF272–32550, et al.*

The DOE issued a Decision and Order granting refunds from crude oil coverage funds to five applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant was an end-user of the products involved and was therefore presumed injured by the alleged crude oil overcharge. The sum of the refunds granted in this Decision is $18,231.

*Atlantic Richfield Company/Hassel Oil Company, Inc. et al., 06/29/89, RF304–993 et al.*

The DOE issued a Decision and Order concerning eight Applications for Refund filed in the Atlantic Richfield Company special refund proceeding. Each of the applications was a reseller that requested a refund in excess of $5,000. Rather than attempt to demonstrate injury, each applicant elected to limit its refund to the 41% mid-range injury presumption. The refunds granted in this Decision totaled $131,839 including interest.

*Atlantic Richfield Company/Stem Mar Arco et al., 06/27/89, RF304–693 et al.*

The DOE issued a Decision and Order concerning twelve applications for refund filed in the Atlantic Richfield Company (ARCO) special refund proceeding. All of the applicants were reseller/retailers requesting refunds of less than $5,000. Therefore, each applicant was presumed injured. The refunds granted in this Decision totaled $7,283 including interest.

*City of Seattle, 06/28/89, RF272–14539*

The DOE issued a Decision and Order determining that the City of Seattle was ineligible for a Subpart V crude oil refund because it waived its rights and those of its affiliates to such a refund by participating in the Stripper Well agreement, as a claimant in the Refiners' Escrow.

*Crown Central Petroleum Corporation/ Adams Resources & Energy, Inc., 06/27/89, RF313–147*

The DOE issued a Decision and Order containing an Application for Refund filed in the Crown Central Petroleum Corporation special refund proceeding by Adams Resources & Energy, Inc. (Adams), a purchaser of Crown refined petroleum products. The DOE found that Adams experienced a competitive disadvantage in all of its purchases of Crown gasoline during the refund period and granted Adams a refund of $93,247 including interest.

*Crown Central Petroleum Corporation/ Davis Oil Company, Inc. et al., 06/29/89, RF313–6 et al.*

The DOE issued a Decision and Order considering six Applications for Refund filed in the Crown Central Petroleum Corporation special refund proceeding. Each applicant was found to be eligible for a refund based on a presumption of injury. The total refund approved in this Decision was $48,651, including interest.

*Crown Central Petroleum Corporation/ North Georgia Petroleum Co. et al., 06/28/89, RF313–22 et al.*

The DOE issued a Decision and Order considering six Applications for Refund filed in the Crown Central Petroleum Corporation special refund proceeding. Each applicant was found to be eligible for a refund based on the applicable presumption of injury. The total refund approved in this Decision was $48,416, representing $41,100 in principal plus $7,316 in accrued interest.

*Davis & Davis Farms et al., 06/27/89, RF272–27030 et al.*

The DOE issued a Decision and Order granting 10 Applications for Refund filed in the crude oil overcharge refund processing. The applicants were found to be end-users of the refined petroleum products upon which their claims were based. They were therefore presumed injured by the alleged crude oil overcharges. The sum of the refunds granted in this Decision is $41,836.

*Dorchester Gas Company/National Coop. Refinery Assoc., 06/26/89, RF253–62*

The DOE considered an Application for Refund in the Dorchester Gas Corporation refund proceeding. The applicant, National Cooperative Refinery Association (National) is an agricultural cooperative which purchased Dorchester butane through Liquid Petroleum Corporation (Liquid). Since Liquid apparently absorbed 44% of the alleged Dorchester overcharges, Liquid's downstream customer, National, was eligible to receive 56% of its allocable share. National certified that it would pass through, on a dollar-for-dollar, basis any refund received. The total refund granted in this Decision is $71,691 including interest.

*Exxon Corporation/Carter & Hensley Oil Co., Herman J. Hensley, 06/27/89, RF307–2781, RF307–9980*

The DOE issued a Decision and Order concerning an Application for Refund filed in the Exxon Corporation special refund proceeding by Carter & Carter Petro., Inc. (Carter), a successor to Carter & Hensley Oil Co. (C & H). C & H, a partnership owned by Arnold Carter and Herman J. Hensley during the Exxon consent order period, purchased directly from Exxon and was a reseller of Exxon products whose allocable share is less than $5,000. Carter, a corporation formed in 1982 and owned by Arnold Carter and Charles A. Carter, submitted an Application based on purchases made by C & H during the entire Exxon consent order period, although Carter did not purchase Mr. Hensley's 50 percent partnership interest in C & H until after the end of that period. Because the contract transferring Mr. Hensley's 50 percent partnership interest in C & H to Carter did not specify potential refunds as an asset being transferred, the DOE determined that partners Arnold Carter and Herman J. Hensley, were each entitled to receive a refund equal to half of the total volumetric amount.

Therefore, each refund recipient received a refund of $1,201, half of the total refund of $2,402.

*Exxon Corporation/Thoro Service Center et al., 06/29/89, RF307–4625 et al.*

The DOE issued a Decision and Order concerning seven Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the Applicants was either an Exxon reseller whose allocable share is less that $5,000 or an end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $7,090 ($5,912 in principal plus $1,178 in interest).

*Getty Oil Company/Smallwood Gas Company, 06/27/89, RR265–2*

The DOE issued a Decision and Order granting a supplemental refund to Smallwood Gas Company in the Getty Oil Company refund proceeding. Based on documentation of further purchases of Getty propane, the DOE approved an additional $4,403 in principal plus accrued interest of $4,697 for Smallwood.

*Gulf Oil Corporation/Butler's Gulf Service et al., 06/26/89, RF300–58 et al.*

The DOE issued a Decision and Order concerning five Applications for Refund submitted in Gulf Oil Corporation special refund proceeding. Each applicant established that it purchased some or all of its Gulf products indirectly from a Gulf jobber. The jobbers that supplied these five applicants either have not applied in the Gulf proceeding, have not attempted to prove injury, or have already received a refund in the Gulf proceeding under an injury presumption. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision, including accrued in interest, is $11,765.

*Gulf Oil Corporation/Francis Ryan, Inc., Bob Yeiser Gulf, 06/29/89, RF300–4271, RF300–4572*

The DOE issued a Decision and Order concerning two Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. The Applications were approved using a presumption of injury. The sum of the refunds granted in this Decision, including accrued interest, is $13,282.

*Gulf Oil Corporation/Riverfront Gulf Service, Inc. et al., 06/30/89, RF300–10838 et al.*

The DOE issued a Supplemental Order correcting the appendix to Gulf Oil Corporation/Riverfront Gulf Service, Inc., *et al.*, 19 DOE ¶ 85,068, (1989). The total correct volume approved in that Decision and Order was 16,639,953 gallons and the correct total refund approved was $14,145.

*Gulf Oil Corporation/L.C. Livingston et al., 06/28/89, RF300 et al.*

The DOE issued a Decision and Order concerning five Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. The Applications were approved using a presumption of injury. The sum of the refunds granted in this Decision including accrued interest is $8,476.

*H. Keith Crook et al.*, 06/27/89, *RF272–22212 et al.*

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to nine claimants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant demonstrated the volume of its claim either by consulting actual records or by using a reasonable estimate of its purchases. Each applicant was an end-user of the products it claimed and was therefore presumed injured by the alleged crude oil overcharges. The sum of the refunds granted in this Decision is $34,399.

*J. H. Alexander et al.*, 06/27/89, *RF272–4642 et al.*

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to four applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant used actual records and/or estimates to report its gallonage claim. Each applicant was an end-user of the products it claimed and was therefore presumed to be injured by the alleged crude oil overcharges. The sum of the refunds granted in this Decision is $1,079.

*Joe's Exxon Service et al.*, 06/28/89, *RF272–54188 et al.*

The DOE issued a Decision and Order, denying forty Applications for Refund filed in the Subpart V crude oil refund proceeding. Each applicant was either a reseller or a retailer during the period August 19, 1973 through January 27, 1981. Because none of the applicants demonstrated that it was injured due to the crude oil overcharges, they were ineligible for a crude oil refund.

*Key Oil Company/Gallatin Oil Company, Allen Oil Company, Inc.*, 06/29/89, *RF282–01, RF282–02*

The DOE issued a Decision and Order concerning two Applications for Refund filed by resellers of diesel fuel covered by a Consent Order that the DOE entered into with Key Oil Company, Inc. Each of the applicants submitted a statement indicating that it purchased diesel fuel from Key during the Consent Order period and that it was willing to accept the portion of the Key settlement fund which was assigned to it during the audit of Key's records by the Economic Regulatory Administration. Each applicant was eligible for a refund below the $5,000 small claims threshold and was therefore not required to prove injury. The total refund approved in this Decision is $4,511, representing $3,014 in principal and $1,497 in accrued interest.

*Mobil Oil Corporation/M. L. & D. C. Murray, Vernon H. Gauthier*, 06/30/89, *RF225–7421, RF225–9812, RF225–9813*

The DOE issued a Decision and Order concerning refund applications filed by two consignee agents in the Mobil Oil Corporation special refund proceeding. The DOE found that both applicants had experienced a decline in their market shares as a result of Mobil's alleged overcharges. The DOE further determined that each was therefore injured by the amount of its lost sales volume of motor gasoline times the Mobil volumetric amount. Accordingly, M.L. & D.C. Murray was granted a refund of $216 ($171 in principal plus $45 in interest), and Vernon H. Gauthier was granted a refund of $1,195 ($948 in principal plus $247 in interest).

*Mobil Oil Corporation/Noco Energy Corporation*, 06/26/89, *RF225–4188, RF225–4189, RF225–4190*

The DOE issued a Decision and Order granting an Application for Refund filed by Noco Energy Corporation, a purchaser of motor gasoline, middle distillates and residual fuel oil from Mobil Oil Corporation. After examining the firm's cost banks for each product and applying a three-part competitive disadvantage test to each product, the DOE granted Noco a full volumetric refund of $57,789, including interest.

*Murphy Oil Corporation/BP Oil Inc., 06/28/89, RF309–624*

The DOE issued a Decision and Order concerning an Application for Refund filed by BP Oil Inc. in the Murphy Oil Corporation special refund proceeding. The DOE determined that BP was not eligible to receive a refund from the Murphy Consent Order fund because it was a spot pruchaser and did not rebut the spot purchaser presumption of no injury. Accordingly, BP's application was denied.

*Murphy Oil Corporation/Mrs. Marvin Tindall & Lawrence McMillian et al., 06/28/89, RF309–705 et al.*

The DOE issued a Decision and Order granting Applications for Refund filed by four purchasers of refined petroleum products sold by Murphy Oil Corporation. Each applicant was found to be eligible for refund of $5,000 or 40% of its full allocable share, whichever was greater. The total refund approved in this Decision was $57,122 including interest.

*O'Connell Oil Company/Denny's Service Station, Bill's Auto Sales, 06/27/89, RF280-01, RF280-02*

The DOE issued a Decision and Order concerning two Applications for Refund filed by retailers of motor gasoline covered by a consent Order that the DOE entered into with O'Connell Oil Compnay. The applicants submitted information indicating the volumes of their O'Connell motor gasoline purchases and were eligible for a refund below the $5,000 small claims threshold. The total refund approved in this Decision is $3,647 including interest.

*Pine Bluff Sand & Gravel Co. et al., 06/27/89, RF272-14906 et al.*

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to twenty-one applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant was an end-user of the products it claimed and was therefore presumed injured by the alleged crude oil overcharges. The sum of the refunds granted in this Decision is $50,031.

*Plaquemines Oil Sales Corp./Delta Marina, 06/30/89, RR305-1*

The DOE issued a Decision and Order ganting in part a Motion for Reconsideration filed by Delta Marina (Delta) from a Decision partially granting the firm's Application for Refund in the Plaquemines Oil Sales Corp. (POSC) special refund proceeding. Using new data obtained from the firm, the DOE computed a larger cost bank for Delta and thus found that it was entitled to a principal refund of $19,689 based on those unrecouped product costs. The DOE also found merit in Delta's position that the prepayment interest on the POSC settlement fund could not be correlated to any overcharges incurred by Delta and that the firm should receive a pro rata share of that interest without being required to establish banked costs in that amount. Accordingly, the DOE determined that Delta was entitled to a total additional refund of $35,250 ($23,314 principal and $11,936 in accrued interest).

*Standard Oil Co. (Indiana)/Indiana, 06/27/89, RM251-153*

The DOE issued a Decision and Order approving a Motion for Modification filed by the State of Indiana in the Standard Oil Co. (Indiana) (Amoco II) refund proceeding. Indiana sought to transfer $77,928 in Amoco II refund proceeding. Indiana sought to transfer $77,928 in Amoco II monies from a previously approved program to its Fuel Saver Van Program. The program involves the outfitting of a van with a computer that, when attached to a car's engine, prints a list of adjustments needed to make the engine more efficient. The van travels to public places throughout the State, providing free car engine analyses to Indiana residents. The OHA determined that the program was restitutionary in nature and approved the State's motion.

*Standard Oil Co. (Indiana)/Wisconsin, 06/27/89, RQ251-514*

The DOE issued a Decision and Order granting a second-stage refund application filed by the State of Wisconsin in the *Standard Oil Co. (Indiana)* special refund proceeding on behalf of nine Wisconsin native American tribal organizations. The State proposed to use these funds for the weatherization of tribal homes. The OHA determined that this program would provide restitution to injured native American consumers of petroleum products and approval the State's plan.

*Total Petroleum/Crawford Oil Company, 06/29/89, RF310-224*

The DOE issued a Decision and Order concerning an Application for Refund filed in the Total Petroleum special refund preceeding by Crawford Oil Company, a retailer of Total motor gasoline. Using the small claims injury presumption, the DOE granted Crawford a refund of $5,914 ($5,000 principal and $914 interest).

*Walker-Williams Lumber Co. Inc., 06/30/89, RF272-14529, RD272-14529*

The DOE issued a Decision and Order concerning an Application for Refund filed in the Subpart V crude oil refund proceeding by Walker-Williams Lumber Co., Inc. (Walker), a manufacturer of pressure-treated lumber. A group of States and Territories (the States) objected to Walker's application on the ground that certain studies suggested that the lumber and forest products industry in general was able to pass through increased petroleum costs to consumers during the petroleum price controls period. In rejecting that argument and the States' Motion for Discovery, the DOE determined that the States had failed to show that Walker itself has passed through increased fuel costs. Accordingly, Walker's application was approved and the firm was granted a refund of $5,832.

*Weyerhauser Company, Champion International Corporation, Federal Paper Board Company, Inc., 06/27/89, RF272-279, RF272-280, RF272-281, RF272-279, RF272-280, RF272-281*

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to Weyerhauser Company (Weyerhauser), Champion International Corporation (Champion), and Federal Paper Board Company, Inc. (Federal), three pulp, paper and lumber manufacturers. In reaching its determination, the DOE rejected the objections to the applicants' claims submitted by a group of States and denied the States' Motions for Discovery. Specifically, the DOE stated that industry-wide data in general is insufficient to rebut the presumption that end-users outside of the petroleum industry were injured by crude oil overcharges. The DOE also determined that the States' showing of sustained growth and profitability of a particular industry or firm does not rebut the end-user presumption. The total refund granted to Weyerhauser was $1,330,335, the refund granted to Champion was $1,031,329 and the refund granted to Federal was $574,941.

The Office of Hearings and Appeals granted crude oil overcharge refunds to end-user applicants in the following Decisions and Orders:

CRUDE OIL END-USERS

| Name | Case No. | Date | No. of applicants | Total refund |
|---|---|---|---|---|
| Bill Stone *et al* | FR272-70000 | 06/30/89 | 133 | $16,658 |
| Concrete Enterprises *et al* | FR272-61001 | 06/30/89 | 98 | 11,750 |

CRUDE OIL END-USERS—Continued

| Name | Case No. | Date | No. of applicants | Total refund |
|---|---|---|---|---|
| Crescent Brick Co. *et al* | FR272-65809 | 06/26/89 | 28 | 3,886 |
| Hazelton Lab. America *et al* | FR272-67000 | 06/28/89 | 85 | 11,077 |
| Iowa Park C.I.S.D *et al* | FR272-62401 | 06/26/89 | 63 | 8,304 |
| Joseph W. Moore *et al* | FR272-69400 | 06/28/89 | 94 | 14,174 |
| Max Hawkins *et al* | FR272-62800 | 06/30/89 | 114 | 17,977 |
| Medi Ride Inc. *et al* | FR272-64600 | 06/28/89 | 144 | 15,733 |
| R&F Coal Co. *et al* | FR272-67218 | 06/28/89 | 35 | 4,300 |
| Ray Dave Trucking *et al* | FR272-69002 | 06/30/89 | 53 | 6,389 |
| Richard A. Sherry *et al* | FR272-59600 | 06/37/89 | 135 | 15,913 |
| St. Michael's Ev. Lutheran Church *et al* | FR272-68200 | 06/26/89 | 133 | 15,543 |
| St, Peter Chuch, Corp. *et al* | FR272-67402 | 06/27/89 | 119 | 14,039 |

The following submissions were dismissed:

DISMISSALS

| Name | Case No. |
|---|---|
| Addison & Laramie Shell | RF315-116 |
| Aiea Shell, Inc. | RF315-1314 |
| Al Bailey | RF315-1587 |
| Amar Oil Co., Inc. | RF315-3400 |
| Carmen Shell Service | RF315-1441 |
| Cash Service Station | RF315-120 |
| Cesare's Shell Station | RF315-62 |
| Charlies Skyway Shell | RF315-1254 |
| Cumberland Lake Shell, Inc. | RF315-2111, RF315-2300 |
| Dan's Shell Newg., Inc. | RF315-377 |
| Dan's Shell Services | RF315-57 |
| Deefield Shell | RF315-2343 |
| Don's Shell | RF315-68 |
| Downtown Shell | RF315-1212, RF315-1442 |
| E. T. Webb | RF315-109 |
| Edward R. Pascoe | RF315-1320 |
| Ericson Oil Corp. | RF315-3120 |
| Fort Schuyler Service Center | RF315-3385 |
| Griffin's Shell Service | RF315-299 |
| H & S Garage | RF315-1627 |
| Harmen's Service | RF315-1437 |
| Harry J. Walter | RF315-344 |
| Jeffrey J. Lynn | RF315-331 |
| John T. Taylor | RF315-355 |
| Kim's Shell Service | RF315-359 |
| Kofford Shell Service | RF315-301 |
| Lake Oswego Shell | RF315-1962 |
| Leo's Shell Service Station | RF315-256 |
| Les Candee Ent., Inc. | RF315-258 |
| Lieu's Shell | RF315-261 |
| Marieville Towing & Service | RF315-340 |
| Mondo Shell | RF315-1225, RF315-1226 |
| Napoleon O. Paul | RF315-2668 |
| Nick Diliddo Shell | RF315-284 |
| Rex & Paul Shell Service | RF315-951 |
| Robert W. Messer | RF315-1200 |
| Roko Shell Service | RF315-5657 |
| Shell Car Wash | RF315-130 |
| Southland Shell | RF315-968 |
| Terry's Shell | RF315-1408 |
| Terry's Super Shell | RF315-990 |
| Tom's Shell Inc. | RF315-985 |
| Tony's Shell Service | RF315-1439 |
| Twin Rivers Shell Inc. | RF315-981 |
| Vandyke Shell | RF315-976 |
| 12 Miles & Crooks Shell | RF315-2602 |

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: October 17, 1989.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

[FR Doc. 89-25396 Filed 10-26-89; 8:45 am]

BILLING CODE 6450-01-M

## ENVIRONMENTAL PROTECTION AGENCY

**[ER-FRL-3675-7]**

### Environmental Impact Statements; Availability

*Responsible Agency:* Office of Federal Activities, General Information (202) 382-5076 or (202) 382-5073. Availability of Environmental Impact Statements Filed October 16, 1989 Through October 20, 1989 Pursuant to 40 CFR 1506.9.

*EIS No. 890284,* Final, FHW, AK, North Douglas Highway Extension, Outer Point to Point Hilda, Funding, section 404 Permit and Right-of-Way Acquisition, City and Borough of Juneau, AK, Due: November 27, 1989, Contact: Thomas C. Neunaber (907) 586-7428.

*EIS No. 890285,* Draft, FHW, CA, West Los Angeles Veloway Project, connecting UCLA Campus with a portion of West Los Angeles, Construction, Los Angeles County, CA, Due: December 22, 1989, Contact: Michael A. Cook (916) 551-1310.

*EIS No. 890286,* DSuppl, COE, AK, Chignik Small Boat Harbor, Quarry Site Selection and Construction, Anchorage Bay, AK, Due: December 11, 1989, Contact: William Lloyd (907) 753-2640.

*EIS No. 890287,* Draft, FHW, CA, CA-267 Bypass Construction, between I-80 and Truckee Area Bypass, Funding, section 404 Permits, Nevada County, CA, Due: December 22, 1989, Contact: John Schultz (916) 551-1140.

*EIS No. 890288,* Final, DOE, ND, Charlies Creek-Belfield 345 kV Transmission Line Project, Construction, Operation and Maintenance, Implementation, Billings, Stark, McKenzie and Dunn Counties, ND, Due: November 27, 1989, Contact: James D. Davies (406) 657-6525.

*EIS No. 890289,* Draft, UAF, IL, Chanute Air Force Base Closure and Realignment, Implementation, Village of Rantoul, IL, Due: December 11, 1989, Contact: Catherine Hitchins (512) 652-3240.

*EIS No. 890290,* Draft, BLM, UT, Dixie Resource Area, Resource Management Plan, Implementation, Washington County, UT, Due: January 24, 1990, Contact: David Brine (801) 673-4654.

*EIS No. 890291,* DSuppl, FHW, NY, Elmira North-South Arterial Construction, South Section, NY-14/328 to Clements Center Parkway at Pennsylvania Avenue, Funding, City of Elmira and Town of Southport, Chemung County, NY, Due: December 11, 1989, Contact: Harold J. Brown (518) 472-3616.

Dated: October 24, 1989.

**William D. Dickerson,**

*Deputy Director, Office of Federal Activities.*

[FR Doc. 89-25404 Filed 10-26-89; 8:45 am]

BILLING CODE 6560-50-M

**[ER-FRL-3675-8]**

### Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared October 9, 1989 through October 13, 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 FR dated April 7, 1989 (54 FR 15006).

Draft EISs

ERP No. D–AFS–D61034–PA, Rating LO, Allegheny Reservoir Motel-Restaurant Complex, Site Selection and Construction, Allegheny National Forest, Warren County, PA.

*Summary:* EPA has no objections to the proposed project.

ERP No. DS–AFS–J65105–CO, Rating EC1, Grand Mesa, Uncompahgre and Gunnison National Forests, Land and Resource Management Plan, Timber Management Amendment, Implementation, Delta, Garfield, Gunnison, Hinsdale, Mesa, Montrose, Ouray, Saguache, San Juan and San Miguel Counties, CO.

*Summary:* EPA's main issues concerning this project is the treatment of water as a "product" of vegetative management and the failure of the document to consider and incorporate impacts to this plan resulting from global climate change.

ERP NO. DS–COE–A30030–FL, Rating LO, Brevard County Beach Erosion Control Project, Updated Information, Implementation, Brevard County, FL.

*Summary:* EPA has no environmental objections to this project as described.

Final EISs

ERP No. F–BLM–J65149–UT, San Rafael Resource Area, Sevier River Resource Area, Forest Planning Unit and Henry Mountain Resource Area, Management Plan, Implementation, Emery, Sevier and Wayne Counties, UT.

*Summary:* EPA has no environmental concerns with the final EIS.

ERP No. F–BPO–J81006–CO, Florence Federal Correctional Institution Complex, Construction and Operation, Fremont County, CO.

*Summary:* EPA has environmental concerns that the waste generated by this facility not overtax the local capacity. EPA encourages BPO to reflect water conservation and waste management in the final design of this facility.

Dated: October 24, 1989.

**William D. Dickerson,**

*Deputy Director, Office of Federal Activities.*

[FR Doc. 89–25405 Filed 10–26–89; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–59276B; FRL 3662–4]

## Certain Chemical Approval of a Test Marketing Exemption

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

**ACTION:** Notice.

**SUMMARY:** This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME–89–25. The test marketing conditions are described below.

**EFFECTIVE DATE:** October 18, 1989.

**FOR FURTHER INFORMATION CONTACT:** Heidi A. Siegelbaum, New Chemicals Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M St. SW., Washington, DC 20460, (202) 475–8262.

**SUPPLEMENTARY INFORMATION:** Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME–89–25. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions specified below, will not present any unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME–89–25. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substance produced and the date of manufacture.

2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.

3. Copies of the bill of lading that accompanies each shipment of the TME substance.

*TME–89–25*

*Date of Receipt:* August 25, 1989.

*Notice of Receipt:* September 25, 1989 (54 FR 39230).

*Applicant:* Confidential.

*Chemical:* (G) Substituted heterocycle.

*Use:* (G) Resin additive.

*Production Volume:* Confidential.

*Number of Customers:* Confidential.

*Test Marketing Period:* Confidential.

Risk Assessment: EPA identified concerns for kidney, liver, developmental toxicity, and mild eye and skin irritation. However, no significant inhalation exposure is expected during manufacturing, processing, or use, and the substance is not expected to be dermally absorbed. EPA identified no significant environmental concerns for, or releases of, the test market substance. Therefore, the test market substance will not present an unreasonable risk of injury to human health or the environment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: October 18, 1989.

**John W. Melone,**

*Director, Chemical Control Division, Office of Toxic Substances.*

[FR Doc. 89–25368 Filed 10–26–89; 8:45 am]

BILLING CODE 6560–50–M

## EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

### SES Performance Review Board Members

**AGENCY:** Equal Employment Opportunity Commission (EEOC).

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of the names of the members of the SES Performance Review Board of EEOC.

**FOR FURTHER INFORMATION CONTACT:** Jo-Ann Henry, Director, Personnel

Management Services, Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC, 20507, 202/663–4306.

**SUPPLEMENTARY INFORMATION:** Pursuant to the requirement of section 4314(c)(1), chapter 43 title 5 U.S.C., membership of the SES Performance Review Board is as follows: Elizabeth Thornton, Associate Legal Counsel, Equal Employment Opportunity Commission (Chairperson); Mr. Ernest Russell, Director of Administration, National Labor Relations Board; Mr. Louis Enoff, Deputy Commissioner for Programs, Social Security Administration; Evangeline Swift (Alternate), Director, Office of Policy and Evaluation, Merit Systems Protection Board. Signed at Washington, DC on this 20th day of October, 1989.

For the Commission.

**Clarence Thomas,**

*Chairman.*

[FR Doc. 89–25280 Filed 10–26–89; 8:45 am]

BILLING CODE 6570–06–M

## FEDERAL MARITIME COMMISSION

### Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested Parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

*Agreement No.:* 202–009238–021.

*Title:* Greece Westbound Conference.

*Parties:*

Farrell Lines, Inc.
Lykes Bros. Steamship Co., Inc.
Sea-Land Service, Inc.
Zim Israel Navigation Company, Ltd.

*Synopsis:* The proposed amendment would reduce from $50,000 to $15,000 the amount of the financial guarantee each party is required to furnish and maintain as a condition of conference membership.

*Agreement No.:* 203–010999–004

*Title:* Ecuador Discussion Agreement.

*Parties:*

United States Atlantic and Gulf/ Ecuador Freight Association
Transportes Navieros Equatorianos
Compania Chilena de Navigacion
Gran Golfo Express

*Synopsis:* The proposed modification would add Empresa Naviera Santa, S.A. as an independent carrier party, and delete Transportes Navieros Equatorianos, now a member of the United States Atlantic and Gulf/ Ecuador Freight Association, as an independent carrier party. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: October 23, 1989.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 89–25297 Filed 10–26–89; 8:45 am]

BILLING CODE 6730–01–M

## FEDERAL RESERVE SYSTEM

### Daniel De Lange; Correction

This notice corrects a previous **Federal Register** notice (FR Doc. 89–16287) published at page 29387 of the issue for Wednesday, July 12, 1989.

Under the Federal Reserve Bank of Atlanta, the entry for Daniel De Lange is amended to read as follows:

**1. Daniel De Lange,** Miami, Florida; to retain 24.38 percent and to acquire an additional 15.94 percent of the voting shares of Imperial Bank, Coral Gables, Florida, for a total of 40.32 percent.

Comments on this application must be received by November 10, 1989.

Board of Governors of the Federal Reserve System, October 23, 1989.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 89–25341 Filed 10–26–89; 8:45 am]

BILLING CODE 6210–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control

### Reestablishment of the Injury Research Grant Review Committee

**ACTION:** Notice of Reestablishment of the Injury Research Grant Review Committee.

Pursuant to Federal Advisory Committee Act, 5 U.S.C. appendix 2, the Centers the Disease Control announces the reestablishment of the following Federal advisory committee by the Secretary of Health and Human Services:

*Designation:* Injury Research Grant Review Committee.

*Purpose:* This committee will provide advice and guidance to the Secretary, the Assistant Secretary for Health, and the Director, CDC, concerning the scientific merit of grant applications received from academic institutions and other public and private profit and nonprofit organizations, including State and local government agencies, to conduct specific injury research and demonstrations that focus on prevention and control and to support injury prevention research centers. The members of this review committee shall survey, as scientific leaders, the status of research in their field.

Authority for this committee will expire August 20, 1991, unless the Secretary for Health and Human Services, with the concurrence of the Committee Management Secretariat, General Services Administration, formally determines that continuance is in the public interest.

Dated October 23, 1989.

**Elvin Hilyer,**

*Associate Director for Policy Coodination Centers for Disease Control.*

[FR Doc. 89–25338 Filed 10–26–89; 8:45 am]

BILLING CODE 4160–18–M

### National Institute for Occupational Safety and Health; Request for Comments and Secondary Data on Silica Flour Exposures and Use

**AGENCY:** National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control (CDC), Public Health Service (PHS), Department of Health and Human Services (HHS).

**ACTION:** Notice of request for comments and secondary data.

**SUMMARY:** NIOSH is requesting comments and secondary data from all interested parties concerning silica flour exposures, including production levels at specific plants, usage levels within specific plants and industries, numbers of workers associated with specific plants and industries which produce or use silica flour, and levels of exposure to free silica at worksites where silica flour is present. Interested parties may submit data related to any industry in which silica flour is produced or used. These data will be used by NIOSH to identify populations potentially at risk and determine whether adequate environmental monitoring has been performed for those populations.

**DATE:** Comments and secondary data concerning this notice should be submitted by December 26, 1989.

**ADDRESS:** Any information, comments, suggestions, or recommendations should be submitted in writing to: Dr. Richard W. Niemeier, Acting Director, Division of Standards Development and Technology Transfer, NIOSH, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

**FOR FURTHER INFORMATION CONTACT:** Mr. Alwin L. Dieffenbach, Environmental Investigations Branch, Division of Respiratory Disease Studies, NIOSH, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505, (304) 291-4496 or FTS 923-4496.

**SUPPLEMENTARY INFORMATION:** Under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) and the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 957 et seq.), NIOSH is directed to gather information for improving occupational safety and health. NIOSH has found in past studies that overexposure to silica flour (also known as ground silica) can lead to acute silicosis, with ". . . irreversible harm and shortened life expectancy" (Current Intelligence Bulletin #36, *Silica Flour: Silicosis*, June 30, 1981). Exposures to free silica at silica flour producing facilities have been documented by the Mine Safety and Health Administration, (MSHA) but NIOSH has not, as yet, identified all populations of workers involved in the use of silica flour.

NIOSH, through data gathered by MSHA, has been able to identify producers of silica flour. However, Occupational Safety and Health Administration (OSHA) data have not enabled NIOSH to identify significant numbers of specific users of silica flour.

Therefore, NIOSH is interested in obtaining existing and available information, e.g., industrial hygiene sampling data, production levels, usage levels, and employment levels for specific facilities and industries which use silica flour, excluding the data gathered by federal MSHA and OSHA inspectors.

All information received in response to this notice, except that designated as trade secret and protected by section 15 of the Occupational Safety and Health Act or exempt from disclosure under the Freedom of Information Act, will be available for public examination and copying at the above address.

Dated: October 23, 1989.

**Larry W. Sparks,**

*Acting Director National Institute for Occupational Safety and Health.*

[FR Doc. 89-25339 Filed 10-26-89; 8:45 am]

BILLING CODE 4160-19-M

## Food and Drug Administration

**[Docket No. 89F-0410]**

### Betz Laboratories, Inc.; Withdrawal of Food Additive Petition

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the withdrawal without prejudice of a petition (FAP 4H2995) proposing that the food additive regulations be amended to provide for the safe use of *N*-(2-nitrobutyl) morpholine as a slimicide in the manufacture of paper and paperboard that contact food.

**FOR FURTHER INFORMATION CONTACT:** Marvin D. Mack, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of February 6, 1975 (40 FR 5553), FDA published a notice that it had filed a petition (FAP 4H2995) from Life and Materials Science Division, Syracuse University Research Corp., Merrill Lane, University Heights, Syracuse, NY 13210, on behalf of Betz Laboratories, Inc., Somerton Rd., Trevose, PA 19047, that proposed to amend the food additive regulations to provide for the safe use of *N*-(2-nitrobutyl) morpholine as a slimicide in the manufacture of paper and paperboard that contact food. Betz Laboratories, Inc., has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: October 19, 1989.

**Fred R. Shank,**

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

[FR Doc. 89-25347 Filed 10-26-89; 8:45 am]

BILLING CODE 4160-01-M

**[Docket No. 89F-0394]**

### Edwards-Councilor Co., Inc.; Filing of Food Additive Petition

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that Edwards-Councilor, Co., Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of a sanitizing solution containing *n*-alkyl ($C_{12}$-$C_{16}$) benzyl-dimethylammonium chloride, calcium stearate, sodium bicarbonate, starch and/or dextrine, and for use of methylene blue as a colorant on food-processing equipment, utensils, and other food-contact articles.

**FOR FURTHER INFORMATION CONTACT:** Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

**SUPPLEMENTARY INFORMATION:** Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 9B4159) has been filed by Edwards-Councilor Co., Inc., 427 Baker Rd., Airport Industrial Park, Virginia Beach, VA 23455, proposing that § 178.1010 *Sanitizing solutions* (21 CFR 178.1010) of the food additive regulations be amended to provide for the safe use of a sanitizing solution containing *n*-alky ($C_{12}$-$C_{16}$) benzyl-dimethylammonium chloride, calcium stearate, sodium bicarbonate, starch and/or dextrine, and methylene blue as a colorant for use on food-processing equipment, utensils, and other food-contact articles.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: October 18, 1989.

**Fred R. Shank,**

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

[FR Doc. 89-25348 Filed 10-26-89; 8:45 am]

BILLING CODE 4160-01-M

**[Docket No. 89G-0393]**

### SPA-Societa Prodotti Antibiotici S.P.A.; Filing of Petition for Affirmation of Gras Status

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that SPA-Societa Prodotti Antibiotici S.P.A. has filed a petition (GRASP 9G0355), proposing to affirm that lysozyme used to inhibit *Clostridium tyrobutyricum* to prevent late blowing

in cheese production is generally recognized as safe (GRAS) as a direct human food ingredient.

**DATE:** Comments by December 26, 1989.

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

**FOR FURTHER INFORMATION CONTACT:** Carl L. Giannetta, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–426–5487.

**SUPPLEMENTARY INFORMATION:** Under the Federal Food, Drug, and Cosmetic Act (sec. 201(s), 409 (21 U.S.C. 321(s), 348)) and the regulations for affirmation of GRAS status in § 170.35 (21 CFR 170.35), notice is given that SPA-Societa Prodotti Antibiotici S.p.A. Milan, Italy, has filed a petition (GRASP 9G0355) proposing that lysozyme used to inhibit *Clostridium tyrobutyricum* to prevent late blowing in cheese production be affirmed as GRAS for use as a direct human food ingredient.

The petition has been placed on display at the Dockets Management Branch (address above).

Any petition that meets the requirements outlined in §§ 170.30 and 170.35 (21 CFR 170.30 and 170.35) is filed by the agency. There is no prefiling review of the adequacy of data to support a GRAS conclusion. Thus, the filing of a petition for GRAS affirmation should not be interpreted as a preliminary indication of suitability for GRAS affirmation.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Interested persons may, on or before December 26, 1989, review the petition and/or file comments (two copies, identified with the docket number found in brackets in the heading of this document) with the dockets Management Branch (address above). Comments should include any available information that would be helpful in determining whether the substance is, or is not, GRAS for the proposed use. A copy of the petition and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 17, 1989.

**Richard J. Ronk**

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

[FR Doc. 89–25349 Filed 10–26–89; 8:45 am]

BILLING CODE 4160–01–M

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**[Docket No. 86N–0499]**

## Advisory List of Critical Devices—1988; Update

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice; update.

**SUMMARY:** The Food and Drug Administration (FDA) is updating its "Advisory List of Critical Devices—1988" prepared by FDA's Center for Devices and Radiological Health (CDRH) that published in the **Federal Register** of March 17, 1988 (53 FR 8854). In the "Advisory List of Critical Devices—1988," the agency inadvertently omitted the high permeability hemodialysis system. This document is updating the list to include that device.

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

**FOR FURTHER INFORMATION CONTACT:** Sharon Kalokerinos, Center for Devices and Radiological Health (HFZ–332), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1131.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of July 21, 1978 (43 FR 31508), FDA published the current good manufacturing practices regulation (CGMP) for devices. The preamble to the CGMP regulations provided a "Guideline List of Critical Devices" (43 FR 31508 at 31511). This was an illustrative list of 75 devices provided to give examples of devices that FDA concluded met the definition of critical device as found in the final CGMP regulations (21 CFR 820.3(f)). The definition reads "a device that is intended for surgical implant into the body or to support or sustain life and whose failure to perform when properly used in accordance with instructions for use provided in the labeling can be reasonably expected to result in a significant injury to the user." In developing this list, FDA used the recommendations received from the Device Good Manufacturing Practices Advisory Committee (21 CFR 14.100(d)(2)) and the device advisory panels (21 CFR 14.100(d)(1)). The agency announced that the list was not exhaustive and that it was based on the most current information available to FDA. The agency also stated that the list would be updated periodically as additional information became available and after consultation with the committee (43 FR 31508 at 31511).

In the **Federal Register** of March 17, 1988 (53 FR 8854), FDA published an updated and expanded "Advisory List of Critical Devices—1988" prepared by CDRH. In the 1988 list, FDA listed (No. 70) § 876.5820 *Hemodialysis system and accessories.* The agency should have also included § 876.5820 *High permeability hemodialysis system* in the list. This device was included in the 1978 list (No. 36).

Interested persons may submit comments to the Dockets Management Branch (address above). Comments will be considered in determining if further changes to the "Advisory List of Critical Devices—1988" are warranted. Two copies of any comments should be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The list and any comments received may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 19, 1989.

**Ronald G. Chesemore,**

*Acting Associate Commissioner for Regulatory Affairs.*

[FR Doc. 89–25350 Filed 10–26–89; 8:45 am]

BILLING CODE 4160–01–M

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## Health Care Financing Administration

**[OACT–025–N]**

## Medicare Program; Monthly Actuarial Rates, Supplementary Medical Insurance Premium Rate, and Catastrophic Coverage Premium Beginning January 1, 1990

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

**ACTION:** Notice.

**SUMMARY:** This notice announces the monthly actuarial rates for aged (age 65 or over) and disabled (under age 65) enrollees in the Medicare supplementary medical insurance (SMI) program for calendar year 1990, and the monthly SMI premium rate based on these actuarial rates to be paid by all enrollees during calendar year 1990. The 1990 monthly SMI premium will be increased from $27.90 to $29.00.

This notice also announces the catastrophic coverage monthly premium for 1990 imposed by the Medicare

Catastrophic Coverage Act of 1988 (Pub. L. 100–360).

**EFFECTIVE DATE:** January 1, 1990.

**FOR FURTHER INFORMATION CONTACT:** Carter S. Warfield, (301) 966–6396.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Medicare supplementary medical insurance (SMI) program is the voluntary Medicare part B program that pays all or part of the costs for physician services, outpatient hospital services, home health services, services furnished by rural health clinics, ambulatory surgical centers, and comprehensive outpatient rehabilitation facilities, and certain other medical and health services not covered by hospital insurance (Medicare part A). The SMI program is available to individuals who are entitled to hospital insurance and to U.S. residents who have attained age 65 and are citizens or aliens who were lawfully admitted for permanent residence and have resided in the United States for five consecutive years. This program requires enrollment and payment of monthly premiums as provided in 42 CFR part 405, subpart B, and part 408, respectively. (Part 408 was published at 52 FR 48112, December 17, 1987, and redesignated regulations formerly at subpart I of 42 CFR part 405.) The difference between the premiums paid by all enrollees and total incurred costs is met from the general revenues of the Federal Government.

The Secretary of Health and Human Services is required by section 1839 of the Social Security Act (the Act) (42 U.S.C. 1395r) to issue annual notices relating to the SMI program. These notices contain monthly actuarial rates, the monthly SMI premium rate paid by enrollees, and adjustments in the premium to insure against catastrophic expenses.

As required by section 1839 of the Act, we have determined the amounts contained in this notice based on the law in effect at the time we were required to make the determinations, September of each year. We recognize that Congress is considering amendments to the Medicare provisions and that, if enacted, some of these may affect the estimated costs or other amounts on which the determinations were made.

## II. Monthly Actuarial Rates

One notice required by section 1839 of the Act announces two amounts that, according to actuarial estimates, will equal, respectively, one-half the expected average monthly cost (excluding costs relating to the amendments made by the Medicare Catastrophic Coverage Act of 1988, Public Law 100–360) of SMI for each aged enrollee (age 65 or over) and one-half the expected average monthly cost (excluding catastrophic costs) of SMI for each disabled enrollee (under age 65) during the calendar year beginning the following January. These amounts are called "monthly actuarial rates."

As required by sections 1839(a) (1) and (4) of the Act (42 U.S.C. 139r(a) (1) and (4)), as amended, I have determined that the monthly actuarial rates applicable for calendar year 1990 are $57.20 for enrollees age 65 and over and $44.10 for disabled enrollees under age 65. The accompanying statement (section V.) gives the actuarial assumptions and bases from which these rates are derived.

## III. Monthly SMI Premium Rates

The second notice required by section 1839 of the Act announces the monthly SMI premium rate to be paid by aged and disabled enrollees for the calendar year beginning the following January. (Although the costs to the program per disabled enrollee are different than for the aged, the law provides that they pay the same premium amount.) Beginning with the passage of section 203 of Public Law 92–603, (the Social Security Amendments of 1972) and until the passage of section 124 of Public Law 97–248 (the Tax Equity and Fiscal Responsibility Act of 1982), the premium rate was limited by section 1839 of the Act to the lesser of the monthly actuarial rate for aged enrollees, or the current monthly premium rate increased by the same pecentage as the most recent general increase in monthly title II (cash payments) social security benefits.

Section 124 of Public Law 97–248 changed the premium basis to 25 percent of program costs. Section 606 of Public Law 98–21, section 2302 of Public Law 98–369, section 9313 of Public Law 99–272 and section 4080 of Public Law 100–203 extended through 1989 the provision that the premium be based on 25 percent of program costs. This extension will expire at the end of 1989.

Beginning with calendar year 1990, the premium rate will once again be limited by section 1839 of the Act to the lesser of the monthly actuarial rate for aged enrollees, or the current monthly premium rate increased by the same percentage as the most recent general increase in monthly title II (cash payments) social security benefits.

A further provision affecting the calculation of the SMI premium is section 1839(f) of the Act as amended by section 211 of the Medicare Catastrophic Coverage Act of 1988. Section 1839(f) now provides that if an individual is entitled to benefits under sectin 202 or 223 of the Act (the Old-Age and Survivors Insurance Benefit and the Disability Insurance Benefit, respectively) and has the SMI premiums (including the part B catastrophic and prescription drug premiums) deducted from these benefit payments, the total premium increase will be reduced to avoid causing a decrease in the individual's net monthly payment. This occurs if the increase in the individual's social security benefit due to the cost-of-living adjustment under section 215(i) of the Act is less than the increase in the premium. Specifically, the reduction in the premium amount applies if the individual is entitled to benefits under section 202 or 223 of the Act for November and December of a particular year and the individual's SMI premiums for December and the following January are deducted from the respective month's section 202 or 223 benefits.[1] (This change in effect perpetuates former amendments that prohibited SMI premium increases from reducing an individual's benefits in years in which the dollar amount of the individual's cost-of-living increase in benefits was not at least as great as the dollar amount of the individual's SMI premium increase.)

Generally, if a beneficiary qualifies for this protection (in order to qualify, a beneficiary must have been in a current payment status for November and December of the previous year), the reduced premium for the individual for that January and for each of the succeeding 11 months for which he or she is entitled to benefits under section 202 or 223 of the Act is the greater of the following:

(1) The monthly premium (including the catastrophic Part B premium) for January reduced as necessary to make the December monthly benefits, after the deduction of the SMI premium for January, at least equal to the preceding November's monthly benefits, after the deduction of the SMI premium for December; or

(2) The monthly premium for that individual for that December.

In determining the premium limitations under section 1839(f) of the Act, the monthly benefits to which an

[1] Note:—A check for benefits under section 202 or 223 is received in the month following the month for which the benefits are due. The SMI premium that is deducted from a particular check is the SMI payment for the month in which the check is received. Therefore, a benefit check for November is not received until December and has December's SMI premium deducted from it.

individual is entitled under section 202 or 223 do not include retroactive adjustments or payments and deductions on account of work. Also, once the monthly premium amount has been established under section 1839(f) of the Act, it will not be changed during the calendar year even if there are retroactive adjustments or payments and deductions on account of work that apply to the individual's monthly benefits.

Individuals who have enrolled in the SMI program late or have reenrolled after the termination of a coverage period are subject to an increased premium under section 1839(b) of the Act. That increase is a precentage of the premium and would be based on the new premium rate before any reductions under section 1839(f) are made or any rounding off under section 1839(g)(6) of the Act are made (See section IV. of this notice concerning additions to premiums for catastrophic coverage.)

As required by section 1839(a)(3), (e)(1) and (f) of the Act as amended (42 U.S.C. 1395(a)(3), (e)(1) and (f)), I have determined that the standard monthly premium amount will be $29.00 during calendar year 1990. However, for individuals whose monthly premium is deducted from his or her monthly social security benefit under sections 1840(a)(1) or 1840(b)(1) of the Act, the premium will remain at $27.90 if monthly Social Security benefits are not increased for 1990. Also, if an individual's cost-of-living increase for 1990 to his or her monthly Social Security benefit is not as much as his or her increase in Part B premiums, including the catastrophic Part B premium, the individual's Social Security benefits will not be decreased below his or her level of benefits for December 1989.

A new enrollee and any individual who does not have the monthly premium deducted from his or her monthly Social Security benefit under section 1840(a)(1) or 1840(b)(1) of the Act will be required to pay the new premium amount regardless of whether monthly Social Security benefits are increased, or the individual's cost-of-living increase for 1990 is less than his or her increase in Part B premiums.

The accompanying statement in section V. of this notice shows how the standard premium amount was derived.

## IV. Catastrophic Coverage Premium

On July 1, 1988, Congress enacted Public Law 100–360, the Medicare Catastrophic Coverage Act of 1988. It provides protection to Medicare beneficiaries whose SMI expenses exceed certain limits. It also adds certain services not previously covered under SMI, including payment of mammograms, respite care, and home IV drug therapy. To pay for this additional coverage for Part B, the law provides for new premiums beneficiaries will pay in addition to the SMI premium. This section of this notice addresses only the catastrophic coverage monthly premium for 1990.

As required by section 1839(g)(1)(A) of the Act, the catastrophic coverage premium for calendar year 1990 is $4.90. There are two exceptions to this amount, as required by section 1839(g)(4) and (5), respectively:

1. The monthly catastrophic coverage premium for calendar year 1990 is $3.56 for residents of Puerto Rico and $5.78 for residents of other U.S. territories and commonwealths; and

2. The monthly catastrophic coverage premium for calendar year 1990 for other individuals enrolled in part B only is $8.75.

## V. Statement of Actuarial Assumptions and Bases Employed in Determining the Monthly Actuarial Rates and the Standard Monthly Premium Rate for the Supplementary Medical Insurance Program Beginning January 1990

### *A. Actuarial Status of the Supplementary Medical Insurance Trust Fund*

Under the law, the starting point for determining the monthly premium is the amount that would be necessary to finance the SMI program for non-catastrophic expenses on an incurred basis; i.e., the amount of income that would be sufficient to pay for non-catastrophic services furnished during that year (including associated administrative costs) even though payment for some of these services will not be made until after the close of the year. The portion of income required to cover benefits not paid until after the close of the calendar year is added to the trust fund and used when needed.

The rates are established prospectively and are therefore subject to projection error. Additionally, legislation enacted after the financing has been established, but effective for the period for which the financing has been set, my affect program costs. As a result, the income to the program may not equal incurred costs. Therefore, trust fund assets should be maintained at a level that is adequate to cover a moderate degree of variation between actual and projected costs in addition to the amount of incurred but unpaid expenses. Table 1 summarizes the estimated actuarial status of the trust fund as of the end of the financing period for 1988 through 1989.

TABLE 1.—ESTIMATED ACTUARIAL STATUS OF THE SMI TRUST FUND AS OF THE END OF THE FINANCING PERIODS, JAN. 1, 1988–DEC. 31, 1989

[In millions of dollars]

| Financing period ending | Assets | Liabilities | Assets less liabilities |
|---|---|---|---|
| Dec. 31, 1988 | $8,990 | $4,905 | $4,085 |
| Dec. 31, 1989 | 12,401 | 6,045 | 6,356 |

### *B. Monthly Actuarial Rate for Enrollees Age 65 and Older*

The monthly actuarial rate is one-half of the monthly projected non-catastrophic cost of benefits and administrative expenses for each enrollee age 65 and older, adjusted to allow for interest earnings on non-catastrophic assets in the trust fund and a contingency margin. The contingency margin is an amount appropriate to provide for a moderate degree of variation between actual and projected costs and to amortize unfunded liabilities.

The monthly actuarial rate for enrollees age 65 and older for calendar year 1990 was determined by projecting per-enrollee non-catastrophic cost for the 12-month periods ending June 30, 1990 and June 30, 1991 by type of service. Although the actuarial rates are now applicable for calendar years, projections of per-enrollee costs were determined on a July to June period, consistent with the July 1 annual fee screen update used for benefits before the passage of section 2306(b) of Public Law 98–369. The values for the 12-month period ending June 30, 1987 were established from program data. Subsequent periods were projected using a combination of program data and data from external sources. The projection factors used are shown in Table 2. Those per-enrollee values are then adjusted to apply to a calendar year period. The projected values for financing periods from January 1, 1987, through December 31, 1990, are shown in Table 3.

TABLE 2.—PROJECTION FACTORS [1] 12-MONTH PERIODS ENDING JUNE 30 OF 1987–91

[In percent]

| 12-month period ending June 30 | Physicians' services | | Outpatient hospital services | Home health agency services [4] | Group practice prepayment plans | Independent lab services |
|---|---|---|---|---|---|---|
| | Fees [2] | Residual [3] | | | | |
| Aged: | | | | | | |
| 1987 | 4.4 | 7.0 | 22.2 | −17.6 | 34.0 | 20.4 |
| 1988 | 3.7 | 6.6 | 12.8 | 65.4 | 44.4 | 18.9 |
| 1989 | 2.5 | 4.7 | 10.2 | 16.0 | 17.1 | 10.5 |
| 1990 | 3.2 | 6.2 | 18.2 | 16.0 | 20.7 | 24.1 |
| 1991 | 4.1 | 6.9 | 19.6 | 16.0 | 21.5 | 25.0 |
| Disabled: | | | | | | |
| 1987 | 4.4 | 5.0 | 10.8 | 0 | 26.7 | 19.0 |
| 1988 | 3.7 | 5.9 | 17.2 | 0 | 44.9 | 15.3 |
| 1989 | 2.5 | 4.2 | 6.0 | 0 | 22.9 | 6.9 |
| 1990 | 3.2 | 5.9 | 15.5 | 0 | 20.1 | 22.4 |
| 1991 | 4.1 | 6.8 | 17.1 | 0 | 21.0 | 23.7 |

[1] All values are per enrollee.
[2] As recognized for payment under the program.
[3] Increase in the number of services received per enrollee and greater relative use of more expensive services.
[4] Since July 1, 1981, home health agency services have been almost exclusively provided by the Medicare hospital insurance (HI) program. However, for those SMI enrollees not entitled to HI, the coverage of these services is provided by the SMI program. Since all SMI disabled enrollees are entitled to HI, their coverage of these services is provided by the HI program.

TABLE 3.—DERIVATION OF MONTHLY ACTUARIAL RATE FOR ENROLLEES AGE 65 AND OVER FINANCING PERIODS ENDING DECEMBER 31, 1987 THROUGH DECEMBER 31, 1990

| | Financing periods (calendar year) | | | |
|---|---|---|---|---|
| | 1987 | 1988 | 1989 | 1990 |
| Covered services (at level recognized): | | | | |
| Physicians' reasonable charges | $38.35 | $41.74 | $45.32 | $50.10 |
| Outpatient hospital and other institutions | 9.81 | 10.93 | 12.51 | 14.88 |
| Home health agencies | 0.05 | 0.07 | 0.08 | 0.10 |
| Group practice prepayment plans | 2.85 | 3.66 | 4.36 | 5.28 |
| Independent lab | 1.20 | 1.37 | 1.61 | 2.01 |
| Total services | 52.26 | 57.77 | 63.88 | 72.37 |
| Cost-sharing: | | | | |
| Deductible | −2.70 | −2.71 | −2.72 | −2.73 |
| Coinsurance | −9.13 | −10.12 | −11.22 | −12.75 |
| Total benefits | 40.43 | 44.94 | 49.94 | 56.89 |
| Administrative expenses | 1.32 | 1.36 | 1.41 | 1.47 |
| Incurred expenditures | 41.75 | 46.30 | 51.35 | 58.36 |
| Value of interest | −0.42 | −0.54 | −0.98 | −1.32 |
| Contingency margin for projection error and to amortize the surplus or deficit | −5.53 | 3.84 | 5.43 | .16 |
| Monthly actuarial rate | 35.80 | 49.60 | 55.80 | 57.20 |

The projected monthly rate required to pay for one-half of the total of non-catastrophic benefits and administrative costs for enrollees age 65 and over for calendar year 1990 is $58.36. The monthly actuarial rate of $57.20 provides an adjustment of −$1.32 for interest earnings and $0.16 for a contingency margin. Based on current estimates, it appears that with respect to enrollees age 65 and over the assets are sufficient to cover the amount of incurred but unpaid expenses and to provide for a moderate degree of variation between actual and projected costs. Thus, only a small positive contingency margin is needed to maintain assets at an appropriate level.

An appropriate level for assets depends on numerous factors. The most important of these factors are: (1) The difference from prior years in the actual performance of the program and estimates made at the time financing was established and (2) the expected relationship between incurred and cash expenditures. Ongoing analysis is made of the former as the trends in the differences vary over time.

*C. Monthly Actuarial Rate for Disabled Enrollees*

Disabled enrollees are those persons enrolled in SMI because of entitlement (before age 65) to disability benefits for more than 24 months or because of entitlement to Medicare under the end-stage renal disease program. Projected monthly non-catastrophic costs for disabled enrollees (other than those suffering from end-stage renal disease) are prepared in a fashion exactly parallel to projection for the aged, using appropriate actuarial assumptions (see Table 2). Non-catastrophic costs for the end-stage renal disease program are projected differently because of the complex demographic problems involved. The combined results for all disabled enrollees are shown in Table 4.

TABLE 4.—DERIVATION OF MONTHLY ACTUARIAL RATE FOR DISABLED ENROLLEES FINANCING PERIODS ENDING DECEMBER 31, 1987 THROUGH DECEMBER 31, 1990

| | Financing periods (calendar year) | | | |
|---|---|---|---|---|
| | 1987 | 1988 | 1989 | 1990 |
| Covered services (at level recognized): | | | | |
| Physicians' reasonable charges | $41.12 | $44.71 | 48.26 | $53.00 |
| Outpatient hospital and other institutions | 22.93 | 24.81 | 26.07 | 28.07 |
| Home health agencies | 0 | 0 | 0 | 0 |
| Total services | 1.05 | 1.39 | 1.69 | 2.03 |
| Independent lab | 1.24 | 1.37 | 1.56 | 1.87 |
| Total services | 66.34 | 72.28 | 77.58 | 84.97 |
| Cost-sharing: | | | | |
| Deductible | −2.42 | −2.43 | −2.44 | −2.45 |
| Coinsurance | −12.09 | −13.19 | −14.15 | −15.59 |
| Total benefits | 51.83 | 56.66 | 60.99 | 67.03 |
| Administrative expenses | 1.69 | 1.72 | 1.73 | 1.73 |
| Incurred expenditures | 53.52 | 58.38 | 62.72 | 68.76 |
| Value of interest | −8.84 | −7.09 | −6.19 | −3.43 |
| Contigency margin for projection error and to amortize the surplus or deficit | 8.32 | −2.69 | −22.23 | −21.23 |
| Monthly actuarial rate | 53.00 | 48.60 | 34.30 | 44.10 |

The projected monthly rate required to pay for one-half of the total of benefits and administrative costs for disabled enrollees for calendar year 1990 is $68.76. The monthly actuarial rate of $44.10 provides an adjustment of −$3.43 for interest earnings and −$21.23 for a contingency margin. Based on current estimates, it appears that the disabled assets are more than sufficient to cover the amount of disabled incurred but unpaid expenses and to provide for a moderate degree of variation between actual and projected costs. Thus, a negative contingency margin is needed to reduce disabled assets to more appropriate levels.

*D. Sensitivity Testing*

Several factors contribute to uncertainty about future trends in medical care costs. In view of this, it seems appropriate to test the adequacy of the rates announced here using alternative assumptions. The most unpredictable factors that contribute significantly to future costs are outpatient hospital costs, physician residual (as defined in Table 2), and increases in physician fees as constrained by the program's reasonable charge screens and economic index. Two alternative sets of assumptions and the results of those assumptions are shown in Table 5. One set represents increases that are lower and is, therefore, more optimistic than the current estimate. The other set represents increases that are higher and is, therefore, more pessimistic than the current version. The values for the alternative assumptions were determined from a study on the average historical variation between actual and projected increases in the respective increase factors. All assumptions not shown in Table 5 are the same as in Table 2.

Table 5 indicates that, under the assumptions used in preparing this report, the monthly actuarial rates will result in an excess of non-catastrophic assets over liabilities of $4,922 million by the end of December 1990. This amounts to 9.1 percent of the estimated total incurred non-catastrophic expenditures for the following year. Assumptions which are somewhat more pessimistic (and, therefore, test the adequacy of the assets to accommodate projection errors) produce a non-catastrophic deficit of $7,277 million by the end of December 1990, which amounts to 11.6 percent of the estimated total non-catastrophic incurred expenditures for the following year. Under these more pessimistic assumptions, assets will be insufficient to cover outstanding liabilities. However, the cash balances in the Trust Fund should remain positive, allowing claims to be paid. Under fairly optimistic assumptions, the monthly actuarial rates will result in a non-catastrophic surplus of $15,997 million by the end of December, 1990, which amounts to 33.9 percent of the estimated total incurred non-catastrophic expenditures for the following year.

TABLE 5.—ACTUARIAL STATUS OF THE SMI TRUST FUND UNDER THREE ASSUMPTIONS FOR FINANCING PERIODS THROUGH DECEMBER 31, 1990

| | This projection | | | Low cost projection | | | High cost projection | | |
|---|---|---|---|---|---|---|---|---|---|
| | 1989 | 1990 | 1991 | 1989 | 1990 | 1991 | 1989 | 1990 | 1991 |
| 12-Month period ending June 30: | | | | | | | | | |
| Projection factors (in percent): | | | | | | | | | |
| Physician fees [1]: | | | | | | | | | |
| Aged | 2.5 | 3.2 | 4.1 | 1.7 | 2.1 | 2.9 | 3.3 | 4.4 | 5.2 |
| Disabled | 2.5 | 3.2 | 4.1 | 1.7 | 2.1 | 2.9 | 3.3 | 4.4 | 5.2 |
| Utilization of physician services [2]: | | | | | | | | | |
| Aged | 4.7 | 6.2 | 6.9 | 3.0 | 3.1 | 3.7 | 6.3 | 9.4 | 10.0 |
| Disabled | 4.2 | 5.9 | 6.8 | −0.3 | 1.0 | 1.8 | 8.8 | 10.9 | 11.7 |
| Outpatient hospital services per enrollee | | | | | | | | | |
| Aged | 10.2 | 18.2 | 19.6 | 1.8 | 10.9 | 12.2 | 18.7 | 25.6 | 27.0 |
| Disabled | 6.0 | 15.5 | 17.1 | −6.5 | 1.3 | 2.9 | 18.5 | 29.6 | 31.2 |

TABLE 5.—ACTUARIAL STATUS OF THE SMI TRUST FUND UNDER THREE ASSUMPTIONS FOR FINANCING PERIODS THROUGH DECEMBER 31, 1990—Continued

| | This projection | | | Low cost projection | | | High cost projection | | |
|---|---|---|---|---|---|---|---|---|---|
| | 1989 | 1990 | 1991 | 1989 | 1990 | 1991 | 1989 | 1990 | 1991 |
| | 1988 | 1989 | 1990 | 1988 | 1989 | 1990 | 1988 | 1989 | 1990 |
| As of December 31: | | | | | | | | | |
| Actuarial status (in millions): | | | | | | | | | |
| Assets | $8,990 | $12,401 | $11,558 | $8,990 | $15,334 | $20,109 | $8,990 | $9,250 | $2,016 |
| Liabilities | 4,905 | 6,045 | 6,636 | 3,004 | 3,863 | 4,132 | 6,854 | 8,308 | 9,293 |
| Assets less liabilities | $4,085 | $6,356 | $4,922 | $5,986 | $11,471 | $15,997 | $2,136 | $942 | $−7,277 |
| Ratio of assets less liabilities to expenditures (in percent) [3] | 10.0 | 13.5 | 9.1 | 15.9 | 27.6 | 33.9 | 4.8 | 1.8 | −11.6 |

[1] As recognized for payment under the program.
[2] Increase in the number of services received per enrollee and greater relative use of more expensive services.
[3] Ratio of assets less liabilities at the end of the year to total incurred expenditures during the following year, expressed as a percent.

*E. Standard Premium Rate*

Beginning with calendar year 1990, section 1839(a)(3) of the Act provides that the standard monthly premium rate, for both aged and disabled enrollees, is the lesser of:

1. The actuarial rate for enrollees aged 65 and older; or

2. The current standard monthly premium, increased by the same percentage that the level of old-age, survivors, and disability insurance (OASDI) benefits has been increased since the November preceding the promulgation (and rounded to the nearer multiple of ten cents).

The standard monthly premium rate for calendar year 1989 is $27.90. The OASDI benefit table increased 4.0 percent in December 1988. The $27.90 rate, increased by 4.0 percent and rounded to the nearer ten-cent multiple, is $29.00. Since this is less than the aged actuarial rate, the standard premium rate is $29.00 for calendar year 1990.

**VI. Regulatory Impact Statement**

The standard monthly SMI premium rate of $29.00 for all enrollees during calendar year 1990 is 3.9 percent higher than the $27.90 monthly premium amount for the previous financing period. The estimated cost of this increase over the current premium to the approximately 33.0 million SMI enrollees will be about $435 million for calendar year 1990. The catastrophic coverage premium, which affects most Part B beneficiaries, is $4.90 ($3.56 for residents of Puerto Rico, $5.78 for residents of other territories and commonwealths, and $8.57 for Part B-only enrollees). The estimated cost of this increase to Medicare beneficiaries will be about $458 million for calendar year 1990.

This notice merely announces amounts required by section 1839 of the Act. This notice is not a proposed rule or a final rule issued after a proposal, and does not alter any regulations. 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 1839 of the Social Security Act; 42 U.S.C. 1395r) (Catalog of Federal Domestic Assistance Program No. 13.774, Medicare—Supplementary Medical Insurance.)

Dated: September 21, 1989.

**Louis B. Hays,**

*Acting Administrator, Health Care Financing Administration.*

Approved: October 23, 1989.

**Louis W. Sullivan,**

*Secretary.*

[FR Doc. 89-25508 Filed 10-25-89; 2:50 pm]

BILLING CODE 4120-01-M

## Public Health Service

### Centers for Disease Control; Statement of Organization, Functions, and Delegations of Authority

Part H, chapter HC (Centers for Disease Control) of the Statement of Organizations, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772-67776, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 54 FR 40911-13, October 4, 1989) is amended to reflect the transfer of the travel policy functions from the Management Analysis and Services Office to the Financial Management Office within the Office of Program Support.

*Section HC-B, Organization and Functions,* is hereby amended as follows:

Under the heading *Financial Management Office (HCA53),* insert the following as item (10): "(10) serves as the focal point for domestic and international travel policy, procedures, and interpretation;" and renumber items (10) and (11) as (11) and (12) respectively.

Under the heading *Management Analysis and Services Office (HCA59),* delete the statement in its entirety and substitute the following:

(1) Plans, coordinates, and provides CDC-wide administrative, technical, management, and information services in the following areas: studies and surveys, delegations of authorities, organization and functions, Privacy Act, policy and procedures, records management, printing procurement and reproduction, correspondence, forms design, publications distribution, issuances, mail services, public inquiries, Freedom of Information Act Index, and reports management; (2) develops and implements policies and procedures in these areas; (3) maintains liaison with HHS, PHS, General Services Administration, the Government Printing Office, and other government and private agencies.

Effective date: October 18, 1989.

**Wilford J. Forbush,**

*Director, Office of Management, PHS.*

[FR Doc. 89-25281 Filed 10-26-89; 8:45 am]

BILLING CODE 4160-18-M

### The Health Omnibus Programs Extension of 1988, Public Law, 100-607; Delegation of Authority, Centers for Disease Control

Notice is hereby given that in furtherance of the January 27, 1989, delegation to the Assistant Secretary for Health of authorities under the Health Omnibus Programs Extension of 1988 (Pub. L. 100-607) by the Secretary of

Health and Human Services (54 FR 5679), the Assistant Secretary for Health has delegated to the Director, Centers for Disease Control, with authority to redelegate, these authorities, insofar as the autorities pertain to the functions assigned to the Centers for Disease Control.

1. Under Title XXIII of the Public Health Service Act, "Research With Respect to Acquired Immune Deficiency Syndrome" (42 U.S.C. 300cc *et seq.*), as amended hereafter (section 201 of Pub. L. 100–607), the following authorities:

Section 2315, Support of International Efforts.
Section 2317, Information Services.
Section 2320, Additional Authority with Respect to Research.
Section 2341, Fellowships and Training.

2. Under Title XXIV of the Public Health Service Act, "Health Services With Respect to Acquired Immune Deficiency Syndrome" (42 U.S.C. 300dd *et seq.*), as amended hereafter (section 211 of Pub. L. 100–607), the following authorities:

Section 2431, Grants for Anonymous Testing.
Section 2432, Requirement of Provision of Certain Counseling Services.
Section 2433. Funding.

3. Under Title XXV of the Public Health Service Act, "Prevention of Acquired Immune Deficiency Syndrome" (42 U.S.C. 300ee *et seq.*), as amended hereafter (section 221 of Pub. L. 100–607), the following authorities:

Section 2501–2511, Formula Grants.
Section 2521, Availability of Information to the General Public.
Section 2522, Public Information Campaigns.
Section 2523, Provision of Information to Underserved Populations.

4. Under Title II, "Programs With Respect to Acquired Immune Deficiency Syndrome," of Pub. L. 100–607 (42 U.S.C. 300cc note), as amended hereafter, the following authority:

Section 203(a), Requirement of Certain Research Studies.

5. Under Subtitle E of Title II, "Programs With Respect to Acquired Immune Deficiency Syndrome," of Pub. L. 100–607 (42 U.S.C. 300cc-1–4), as amended hereafter, the following authorities:

Section 252, Establishment of Office With Respect to Minority Health and AIDS.
Section 253, Information for Health and Public Safety Workers.
Section 255, Technical Assistance.

The delegation excluded the authorities to promulgate regulations, to submit reports to the Congress, to establish advisory committees or national commissions, and to appoint members to such committees or commissions.

These delegations became effective on October 11, 1989.

**James O. Mason,**

*Assistant Secretary for Health.*

[FR Doc. 89–25288 Filed 10–26–89; 8:45 am]

BILLING CODE 4160–18–M

## Social Security Administration

### Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 96–511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the Federal Register on September 15, 1989.

(Call Reports Clearance Officer on (301) 965–4149 for copies of package)

1. Statement of Marriage—0960–0017—The information collected on the form SSA–753 is used by the Social Security Administration to make determinations regarding entitlement to spouse's benefits when a common law marriage is alleged. The affected public is comprised of third parties who can supply evidence concerning the existence of a common-law marriage.

*Number of Respondents:* 40,000
*Frequency of Response:* 1
*Average Burden Per Response:* 9 minutes
*Estimated Annual Burden:* 6,000 hours

2. SSA initiated Personal Earnings and Benefit Estimate Statement Questionnaire and Interview Guides (Project 2)—0960–xxxx—The information collected on the form SSA–7006 will be used by the Social Security Administration to determine the value and best procedure of providing unsolicited Social Security information to the public. The affected public is comprised of non-beneficiaries age 19 through 64 selected to participate in this survey.

*Number of Respondents:* 5,450
*Frequency of Response:* 1
*Average Burden Per Response:* 10 minutes
*Estimated Annual Burden:* 908 hours

3. Employee Work Activity Questionnaire—00960–xxxx—The information collected on the form SSA–3033 is used by the Social Security Administration to determine if a disability claimant has or has not either engaged in substantial gainful activity or received a nonspecific subsidy. Such a determination is necessary in evaluating claimant's eligibility for disability benefits.

*Number of Respondents:* 12,500
*Frequency of Response:* 1
*Average Burden Per Response:* 10 minutes
*Estimated Annual Burden:* 2,083 hours

4. Request for Workers' Compensation/Public Disability Benefit Information—0960–0098—The information collected on the form SSA–1709 is used by the Social Security Administration to verify information about workers' compensation or other disability benefits made to Social Security disability insurance beneficiaries so that appropriate adjustments are made to their monthly Social Security benefits.

*Number of Respondents:* 32,500
*Frequency of Response:* 1
*Average Burden Per Response:* 15 minutes
*Estimated Annual Burden:* 8,125 hours

OMB Desk Officer: Justin Kopca.

Written comments and recommendations regarding these 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 3208, Washington, DC 20503.

Dated: October 20, 1989.

**Ron Compston,**

*Social Security Administration, Reports Clearance Officer.*

[FR Doc. 89–25225 Filed 10–26–89; 8:45 am]

BILLING CODE 89–21388

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistant Secretary for Community Planning and Development

**[Docket No. N–89–1917; FR–2606–N–43]**

### Unutilized and Underutilized Federal Buildings and Real Property Determined 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:** October 27, 1989.

**ADDRESS:** For further information, contact James Forsberg, Department of Housing and Urban Development, Room 7228, 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 publishes a Notice, on a weekly basis, identifying unutilized and underutilized Federal buildings and real property determined by HUD to be suitable for use for facilities to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable this week.

Dated: October 20, 1989.

**Stephen A. Glaude,**

*Deputy Assistant, Secretary for Program Management.*

[FR Doc. 89–25320 Filed 10–26–89; 8:45 am]

BILLING CODE 4210–29–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[9–00152–ILM; UT–047–4410–08]**

### Draft Resource Management Plan/ Environmental Impact Statement; Cedar City, UT

**AGENCY:** Bureau of Land Management, Department of the Interior.

**ACTION:** Notice of availability of draft resource management plan/ environmental impact statement and proposed areas of critical environmental concern for the Dixie Resource Area, Cedar City District, Utah.

**SUMMARY:** The Draft Resource Management Plan/Environmental Impact Statement (RMP/EIS) for the Dixie Resource Area, Cedar City District, Washington County, Utah, is available for review and comment. The RMP/EIS presents three alternative land use plans for management of approximately 628,000 acres of public land in Washington County, Utah. These alternatives present an array of land disposals, acquisitions, Areas of Critical Environmental Concern (ACECs), Special Recreation Management Areas (SRMAs), and other resource management decisions designed to guide management of the public lands within the Dixie Resource Area.

An open house will be held on November 15, 1989, at the Dixie Resource Area office, 225 North Bluff Street, St. George, Utah, from 3:00 to 8:00 p.m. The public is invited to present written comments and questions concerning the draft RMP/EIS. To be considered in the final RMP/EIS, comments must be received in the Dixie Resource Area office within 90 days after publication of EPA's notice in the **Federal Register**.

This action is announced pursuant to section 102(2)(c) of the National Environmental Policy Act of 1970, section 202(a) of the Federal Land Policy and Management Act of 1976, and 43 CFR part 1610.

**FOR FURTHER INFORMATION CONTACT:** David Brine, RMP Team Leader, Bureau of Land Management, 225 North Bluff Street, St. George, Utah 84770: (801) 673–4654.

**SUPPLEMENTARY INFORMATION:** The Dixie Draft RMP/EIS analyzes three alternative multiple-use management plans. Each plan provides management guidance for all relevant resource management programs administered by the Bureau of Land Management in the planning area. Various combinations of special designations are analyzed under the alternatives.

*Alternatives Analyzed*

1. Alternative A (no action) presents the continuation of current management under the Virgin River Management Framework Plan (MFP) completed in 1981. Nonconforming actions would continue to be dealt with through plan amendments. MFP decisions would be analyzed for NEPA compliance.

2. Alternative B emphasizes land tenure adjustment to maximize opportunities for exchanging tracts of public land (identified as desired by State and local planning interests) for State and private lands (which would be resource enhancing for public purposes).

3. Alternative C (the preferred alternative) emphasizes the long-term retention, protection, and special management of public lands identified as having important resource values. It also directs priority in land tenure changes toward acquisition of identified lands to benefit public resource management program.

*Proposed ACECs*

Ten areas of critical environmental concern (ACEC) are proposed for designation. The acreage of these units varies among alternatives and is displayed in the following table.

Dated: September 26, 1989.

**James M. Parker,**

*State Director.*

TABLE 1.—NOMINATED AREAS OF CRITICAL ENVIRONMENTAL CONCERN DESIGNATION, BY ALTERNATIVE

| Area name | Critical concerns | Acres by alternative | | |
|---|---|---|---|---|
| | | A | B | C |
| Red Bluff | Endangered plant species (dwarf bearclaw poppy); Colorado River Salinity control (saline soils). | 0 | 4,750 | 6,010 |
| Warner Ridge | Endangered plant species (dwarf bearclaw poppy, siler cactus) Colorado River salinity control (saline soils); riparian system; sensitive wildlife habitat (spotted bat, gila monster). | 0 | 3,690 | 3,690 |
| Santa Clara River Gunlock Section | Riparian system; cultural resources (Virgin Anasazi and Paiute riverine sites); wildlife habitat; sensitive fish species (Virgin River spinedace). | 0 | 1,790 | 1,790 |
| Santa Clara River Landhill Section | Riparian system; cultural resources (Virgin Anasazi and Paiute riverine sites); wildlife habitat; sensitive fish species (Virgin River spinedace); petroglyphs. | 0 | 1,550 | 1,770 |
| Lower Virgin River | Riparian systems; endangered fish (woundfin minnow); sensitive fish (Virgin River chub); cultural resources (Virgin Anasazi riverine sites); wildlife habitat. | 0 | 965 | 1,460 |
| Little Creek Mountain | Cultural resources (Virgin Anasazi upland sites) | 0 | 18,455 | 18,455 |
| Canaan Mountain | National Scenic Resource (geologic) | 0 | 3,360 | 31,870 |
| Red Mountain | National Scenic Resource (geologic) | 0 | 5,480 | 5,480 |

TABLE 1.—NOMINATED AREAS OF CRITICAL ENVIRONMENTAL CONCERN DESIGNATION, BY ALTERNATIVE—Continued

| Area name | Critical concerns | Acres by alternative | | |
|---|---|---|---|---|
| | | A | B | C |
| Desert Woodbury (Joshua Tree N.N.L.) | Threatened animal species (desert tortoise); National Natural Landmark (Northeast Mojave Desert). | 0 | 3,230 | ..... |
| Beaver Dam Slope (includes Joshua Tree N.N.L. and Desert Woodbury). | Threatened animal species (desert tortoise); Northeast Mojave Desert system. | 0 | 0 | 26,960 |
| City Creek | Endangered animal species (desert tortoise); important community watershed. | 0 | 2,595 | 2,595 |

[FR Doc. 89-25315 Filed 10-26-89; 8:45 am]
BILLING CODE 4310-DQ-M

[AZ-010-90-4322-02; 1784-0100]

## Arizona Strip District Grazing Advisory Board; Field Tour Date Change

**AGENCY:** Bureau of Land Management, Arizona Strip District, Interior.

**ACTION:** Notice of Field Tour—Date Change.

**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:** Tuesday, November 28, 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, UT 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: October 19, 1989.

**G. William Lamb,**

*Arizona Strip District Manager.*

[FR Doc. 89-25316 Filed 10-26-89; 8:45 am]
BILLING CODE 4310-32-M

[WY-030-00-4351-02]

## Meeting; Rawlins District Advisory Council

**AGENCY:** Bureau of Land Management (BLM), Interior.

**ACTION:** Notice of meeting of the Rawlins District Advisory Council.

**SUMMARY:** Notice is hereby given of a meeting of the Rawlins District Advisory Council, in accordance with Public Law 94-597.

**DATE:** November 30, 1989.

**ADDRESS:** Bureau of Land Management, 1300 Third Street, Rawlins, WY 82301.

**FOR FURTHER INFORMATION CONTACT:** Grant Petersen, Public Affairs Specialist, or Richard Bastin, District Manager, Rawlins District, Bureau of Land Management, P.O. Box 670, Rawlins, WY 82301, (307) 324-7171.

**SUPPLEMENTARY INFORMATION:** The meeting will be held at 1 p.m. at the Bel Air Inn, 23rd and Spruce Street, Rawlins, WY. A public comment period will be held at 1 p.m. The agenda items include: Welcome, Public Session; Rawlins District Programs/Summary of FY 89 Accomplishments and FY 90 Goals; Black-footed Ferret Reintroductions; North Platte National Recreation Area Proposal Status; Volunteer Programs; and Advisory Council Resolutions and Adjournment.

Dated: October 20, 1989.

**Leslie A. Oiver,**

*Associate District Manager.*

[FR Doc. 89-25312 Filed 10-26-89; 8:45 am]
BILLING CODE 4310-22-M

[NV-930-90-4212-22]

## Filing of Plats of Survey; Nevada

October 17, 1989.

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The purpose of this notice is to inform the public and interested State and local government officials of the latest filing of Plats of Survey in Nevada.

**EFFECTIVE DATES:** Filing was effective at 10:00 a.m. on October 11, 1989.

**FOR FURTHER INFORMATION CONTACT:** James R. Munson, Acting Chief, Branch of Cadastral Survey, Bureau of Land Management (BLM), Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, NV 89520, 702-328-6345.

**SUPPLEMENTARY INFORMATION:** The Plats of Survey of lands described below were officially filed at the Nevada State Office, Reno, NV, on October 11, 1989.

**Mount Diablo Meridian, Nevada**

T. 19 N., R. 30 E.—Dependent Resurvey and Tract Surveys
T. 14 N., R. 25 E.—Dependent Resurvey and Subdivision of Sections
T. 14 N., R. 27 E.—Dependent Resurvey and Subdivision of Section 5
T. 15 N., R. 27 E.—Dependent Resurvey
T. 13 N., R. 28 E.—Dependent Resurvey and Subdivision of Sections
T. 12 N., R. 29 E.—Dependent Resurvey and Subdivision of Section 28

All the surveys were accepted on September 27, 1989 and were executed to meet certain administrative needs of the Bureau of Indian Affairs. All of the above-listed surveys are now the basic record for describing the lands for all authorized purposes. The surveys will be placed in the open files in the BLM Nevada State Office and will be available to the public as a matter of information. Copies of the surveys and related field notes may be furnished to the public upon payment of the appropriate fee.

**Edward F. Spang,**

*State Director, Nevada.*

[FR Doc. 89-25388 Filed 10-26-89; 8:45 am]
BILLING CODE 4310-HC-M

## Bureau of Reclamation

## Analysis of the Operating Criteria and Alternatives of Glen Canyon Dam, AZ, Colorado River Storage Project

**AGENCY:** Bureau of Reclamation (USBR).

**ACTION:** Notice of intent to prepare a draft environmental impact statement.

**SUMMARY:** Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), as amended, the Bureau of Reclamation (Reclamation) proposes to prepare a draft environmental impact statement (DEIS) to analyze the existing operating criteria of Glen Canyon Dam, Arizona, Colorado River Storage Project, and to develop a set of environmental criteria that will be used by the Department of the Interior during the development of the Annual Operating Plan for the operation of Glen Canyon Dam. This information is

necessary to determine specific options to the operation of Glen Canyon Dam that could be enacted to minimize, consistent with law, the impact of operation on the natural resources of the Grand Canyon. The statement will discuss: the requirements of the Colorado River Compact, Colorado River Storage Project Act, Endangered Species Act, National Park Service mandates, recreation issues, and requirements of the Department of Energy.

The DEIS will present an analysis of the impacts of various alternative management practices, including existing ones, as affected by changes in the operating criteria for Glen Canyon Dam.

Reclamation will conduct scoping meetings in several locations to obtain information on which to base management options to be analyzed in the NEPA process. Reclamation will be the lead agency in the development of the DEIS. The U.S. Fish and Wildlife Service, the National Park Service, and Western Area Power Administration of the Department of Energy will be cooperating agencies.

**DATE:** The formal public involvement process and scoping efforts will begin in January 1990.

**ADDRESSES:** The scoping meetings will be held in several locations and will be published when the specific locations are selected.

**FOR FURTHER INFORMATION CONTACT:** Mr. Steve Robinson, Director, Colorado River Studies and Initiatives Office, U.S. Bureau of Reclamation, 125 South State Street, P.O. Box 11568, Salt Lake City, Utah 84147, telephone: (801) 524–3595.

**SUPPLEMENTARY INFORMATION:** Glen Canyon Dam was authorized and constructed prior to the enactment of NEPA. Consequently, no NEPA documentation on the overall operations of the facility has ever been completed. Reclamation completed an Environmental Assessment/Finding of No Significant Impact on the uprating and the rewinding of the generators at Glen Canyon Dam in 1982. The Department of the Interior initiated the Glen Canyon Environmental Studies in 1982 with the objective of collecting the technical information required to assess the impact of operations on the natural and recreation resources in Glen Canyon and Grand Canyon. The Glen Canyon Environmental Studies have produced multiple technical reports on the impacts of high and steady flow operations, and studies have recently been initiated on the impacts of fluctuating and minimum flows.

Anyone interested in more information concerning the studies or who has suggestions as to significant environmental issues should contact Mr. Robinson at the above address.

The DEIS is expected to be completed and available for review and comment by the end of 1991.

**Joe D. Hall,**

*Deputy Commissioner.*

[FR Doc. 89–25337 Filed 10–26–89; 8:45 am]

**BILLING CODE 4310–09–M**

## Proposed City of Santa Rosa Public Law 84–984 Loan Project, Santa Rosa, CA

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of intent to prepare a draft environmental impact statement/environmental impact report (EIS/EIR).

**SUMMARY:** Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), as amended, the Council on Environmental Quality Guidelines (40 CFR Part 1500), section 21002 of the California Environmental Quality Act, the Bureau of Reclamation (Reclamation), and the City of Santa Rosa intend to prepare a joint EIS/EIR. The city is in the process of applying for a Public Law 84–984 loan from Reclamation to finance construction of a reservoir as part of a multipurpose wastewater reclamation and reuse project. A grant for wildlife enhancement is also being considered.

The purposes of the project are to provide: Increased capacity for the city's tertiary sewage treatment plant, enhancement of wildlife resources, and irrigation of 7,500 acres of presently unirrigated land. Its major features would include: Expansion of the city's existing tertiary wastewater treatment plant, installation of 6 miles of buried pipeline, construction of a 15,000 acre-foot reservoir, installation of a pipeline irrigation distribution system, and provision of tertiary treated water for enhancement of wildlife habitats.

A meeting has been scheduled to solicit public input, determine alternatives to the proposed project to determine the scope of the EIS/EIR, and identify significant issues related to the proposes action.

**DATE:** The meeting will be held on November 16, 1989, at 7:00 p.m., in Santa Rosa, California.

**ADDRESS:** The meeting will be held at the following location: Dohn Room, Santa Rosa Recreation Center, 415 Steele Lane, Santa Rosa, California 95401.

**FOR FURTHER INFORMATION CONTACT:** Mr. Chip Bruss, Environmental Specialist, Bureau of Reclamation (Code: MP–750), Mid-Pacific Region, 2800 Cottage Way, Sacramento, California 95825–1898; Telephone: (916) 978–5130; or Ms. Marie Meredith, Associate Planner, Department of Community Development, City of Santa Rosa, 100 Santa Rosa Avenue, Santa Rosa, California 95402–1678; Telephone: (707) 576–5295.

**SUPPLEMENTARY INFORMATION:** The proposed project is located south and east of Santa Rosa, California, in the Americano Creek and Stemple Creek watersheds. The primary land use in these areas is dairy farming.

Tertiary treated waste water would be pumped to the reservoir and stored for use in irrigating 7,500 acres of land and for wetland development and riparian habitat enhancement. These improvements would be done in cooperation with the U.S. Fish and Wildlife Service and the California Department of Fish and Game.

Anyone interested in more information concerning the proposed exchange or who has suggestions about significant environmental, issues should contact with the people listed above.

**Joe D. Hall,**

*Deputy Commissioner.*

[FR Doc. 89–25336 Filed 10–26–89; 8:45 am]

**BILLING CODE 4310–09–M**

# INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

## Overseas Private Investment Corporation

### Public Hearing

**AGENCY:** Overseas Private Investment Corporation, IDCA.

**ACTION:** Notice of public hearing.

**SUMMARY:** This notice sets forth the schedule and requirements for participation in an annual public hearing to be conducted by the Board of Directors of the Overseas Private Investment Corporation (OPIC) on November 28, 1989. This hearing is required by the OPIC Amendments Act of 1985, and this notice is being published to facilitate public participation. The notice also describes OPIC and the subject matter of the hearing.

**DATE:** The hearing will be held on November 28, 1989, and will begin promptly at 1 p.m. Prospective participants must submit to OPIC on or

before November 7, 1989, notice of their intent to participate.

**ADDRESS:** The location of the hearing will be: Interstate Commerce Commission, Hearing Room A, 12th Street and Constitution Avenue NW., Washington, DC.

Notices and prepared statements should be sent to James R. Offutt, Office of General Counsel, Overseas Private Investment Corporation, 1615 M Street, NW., Washington, DC 20527.

**(1) Procedure**

(a) *Attendance; Participation.* The hearing will be open to the public. However, a person wishing to present his or her views at the hearing must provide OPIC with advance notice on or before November 7, 1989. The notice must include the name, address and telephone number of the person who will make the presentation, the name and address of the organization which the person represents (if any) and a concise summary of the subject matter of the presentation.

(b) *Prepared Statements.* Any participant wishing to submit a prepared statement for the record must submit it to OPIC with the notice or, in any event, not later than 5:00 p.m. on November 17, 1989. Prepared statements must be typewriten, double spaced and may not exceed twenty-five (25) pages.

(c) *Duration of Presentations.* Oral presentations will in no event exceed ten (10) minutes, and the time for individual presentations may be reduced proportionately, if necessary, to afford all prospective participants on a particular subject an opportunity to be heard or to permit all subjects to be covered.

(d) *Agenda.* Upon receipt of the required notices, OPIC will draw up an agenda for the hearing setting forth the subject or subjects on which each participant will speak and the time allotted for each presentation. OPIC will provide each prospective participant with a copy of the agenda.

(e) *Publication of Proceedings.* A verbatim transcript of the hearing will be compiled and published. The transcript will be available to members of the public at the cost of reproduction.

(2) Supplementary Information: OPIC is a U.S. Government agency which provides, on a commercial basis, political risk insurance and financing in friendly developing countries for projects which confer positive developmental benefits upon the project country while avoiding negative effects on the U.S. economy. OPIC's Board of Directors is required by section 231A(b) of the Foreign Assistance Act of 1961, as amended ("the Act") to hold at least one public hearing each year.

Among other issues, OPIC's annual public hearing has, in previous years, provided a forum for testimony concerning section 231A(a) of the Act. This section provides that OPIC may operate its programs only in those countries that are determined to be "taking steps to adopt and implement laws that extend internationally recognized worker rights to workers in that country (including any designated zone in that country)."

By prior agreement with Congress, OPIC complies with annual determinations made by the Exceutive Branch with respect to worker rights for countries that are eligible for the Generalized System of Preferences (GSP). Any country for which GSP eligibility is revoked on account of its failure to take steps to adopt and implement internationally recognzied worker rights is subject concurrently to the suspension of OPIC programs.

For non-GSP countries in which OPIC operates its programs, OPIC has agreed to provide a report to the Congress for any country which is the subject of a formal challenge at its annual public hearing. To qualify as a formal challenge, testimony must pertain directly to the woker rights requirements of the law as defined in OPIC's 1985 reauthorizing legislation (Pub. L. 99–204) with reference to the Trade Act of 1974, as amended, and be supported by factual information.

**FOR FURTHER INFORMATION ABOUT THE PUBLIC HEARING CONTACT:** James R. Offutt, Office of General Counsel, Overseas Private Investment Corporation, 1615 M Street, NW., Washington, DC 20527 (202) 457–7038.

Dated: October 23, 1989.

**Margaret A. Kole,**

*Corporate Secretary.*

[FR Doc. 89–25382 Filed 10–26–89; 8:45 am]

BILLING CODE 3210–01–M

## INTERSTATE COMMERCE COMMISSION

**[Finance Docket No. 31485]**

### Indiana Rail Road Co.; Trackage Rights Exemption; Illinois Central Railroad Co. and Indiana Hi-Rail Corp.

Illinois Central Railroad Company (IC) has agreed to grant overhead trackage rights to Indiana Rail Road Company (IRRC) between milepost X–155 at Newton, IL and the Wye connecting tracks to the Central Illinois Public Service Company facility at milepost X–160 at Lis, IL, a distance of 5 miles. IC has also agreed to assign to IRRC its existing trackage rights over a line owned by Indiana Hi-Rail Corporation (IHR) between milepost B–204.3 at Browns, IL and milepost B–215.5 at Grayville, IL, a distance of 11.2 miles.[1] These trackage rights will become effective on the date the transaction proposed for exemption is consummated. The trackage rights is this proceeding connect with two lines that are the subject of a related proceeding, F.D. 31472, *Indiana Rail Road Company—Acquisition and Operation Exemption-Illinois Central Railroad Company*, filed concurrently with this notice.[2]

This notice is filed under CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Comments must be filed with the Commission and served on: John H. Broadley (IRRC), Jenner & Block, 21 Dupont Circle, NW., Washington, DC 20036; and William C. Sippel (IC), Oppenheimer, Wolff & Donnelly, Two Illinois Center, 233 N. Michigan Avenue, Suite 2400, Chicago, IL 60601.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978). *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: October 18, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 89–25117 Filed 10–26–89; 8:45 am]

BILLING CODE 7035–01–M

## DEPARTMENT OF JUSTICE

### Lodging of Consent Decree; Gardner Asphalt Corp.

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that a complaint styled *United States* v. *Gardner Asphalt*

[1] The acquisition of trackage rights by IRRC through assignment from IC falls within the class exemption which applies to trackage rights "over lines owned or operated" by other rail carriers. 49 CFR 1180.2(d)(7). There is no representation that IHR agrees to the assignments. It is assumed the IHR agrees or that its agreement is not required.

[2] In that proceeding, IRRC seeks exemption authority under 49 U.S.C. 10505 from the provisions of 49 U.S.C. 11343 to acquire IC's 90.3-mile line: (1) between milepost X–109 at Sullivan, IN, and milepost X–155 at Newton, IL; and (2) between milepost B–160 at Newton, IL, and milepost B–204.3 near Browns, IL.

*Corporation*, Civil Action No. 89–2946–S, was filed in the United States District Court for the District of Kansas on October 5, 1989, and, simultaneously, a consent decree was lodged with the Court in settlement of the allegations in the complaint. This consent decree settles the government's claims in the complaint pursuant to sections 112 and 113 of the Clean Air Act, 42 U.S.C. 7412 and 7413, for civil penalties and for injunctive relief to require compliance with all provisions of the Clean Air Act and with the National Emission Standard for Hazardous Air Pollutant (NESHAP) for Asbestos, codified at 40 CFR part 61, subpart M, by Gardner Asphalt Corporation of Kansas City, Kansas. The complaint alleged, among other things, that the defendant's Kansas City facility is subject to the NESHAP for asbestos, 40 CFR part 61, subpart M. The complaint further alleged that defendant failed to obtain written approval from the Administrator of EPA prior to commencing construction of its Kansas City, Kansas, facility, and failed to notify the Administrator of EPA prior to and after start up of its Kansas City, Kansas, facility.

Under the terms of the proposed consent decree, the defendants agree to pay civil penalties of thirteen thousand seven hundred fifty dollars ($13,750.00) and to comply with all provisions of the Clean Air Act, 42 U.S.C. 7401 *et seq.* and with the National Emission Standard for Hazardous Air Pollutant for Asbestos, codified at 40 CFR part 61, subpart M. The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, 10th and Pennsylvania Avenue NW., Washington, DC 20530. All comments should refer to *United States* v. *Gardner Asphalt Corporation*, D.J. Ref. 90–5–2–1–1254. The proposed consent decree may be examined at the following offices of the Unites States Attorney and the Environmental Protection Agency ("EPA"):

*United States Attorney's Office*

Contact: Chief, Civil Division, Office of the United States Attorney, 412 Federal Building, 812 North Seventh Street, Kansas City, Kansas 66101; (913) 236–3730.

*EPA Region VII*

Contact: Becky Ingrum Dolph, Office of Regional Counsel, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101; (913) 236–2853.

Copies of the proposed consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1515, 10th and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044. In requesting a copy of the decree, please enclose a check for copying costs in the amount of $7.10 payable to Treasurer of the United States.

**Richard B. Steward,**

*Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc. 89–25305 Filed 10–26–89; 8:45 am]

BILLING CODE 4410–01–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 6, 1989.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 6, 1989.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213.

Signed at Washington, DC, this 16th day of October 1989.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

APPENDIX

| Petitioner: Union/Workers/Firm | Location | Date received | Date of petition | Petition No. | Articles produced |
|---|---|---|---|---|---|
| AT&T Communication & Computer Products (IBEW). | Little Rock, AR | 10/16/89 | 10/6/89 | 23,481 | Computers. |
| Alexander Well Services (Workers) | Nowata, OK | 10/16/89 | 9/30/89 | 23,482 | Oilfield Services. |
| Ansewn Shoe, Co. (Workers) | East Port, ME | 10/16/89 | 9/22/89 | 23,483 | Shoes. |
| Billen Shoe, Co. (Workers) | Lewiston, ME | 10/16/89 | 10/2/89 | 23,484 | Shoes. |
| Berry Plastics (Company) | New Brunswick, NJ | 10/16/89 | 10/6/89 | 23,485 | Aerosol Caps & Cans Plastic. |
| Certaineed Corp. (UGCW) | Winslow Township, NJ | 10/16/89 | 10/5/89 | 23,486 | Insulations for Homes. |
| Duckhead Apparel (Formerly O'Bryan Bros., Inc.) (Workers). | McLemoresville, TN | 10/16/89 | 10/3/89 | 23,487 | Pants & Shorts. |
| France Rental Tool, Inc. (Workers) | LaFayette, LA | 10/16/89 | 10/5/89 | 23,488 | Machines for Oil Industry. |
| General Motors (CPC)(UAW) | Van Nuys, CA | 10/16/89 | 10/11/89 | 23,489 | Automobiles. |

APPENDIX—Continued

| Petitioner: Union/Workers/Firm | Location | Date received | Date of petition | Petition No. | Articles produced |
|---|---|---|---|---|---|
| Goldfeder, Inc. (UE) | Yalesville, CT | 10/16/89 | 10/6/89 | 23,490 | Silverplated Articles. |
| Howard Mfg. Co., Inc. (Company) | Nashville, AR | 10/16/89 | 10/6/89 | 23,491 | Ladies' Robes & Loungewear. |
| Lordship Incorp. (Company) | Stratford, CT | 10/16/89 | 9/26/89 | 23,492 | Retreaded Tires. |
| Marlite Division U.S.G. (UPW) | Dover, OH | 10/16/89 | 10/5/89 | 23,493 | Doors & Toilet Partitions. |
| Monk Fur Co., Inc. (Workers) | Jim Thorpe, PA | 10/16/89 | 10/2/89 | 23,494 | Rabbit Fur. |
| Ohio River Pipeline, Inc. (Workers) | Marrietta, OH | 10/16/89 | 10/1/89 | 23,495 | Oil and Gas. |
| Ohio River Pipeline, Inc. (Workers) | E. Sparta, OH | 10/16/89 | 10/1/89 | 23,496 | Oil and Gas. |
| Ohio River Pipeline, Inc. (Workers) | Moreland, OH | 10/16/89 | 10/1/89 | 23,497 | Oil and Gas. |
| Ohio River Pipeline, Inc. (Workers) | Mt. Gilead, OH | 10/16/89 | 10/1/89 | 23,498 | Oil and Gas. |
| Ohio River Pipeline, Inc. (Workers) | Lexington, OH | 10/16/89 | 10/1/89 | 23,499 | Oil and Gas. |
| Olin-Hunt Specialty Products, Inc. | Palisades Park, NJ | 10/16/89 | 10/3/89 | 23,500 | Etching Chemicals (Developer & Toner). |
| Oxy USA Incorporated (Company) | Tulsa, OK | 10/16/89 | 10/6/89 | 23,501 | Oil and Gas. |
| Oxy USA Incorporated (Company) | Oklahoma City OK | 10/16/89 | 10/6/89 | 23,502 | Oil and Gas. |
| Oxy USA Incorporated (Company) | Houston, TX | 10/16/89 | 10/6/89 | 23,503 | Oil and Gas. |
| Oxy USA Incorporated (Company) | Midland, TX | 10/16/89 | 10/6/89 | 23,504 | Oil and Gas. |
| Oxy USA Incorporated (Company) | Jackson, MS | 10/16/89 | 10/6/89 | 23,505 | Oil and Gas. |
| Oxy USA Incorporated (Company) | Bakersfield, CA | 10/16/89 | 10/6/89 | 23,506 | Oil and Gas. |
| Plaskon Electronic Material, Inc. (UAW) | Toledo, OH | 10/16/89 | 9/26/89 | 23,507 | Epoxy Moulding Compounds. |
| Robertshaw Controls Co. (Workers) | Lebanon, TN | 10/16/89 | 10/2/89 | 23,508 | Auto Sensors & Thermostats. |
| Square D Co. (IBEW) | Levington, KY | 10/16/89 | 10/6/89 | 23,509 | Electrical Equip. |
| Superior/Ideal, Inc. (Workers) | Oskaloosa, IA | 10/16/89 | 10/2/89 | 23,510 | Vehicle & Trailer Accessories. |
| U S. Pipe and Foundry Co., Industrial Products Div. | Burlington, NJ | 10/16/89 | 10/6/89 | 23,511 | Tubular Ferrous. |
| Vassarette (Workers) | Guin, AL | 10/16/89 | 10/2/89 | 23,512 | Ladies' Apparel. |
| Western Art Mfg., Co. (Workers) | Colorado Springs, CO | 10/16/89 | 10/5/89 | 23,513 | Children's Wear. |
| Lorch Electronic Div. of Vernitron Corp. (Company) | Englewood, NJ | 10/16/89 | 10/3/89 | 23,514 | Electronic Components. |

[FR Doc. 89-25374 Filed 10-26-89; 8:45 am]

BILLING CODE 4570-30-M

## Cactus Drilling Co; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In the matter of: TA-W-21,807, Midland, Texas; TA-W-21,807A, All Other Locations in Texas; TA-W-21,807B, All Locations in Louisiana; TA-W-21,807C, All Locations in New Mexico; TA-W-21,807D, All Locations in Oklahoma; TA-W-21,807E, All Locations in Michigan.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 9, 1989 applicable to all workers of Cactus Drilling Company.

Based on new information from the company, additional workers were layed off at other locations in the State of Texas and in the States of Louisiana, New Mexico, Oklahoma and Michigan. The amended notice applicable to TA-W-21,807 is hereby issued as follows:

All workers of Cactus Drilling Company, Midland, Texas and in other locations in the State of Texas and in all locations in the States of Louisiana, New Mexico, Michigan and Oklahoma who became totally or partially separated from employment on or after October 1, 1985 are eligible to apply for adjustment assistance under Section 222 of the Trade Act of 1974.

Signed at Washington, DC, this 16th day of October 1989.

**Robert O. Deslongchamps,**

*Director, Office of Legislation and Actuarial Services, UIS.*

[FR Doc. 89-25375 Filed 10-26-89; 8:45 am]

BILLING CODE 4510-30-M

## Core Laboratories, Inc.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In the matter of: TA-W-21,406, Dallas, Texas; TA-W-21,406A, Magnolia, Arkansas; TA-W-21,406B, Irving, Texas; TA-W-21,406C, All Other Locations in Texas; TA-W-21,406D, All Other Locations in Arkansas.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 19, 1988 applicable to all workers of Core Laboratories, Dallas, Texas and Magnolia, Arkansas. The certification notice was amended on August 31, 1989 to include all workers of Core Laboratories in Irving, Texas. The amended notice was published in the **Federal Register** on September 13, 1989 (54 FR 37841).

Based on new information from the company additional workers of Core Laboratories, a subsidiary of Western Atlas International, were separated at other locations in Texas and Arkansas. The amended notice applicable to TA-W-21,406 is hereby issued as follows:

All workers of Core Laboratories, Inc., Dallas, Texas; Irving, Texas; Magnolia, Arkansas and all other locations in Texas and Arkansas who became totally or partially separated from employment on or after October 1, 1985 are eligible to apply for adjustment assistance under Section 222 of the Trade Act of 1974.

Signed at Washington, DC, this 16th day of October 1989.

**Robert O. Deslongchamps,**

*Director, Office of Legislation and Actuarial Services, UIS.*

[FR Doc. 89-25376 Filed 10-26-89; 8:45 am]

BILLING CODE 4510-30-M

**[TA-W-23, 176]**

## Eaton Corporation-Controls Division, Fremont, OH; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on September 15, 1989 applicable to all workers of Eaton Corporation-Controls Division, Fremont, Ohio.

Based on new information from the company, additional workers engaged in employment related to the production of automotive switches were retained beyond the September 15, 1989 termination date. All production of automotive switches is scheduled to be transferred to Mexico by mid-1990. Therefore, the Department is deleting the termination date. The amended

notice applicable to TA–W–23,176 is hereby issued as follows:

All workers engaged in employment related to the production of automotive switches at Eaton Corporation, Controls Division, Fremont, Ohio who became totally or partially separated from employment on or after June 29, 1988 are eligible to apply for adjustment assistance under Section 222 of the Trade Act of 1974.

I further determine that all workers engaged in employment related to the production of appliance switches at Eaton Corporation, Controls, Division, Fremont, Ohio are denied eligibility to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 16th day of October 1989.

**Robert O. Deslongchamps,**

*Director, Office of Legislation and Actuarial Services, UIS.*

[FR Doc. 89–25377 Filed 10–26–89; 8:45 am]

BILLING CODE 4510–30–M

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**[TA–W–22, 535 and 536]**

### Levi Straus & Co., Inc.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 26, 1989 applicable to all workers of Levi Straus and Company, Inc., McArthur Road and Jackson Avenue, Maryville, Tennessee. The notice was published in the **Federal Register** on May 23, 1989 (54 FR 22381).

Based on new information from the company, a few workers whose separations were affected by the closing of the plant were retained beyond the November 30, 1988 termination date. Accordingly, the Department is changing the termination date to December 15, 1988. The amended notice applicable to TA–W–22,535 and TA–W–22,536 is hereby issued as follows:

All workers of Levi Straus and Company, Inc., McArthur Road and Jackson Avenue, Maryville, Tennessee who became totally or partially separated from employment on or after February 2, 1988 and before December 15, 1988 are eligible to apply for adjustment assistance under Section 222 of the Trade Act of 1974.

Signed at Washington, DC, this 16th day of October 1989.

**Robert O. Deslongchamps,**

*Director, Office of Legislation and Actuarial Services, UIS.*

[FR Doc. 89–25378 Filed 10–26–89; 8:45 am]

BILLING CODE 4510–30–M

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**[TA–W–23,041]**

### Meriden-Steinhour Press, Inc.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 10, 1989 applicable to all workers of Meriden-Steinhour Press, Inc. in Meriden, Connecticut. The notice was published in the **Federal Register** on September 6, 1989 (54 FR 37033).

Based on new information from the company, a few workers were retained for close down operations beyond the July 1, 1989 termination date. The amended notice applicable to TA–W–23,041 is hereby issued as follows:

All workers of Meriden-Steinhour Press, Inc., Meriden, Connecticut who became totally or partially separated from employment on or after January 1, 1989 and before October 1, 1989 are eligible to apply for adjustment assistance under Section 222 of the Trade Act of 1974.

Signed at Washington, DC, this 16th day of October 1989.

**Robert O. Deslongchamps,**

*Director, Office of Legislation and Actuarial Services, UIS.*

[FR Doc. 89–25379 Filed 10–26–89; 8:45 am]

BILLING CODE 4510–30–M

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**[TA–W–22,163]**

### Micro Energy International, Inc.; Affirmed Termination of Investigation on Remand

Pursuant to a summons and complaint at the U.S. Court of International Trade, in *Former Employees of Micro Energy International Inc.* v. *Secretary of Labor* (USCIT 89–05–00279) the Department requested a remand to support its termination of investigation for workers at Micro Energy International, Inc., Roswell, New Mexico.

The Department terminated the investigation because the findings show that MEI never produced a marketable product or service in the short time it was in operation. MEI was incorporated in August 1985 to engage in the business of manufacturing an uninterruptable power source. The company was dissolved in November 1985. MEI was a start-up corporation that experienced a 4-month research and development period before ceasing operations for lack of capital.

Further, the retroactive provisions of the 1988 amendments contained in the Omnibus Trade and Competitiveness Act do not apply to workers engaged in the production of an article if such workers were eligible to be certified for benefits under the Trade Act prior to the implementation of the retroactive provisions.

Other findings show that all workers were separated from MEI more than one year prior to the date of the petition. Section 223 of the Trade Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose and the investigation was terminated.

**Conclusion**

After review of the investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the notice of termination of investigation is affirmed.

Signed at Washington, DC, this 16th day of October 1989.

**Robert O. Deslongchamps,**

*Director, Office of Legislation and Actuarial Services, UIS.*

[FR Doc. 89–25381 Filed 10–26–89; 8:45 am]

BILLING CODE 4510–30–M

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**TA–W–22,513**

### Wearever Proctor Silex; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 3, 1989 applicable to all workers of Wearever Proctor Silex, Altoona, Pennsylvania. The notice was published in the **Federal Register** on June 23, 1989 (54 FR 26447).

Based on new information from the company, additional workers were retained for close down operations

beyond the February 1, 1989 termination date. Therefore, the certification is amended by deleting the February 1, 1989 termination date. The amended notice applicable to TA–W–22,513 is hereby issued as follows:

All workers of Wearever Proctor Silex, Altoona, Pennsylvania who became totally or partially separated from employment on or after January 26, 1988 are eligible to apply for adjustment assistance under Section 222 of the Trade Act of 1974.

Signed at Washington, DC, this 16th day of October 1989.

**Robert O. Deslongchamps,**

*Director, Office of Legislation and Actuarial Services, UIS.*

[FR Doc. 89–25380 Filed 10–26–89; 8:45 am]

BILLING CODE 4510–30–M

## Employment Standards Administration, Wage and Hour Division

### Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and 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 II*

Texas:
TX89–51 ..... p.1136c, p.1136d–1136f.

### 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*

Maryland:
MD89–1 (Oct. 20, 1989)... p. 411, pp. 411.

*Volume II:*

Illinois:
IL89–1 (Jan. 6, 1989) ..... p. 69, pp. 70–79.
IL89–2 (Jan. 6, 1989) ..... p. 97, pp. 98–103, 113.
IL89–3 (Jan. 6, 1989) ..... p. 115, pp. 116–117.
IL89–4 (Jan. 6, 1989) ..... p. 121, pp. 122-pp. 123, 125.
IL89–5 (Jan. 6, 1989) ..... p. 127, pp. 128–129.
IL89–6 (Jan. 6, 1989) ..... p. 133, p. 134.
IL89–7 (Jan. 6, 1989) ..... p. 137, pp. 138–140, p. 143.
IL89–8 (Jan. 6, 1989) ..... p. 145, pp. 146–150b.
IL89–9 (Jan. 6, 1989) ..... p. 151, pp. 152–153.
IL89–11 (Jan. 6, 1989) ..... p. 161, pp. 162–164.
IL89–12 (Jan. 6, 1989) ..... p. 167, pp. 168–170.
IL89–13 (Jan. 6, 1989) ..... p. 179, pp. 180–182.
IL89–14 (Jan. 6, 1989) ..... p. 191, pp. 192–194.
IL89–15 (Jan. 6, 1989) ..... p. 201, pp. 202–204.
IL89–16 (Jan. 6, 1989) ..... p. 211, pp. 212–214, p. 220.
IL89–17 (Jan. 6, 1989) ..... p. 221, pp. 222–229, p. 233.

Missouri:
MO89–1 (Jan. 6, 1989)..... p. 627, p.629.
MO89–2 (Jan. 6, 1989)..... p. 647, pp. 649, 654.

Ohio:
OH89–2 (Jan. 6, 1989) ..... p. 787, pp. 787–807.

Texas:
TX89–2 (Jan. 6, 1989) ..... p. 981, pp. 981–982.

*Volume III*

California:
CA89–2 (Jan. 6, 1989)..... p. 43, pp. 47–49, 55-p. 64d.

Colorado:
CO89–1 (Jan. 6, 1989)..... p. 105, p. 106.

Montana:
MT89–1 (Jan. 6, 1989)..... p. 171, pp. 173, 175-p. 180.

**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 20th day of October 1989.

**Ethel P. Miller,**

*Acting Director, Division of Wage Determinations.*

[FR Doc. 89–25157 Filed 10–26–89; 8:45 am]

BILLING CODE 4510–27–M

## Mine Safety and Health Administration

**[Docket No. M–89–19–M]**

### Bunker Hill Mining Co. (U.S.) Inc.; Petition for Modification of Application of Mandatory Safety Standard

Bunker Hill Mining Company (U.S.) Inc., P.O. Box 29, Kellogg, Idaho 83837 has filed a petition to modify the application of 30 CFR 49.8(b) (training for mine rescue teams) to its Bunker Hill Mine (I.D. No. 10–00083) and its Crescent Mine (I.D. No. 10–00085) both located in Shoshone County, Idaho. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirements that upon completion of the initial training, all team members are required to receive at least 40 hours of refresher training annually. This training is required to be given at least 4 hours each month, or for a period of 8 hours every two months.

2. Petitioner states that requiring at least 4 hours of refresher training each month or 8 hours every two months would result in a diminution of safety for the underground personnel because most of the experienced mine rescue personnel would resign.

3. In support of this request, petitioner states that—

(a) Most of the rescue team personnel are veterans; and

(b) Adequacy of training cannot be measured in hours spent in training. Performance and knowledge are the only valid criteria.

4. For these reasons, petitioner requests a modification of the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 27, 1989. Copies of the petition are available for inspection at that address.

Dated: October 18, 1989.

**Patricia W. Silvey,**

*Director, Office of Standards, Regulations and Variances.*

[FR Doc. 89–25370 Filed 10–26–89; 8:45 am]

BILLING CODE 4510–43–M

**[Docket No. M–89–20–M]**

### Fausett International, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Fausett International, Inc., P.O. Box 968, Osburn, Idaho 83849 has filed a petition to modify the application of 30 CFR 49.8(b) (training for mine rescue teams) to the Bunker Hill Mine (I.D. No. 10–00083) located in Shoshone County, Idaho. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the requirement that upon completion of the initial training, all team members are required to receive at least 40 hours of refresher training annually. This training is required to be given at least 4 hours each month, or for a period of 8 hours every two months.

2. Petitioner states that requiring at least 4 hours of refresher training each month or 8 hours every two months would result in a diminution of safety for the underground personnel because most of the experienced mine rescue personnel would resign.

3. In support of this request, petitioner states that—

(a) Most of the rescue team personnel are veterans; and

(b) Adequacy of training cannot be measured in hours spent in training. Performance and knowledge are the only valid critieria.

4. For these reasons, petitioner requests a modification of the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 27, 1989. Copies of the petition are available for inspection at that address.

Dated: October 18, 1989.

**Patricia W. Silvey,**

*Director, Office of Standards, Regulations and Variances.*

[FR Doc. 89–25371 Filed 10–26–89; 8:45 am]

BILLING CODE 4510–43–M

**[Docket No. M–89–155–C]**

### Sea "B" Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Sea "B" Mining Company, P.O. Box 26, Jewell Ridge, Virginia 24622 has filed a petition to modify the application of 30 CFR 75.305 to its Seaboard No. 1 Mine (I.D. No. 44–02253) located in Tazewell County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that the main return be examined in its entirety on a weekly basis.

2. Due to several roof falls, and an extremely weak roof certain areas of the return cannot be safety traveled.

3. As an alternate method, petitioner proposes to establish checkpoints in specific areas where air readings and gas checks would be made and a date board would be signed in lieu of traveling the affected areas.

4. For these reasons, petitioner requests a modification of the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 27, 1989. Copies of the petition are avilable for inspection at that address.

Patricia W. Silvey,

*Director, Office of Standards, Regulations and Variances.*

[FR Doc. 89-25372 Filed 10-26-89; 8:45 am]

BILLING CODE 4510-43-M

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[Docket No. M-89-154-C]

## Southern Light Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Southern Light Coal Co., P.O. Box 1185, Barbourville, Kentucky 40906 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its Mine No. 1 (I.D. No. 15-15872) located in Whitley County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on electric face cutting equipment, continuous mining machines, longwall face equipment and loading machines. The monitor is required to be properly maintained and frequently tested.

2. No methane has been detected in the mine.

3. The three-wheel tractors are permissible DC-powered machines, without hydraulics. Approximately 30-40% of the coal is hand loaded into a drag-type bucket. Approximately 20% of the time that the tractor is in use, it is used as a mantrip and supply vehicle.

4. As an alternate method, petitioner proposes to use hand-held continuous oxygen and methane monitors instead of methane monitors on three-wheel tractors. In further support of this request, petitioner states that:

(a) Each three-wheel tractor would be equipped with a hand-held continuous monitoring methane and oxygen detector and all persons would be trained in the use of the detector;

(b) Prior to allowing the coal loading tractor in the face area, a gas test would be performed to determine the methane concentration in the atmosphere. When the elapsed time between trips does not exceed 20 minutes, the air quality would be monitored continuously after each trip. This would provide continuous monitoring of the mine atmosphere for methane to assure the detection of any methane buildup between trips;

(c) If one percent methane is detected, the operator would manually deenergize the battery tractor immediately. Production would cease and would not resume until the methane level is lower than one percent;

(d) A spare continuous monitor would be available to assure that all coal hauling tractors would be equipped with a continuous monitor;

(e) Each monitor would be removed from the mine at the end of the shift, and would be inspected and charged by a qualified person. The monitor would also be calibrated monthly; and

(f) No alterations or modifications would be made in addition to the manufacturer's specifications.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 27, 1989. Copies of the petition are available for inspection at that address.

Dated: October 10, 1989.

Patricia W. Silvey,

*Director, Office of Standards, Regulations and Variances.*

[FR Doc. 89-25373 Filed 10-26-89; 8:45 am]

BILLING CODE 4510-43-M

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## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

## Nixon Presidential Historical Materials; Opening of Materials

**AGENCY:** National Archives and Records Administration.

**ACTION:** Notice of opening of materials.

**SUMMARY:** This notice announces the opening of selected subject categories and staff member files from the Nixon White House Central Files (WHCF). Notice is hereby given that, in accordance with section 104 of title I of the Presidential Recordings and Materials Preservation Act (88 Stat. 1695: 44 U.S.C. 2111 note) and § 1275.42(b) of the Public Access Regulations implementing the Act (36 CFR part 1275), the agency has identified, inventoried, and prepared for public access integral file segments of materials among the Nixon Presidential materials.

**DATES:** The National Archives intends to make the integral file segments described in this notice available to the public beginning December 15, 1989. Any person who believes it necessary to file a claim of legal right or privilege concerning access to these materials should notify the Archivist of the United States in writing of the claimed right, privilege, or defense before December 6, 1989.

**ADDRESSES:** The materials will be made available to the public at the National Archives' facility located at 845 South Pickett Street, Alexandria, Virginia.

Petitions concerning access must be sent to the Archivist of the United States, National Archives and Records Administration, Washington, DC 20408.

**FOR FURTHER INFORMATION CONTACT:** Clarence F. Lyons, Jr., Acting Director, Nixon Presidential Materials Staff, 703-756-6498.

**SUPPLEMENTARY INFORMATION:** The integral file segments of textual materials to be opened consist of 120.9 cubic feet. This is the fifth of a series of openings of Central Files; the previous openings were on December 1, 1986; March 22, 1988; December 9, 1988; and July 17, 1989.

The White House Central Files Unit is a permanent organization within the White House complex that maintains a central filing and retrieval system for the records of the President and his staff. Some of the materials designated for opening on December 15, 1989, were selected from the Subject Files of the Central Files. The Subject Files are based on an alphanumeric file scheme of 61 primary subject categories. Listed below are the primary subject categories of the Subject Files that will be made available to the public on December 15, 1989.

| Subject Category | Volume (cubic feet) |
|---|---|
| *Federal Government (FG):* | |
| Council for Urban Affairs (FG 6-12) | 1.3 |
| The Judicial Branch (FG 50) | 0.2 |
| United States Courts of Appeals (FG 52) | 0.5 |

| Subject Category | Volume (cubic feet) |
|---|---|
| American Revolution Bicentennial Commission (FG 75) | 0.9 |
| Civil Aeronautics Board (FG 88) | 0.6 |
| Commission on Obscenity and Pornography (FG 95) | 0.3 |
| Federal Communications Commission (FG 118) | 0.5 |
| Interdepartmental Committee on the Status of Women (FG 147) | 0.1 |
| Smithsonian Institution (FG 218) | 0.8 |
| Cabinet Committee on the Environment/ Citizens Advisory Committee on Environmental Quality (FG 251) | 0.3 |
| National Industrial Pollution Control Council (FG 278) | 0.2 |
| Environmental Protection Agency (FG 298) | 0.7 |
| *Publications (PU)* | 9.6 |
| *Social Affairs (SO)* | 10.0 |

In addition to the subject categories, four file groups from the Staff Member and Office Files will be made available to the public. These consist of materials that were transferred to Central Files but were not incorporated into the Subject Files. Listed below are the Staff Member and Office Files that will be made available to the public on December 15, 1989.

| File group | Volume (cubic feet) |
|---|---|
| Nils A. Boe | 15.0 |
| James H. Cavanaugh | 18.3 |
| Paul W. McCracken | 44.6 |
| White House Gift Unit | 17.0 |

Public access to some of the items in the file segments will be restricted as outlined in 36 CFR 1275.50 or 1275.52 (Public Access Regulations).

Dated: October 23, 1989.

**Don W. Wilson,**

*Archivist of the United States.*

[FR Doc. 89–25346 Filed 10–26–89; 8:45 am]

BILLING CODE 7515-01-M

## NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

### Meeting of Museum Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Museum Advisory Panel (Care of Collections Section) to the National Council on the Arts will be held on November 14–16, 1989, from 9:15 a.m.–5:30 p.m. in Room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: October 23, 1989.

**Yvonne M. Sabine,**

*Director, Council and Panel Operations, National Endowment for the Arts.*

[FR Doc. 89–25389 Filed 10–26–89; 8:45 am]

BILLING CODE 7537-01-M

## NATIONAL SCIENCE FOUNDATION

### Permit Applications Received Under the Antarctic Conservation Act of 1978

**AGENCY:** National Science Foundation.

**ACTION:** Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978, Public Law 95–541.

**SUMMARY:** The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

**DATE:** Interested parties are invited to submit written data, comments, or views with respect to these permit applications by November 29, 1989. Permit applications may be inspected by interested parties at the Permit Office, address below.

**ADDRESS:** Comments should be addressed to Permit Office, Room 627, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

**FOR FURTHER INFORMATION CONTACT:** Charles E. Myers at the above address or (202) 357–7934.

**SUPPLEMENTARY INFORMATION:** The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Public Law 95–541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed in 1964 by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest. Additional information was published in the **Federal Register** on July 17, 1989.

The applications received are as follows:

**1. Applicant**

Stephen L. Burns, National Geographic Society, 1600 M Street, NW., Washington, DC 20036.

**Activity for Which Permit Requested**

Enter Specially Protected Area. Enter Sites of Special Scientific Interest. The applicant is working on a television special about the Antarctic Peninsula and requests permission to enter protected areas to record scientists collecting data.

**Location**

Antarctic Peninsula. Specially protected area #17, Litchfield Island. Sites of Special Scientific Interest #6, Byers Peninsula; #8 western shore of Admiralty Bay.

**Dates**

December 1989—February 1990.

**Charles E. Myers,**

*Permit Office.*

[FR Doc. 89–25406 Filed 10–26–89; 8:45 am]

BILLING CODE 7555-01-M

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–443–OL–1 & 50–444–OL–1]**

### Public Service Company of New Hampshire, et al. (Seabrook Station, Units 1 and 2); Reconstitution of Atomic Safety and Licensing Appeal Board

Notice is hereby given that, in accordance with the authority conferred by 10 CFR 2.787(a), the Chairman of the Atomic Safety and Licensing Appeal Panel has reconstituted the Atomic Safety and Licensing Appeal Board for that portion of this operating license proceeding concerned with the motions

to reopen for consideration of low-power testing contentions. As reconstituted, this Appeal Board will consist of the following members:

Thomas S. Moore, Chairman,
Howard A. Wilber,
G. Paul Bollwerk, III.

Dated: *October 23, 1989.*

**Barbara A. Tompkins,**

*Secretary to the Appeal Board.*

[FR Doc. 89-25365 Filed 10-26-89; 8:45 am]

BILLING CODE 7590-01-M

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

**[Docket No. 301-49]**

### Termination of Section 302 Investigation: Policies and Practices of the Government of Brazil With Respect to Informatics

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice of termination of investigation under section 302 of the Trade Act of 1974, as amended.

**SUMMARY:** The United States Trade Representative (USTR) has decided to terminate and investigation initiated under section 302 of the Trade Act of 1974, as amended (Trade Act) with respect to acts, policies, and practices of the Government of Brazil with respect to informatics (computer and other electronics hardware and software) products.

**DATE:** This investigation is terminated effective October 6, 1989.

**FOR FURTHER INFORMATION CONTACT:** Jon Huenemann, Director, Brazil and Southern Cone Affairs, USTR, (202) 395-5190.

**SUPPLEMENTARY INFORMATION:** On September 16, 1985, pursuant to his authority under section 302(c) of the Trade Act, the USTR initiated an investigation into Brazil's informatics policy [Docket No. 301-49, 50 FR 37608].

On October 6, 1986, President Reagan determined pursuant to section 301 of the Trade Act of 1974, as amended, that the Government of Brazil had engaged in acts, policies and practices with respect to informatics products that were unreasonable and burdened or restricted U.S. Commerce. The President directed the USTR to pursue negotiations to address U.S. concerns regarding barriers to U.S. trade and investment and the lack of adequate and effective intellectual property protection [51 FR 35993].

While a number of restrictions to foreign access remain, significant progress has been achieved since the October 1986 determination. Brazil has extended explicit copyright protection to computer software, provided increased market access for foreign computer software following implementation of the software law, and improved the responsiveness and clarity of its administrative functions regarding the implementation of its informatics policies that affect foreign trade. In addition, in September 1989, Brazil lifted restrictions on remittances from sales of foreign software, and the government of Brazil indicated its willingness to work constructively with the U.S. on informatics investment issues.

In response to this progress, the following steps were taken over the course of this investigation: on December 30, 1986, President Reagan determined to suspend that part of the investigation dealing with Brazilian administrative procedures (52 FR 1619); on June 30, 1987, President Reagan determined to suspend the intellectual property portion of the investigation (52 FR 24971); and on October 5, 1989, the USTR determined that the investigation of Brazil's acts, policies and practices with respect to informatics would be terminated.

**Joshua B. Bolten,**

*General Counsel.*

[FR Doc. 89-25321 Filed 10-26-89; 8:45 am]

BILLING CODE 3190-01-M

## RAILROAD RETIREMENT BOARD

### Agency Forms Submitted for OMB Review

**AGENCY:** Railroad Retirement Board.

**ACTION:** In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s):

(1) *Collection title:* Financial Disclosure Statement.

(2) *Form(s) submitted:* G-423.

(3) *OMB Number:* 3220-0127.

(4) *Expiration date of current OMB clearance:* 12-31-89.

(5) *Type of request:* Revision of a currently approved collection.

(6) *Frequency of response:* ON occasion.

(7) *Respondents:* Individuals or households.

(8) *Estimated annual number of respondents:* 1,550.

(9) *Total annual responses:* 1,550.

(10) *Average time per response:* 1.3335 hours.

(11) *Total annual reporting hours:* 2,067.

(12) *Collection description:* Under the Railroad Retirement and Railroad Unemployment and Insurance Acts, the Railroad Retirement Board has authority to secure from an overpaid beneficiary a statement of the indivdual's assets and liabilities if waiver of the overpayment is requested.

Additional Information or Comments: Copies of the proposed forms and supporting documents can be obtained from Ronald J. Hodapp, the agency clearance officer (312-751-4692). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Justin Kopca (202-395-7316), Office of Management and Budget, Room 3002, New Executive Office Building, Washington, DC 20503.

**Ronald J. Hodapp,**

*Director of Information Resources Management.*

[FR Doc. 89-25318 Filed 10-26-89; 8:45 am]

BILLING CODE 7905-01-M

## SECURITIES AND EXCHANGE COMMISSION

### Forms Under Review by Office of Management and Budget

*Agency Clearance Officer:* Kenneth Fogash, (202) 272-2142.

*Upon written request copy available from:* Securities and Exchange Commission, Public Reference Branch, Washington, DC 20549-1002.

Extension
Form BDW, File No. 270-17
Rule 17a-7, File No. 270-147
Rule 17a-5, File No. 270-199
Rule 17a-2, File No. 270-189
Rule 19d-3, File No. 270-245
Rule 17a-1, File No. 270-244
Rule 19h-1, File No. 270-247
Rule 17f-1(g), File No. 270-30

Notice is hereby given pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), that the Securities and Exchange Commission (Commission) has submitted for extension of OMB approval the following forms/rules under the Securities Exchange Act of 1934 (1934 Act):

3235-0018 Form BDW [Rule 15b-6(a)]—Notice of withdrawal from registration as a broker-dealer; 847 broker-dealers incur an estimated

average of one-half burden hour to comply with this requirement.

3235–0131 Rule 17a–7—Records of non-resident brokers and dealers; three broker-dealers incur an estimated average of one burden hour to comply with this requirement.

3235–0199 Rule 17a–5—Customer statements re financial condition of broker-dealer; 1,500 broker-dealers incur an estimated average of one minute to comply with this requirement.

3235–0201 Rule 17a–2—Recordkeeping requirements relating to stabilizing activities; 500 underwriting managers incur an estimated average of seven and one-half minutes to comply with this requirement.

3235–0204 Rule 19d–3—Application for review of final disciplinary sanctions, denials of membership participation or limitations of access to services imposed by self-regulatory organizations; thirteen members incur an estimated average of 18 burden hours to comply with this requirement.

3235–0208 Rule 17a–1—Recordkeeping rule for national securities exchanges and national securities association; thirty recordkeepers incur an estimated average of 50 burden hours to comply with this requirement.

3235–0259 Rule 19(h)–1—Notice by self-regulatory organizations of proposed admissions to or continuance in membership or participation or association with a member of any person subject to a statutory disqualification and applications to the relief therefrom; three organizations incur an estimated average of four and one-half burden hours to comply with this requirement.

3235–0290 Rule 17f–1(g)—Recordkeeping requirements for the lost and stolen securities program; 19,602 recordkeepers incur an estimated average of thirty-five minutes to comply with this requirement.

The estimated average burden hours are made solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

General comments regarding the estimated burden hours should be directed to Gary Waxman at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to Kenneth A. Kogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–6004 and Gary Waxman, Clearance Officer, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: October 20, 1989.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 89–25384 Filed 10–26–89; 8:45 am]

BILLING CODE 8010–01–M

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**[Release No. 34–27370; File Nos. SR–PHLX–89–47; SR–NYSE–89–31; SR–Amex–89–24; SR–BSE–89–7; SR–NASD–89–46; and SR–MSE–89–9]**

## Self-Regulatory Organization; Philadelphia Stock Exchange, Inc., et al.; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Changes Relating to Market Circuit Breaker Proposals

In the matter of Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; New York Stock Exchange, Inc.; American Stock Exchange, Inc.; Boston Stock Exchange, Inc.; Midwest Stock Exchange Inc.; and National Association of Securities Dealers, Inc.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder [2] the New York Stock Exchange Inc., ("NYSE"); the Philadelphia Stock Exchange Inc., ("PHLX"); the American Stock Exchange, Inc. ("Amex"); the Boston Stock Exchange, Inc. ("BSE"); the Midwest Stock Exchange, Inc. ("Midwest") and the National Association of Securities Dealers ("NASD") [collectively, the self-regulatory organizations ("SROs")] have filed with the Securities and Exchange Commission ("Commission") proposed rule changes to extend rule changes that implement certain procedures that will be activated during volatile market conditions.

The Commission approved in 1988 circuit breaker proposals by the SROs. In general, the circuit breaker proposals provide that trading in all markets would halt for one hour if the Dow Jones Industrial Average ("DJIA") declines 250 or more points from its previous day's closing level; once trading has been reopened, trading would halt for an additional two hours if the DJIA declines 400 points from the previous day's close. Such circuit breaker proposals were an important part of the measures adopted by the SROs to address volatility concerns in wake of the October 1987 Market Break.

The Commission approved the NYSE, the Amex, the BSE, the MSE, the PHLX, and the NASD circuit breaker proposals on a pilot program basis and these SROs have filed with the Commission proposals to extend their respective pilot programs.[3] The circuit breaker proposals of the Chicago Board Options, Inc. ("CBOE"),[4] the Pacific Stock Exchange, Inc. ("PSE"),[5] and the Cincinnati Stock Exchange, Inc. ("CSE") [6] were proposed by these exchanges, and approved by the Commission, on a permanent basis rather than as a pilot program.

### I. Description of the Proposals

*A. NYSE*

The NYSE circuit breaker proposal was approved by the Commission in October 1988 for a one year pilot program,[7] the NYSE proposes to extend

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[1] 15 U.S.C. 78s(b) (1982)

[2] 17 CFR 240.19b–4 (1989).

[3] The NYSE proposal (SR–NYSE–89–31) was filed with the Commission on October 6, 1989. The Amex proposal (SR–Amex–89–24) was filed with the Commission on October 16, 1989. The NASD proposal (SR–NASD–89–46) was filed with the Commission on October 12, 1989. The PHLX proposal (SR–PHLX–89–47) was filed with the Commission on September 29, 1989. The MSE proposal (SR–MSE–89–9) was filed with the Commission on October 17, 1989. The BSE proposal (SR–BSE–89–7) was filed with the Commission on October 18, 1989.

[4] CBOE Rule 6.3A provides that the CBOE would halt trading in all stock options and stock index options when trading in all stocks on the NYSE has been halted as a result of activation of circuit breakers pursuant to NYSE Rule 80B. CBOE Rule 6.3A also provides procedures for reopening options after such a halt. Additionally, the CBOE amended its Rule 24.7 to establish procedures for the opening, halting, and reopening of the trading in stock index options linked to the halting and reopening of futures on the same or a related index. See Securities Exchange Act Release No. 26198 (October 19, 1988), 53 FR 41637.

[5] The PSE, similar to the NASD, filed a rule in the form of an official policy that stated it would cooperate with a request from the SEC to halt trading in all equity and equity-related products traded at the PSE in conjunction with halted trading at other U.S. markets. See Securities Exchange Act Release No. 26368 (December 16, 1988) 53 FR 51942. The Commission, in approving the PSE's proposed rule change, requested that the PSE implement its policy statement by imposing a trading halt as quickly as practicable whenever the NYSE and other equity markets have suspended trading.

[6] The CSE adopted a policy statement, similar to the NASD and PSE proposals, that requires the CSE to participate in a uniform trading halt by all exchanges. The CSE policy was approved by the Commission on a permanent basis rather than as a pilot program. See Securities Exchange Act Release No. 26440 (January 10, 1989) 54 FR 1830.

[7] See Securities Exchange Act Release No. 26198, supra note four. The NYSE circuit breaker proposal also included (1) special procedures (so-called "sidecar" procedures) if the Standard and Poor's 500 index futures declined 12 points, see NYSE Rule

Continued

its circuit breaker rule, NYSE Rule 80B, for an additional year. NYSE Rule 80B provides for a temporary halt in the trading of all stocks, stock options, and stock index options on the NYSE if the DJIA reaches certain trigger values. Specifically, trading would halt for one hour if the DJIA declines 250 or more points from its previous day's closing level; once trading has been reopened, trading would halt for an additional two hours if the DJIA declines 400 points from the previous day's close. Trading would resume following a halt pursuant to procedures similar to those used by the NYSE to open trading on "Expiration Fridays", the days that stock options, stock index options, and stock index futures expire simultaneously.[8]

*B. Amex*

The Amex's circuit breaker rule is substantially identical to the NYSE's Rule 80B.[9] The Amex proposes to extend its circuit breaker provision for an additional year. Under the Amex's pilot program, trading in all stocks and options will halt for one hour if the DJIA declines 250 or more points from its previous day's closing level; once trading has been reopened, trading will halt for an additional two hours if the DJIA declines 400 points from the previous day's close. The Amex proposal contains provisions for halting trading for the remainder of the day and using abbreviated reopening procedures that are substantially identical to the NYSE procedures.

The Amex pilot program also provides that index options are subject to a trading halt within ten minutes of a determination that the primary Standard and Poor's 500 Index futures contract traded on the Chicago Mercantile Exchange has reached a price limit due to a decline of 30 index points from the closing value of the previous day.

*C. PHLX, BSE, and MSE*

The PHLX, BSE, and MSE circuit breaker rules are substantially identical to the NYSE's circuit breaker rule. The PHLX and MSE propose to extend their pilot periods to correspond with the NYSE's proposed extended pilot and the BSE proposes to extend its pilot until October 31, 1991.[10]

*D. NASD*

The NASD filed with the Commission a Policy Statement on Market Closing ("Policy Statement"), that states that at times when other major securities markets initiate market-wide trading halts in response to extraordinary market conditions, the NASD will, upon request from the Commission, act to halt domestic trading in all securities quoted on the National Association of Securities Dealers Automatic Quotation ("NASDAQ") system and domestic trading in equity or equity-related securities in the over-the-counter ("OTC") market.[11] The NASD's Policy Statement is effective until December 31, 1989, and the NASD proposes to extend the Policy Statement until December 31, 1990 unless modified or extended prior to that date.

## II. Discussion

The circuit breaker mechanisms were enacted in the wake of the October 1987 Market Break. Both the *Report of the Presidential Task Force on Market Mechanisms* ("Brady Report") and the Working Group's Interim Report recommended that coordinated trading halts and reopening procedures be developed that would be implemented in all U.S. markets for equity and equity related products during large rapid market declines.[12] In response, the SROs submitted proposals to implement circuit breaker procedures that are designed to substitute planned trading halts for unplanned and destabilizing market closings. In addition, the stock index futures exchanges have parallel circuit breakers that have been approved by the Commodity Futures Trading Commission on a permanent basis.[13]

Since the Commission approved these proposals in October 1988, the DIJA has not experienced a one day 250 point decline that would trigger a market halt.[14] The Commission continues to believe that circuit breaker procedures are desirable to deal with potential strains that may develop during periods of extreme market volatility, and, accordingly, the Commission believes that the pilot programs should be extended. The Commission also believes that circuit breakers represent a reasonable means to retard rapid market declines that can have a destabilizing effect on the nation's financial markets and participants.[15]

Accordingly, the Commission finds that the proposed rule changes filed by the NYSE, the PHLX, the Amex, the BSE, the Midwest and the NASD are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and/or to a national securities association, and, in particular, the requirements of section 6[16] and section 15A[17] and the rules and regulations thereunder.[18]

The Commission finds good cause for approving the SRO proposed rule changes prior to the thirtieth day after the date of publication of the proposals in the **Federal Register** because there are no changes being made to the current provisions and accelerated approval would enable the pilots to continue on an uninterrupted basis.

Interested persons are invited to submit written data, views, and

80A, and (2) special routing of certain small orders from public investors over the Designated Order Turnaround system if the DJIA moves 25 points from the previous day's close (so-called Individual Investor Express Delivery System). These were approved on a permanent basis.

[8] See Securities Exchenge Act Release No. 25804 (June 15, 1988), 53 FR 23474.

[9] The Amex circuit breaker proposal was approved by the Commission in Securities Exchange Act Release No. 26198, supra note four. Subsequently the proposal was amended, among other things, to clarify its application to options transactions. See Securities Exchange Act Release No. 26382 (December 21, 1988), 53 FR 52539

[10] See Securities Exchange Act Release No. 26386 (December 22, 1988), 53 FR 52904; Securities Exchange Act Release No. 26357 (December 14, 1988), 53 FR 51182; and Securities Exchange Act Release No. 26218 (October 26, 1988) 53 FR 44137.

[11] See Securities Exchange Act Release No. 26198, *supra* note four. In approving the NASD proposal, the Commission requested that the NASD implement its Policy Statement by imposing a trading halt as quickly as practicable whenever the NYSE and other equity markets have suspended trading (*i.e.*, whenever the DJIA declines 250 or 400 points).

[12] In particular, the Working Group recommended a one-hour trading halt if the DIJA declined 250 points from its previous day's closing level, and a subsequent two-hour trading halt if the DIJA declined 400 points below its previous day's closing level. The Working Group also recommended that the NYSE use reopening procedures, similar to those used on Expiration Fridays, that are designed to enhance the information made public about market conditions.

[13] For example, the Chicago Mercantile Exchange's circuit breaker provides for a downward price limit of 30 points from the previous day's settlement price for its Standard & Poor's 500 future. When trading halts on the NYSE due to a drop in the DJIA of 250 points and the 30 point price limit has been reached, then trading in the future halts on the Chicago Mercantile Exchange.

[14] The sidecar procedures were triggered once, during the last hour of trading on October 13, 1989, as was the 30 point price limit on the Standard & Poor's stock index future. Preliminary indications are that the procedures worked operationally well that day. Finally, the Individual Investor Express Delivery Service has been triggered over 20 times since implementation without operational problems.

[15] The Commission, of course, will review the operation of these procedures during October 1989 and consider modifications to these procedures, if necessary, in light of that experience. During the interim, however, the Commission believes that market continuity and stability warrants extension of the pilot procedures.

[16] 15 U.S.C. 78f (1982).

[17] 15 U.S.C. 78o-3 (1982).

[18] The Commission reaffirms its request that the NASD and PSE implement their policy statements by imposing a trading halt as quickly as practicable whenever the NYSE and other equity markets have suspended trading.

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 person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE, Amex, PHLX, BSE, Midwest, or NASD. All submission should refer to file number SR–NYSE–89–31, SR–PHLX–89–47, SR–NASD–89–46, SR–MSE–89–9, SR–BSE–89–7, or SR–Amex–89–24, and should be submitted by November 17, 1989.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[19] that the proposed rule changes are approved until October 31, 1990 for the NYSE, PHLX, Amex, and MSE, until October 31, 1991 for the BSE, and until December 31, 1990 for the NASD.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Dated: October 23, 1989.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 89–25385 Filed 10–26–89; 8:45 am]

BILLING CODE 8010–01–M

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**[Rel. No. IC–17190; 812–7411]**

## Dean Witter American Value Fund, et al.; Temporary Order

October 23, 1989.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Temporary order under the Investment Company Act of 1940 (the "1940 Act").

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*Applicants:* Dean Witter American Value Fund, Dean Witter California Tax-Free Income Fund, Dean Witter Convertible Securities Trust, Dean Witter Developing Growth Securities Trust, Dean Witter Dividend Growth Securities Inc., Dean Witter Government Securities Plus, Dean Witter High Yield Securities Inc., Dean Witter Intermediate Income Securities, Dean Witter Managed Assets Trust, Dean Witter Natural Resource Development Securities, Inc., Dean Witter New York Tax-Free Income Fund, Dean Witter Option Income Trust, Dean Witter Strategist Fund, Dean Witter Tax Exempt Securities Trust, Dean Witter U.S. Government Securities Trust, Dean Witter Utilities Fund, Dean Witter World Wide Income Trust, Dean Witter World Wide Investment Trust, Dean Witter Value -Added Market Series, Dean Witter/Sears California Tax-Free Daily Income Trust, Dean Witter/Sears Liquid Asset Fund Inc., Dean Witter/Sears Tax-Free Daily Income Trust and Dean Witter/Sears U.S. Government Money Market Trust ("Applicant Funds") and Dean Witter Reynolds Inc. ("DWR") (DWR and Applicant Funds are collectively referred to as "Applicants").

*Relevant 1940 Act Section:* Order requested pursuant to section 11(a) of the 1940 Act.

**SUMMARY:** Applicants (1) have requested an order, pursuant to section 11(a) of the 1940 Act, permitting Applicants and any other registered, open-end management investment company as to which DWR may subsequently serve as investment adviser (collectively, with Applicant Funds, the "DWR Funds") to make certain offers of exchange, until April 23, 1990, without complying with the provisions of paragraph (b)(5) of rule 11a–3 under the 1940 Act; and (2) have requested that such order be made effective on a temporary basis upon the approval, by the SEC, of the issuance of this notice of application.

**FILING DATE:** The application was filed on October 13, 1989.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicans, Two World Trade Center, New York, New York 10048.

**FOR FURTHER INFORMATION CONTACT:** Stuart Horwich, Staff Attorney (202) 272–3035 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 Repesentations

1. Applicant Funds are registered under the 1940 Act as open-end, management investment companies. DWR is a registered broker-dealer and, through its InterCapital Division, provides services to Applicant Funds. It is an investment adviser registered under the Investment Advisers Act of 1940. DWR is the principal underwriter for shares of Applicant Funds other than Dean Witter/Sears California Tax-Free Daily Income Trust, Dean Witter/Sears Liquid Asset Fund Inc., Dean Witter/Sears Tax-Free Daily Income Trust and Dean Witter/Sears U.S. Government Money Market Trust. Those funds are self-distributed.

2. Certain of the DWR Funds may impose a contingent deferred sales charge ("CDSL") on shares redeemed within six years of purchase (the "CDSL Funds"). The rate of the applicable CDSL declines over time, with a 5% CDSL applicable for redemptions within the first year of purchase, and 1% for shares redeemed during the sixth year. DWR receives the proceeds of the CDSL and also receives payments pursuant to plans of distribution adopted by the CDSL Funds pursuant to rule 12b–1 under the 1940 Act ("12–1 plans"). The DWR Funds received orders of the Commission granting certain exemptions with respect to the imposition of the CDSL.

3. Shares of other DWR Funds sold with a front-end sales load (the "FESL Funds"). In addition, shares of other DWR Funds are sold without a sales load; however, those which are money market funds (the "Money Market Funds") have adopted 12b–1 plans under which they may bear distribution expenses in amounts up to a maximum of .15% per annum of their respective average net assets. Currently, DWR collects a 12b–1 fee of .10%W per annum from the Money Market Funds.

4. In 1984, the Commission issued an order pursuant to section 11(a) of the 1940 Act, permitting exchanges of shares between the CDSL Funds and the Money Market Funds (the "Prior Order"). As described in the application that requested the Prior Order, when shares of a CDSL Fund are exchanged for shares of one of the Money Market Funds, and during the period the Money Market Fund shares so acquired are held, there is a tolling of the holding period used in determining the CDSL to be applied upon redemption of those shares. The Prior Order was amended upon an application in 1987 to expand the types of permitted offers of exchange so as to enable exchanges of shares between the CDSL Funds and the FESL Funds. Under a condition agreed to in obtaining the 1987 amendment to the Prior Order, the DWR Funds agreed to comply with rule 11a–3 under the 1940 Act "when and if adopted".

5. The Commission's release adopting rule 11a–3 under the 1940 Act (Investment Company Act Release No.

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[19] 15 U.S.C. 78s(b) (2) (1982).

[20] 17 CFR 200.30–3(a) (12) (1986).

17097) (August 3, 1989) provided that holders of orders pursuant to section 11(a) of the 1940 Act that were conditioned specifically upon compliance with rule 11a–3, if and when adopted, have until 60 days after the date of the rule's publication in the **Federal Register** (October 23, 1989) to conform fees and sales loads to the requirements set forth in the rule. Accordingly, the DWR Funds must comply with all provisions of rule 11a–3 by October 23, 1989. Other holders of orders pursuant to section 11(a) that were not so conditioned need not conform their fees and sales loads to rule 11a–3 until October 23, 1990.

6. In connection with offers of exchanges between the CDSL Funds and the Money Market Funds, paragraph (b)(5) of rule 11a–3 requires that the holding period used to determine the CDSL percentage rate applicable upon a redemption of shares include any period of time during which the shares (or the shares exchanged to acquire the redeemed shares) were held as Money Market Fund shares, unless, upon a redemption of shares which result in a CDSL being imposed, a credit is given in an amount equal to the Money Market Fund 12b–1 fees attributable to such shares (or attributable to Money Market Fund shares previously exchanged to acquire the redeemed shares) (the "12b–1 Credit"). Applicant Funds wish to continue to toll the holding period used in determining the applicable CDSL when shares of a CDSL Fund are exchanged for shares of a Money Market Fund. However, to do so under the terms of paragraph (b)(5) of rule 11a–3, it is necessary to provide the 12b–1 Credit because the Money Market Funds bear distribution expenses pursuant to 12b–1 plans. The decision to provide the credit rather than to cease tolling is based on the view of Applicants that use of the 12b–1 Credit is fairer to shareholders of CDSL Funds who have not exchanged shares than is "tacking" of holding periods which paragraph (b)(5) of rule 11a–3 otherwise requires.

7. Applicants assert that implementation of the 12b–1 Credit requires Applicant Funds' transfer agent to develop a variety of new systems. Those systems cannot be written, tested and implemented prior to the October 23, 1989 effective date of rule 11a–3. Thus, absent additional time to comply, Applicant Funds would be forced to suspend exchange privileges between the CDSL Funds and the Money Market Funds on October 23, 1989 in order not to be in violation of rule 11a–3. In addition, any newly organized DWR Funds which are CDSL Funds, and DWR Funds which are now FESL Funds but which become CDSL Funds, would not be able to offer exchanges for shares of Money Market Funds until the systems necessary to provide the 12b–1 Credit are implemented. A suspension of exchange privileges between the CDSL Funds and the Money Market Funds would be disadvantageous to shareholders of the DWR Funds.

8. Based upon the foregoing, Applicants (1) seek an order of the Commission, pursuant to section 11(a) of the 1940 Act, permitting the DWR Funds and DWR to make certain offers of exchange, until April 23, 1990, without complying with the provisions of paragraphs (b)(5) of rule 11a–3 under the 1940 Act; and (2) have requested that an order be issued pursuant to section 11(a) on a temporary basis effective upon the Commission's approval of the issuance of this notice. In making the application, Applicants acknowledge, understand and agree that any order granting the application on a temporary basis shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, further consideration by the Commission of and action upon the application.

**Applicants' Justification For Requested Order**

1. Applicants assert that extensive systems modifications are needed to implement the 12b–1 Credit. In essence, the transfer agent systems used for the DWR Funds must be enhanced to permit a calculation of, and to retain information regarding, 12b–1 fees of the Money Market Funds attributable to the account of each investor who exchanges a CDSL Fund's shares for shares of a Money Market Fund. The system must track this information as to each investor's account through subsequent exchanges, if any, and apply the 12b–1 Credit in the event that a CDSL is determined to be applicable upon redemption of the shares.

2. The system changes involved in implementing the 12b–1 Credit require modification of over 60 separate computer programs. This means that numerous programs must each be written and tested. Although the Applicant Funds' transfer agent has committed to make available substantial personnel resources to design and to implement the new systems, it is nevertheless estimated that the scope of required systems modifications is so extensive that it may take a number of months before the systems are operational.

3. Applicants note that by postponing the date by which the DWR Funds become subject to paragraph (b)(5) of rule 11a–3, investors exchanging shares of the CDSL Funds for shares of the Money Market Funds on or after October 23, 1989, but before April 23, 1990, will not be eligible for the 12b–1 Credit. To provide such a credit would require the development of extensive systems to enable retroactive computation of the 12b–1 Credit. Applicants do not believe it cost-effective to their shareholders to develop such systems. In the estimate of DWR, the cost to Applicant Funds of developing these systems could exceed the aggregate benefits that shareholders could reasonably be expected to receive.

4. Applicants submit that the requested orders under section 11(a) are appropriate and in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. They submit that the granting of the requested temporary order is appropriate and justified because, although Applicants began the process of developing the necessary systems modifications required to comply with paragraph (b)(5) of rule 11a–3 promptly upon the publication of the rule, implementation of those modifications by October 23, 1989 is not possible. Absent the requested temporary order being issued prior to that date and the granting of the other requested order, Applicants will be forced to suspend exchange privileges between the CDSL Funds and the Money Market Funds; a result which Applicants believe would be disadvantageous to shareholders of the DWR Funds.

*Applicants' Undertakings*

Applicants have agreed that the following may be imposed as conditions to the requested order:

1. Except to the extent as may otherwise be permitted under the terms of the requested orderss, the DWR Funds will comply with all requirements of rule 11a–3 as of October 23, 1989.

2. Applicants will monitor and supervise the efforts of their transfer agfent in developing the required systems modifications in an effort to enable implementation of those modifications, if possible, on or before April 23, 1990.

3. The Money Market Funds will not increase the current levels of their 12b–1 payments during the period they are relying upon the order.

**Temporary Order**

Based on the foregoing, the Commission has considered the matter and pursuant to section 11(a) of the 1940 Act, has approved for a 14-day period Applicants' request to continue making offers of exchange offers that do not comply with paragraph (b)(5) of Rule 11a–3.

Accordingly, *it is ordered*, Pursuant to section 11(a) of the 1940 Act and subject to the conditions set forth in the application, that the DWR Funds and DWR are hereby permitted to make offers of exchange between CDSL Funds and Money Market Funds without complying with paragraph (b)(5) of rule 11a–3 under the 1940 Act for 14 days from the date of this order.

By the Commission.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 89–25386 Filed 10–26–89; 8:45 am]

BILLING CODE 8010–01–M

## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster Loan Area #2387]**

### California; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on October 18, 1989, I find that the City and County of San Francisco, and the Counties of Alameda, Monterey, San Benito, San Mateo, Santa Clara, and Santa Cruz, in the State of California, constitute a disaster area as a result of damages caused by an earthquake and aftershocks which began on October 17, 1989. Applications for loans for physical damage may be filed until the close of business on December 18, 1989, and for economic injury until the close of business on July 18, 1990, at the address listed below:

Disaster Area 4 Office, Small Business Administration, 1825 Bell Street, Suite 208, Sacramento, California 95825.

or other locally announced locations. In addition, applications for economic injury from small businesses located in the contiguous counties of Contra Costa, Fresno, Kern, Kings, Marin, Merced, San Luis Obispo, San Joaquin and Stanislaus in the State of California may be filed until the specified date at the above location.

The interest rates are:

| For physical Damage | Percent |
|---|---|
| Homeowners with credit available elsewhere | 8.000 |
| Homeowners without credit available elsewhere | 4.000 |
| Businesses with credit available elsewhere | 8.000 |
| Businesses and non-profit organizations without credit available elsewhere | 4.000 |
| Others (including non-profit organizations) with credit available elsewhere | 9.250 |
| For economic injury: | |
| Businesses and small agricultural cooperatives without credit available elsewhere | 4.000 |

The number assigned to this disaster for physical damage for the State of California is 238702, and for economic injury the number is 686700.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 20, 1989.

**Bernard Kulik,**

*Deputy Associate Administrator for Disaster Assistance.*

[FR Doc. 89–25342 Filed 10–26–89; 8:45 am]

BILLING CODE 8025–01–M

**[License No. 09/09–5363]**

### Surrender of License; Princeton Finance Co.

Notice is hereby given that Princeton Finance Company, 2231 Colby Avenue, Los Angeles, California 90064, has surrendered its license to operate a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Princeton Finance Company was licensed by the Small Business Administration on June 8, 1987.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was accepted on May 8, 1989, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59011. Small Business Investment Companies)

Dated: October 19, 1989.

**Robert G. Lineberry,**

*Deputy Associate Administrator for Investment.*

[FR Doc. 89–25343 Filed 10–26–89; 8:45am]

BILLING CODE 8025–01–M

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. IP89–03; Notice 2]**

### Volvo Cars of North America; Mootness of Petition for Determination of Inconsequential Noncompliance

Earlier this year, Volvo Cars of North America of Rockleigh, New Jersey, petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 et seq.) for an apparent noncompliance with 49 CFR 571.110, Motor Vehicle Safety Standard No. 110, *Tire Selection and Rims*. The basis of the petition was that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published on May 30, 1989, and an opportunity afforded for comment (54 FR 23009).

Paragraphs S4.3 (c) and (d) of Standard No. 110, require that:

A placard be permanently affixed to the glove compartment door or an equally accessible location which displays the vehicle manufacturer's recommended cold tire inflation pressure for maximum loaded vehicle weight and subject to the limitations of S4.3.1, for any other manufacturer specified vehicle loading condition; and the vehicle manufacturer's recommended tire size designation.

Volvo stated that the tire placards on the Volvo 764 (Sedan) and 765 (Wagon) specified the cold tire inflation pressure as 40 PSI for a "Special Spare" tire, which comes on a 4.5"x15" size wheel. However, due to equipment availability difficulties, the spare tires used in 285 of these vehicles were normal road tires that come on 6"x15" alloy road wheels. The cold inflation pressure specified for these tires is 36 PSI. Therefore, Volvo is in noncompliance with Standard No. 110 because the cold inflation pressure and the tire size designation specified for the special spare tires on the tire placards does not correspond with the spare tires used in the 285 Volvos.

Subsequent to publication of its petition notice, Volvo agreed to notify owners of vehicles concerned of the noncompliance, and to provide them with labels that could be placed over the erroneous placards containing the correct inflation pressure for the spare tires. It has informed the agency that this corrective action should be completed by October 20, 1989. It further informed the agency that the number of vehicles covered had been determined

to be 475, not the 285 previously reported.

Inasmuch as Volvo has conducted a notification and remedial campaign as required by the National Traffic and Motor Vehicle Safety Act, its petition for an inconsequential determination, discussed above, is moot, and no further action will be taken on it.

No comments were received on Volvo's petition.

(15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 501.8)

Issued: October 23, 1989.

**Barry Felrice,**

*Associate Administrator for Rulemaking.*

[FR Doc. 89-25300 Filed 10-26-89; 8:45 am]

BILLING CODE 4910-59-M

## DEPARTMENT OF THE TREASURY

### Public Information Collection Requirements Submitted to OMB for Review

Date: October 23, 1989.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2409, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

**Departmental Office**

*OMB Number:* 1505-0104
*Form Number:* None
*Type of Review:* Reinstatement
*Title:* Amendment to the Bank Secrecy Act Regarding Disclosure of Bank Secrecy Act Data
*Description:* Treasury needs reports of currency transactions exceeding $10,000 at financial institutions to identify persons who may be involved in drug trafficking, tax evasion, or other illegal activity. The information will be made available to Treasury law enforcement agencies, other Federal, State, and local law enforcement agencies, and Congressional committees
*Respondents:* State or local governments, Federal agencies or employees
*Estimated Number of Respondents:* 450
*Estimated Burden Hours Per Response:* 12 minutes
*Frequency of Response:* On occasion
*Estimated Total Reporting Burden:* 90 hours
*Clearance Officer:* Dale A. Morgan, [202] 566-2693, Departmental Offices, Room 2409, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220
*OMB Reviewer:* Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR Doc. 89-25366 Filed 10-26-89; 8:45 am]

BILLING CODE 4810-25-M

### Public Information Collection Requirements Submitted to OMB for Review

Date: October 23, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pensylvania Avenue, NW., Washington, DC 20220.

**Internal Revenue Service**

*OMB Number:* New
*Form Number:* 990EZ
*Type of Review:* New Collection
*Title:* Short Form Return of Organization Exempt From Income Tax Under section 501(c) (except black lung benefit trust or private foundation) of the Internal Revenue Code or section 4947(a)(1) trust
*Description:* Form 99EZ is needed to determine that Internal Revenue Code section 501(a) tax-exempt organizations fulfill the operating conditions of their tax exemption. IRS uses the information from this form to determine if the filers are operating within the rules of their exemption.
*Respondents:* Non-profit institutions
*Estimated Number of Respondents:* 100,000
*Estimated Burden Hours Per Response/ Recordkeeping:*
Recordkeeping: 26 hours, 4 minutes
Learning about the law or the form: 4 hours, 20 minutes
Preparing the form; copying, assembling, and sending the form to IRS: 5 hours, 53 minutes 16 minutes
*Frequency of Response:* Annually
*Estimated Total Recordkeeping/ Reporting Burden:* 3,657,000 hours
*OMB Number:* 1545-0044
*Form Number:* 973
*Type of Review:* Extension
*Title:* Corporation Claim for Deduction for Consent Dividends
*Description:* Form 973 is filed by corporations to claim a deduction for dividends paid. If shareholders consent and IRS approves, the corporation may claim a deduction for dividends paid, which reduces the corporation's tax liability. IRS uses Form 973 to determine if the shareholders of the corporation have included the dividends in gross income
*Respondents:* Businesses or other for-profit
*Estimated Number of Respondents:* 500
*Estimated Burden Hours Per Response/ Recordkeeping:*
Recordkeeping: 4 hours, 4 minutes
Learning about the law or the form: 24 minutes
Preparing, copying, assembling, and sending the form to IRS: 29 minutes
*Frequency of Response:* On occasion
*Estimated Total Recordkeeping/ Reporting Burden:* 2,475 hours
OMB Number: 1545-0119
*Form Number:* 1099-R
*Type of Review:* Revision
*Title:* Statement for Recipients of Total Distributions From Profit-Sharing, Retirement Plans, Individual Retirement Arrangements, Insurance Contracts, Etc.
*Description:* Form 1099-R is used to report total distributions from profit-sharing or retirement plans, IRAs, and the surrender of insurance contracts. This information is used by IRS to verify that income has been properly reported by the recipient.
*Respondents:* State or local governments, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations
*Estimated Number of Respondents:* 216,311
*Estimated Burden Hours Per Response:* 18 minutes
*Frequency of Response:* Annually
*Estimated Total Reporting Burden:* 3,512,106 hours
*OMB Number:* 1545-0143
*Form Number:* 2290
*Type of Review:* Extension
*Title:* Heavy Vehicle Use Tax Return
*Description:* Form 2290 is used to compute and report the tax imposed by section 4481 on the highway use of

certain motor vehicles. The information is used to determine whether the taxpayer has paid the correct amount of tax.

*Respondents:* Individuals or households, Farms, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations

*Estimated Number of Respondents:* 486,000

*Estimated Burden Hours Per Response*

*Recordkeeping:*

Recordkeeping: 35 hours, 10 minutes

Learning about the law or the form: 12 minutes

Preparing, copying, and sending the form to IRS: 47 minutes

*Frequency of Response:* Annually

*Estimated Total Recordkeeping/ Reporting Burden:* 17,559,180 hours

*Clearance Officer:* Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224

*OMB Reviewer:* Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR Doc. 89–25367 Filed 10–26–89; 8:45 am]

BILLING CODE 4810–25–M

## Internal Revenue Service

### Tax on Certain Imported Substances; Filing of Petition

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

**ACTION:** Notice.

**SUMMARY:** This notice announces the acceptance under Notice 89–61, 1989–21 I.R.B. 25, of petitions requesting that *perchloroethylene, methyl chloroform,* and *trichloroethylene* be added to the list of taxable substances in section 4672(a)(3) of the Internal Revenue Code. Publication of this notice is in compliance with Notice 89–61. This is not a determination that the list of taxable substances should be modified.

**DATE:** Written comments and requests for a public hearing relating to these petitions must be delivered or mailed by December 26, 1989.

**ADDRESS:** Send comments and requests for a public hearing to the Internal Revenue Service, Attention: CC:CORP:T:R (Petition), Room 4429, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Ruth Hoffman, Office of Assistant Chief Counsel (Passthroughs and Special Industries). Telephone 202–566–4475 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:** The petitions were received on August 28, 1989. The petitioner is Vulcan Chemicals, a manufacturer who exports perchloroethylene and methyl chloroform and imports trichloroethylene. The following is a summary of the information contained in the petitions. The complete petitions are available in the Internal Revenue Service Freedom of Information Reading Room.

*Perchloroethylene*

Harmonized Tariff System number: 2903.23.0000

Schedule B number: 2903.23.0000

Chemical Abstract Service number: 127–18–4

This substance is derived from the taxable chemicals *ethylene* and *chlorine.* Perchloroethylene is produced by the high temperature chlorination of ethylene.

The stoichiometric material consumption formula for this substance is:

$C_2H_4$ ethylene + $Cl_2$ chlorine ► $C_2Cl_4$ perchloroethylene + 4 HCl hydrogen chloride

According to the petition, taxable chemicals constitute 100 per cent by weight of the materials used to produce this substance. The rate of tax for this substance would be $5.44 per ton. This is based upon a conversion factor for ethylene of 0.17 and a conversion factor for chlorine of 1.71.

*Methyl Chloroform*

Harmonized Tariff System number: 2903.19.5010

Schedule B number: 2903.19.5010

Chemical Abstract Service number: 71–55–6

This substance is derived from the taxable chemicals *ethylene* and *chlorine.* Methyl chloroform is produced from vinyl chloride. Vinyl chloride is produced from ethylene dichloride. Ethylene dichloride is produced by the chlorination of ethylene.

The stoichiometric material consumption formula for this substance is

$C_2H_4$ ethylene + 1.5 $Cl_2$ chlorine + 0.25 $O_2$ oxygen ► $CH_3$ $CCl_3$ methyl chloroform + 0.5 $H_2O$ water

According to the petition, taxable chemicals constitute 94.4 per cent by weight of the materials used to produce this substance. The rate of tax for this substance would be $3.18 per ton. This is based upon a conversion factor for ethylene of 0.21 and a conversion factor for chlorine of 0.80.

*Trichloroethylene*

Harmonized Tariff System number: 2903.22.0000

Schedule B number: 2903.22.0000

Chemical Abstract Service number: 79–01–6

This substance is derived from the taxable chemicals *ethylene* and *chlorine.* Trichloroethylene is produced by the oxychlorination of ethylene dichloride. Ethylene dichloride is produced by the chlorination of ethylene.

The stoichiometric material consumption formula for this substance is:

$C_2H_4$ + 1.5 $Cl_2$ chlorine + 0.75 $O_2$ oxygen ► $C_2HCl_3$ trichloroethylene + 1.5 $H_2O$ water

According to the petition, taxable chemicals constitute 84.87 per cent by weight of the materials used to produce this substance. The rate of tax for this substance would be $3.18 per ton. This is based upon a conversion factor for ethylene of 0.21 and a conversion factor for chlorine of 0.80.

**Dale D. Goode,**

*Chief, Regulations Unit, Assistant Chief Counsel (Corporate).*

[FR Doc. 89–25286 Filed 10–26–89; 8:45 am]

BILLING CODE 4830–01–M

## Office of Thrift Supervision

### Columbia Federal Homestead Association, Metairie, LA; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Columbia Federal Homestead Association, Metairie, Louisiana ("Association") with the Resolution Trust Corporation as sole Receiver for the Association on October 13, 1989.

Dated: October 20, 1989.

By the Office of Thrift Supervision.

**M. Danny Wall,**

*Director.*

[FR Doc. 89–25356 Filed 10–26–89; 8:45 am]

BILLING CODE 6720–01–M

**Columbia Homestead Association, Metairie, LA; Appointment of Receiver**

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2)(c) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Columbia Homestead Association, Metairie, Louisiana ("Association") on October 13, 1989.

Dated: October 20, 1989.

By the Office of Thrift Supervision.

M. Danny Wall,

*Director.*

[FR Doc. 89-25357 Filed 10-26-89; 8:45 am]

BILLING CODE 6720-01-M

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**Mid Kansas Federal Savings & Loan Association of Wichita, Wichita, KS; Appointment of Receiver**

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2)(a) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Mid Kansas Federal Savings and Loan Association of Wichita, Wichita, Kansas ("Association") on October 19, 1989.

Dated: October 20, 1989.

By the Office of Thrift Supervision.

M. Danny Wall,

*Director.*

[FR Doc. 89-25358 Filed 10-26-89; 8:45 am]

BILLING CODE 6720-01-M

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**Mid Kansas Savings & Loan Association, F.A., Wichita, KS; Replacement of Conservator With a Receiver**

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Mid Kansas Savings and Loan Association, F.A., Wichita, Kansas ("Association") with the Resolution Trust Corporation as sole Receiver for the Association on October 19, 1989.

Dated: October 20, 1989.

By the Office of Thrift Supervision.

M. Danny Wall,

*Director.*

[FR Doc. 89-25359 Filed 10-26-89; 8:45 am]

BILLING CODE 6720-02-M

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**People's Homestead Federal Bank for Savings, Monroe, LA; Appointment of Receiver**

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2)(a) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for People's Homestead Federal Bank for Savings, Monroe, Louisiana ("Association") on October 19, 1989.

Dated: October 20, 1989.

By the Office of Thrift Supervision.

M. Danny Wall,

*Director.*

[FR Doc. 89-25360 Filed 10-26-89; 8:45 am]

BILLING CODE 6720-01-M

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**People's Homestead Savings Bank, F.S.B., Monroe, LA; Replacement of Conservator With a Receiver**

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for People's Homestead Savings Bank, F.S.B., Monroe, Louisiana ("Association") with the Resolution Trust Corporation as sole Receiver for the Association on October 19, 1989.

Dated: October 20, 1989.

By the Office of Thrift Supervision.

M. Danny Wall,

*Director.*

[FR Doc. 89-25361 Filed 10-26-89; 8:45 am]

BILLING CODE 6720-01-M

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**Seasons Federal Savings Bank, Richmond, VA; Replacement of Conservator With a Receiver**

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Seasons Federal Savings Bank, Richmond, Virginia ("Savings Bank") with the Resolution Trust Corporation as sole Receiver for the Association on October 19, 1989.

Dated: October 20, 1989.

By the Office of Thrift Supervision.

M. Danny Wall,

*Director.*

[FR Doc. 89-25362 Filed 10-26-89; 8:45 am]

BILLING CODE 6720-01-M

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**Seasons Savings Bank, F.S.B., Richmond, VA; Appointment of Receiver**

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2)(a) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Seasons Savings Bank, F.S.B., Richmond, Virginia ("Savings Bank") on October 19, 1989.

Dated: October 20, 1989.

By the Office of Thrift Supervision.

M. Danny Wall,

*Director.*

[FR Doc. 89-25363 Filed 10-26-89; 8:45 am]

BILLING CODE 6720-01-M

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**University Federal Savings Association, Houston, TS; Appointment of Receiver**

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2)(a) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for University Federal Savings Association, Houston, Texas ("Association") on October 13, 1989.

Dated: October 20, 1989.

By the Office of Thrift Supervision.

M. Danny Wall,

*Director.*

[FR Doc. 89-25364 Filed 10-26-89; 8:45 am]

BILLING CODE 6720-01-M

# Sunshine Act Meetings

Federal Register
Vol. 54, No. 207
Friday, October 27, 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).

**PAROLE COMMISSION**

Record of Vote of Meeting Closure

Pub. L. 94–409; 5 U.S.C. 552b)

I, Benjamin F. Baer, Chairman of the United States Parole Commission, presided at a meeting of said Commission which started at nine o'clock a.m. on Tuesday, October 24, 1989 at the Commission's Central Office, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815. The meeting ended at or about 12:30 p.m. The purpose of the meeting was to decide approximately 11 appeals from National Commissioners' decisions pursuant to 28 C.F.R. Sec. 2.27. Eight Commissioners were present, constituting a quorum when the vote to close the meeting was submitted.

Public announcements further describing the subject matter of the meeting and certifications of General Counsel that this meeting may be closed by vote of the Commissioners present were submitted to the Commissioners prior to the conduct of any other business. Upon motion duly made, seconded, and carried, the following Commissioners voted that the meeting be closed: Benjamin F. Baer, Cameron M. Batjer, Jasper Clay, Jr., Vincent Fechtel, Jr., Carol Pavilack Getty, Victor M.F. Reyes, Daniel R. Lopez, and G. MacKenzie Rast.

*In witness whereof,* I make this official record of the vote taken to close this meeting and authorize this record to be made available to the public.

Dated: October 24, 1989.

**Benjamin F. Baer,**

*Chairman, U.S. Parole Commission.*

[FR Doc. 89–25507 Filed 10–25–89; 2:41 pm]

BILLING CODE 4410–01–M

# Corrections

Federal Register
Vol. 54, No. 207
Friday, October 27, 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.

## GENERAL SERVICES ADMINISTRATION

**41 CFR Part 101-41**

**[FPMR Temp. Reg. G-53]**

### Submission of Paid Freight Bills/ Invoices, Commercial Bills of Lading, Government Transportation Requests, Passenger Coupons, and Supporting Documentation Covering Transportation Services Under Cost-Reimbursement Contracts

*Correction*

In rule document 89-9418 beginning on page 15942 in the issue of Thursday, April 20, 1989, make the following correction:

1. On page 15942, in the second column, under **Federal Property Management Regulations, Temporary Regulation G-53**, paragraph 3. should read: "3. *Expiration date.* This regulation expires on (Insert date not to exceed 6 months after effective date (October 20, 1989))."

BILLING CODE 1505-01-D

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

**Public Health Service**

**45 CFR Part 60**

**RIN 0905-AC51**

### National Practitioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners

*Correction*

In rule document 89-24425 beginning on page 42722 in the issue of Tuesday, October 17, 1989, make the following corrections:

1. On page 42722, in the first column, under **FOR FURTHER INFORMATION CONTACT**, in the first line, "M.S." should read "M.D.".

2. On page 42723, in the 3rd column, in the 1st complete paragraph, in the 22nd line, "allows" should read "allow".

3. On page 42728, in the third column, in the third complete paragraph, in the last line, insert a period after "§ 60.12".

**§ 60.3 [Corrected]**

4. On page 42731, in the first column, in the first complete paragraph, in the first line, "*Health care practitioners*" should read "*Health care practitioner*".

**§ 60.11 [Corrected]**

5. On page 42733, in the third column, in § 60.11(a)(4), in the fifth line, after "practitioner" insert ", or to which the physician, dentist or other health care practitioner"; and in § 60.11(b), in the last line, insert a period after "§ 60.12".

**§ 60.14 [Corrected]**

6. On page 42734, in the second column, in § 60.14, the first paragraph should be designated "(a)".

BILLING CODE 1505-01-D

## DEPARTMENT OF TRANSPORTATION

**Coast Guard**

**33 CFR Part 165**

**[CGD13 89-03]**

### Security Zones; Puget Sound, WA

*Correction*

In proposed rule document 89-22972 beginning on page 40127 in the issue of Friday, September 29, 1989, make the following corrections:

**§ 165.1304 [Corrected]**

1. On page 40129, in the second column, in the first line, "47°43'17"" should read "47°42'17"".

2. On the same page, in the same column, in the fifth line, "122°36'39" W" should read "122°36'29" W".

3. On the same page, in the same column, in § 165.1304(a)(2), in the third line, "undersea" should read "Undersea".

4. On the same page, in the same column, in § 165.1304(a)(2), in the fourth line, "Detachment" was misspelled.

5. On the same page, in the same column, in § 165.1304(a)(2), in the ninth line, "122°33'53" W" should read "122°44'53" W".

6. On the same page, in the same column, in § 165.1304(a)(3)(i), in the fifth line, "122°42'09" W" should read "122°40'09" W".

7. On the same page, in the same column, in § 165.1304(a)(3)(ii), in the fifth line, "122°40'09" W" should read "122°33'03" W".

8. On the same page in the same column, in § 165.1304(a)(4), in the first line, "water" should read "waters".

9. On the same page in the third column, in § 165.1304(b)(2), in the second line, after "do" insert "not".

10. On the same page in the same column, in § 165.1304(b)(2)(ii), in the third line "that" should read "their".

11. On the same page in the same column, in § 165.1304(b)(2)(iii), in the fifth line from the bottom, "certificates" should read "certificate".

BILLING CODE 1505-01-D

Federal Register

Friday
October 27, 1989

Part II

# Department of Defense

Department of the Army

32 CFR Part 536

Claims Against the United States; Final Rule

## DEPARTMENT OF DEFENSE

### Department of the Army

### 32 CFR Part 536

### Claims Against the United States

**AGENCY:** Department of the Army, DOD.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Army announces a change of the regulatory provisions controlling the processing and settlement of administrative claims filed against the Army. This change will inform third parties of the procedures currently controlling the processing and settlement of these administrative claims by the Army.

**EFFECTIVE DATE:** November 27, 1989.

**FOR FURTHER INFORMATION CONTACT:** Mr. James A. Mounts, Jr., Deputy Director, U.S. Army Claims Service, Office of The Judge Advocate General, Fort Meade, Maryland 20755–5360, (301) 677–7622.

**SUPPLEMENTARY INFORMATION:** This change implements a statutory change concerning advance payments for claims arising under the Military Claims Act, National Guard Claims Act, and Foreign Claims Act. It clarifies documentation required and the measure of damages for personal injury and wrongful death claims arising overseas. The change adds guidance concerning the need for claimants to cooperate in substantiating a claim under the Military Claims Act.

### Executive Order 12291

This final rule has been reviewed under Executive Order 12291 and the Secretary of the Army has classified this action as non-major. The effect of the final rule on the economy will be less than $100 million.

### Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 and the Secretary of the Army has certified that this action does not have a significant impact on a substantial number of small entities.

### Paperwork Reduction Act

This final rule does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget under the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

### List of Subjects in 32 CFR Part 536

Claims, Foreign claims, Tort claims.

Dated: October 11, 1989.

**Jack F. Lane, Jr.,**

*Commanding, United States Army Claims Service, Office of The Judge Advocate General, Department of Defense.*

32 CFR part 536 is revised as follows:

## PART 536—CLAIMS AGAINST THE UNITED STATES

**Subpart A—General Provisions**



**Subpart B—Claims Arising From Activities of Military or Civilian Personnel or Incident to Noncombat Activities**



**Subpart C—Claims Arising From Activities of National Guard Personnel While Engaged in Duty or Training**



**Subpart D—Claims Incident to Use of Government Vehicles and Other Property of the United States not Cognizable Under Other Law**



**Authority:** 10 U.S.C. 939, 2733, 2734, 2734a, 2736, 2737, 3012, 4801 through 4804, and 4806; 28 U.S.C. 1346(b), 2401(b), 2402, 2671 through 2680; and 32 U.S.C. 715.

### Subpart A—General Provisions

#### § 536.1 Purpose and scope.

(a) *Purpose.* Part 536 prescribes policies and procedures to be followed in the filing, investigation, processing and administrative settlement of Department of Army (DA) generated noncontractual claims. Sections 536.1 through 536.13 contain general instructions and guidance for the investigation and processing of claims and apply to all claims unless other laws or regulations specify other procedures. They are intended to ensure that incidents that may result in claims are promptly and efficiently investigated under supervision adequate to ensure a sound basis for official action and that all claims resulting from such incidents are expeditiously settled. The Secretary of the Army has delegated authority to The Judge Advocate General (TJAG) to assign areas of responsibility and designate functional responsibility for claims purposes. TJAG has delegated authority to the Commander, U.S. Army Claims Service (USARCS) to carry out these responsibilities. USARCS is the agency through which the Secretary of the Army and TJAG discharge their responsibilities for claims administration. The proper mailing address of USARCS is Commander, U.S. Army Claims Service, Office of The Judge Advocate General, Fort George G. Meade, Maryland 20755–5360.

(b) *Scope*—(1) *Applicability.* (i) Sections 536.20 through 536.35 apply in the settlement of claims under the Military Claims Act (MCA) (10 U.S.C. 2733) for personal injury, death or property damage that was either caused by members or employees of the DA acting within the scope of their employment or otherwise incident to noncombat activities of the DA.

(ii) Section 536.40 sets forth the procedures to be followed and the standards to be applied in the processing of claims cognizable under Article 139, Uniform Code of Military

Justice (UCMJ) (10 U.S.C. 939) for property willfully damaged or wrongfully taken or withheld by members of the DA.

(iii) Section 536.50 governs the administrative settlement of claims under the Federal Tort Claims Act (FTCA) (28 U.S.C. 1346(b), 2671–2680) for personal injury, death or property damage caused by the negligent act or omissions of members or employees of the DA while acting within the scope of their employment.

(iv) Section 536.60 provides the procedures to be followed in the settlement of claims under the Army Maritime Claims Settlement Act (10 U.S.C. 4801–4804, 4806) for damage caused by a vessel of or in the service of the Army.

(v) Sections 536.70 through 536.81 provide instructions for settlement of claims under the National Guard Claims Act (NGCA) (32 U.S.C. 715) for personal injury, death or property damage that was either caused by a member or employee of the Army National Guard (ARNG) while in training or duty under Federal law, and acting within the scope of their employment; or otherwise incident to noncombat activities of the ARNG not in active Federal service.

(vi) Sections 536.90 through 536.97 provide instructions for settlement of claims under 10 U.S.C. 2737 for personal injury, death or property damage (not cognizable under any other law) incident to the use of Government property by members or employees of the DA.

(2) *Nonappropriated fund activities.* Claims arising from acts or omissions of employees of nonappropriated fund activities within the United States, its Territories, and possessions, are processed in the manner prescribed by applicable regulations. In oversea areas, such claims will be processed in accordance with treaties or agreements between the United States and foreign countries with respect to the settlement of claims arising from acts or omissions of military and civilian personnel of the United States in such countries, or in accordance with applicable regulations as appropriate.

(3) *Nonapplicability.* Sections 536.1 through 536.13 do not apply to:

(i) Contractual claims which are under the provisions of Public Law 85–804, 28 August 1958 (72 Stat. 972) and AR 37–103, AR 37–103 and other Army Regulations referenced herein are available thru: National Technical Information Services, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161, or other regulations including acquisition regulations.

(ii) Maritime claims (§ 536.60).

**§ 536.2 Information and assistance.**

(a) Government personnel may not represent any claimant or receive any payment or gratuity for services rendered. They may not accept any share or interest in a claim or assist in its presentation, under penalty of Federal criminal law (18 U.S.C. 203, 205). They are prohibited from disclosing information which may be the basis of a claim, or any evidence of record in any claims matter, except as prescribed in §§ 518.1 through 518.4 of this chapter or other pertinent regulations. A person lacking authority to approve or disapprove a claim may not advise a claimant or his representative as to the disposition recommended.

(b) The prohibitions against furnishing information and assistance do not apply to the performance of official duty. Any person who indicates a desire to file a claim against the United States will be instructed concerning the procedure to follow. He will be furnished claim forms, and, when necessary, will be assisted in completing the forms and assembling evidence. He will not be assisted in determining what amount to claim. In the vicinity of a field exercise, maneuver, or disaster, information may be disseminated concerning the right to present claims, the procedure to be followed, and the names and locations of claims officers, and engineer repair teams. When the government of a foreign country in which the U.S. Armed Forces are stationed has assumed responsibility for the settlement of certain claims against the United States, officials of that country will be furnished pertinent information and evidence so far as security considerations permit.

**§ 536.3 Definitions and explanations.**

The following terms as used in §§ 536.1 through 536.13 and the matters referred to in § 536.1(b) will have the meanings here indicated:

(a) *Affirmative Claims.* The government's statutory right to recover money, property, or repayment in kind incurred as a result of property loss, damage, or destruction by any individual, partnership, association or other legal entity, foreign or domestic, except an instrumentality of the United States. Also, the Government's statutory right to recover the reasonable medical costs expended for hospital, medical, surgical, or dental care and treatment (including prostheses and medical appliances) incurred under circumstances creating tort liability upon some third person.

(b) *Civilian Employees.* Civilian employee means a person whose activities the Government has the right to direct and control, not only as to the result to be accomplished but also as to the means used; this includes, but is not limited to, full-time Federal civilian officers and employees. The term should be distinguished from the term "independent contractor" for whose actions the Government generally is not liable. The determination of who is a civilian employee is a Federal question determined under Federal law and not under local law.

(c) *Claim.* A demand for payment of a specified sum of money (other than the ordinary obligations incurred for services, supplies or equipment) and, unless otherwise specified in this regulation, in writing and signed by the claimant or a properly designated representative.

(d) *Claim file.* The claim, report of the claims officer or other report of investigation, supporting documentation, and pertinent correspondence.

(e) *Claim approval authority.* Except for claims under 10 U.S.C. 939, 31 U.S.C. 3721, and treaties or international agreements such as the North Atlantic Treaty Organization (NATO), Status of Forces Agreement (SOFA), and subject to any limitations found in specific provisions of these regulations, the authority to approve and pay a claim in the amount presented or in a lesser amount upon the execution of a settlement agreement by the claimant. A person with approval authority may not disapprove a claim in its entirety nor make a final offer, subject to any limitations found in specific provisions of this regulation.

(f) *Claim settlement authority.* The authority to approve a claim, to deny a claim in its entirety, or to make a final offer subject to any limitations found in specific provisions of this regulation.

(9) *Claims attorney.* DA or DOD civilian attorney assigned to a judge advocate or legal office, who has been designated by the Commander, USARCS.

(h) *Claims judge advocate.* An officer of the Judge Advocate General's Corps designated by a command or staff judge advocate (SJA) to be in immediate charge of claims activities of the command.

(i) *Claims Officer.* A commissioned officer, warrant officer, or qualified civilian employee detailed by the commander of an installation or unit who is trained or experienced in the investigation of claims.

(j) *Claimant.* An individual, partnership, association, corporation,

country, state, territory, or other political subdivision of such country; does not include the U.S. Government or any of its instrumentalities, except as prescribed by statute. Indian tribes are not proper party claimants but individual Indians can be claimants.

(k) *Combat activities.* Activities resulting directly or indirectly from action by the enemy, or by U.S. Armed Forces engaged in, or in immediate preparation for, impending armed conflict.

(l) *Disaster.* A sudden and extraordinary calamity occasioned by activities of the Army, other than combat, resulting in extensive civilian property damage or personal injuries and creating a large number of potential claims.

(m) *Federal agency.* A federal agency includes the executive departments and independent establishments of the United States and corporations acting as instrumentalities or agencies of the United States but does not include any contractor with the United States.

(n) *Final offer.* An offer of payment by a settlement authority in full and final settlement of a claim which, if not accepted, constitutes a final action for purposes of filing suit under § 536.50 or filing an appeal under §§ 536.20 through 536.35 and 536.70 through 536.81, provided such offer is made in writing and meets the other requirements of a final action as set forth in this regulation.

(o) *Government vehicle.* A vehicle owned or on loan to any agency of the Government of the United States or privately owned, and operated by members or civilian employees of the DA in the scope of their office or employment with the Government of the United States including vehicles being operated on joint operations of the U.S. Armed Forces.

(p) *Medical claims judge advocate.* A judge advocate (JA) assigned to an Army Medical Center, under an agreement between TJAG and The Surgeon General, to perform the primary duty of investigating and processing medical malpractice claims.

(q) *Medical claims investigator.* A senior legal specialist or qualified civilian assigned to assist a medical claims JA on a full-time basis. A medical claims investigator is authorized to administer oaths under the provisions of Article 136(b)(6), UCMJ, 10 U.S.C. 936(b)(6) when performing investigative duties.

(r) *Medical malpractice claim.* A claim arising out of substandard or inadequate care of an Army patient.

(s) *Military personnel.* Military personnel means members of the DA on active duty for training, or inactive duty training as defined in AR 310–25 and 10 U.S.C. 101(22), 101(23), and 101(30). This includes members of the District of Columbia ARNG while performing active duty or training under 32 U.S.C. 316, 502, 503, 504 or 505.

(t) *Noncombat activities.* A noncombat activity arises from authorized activities essentially military in nature, having little parallel in civilian pursuits and which historically have been considered as furnishing a proper basis for payment of claims, such as practice firing of missiles and weapons, training and field exercises, and maneuvers, including, in connection therewith, the operation of aircraft and vehicles, and use and occupancy of real estate, and movement of combat or other vehicles designed especially for military use. Activities incident to combat, whether in time of war or not, and use of military personnel and civilian employees in connection with civil disturbances, are excluded.

(u) *Personal property.* Property consisting solely of corporeal personal property, that is, tangible things. Personal property does not consist of the loss or forfeiture of a security deposit or a contingent financial benefit.

### § 536.4 Treaties and international agreements.

(a) The governments of some foreign countries have by treaty or agreement waived or assumed, or may hereafter waive or assume, certain claims against the United States. In such instances claims will not be settled under laws or regulations of the United States.

(b) The prohibition stated in paragraph (a) of this section is not applicable to claims within the purview of Article VIII of the Agreement Regarding the Status of Forces of Parties to the North Atlantic Treaty or similar type agreements which normally will be investigated and settled as therein provided.

### § 536.5 Claims.

(a) *Who may present.* (1) A claim may be presented by the owner of the property, or in his name by a duly authorized agent or legal representative. As used in this regulation an owner includes the following:

(i) *For real property.* The mortgagor, or the mortgagee, if he or she can maintain a cause of action in the local courts involving a tort to that specific property. When notice of divided interests in real property is received, the claim should, if feasible, be treated as a single claim or a release from all interests must be obtained.

(ii) *For personal property.* A bailee, leasee, mortgagee, and conditional vendor, or others having title for purposes of security only, are not proper claimants unless specifically authorized by the statute and implementing regulations in question. If more than one party has a real interest in the property, all must join in the claim or a release from all interests must be obtained.

(2) A claim for personal injury may be presented by the injured person or duly authorized agent or legal representative.

(3) A claim based on death may be presented by the executor or administrator of the deceased's estate, or by any person determined to be legally or beneficially entitled. The amount allowed will, to the extent practicable, be apportioned among the beneficiaries in accordance with the law applicable to the incident.

(4) A claim for medical, hospital, or burial expenses may be presented by any person who by reason of family relationship has in fact incurred the expenses for which the claim is made. However, for claims cognizable under the provisions of the FTCA, see § 536.50, and for claims cognizable under the provisions of the Nonscope of Employment Claims Act, see §§ 536.90 through 536.97.

(5) A claim presented by an agent or legal representative will be made in the name of the claimant and signed by the agent or legal representative showing the title or capacity. Written evidence of the authority of such person to act is mandatory except when controlling law does not require such evidence.

(6) A claim normally will include all damages that accrue by reason of the incident. Where the same claimant has a claim for damage to or loss of property and a claim for personal injury or a claim based on death arising out of the same incident, each of the foregoing or any combination of them ordinarily represent only an integral part or parts of a single claim or cause of action. Under §§ 536.20 through 536.35 and the Foreign Claims Act (FCA) (10 U.S.C. 2734), a single claimant is entitled to be compensated only one time for all damages or injuries arising out of an incident.

(b) *Subrogation.* A claim may be presented by a subrogee in his own name if authorized by the law of the place where the incident giving rise to the claim occurred, provided subrogation is not barred by the regulation applicable to the type of claim involved.

(1) The claims of the subrogor (insured) and subrogee (insurer) for damages arising out of the same

incident constitute separate claims, and it is permissible for the aggregate of such claims to exceed the monetary jurisdiction of the approving or settlement authority.

(2) A subrogor and a subrogee may file a claim jointly or individually. A fully subrogated claim will be paid only to the subrogee. Whether a claim is fully subrogated is a matter to be determined by local law. Some jurisdictions permit the property owner to file for property damage even though the owner has been compensated for the repairs by an insurer. In such instances a release should be obtained from both parties in interest or be released by both of them. The approved payment in a joint claim will be by joint check which will be sent to the subrogee unless both parties specify otherwise. If separate claims are filed, payment will be by check issued to each claimant to the extent of his undisputed interest.

(3) Where a claimant has made an election and accepted workmen's compensation benefits, both statutory and case law of the jurisdiction should be scrutinized to determine to what extent the claim of the injured party against third parties has been extinguished by acceptance of compensation benefits. While it is infrequent that the claim is fully extinguished, it is true in some jurisdictions, and the only proper party claimant is the workmen's compensation carrier. Even where the injured party's claim has not been fully extinguished, most jurisdictions provide that the compensation insurance carrier has a lien on any recovery from the third party, and no settlement should be reached without approval by the carrier where required by local law. Additionally, claims from the workmen's compensation carrier as subrogee or otherwise will not be considered payable where the United States has paid the premiums, directly or indirectly, for the workmen's compensation insurance. Applicable contract provisions holding the United States harmless should be utilized.

(4) Whether medical payments paid by an insurer to its insured can be subrogated depends on local law. Some jurisdictions prohibit these claims to be submitted by the insurer notwithstanding a contractual provision providing for subrogation. Therefore, local law should be researched prior to deciding the issue, and claims forwarded to higher headquarters for adjudication should contain the results of said research. Such claims, where prohibited by state law, will also be barred by the Antiassignment Act.

(5) Care will be exercised to require insurance disclosure consistent with the type of incident generating the claim. Every claimant will, as a part of his claim, make a written disclosure concerning insurance coverage as to:

(i) The name and address of every insurer;

(ii) The kind and amount of insurance;

(iii) Policy number;

(iv) Whether a claim has been or will be presented to an insurer, and, if so, the amount of such claims; and

(v) Whether the insurer has paid the claim in whole or in part, or has indicated payment will be made.

(6) Each subrogee must substantiate his interest or right to file a claim by appropriate documentary evidence and should support the claim as to liability and measure of damages in the same manner as required of any other claimant. Documentary evidence of payment to a subrogor does not constitute evidence either of liability of the Government or of the amount of damages. Approving and settlement authorities will make independent determinations upon the evidence of record and the law.

(7) Subrogated claims are not cognizable under §§ 536.90 through 536.97 and the FCA (10 U.S.C. 2734).

(c) *Transfer and assignments.* (1) Except as they occur by operation of law or after a voucher for the payment has been issued, unless within the exceptions set forth by statute (see 31 U.S.C. 3727 and AR 37–107), the following are null and void—

(i) Every purported transfer or assignment of a claim against the United States, or of any part of or interest in a claim, whether absolute or conditional.

(ii) Every power of attorney or other purported authority to receive payment of all or part of any such claim.

(2) The purposes of the Antiassignment Act are to eliminate multiple payment of claims, to cause the United States to deal only with original parties, and to prevent persons of influence from purchasing claims against the United States.

(3) In general, this statute prohibits voluntary assignments of claims with the exception of transfers or assignments made by operation of law. The operation of law exception has been held to apply to claims passing to assignees because of bankruptcy proceedings, assignments for the benefit of creditors, corporate liquidations, consolidations or reorganizations, and where title passes by operation of law to heirs or legatees. Subrogated claims which arise under a statute are not barred by the Antiassignment Act. For example, subrogated worker's compensation claims are cognizable when presented by the insurer.

(4) Subrogated claims which arise pursuant to contractual provisions may be paid to the subrogee if the subrogated claim is recognized by state statute or decision. For example, an insurer under an automobile insurance policy becomes subrogated to the rights of a claimant upon payment of a property damage claim. Generally, such subrogated claims are authorized by state law and are therefore not barred by the Antiassignment Act.

(5) Before claims are paid, it is necessary to determine whether there may be a valid subrogated claim under Federal or State statute or subrogation contract held valid by State law. If there may be a valid subrogated claim forthcoming, payment should be withheld for this portion of the claim. If it is determined that claimant is the only proper party, full settlement is authorized.

(d) *Action by claimant*—(1) *Form of claim.* The claimant will submit his claim using authorized official forms whenever practicable. A claim is filed only when the elements indicated in § 536.3(c) have been supplied in writing by a person authorized to present a claim, unless the claim is cognizable under a regulation that specifies otherwise. A claim may be amended by the claimant at any time prior to final agency action or prior to the exercise of the claimant's option under 28 U.S.C. 2675(a).

(2) *Signatures.* (i) The claim and all other papers will be signed in ink by the claimant or by his duly authorized agent. Such signature will include the first name, middle initial, and surname. A married woman must sign her claim in her given name, for example, "Mary A. Doe," rather than "Mrs. John Doe."

(ii) Where the claimant is represented, the supporting evidence required by paragraph (a)(5) of this section will be required only if the claim is signed by the agent or legal representative. However, in all cases in which a claimant is represented, the name and address of the representative will be included in the file together with copies of all correspondence and records of conversations and other contacts maintained and included in the file. Frequently, these records are determinative as to whether the statute of limitations has been tolled.

(3) *Presentation.* The claim should be presented to the commanding officer of the unit involved, or to the legal office of the nearest Army post, camp, or station, or other military establishment

convenient to the claimant. In a foreign country where no appropriate commander is stationed, the claim should be submitted to any attache of the U.S. Armed Forces. Claims cognizable under Article VIII of the Agreement Regarding the Status of Forces of Parties to the North Atlantic Treaty, Article XVIII of the Treaty of Mutual Cooperation and Security between the United States and Japan regarding facilities and areas and the Status of United States Armed Forces in Japan (Japan SOFA) or other similar treaty or agreement are filed with designated claims officials of the receiving State.

(e) *Evidence to be submitted by claimant.* The claimant should submit the evidence necessary to substantiate his claim. It is essential that independent evidence be submitted which will substantiate the correctness of the amount claimed.

(f) *Statute of limitations*—(1) *General.* Each statute available to the Department of the Army for the administrative settlement of claims, except the Maritime Claims Settlement Act (10 U.S.C. 4802), specifies the time during which the right to file a claim must be exercised. These statutes of limitations, which are jurisdictional in nature, are not subject to waiver unless the statute expressly provides for waiver. Specific information concerning the period for filing under each statute is contained in the appropriate implementing sections of this regulation.

(2) *When a claim accrues.* A claim accrues on the date on which the alleged wrongful act or omission results in an actionable injury or damage to the claimant or his decedent. Exceptions to this general rule may exist where the claimant does not know the cause of injury or death; that is, the claim accrues when the injured party, or someone acting on his or her behalf, knows both the existence and the cause of his or her injury. However, this exception does not apply when, at a later time, he or she discovers that the acts inflicting the injury may constitute medical malpractice. (See *United States* v. *Kubrick*, 444 U.S. 111, 100 S. Ct. 352 (1979).) The discovery rule is not limited to medical malpractice claims; it has been applied to diverse situations involving violent death, chemical and atomic testing, and erosion and hazardous work environment. In claims for indemnity or contribution against the United States, the accrual date is the time of the payment for which indemnity is sought or on which contribution is based.

(3) *Effect of infancy, incompetency or the filing of suit.* The statute of limitations for administrative claims is not tolled by infancy or incompetency. Likewise, the statute of limitations is not tolled for purposes of filing an administrative claim by the filing of a suit based upon the same incident in a Federal, State, or local court against the United States or other parties.

(4) *Amendment of Claims.* A claim may be amended by the claimant at any time prior to final agency action or prior to the exercise of the claimant's option under 28 U.S.C. 2675(a). A claim may be amended by changing the amount, the bases of liability, or elements of damages concerning the same incident. Parties may be added only if the additional party could have filed a joint claim initially. If the additional party had a separate cause of action, his claim may not be treated as an amendment but only as a separate claim and is thus barred if the statute of limitations has run. For example, if a claim is timely filed on behalf of a minor for personal injuries, a subsequent claim by a parent for loss of services is considered a separate claim and is barred if it is not filed prior to the running of the statute of limitations. Another example is where a separate claim is filed for loss of services or consortium by a spouse arising out of injuries to the husband or wife of the claimant. On the other hand, if a claim is timely filed by an insured for the deductible portion of the property damage, a subsequent claim by the insurer based on payment of property damage to its insured may be filed as an amendment even though the statute of limitations has run, unless final action has been taken on the insured's claim.

(5) *Date of receipt stops the running of the statute.* In computing the time to determine whether the period of limitations has expired, exclude the first day and include the last day, except when it falls on a nonworkday such as Saturday, Sunday, or a legal holiday, in which case it is to be extended to the next workday.

(g) *By the command concerned*—(1) *General.* If the claim is of a type and amount within the jurisdiction of the claims office of the command concerned and the claim is meritorious in the amount claimed, it will be approved and paid. If a claim in an amount in excess of the monetary jurisdiction of the claims office is meritorious in a lesser amount within its jurisdiction, the claim may be approved for payment provided the amount offered is accepted by the claimant in settlement of the claim. If the claim is not of a type within the jurisdiction of the claims office, or if the claimant will not accept an amount within its jurisdiction, the claim with supporting papers and a recommendation for appropriate action will be forwarded to the next higher claims authority. If the claim is determined to be not meritorious, it will be disapproved provided the claims office has settlement authority for claims of the type and amount involved. Prior to the disapproval of a claim under a particular statute, a careful review should be made to ensure that the claim is not properly payable under a different statute or on another basis.

(2) *Claims within settlement authority of USARCS or the Attorney General.* A copy of each of the following types of claims will be forwarded immediately to the Commander, USARCS:

(i) One that appears to be of a type that must be brought to the attention of the Attorney General in accordance with his or her regulations;

(ii) One in which the demand exceeds $15,000; or

(iii) One which is a claim under the FTCA (§ 536.50) where the total of all claims, arising from a single incident, actual or potential, exceeds $25,000. USARCS is responsible for the monitoring and settlement of such claims and will be kept informed on the status of the investigation and processing thereof. Direct liaison and correspondence between the USARCS and the field claims authority or investigator is authorized on all claims matters, and assistance will be furnished as required. The field claims office will provide USARCS duplicates of all documentation as it is added to the field file. This will include all correspondence, memoranda, medical reports, reports, evaluations, and any other material relevant to the investigation and processing of the claim.

(3) *Claims involving privately owned vehicles.* In areas where the FTCA (§ 536.50) is applicable, any claim except those under 31 U.S.C. 3721, arising out of an accident involving a privately owned vehicle driven by a member of the DA, or by ARNG personnel as defined in § 536.71, based on an allegation that the privately owned vehicle travel was within the scope of employment, should be forwarded without adjudication directly to the Commander, USARCS. Additional information is provided in §§ 536.20 through 536.35, 536.90 through 536.97.

(4) *Claims within the exclusive jurisdiction of USARCS.* Authority to settle the following claims has been delegated to the Commander, USARCS, only:

(i) Claims of under Article VIII of the Agreement Regarding the Status of

Forces Parties to the North Atlantic Treaty and other treaties or international agreements where the United States is the Receiving State;

(ii) Claims under § 536.60 (Maritime claims not arising out of civil works activities) except as delegated to overseas command claims services;

(iii) Industrial security claims, DoD Directive 5220.6, 12 August 1985; and

(iv) Claims of the U.S. Postal Service. Files of these claims will be forwarded directly to the Commander, USARCS, with the report of investigation and supporting papers, including a memorandum of opinion.

(5) *Maritime claims.* (i) A copy of a claim arising out of damage, loss, injury, or death which originates on navigable waters and is not considered cognizable under the Army Maritime Claims Settlement Act (10 U.S.C. 4802–4804) will be forwarded immediately to the Commander, USARCS or appropriate overseas command claims service. A determination will be made as to whether the claim must be processed under the Suits in Admiralty Act or the Public Vessels Act or may be considered administratively.

(ii) If a maritime claim cannot be settled administratively, the claimant will be advised that he must file a suit.

(iii) If it is determined that both administrative and judicial remedies are available, the claim may be processed administratively and the claimant advised of the need to file a suit within 2 years of the date of occurrence if he chooses his judicial remedy.

(iv) If the claim is for damage to property, or injury to person, consummated on land, a claimant who makes an oral inquiry or demand will be advised that no suit can be filed until a period of six months has expired after a claim in writing is submitted.

(v) If it is determined by the Commander, USARCS, that a claim, apparently maritime in nature, is not within the maritime jurisdiction, the claimant will be so advised, and the claim will be returned for processing under the appropriate section of this regulation.

(h) *By district or division engineer.* The district or division engineer area claims office will take the action of an initial claims authority. Files of unpaid claims should be forwarded directly to USARCS. An information copy will be sent to the next higher engineer authority unless such requirement is waived.

(i) *By higher settlement authority.* A higher claims settlement authority may take action with respect to a claim in the same manner as the initial claims office. However, if it is determined that any further attempt to settle the claim would be unwarranted, the claim will be forwarded to the Commander, USARCS, with recommendations.

### § 536.6 Determination of liability.

(a) In the adjudication of tort claims, the liability of the United States generally is determined in accordance with the law of the State or country where the act or omission occurred, except that any conflict between local law and the applicable United States statute will be resolved in favor of the latter. However, in claims by inhabitants of the United States arising in foreign countries, liability is determined in accordance with general principles of tort law common to the majority of American jurisdictions as evidenced by Federal case law and standard legal publications, except as it applies to absolute liability. Where liability is not clear or other issues exist, settlements should truly reflect the uncertainties in the adjudication of such issues. Compromise settlements are encouraged provided agreement can be reached that reflects the reduced value of the damages as measured against the full value or range of value if such uncertainties or issues did not exist and were it possible for the claimant to successfully litigate the claim.

(b) Quantum exclusion. The costs of filing a claim and similar costs, for example, court costs, bail, interest, inconvenience expenses, or costs of long distance telephone calls or transportation in connection with the preparation of a claim, are not proper quantum elements and will not be allowed.

### § 536.7 Incident to service exclusionary rule.

(a) *General.* A claim for personal injury or death of a member of the Armed Forces of the United States or a civilian employee of the United States that accrued incident to his service is not payable under this regulation. A claim for property damage that accrued incident to the service of a member of the Armed Forces may be payable under 31 U.S.C. 3721 or §§ 536.20 through 536.35 depending on the facts.

(b) *Property damage claims.* A claim for damage to or loss of personal property of a claimant who is within one of the categories of proper party claimants under 31 U.S.C. 3721, which is otherwise cognizable under 31 U.S.C. 3721, must first be considered thereunder. If a claim is not clearly compensable under 31 U.S.C. 3721, and it arises incident to a noncombat activity of the DA or was caused by a negligent or wrongful act or omission of military personnel or civilian employees of the Department of Defense (DOD), it may be cognizable under either §§ 536.20 through 536.35 or § 536.50. The claim, if meritorious in fact, will probably be payable under one authorization or another regardless of whether the claim accrued incident to the service of the claimant.

(c) *Personal injury and death claims.* (1) Only after the death or personal injury (which is the subject of the claim) has been determined to have not been incurred incident to the member's service should §§ 536.20 through 536.35 and § 536.50 be studied to determine which, if either, provides a proper basis for settlement of the claim. In any event, the rule in *U.S.* v. *Brooks*, 176 F.2d 482 (4th Cir. 1949) requiring setoff of amounts obtained through military or veterans' compensation systems against amounts otherwise recoverable will be followed. Other Government benefits, funded by general treasury revenues and not by the claimant's contributions, may also be used as a setoff against the settlement. (See, *Overton* v. *United States*, 619 F.2d 1299 (8th Cir. 1980)).

(2) As the incident to service issue is determinative as to whether this type of claim may be processed administratively at all, the applicable law and facts should be carefully considered before deciding that injury or death was not incident to service. Such claims also are often difficult to settle on the issue of quantum and thus more likely to end in litigation. Moreover, the United States may well elect to defend the lawsuit on the basis of the incident to service exclusion, and this defense could be prejudiced by a contrary administrative determination that a service member's personal injuries or death were not incident to service. Doubtful cases will be forwarded to the Commander, USARCS without action along with sufficient factual information to permit a determination of the incident to service question.

### § 536.8 Use of Appraisers and Independent Medical Examinations.

(a) *Appraisers.* Appraisers should be used in all claims where an appraisal is reasonably necessary and useful in effectuating the administrative settlement of the claims. The decision to use an appraiser is at the discretion of DA.

(b) *Independent medical examinations.* In claims involving serious personal injuries, for example, normally those cases in which there is an allegation of temporary or permanent disability, the claimant should be examined by an independent physician,

or other medical specialist, depending upon the nature and extent of the injuries. The decision to conduct an independent medical examination is at the discretion of DA.

**§ 536.9 Effect on Award of Other Payments to Claimant.**

The total award to which the claimant (and subrogee) may be entitled normally will be computed as follows:

(a) Determine the total of the loss or damage suffered.

(b) Deduct from the total loss or damage suffered any payment, compensation, or benefit the claimant has received from the following sources:

(1) The U.S. or ARNG employee/member who caused the damage.

(2) The U.S. or ARNG employee's/member's insurer.

(3) Any person or agency in a surety relationship with the U.S. employee; or

(4) Any joint tortfeasor or insurer, to include Government contractors under contracts or in jurisdictions where it is permissible to obtain contribution or indemnity from the contractor in settlement of claims by contractor employees and third parties.

(5) Any advance payment made pursuant to § 536.13.

(6) Any benefit or compensation based directly or indirectly on an employer-employee relationship with the United States or Government contractor and received at the expense of the United States including but not limited to medical or hospital services, burial expenses, death gratuities, disability payment, or pensions.

(7) The State (Commonwealth, etc.) whose employee or ARNG member caused or generated an incident that was a proximate cause of the resulting damages.

(8) Value of Federal medical care.

(9) Benefits paid by the Veterans Administration (VA) that are intended to compensate the same elements of damage. When the claimant is receiving money benefits from the VA under 38 U.S.C. 351 for a non-service connected disability or death based on the injury that is the subject of the claim, acceptance of a settlement or an award under the FTCA (§ 536.50) will discontinue the VA monetary benefits until the amount that would have otherwise been received in VA monetary benefits is equal to the total amount of the agreement or award including attorney fees. While monetary benefits received under 38 U.S.C. 351 must be discontinued as above, medical benefits, that is, VA medical care may continue provided the settlement or award expressly provides for such continuance and the appropriate VA official is informed of such continuance.

(10) When the claimant is receiving money benefits under 38 U.S.C. 410(b) for non-service connected death, arising from the injury that is the subject of the claim, acceptance of a settlement or award under the FTCA (§ 536.50) or under any other tort procedure will discontinue the VA benefits until the amount that would have otherwise been received in VA benefits is equal to the amount of the total settlement or award including attorney fees. The discontinuation of monetary benefits under 38 U.S.C. 410(b) has no effect on the receipt of other VA benefits. The claimant should be informed of the foregoing prior to the conclusion of any settlement and thus afforded an opportunity to make appropriate adjustment in the amount being negotiated.

(11) Value of other Federal benefits to which the claimant did not contribute, or at least to the extent they are funded from general revenue appropriation.

(12) Collateral sources where permitted by State law (for example, State or Federal workers' compensation, social security, private health, accident, and disability benefits paid as a result of injuries caused by a health care provider).

(c) No deduction will be made for any payment the claimant has received by way of voluntary contributions, such as donations of charitable organizations.

(d) Where a payment has been made to the claimant by his insurer or other subrogee, or under workmen's compensation insurance coverage, as to which subrogated interests are allowable, the award based on total damages will be apportioned as their separate interests are indicated (see § 536.5(b)).

(e) After deduction of permissible collateral and non-collateral sources, also deduct that portion of the loss or damage believed to have been caused by the negligence of the claimant, third parties whose negligence can be imputed to the claimant, or joint tortfeasors who are liable for their share of the negligence (for example, where some form of the Uniform Contribution Among Joint Tortfeasors Act has been passed).

(f) Claims with more than one potential source of recovery. (1) The Government seeks to avoid multiple recovery, that is, claimants seeking recovery from more than one potential source, and to minimize the award it must make. The claims investigation should therefore identify other parties potentially liable to the claimant and/or their insurance carriers; indicate the status of any claims made or include a statement that none has been made so that it can be assured there is only one recovery and the Government does not pay a disproportionate share. Where no claim has been made by the claimant against others potentially liable, if applicable State law grants the Government the right to indemnity or contribution, and it is felt the Government may be entitled to either under the facts developed by the claims investigation, the claims officer or attorney should formally notify the other parties of their potential liability, the Government's willingness to share information, and its expectation of shared responsibility for any settlement. Furthermore, the claimant may be receiving or entitled to receive benefits from collateral and non-collateral sources, which can be deducted from the total loss or damage. Accordingly, a careful review must be made of applicable State laws regarding joint and several liability, indemnity, contribution, comparative negligence, and the collateral source doctrine.

(2) If a demand by a claimant or an inquiry by a potential claimant is directed solely to the Army, in a situation where it appears that the responsible Army employee may have applicable insurance coverage, inquiry should be made of the employee as to whether he has liability insurance.

(i) If so, determine if the insurer has made or will make any payment to claimant. Under applicable State law, the United States may be an additional named insured entitled to coverage under the employee's liability policy. (See 16 ALR3d 1411; *United States* v. *State Farm Mutual Ins. Co.*, 245 F. Supp. 58 (D. Ore. 1965.)) Therefore, where there may be applicable insurance coverage, there should be a review of the policy language together with the rules and regulations of the State insurance regulatory body to determine whether the United States comes within the definition of "insured," and whether the exclusion of the United States from policy coverage conforms with state law and policy.

(ii) If the employee refuses to cooperate in providing this information, he or she should be advised to comply with the notice requirements of the insurance policy and to request the insurance carrier contact the claims officer or attorney. In addition, other sources of information, such as vehicle registration records, will be checked to ascertain the employee's insurer. The case should be followed to ascertain whether the employee's insurer has made or will make any payment to the

claimant before deciding whether to settle the claim against the Government. Normally, the award, if any, to the claimant will be reduced by the amount of the payment of the employee's insurance carrier.

(3) If the employee is the sole target of the claim and Army claims authorities arrange to have the claim made against the Government, the member or employee should be required to notify his or her insurance carrier according to the policy and inform DA claims authorities as to the details of the insurance coverage, including the name of the insurance carrier. Except when the "Drivers Act" is applicable, the insurance carrier is expected to participate in the negotiation of the claims settlement and to pay its fair share of any award to the claimant.

(4) Where the responsible Army employee is "on loan" to another employer other than the United States, for example, civilian institution for ROTC instructor, or performing duties for a foreign government, inquiry should be made to determine whether there is applicable statutory or insurance coverage concerning the acts of the responsible employee and contribution or indemnification sought, as appropriate. In the case of foreign governments, applicable treaties or agreements are considered controlling.

(5) A great many claims cognizable under the FTCA (§ 536.50) are now settled on a compromise basis. A major consideration in many such settlements is the identification of other sources of recovery. This is true in a variety of factual situations where there is a potential joint tortfeasor; for example, multi-vehicle accidents with multiple drivers and guest passengers, State or local government involvement, contractors performing non-routine tasks for the Government, medical treatment rendered to a claimant by non-Government employees, or incidents caused by a member or employee of the military department of a State or Commonwealth with whom the DA does not have a cost-sharing agreement. The law of the jurisdiction regarding joint and several liability, indemnity and contribution may permit shared financial responsibility, but even in jurisdictions which do not permit contribution, a compromise settlement can often be reached with the other tortfeasor's insurance company paying a portion of the total amount of the claim against the Government. For these reasons, every effort should be made to identify the insurance of all potential tortfeasors involved and the status of any claims made, and to demand contribution or indemnity where there is a substantial reason to believe that liability for the loss or damage should be shared.

(6) Whenever a claim is filed against the Government under a statute which does not permit the payment of a subrogated interest, it is important to ensure that full information is obtained from the claimant regarding insurance coverage, if any, since it is the clear legislative intent of such statutes that insurance coverage be fully utilized before using appropriated funds to pay the claims.

**§ 536.10 Settlement agreement.**

(a) *General.* Except under 31 U.S.C. 3721, if a claim is determined to be meritorious in an amount less than claimed, or if a claim involving personal injuries or death is approved in full, a settlement agreement will be obtained prior to payment. Acceptance by a claimant of an award constitutes a full and final settlement and release of any and all claims against the United States and against the military or civilian personnel whose act or omission gave rise to the claim.

(b) *Claims involving workmen's compensation carriers.* The settlement of a claim involving a claimant who has elected to receive workmen's compensation benefits under local law may require the consent of the workmen's compensation carrier and in certain jurisdictions the State agency with authority over workmen's compensation awards. Accordingly, claims approval and settlement authorities should be aware of local requirements.

**§ 536.11 Appeals and notification to claimant as to denial of claims.**

(a) *General.* The nature and extent of the written notification to the claimant as to the denial of his claim should be based on whether the claimant has a judicial remedy following denial or whether he has an administrative recourse to appeal.

(b) *Final Actions under the Federal Tort Claims Act (28 U.S.C. 2671–2680) § 536.50.* If the settlement authority has information available which could possibly be a persuasive factor in the decision of the claimant as to whether to resort to litigation, such information may be orally transmitted to the claimant and, in appropriate cases, released under normal procedures in accordance with AR 340–17. However, the written notification of the denial should be general in nature; for example, denial on the weaker ground of contributory negligence should be avoided, and the inclination should be to deny on the basis that the claimant was solely responsible for the incident. The claimant will be informed in writing of his right to bring an action in the appropriate United States District Court not later than 6 months after the date of mailing of the notification.

(c) *Denials under the MCA (10 U.S.C. 2733) §§ 536.20 through 536.35 and the NGCA (32 U.S.C. 715) §§ 536.70 through 536.81.* Claims disapproved under these statutes are subject to appeal and the claimant will be so informed. Also, the notice of disapproval will be sufficiently detailed to provide the claimant with an opportunity to know and attempt to overcome the basis for the disapproval. The claimant should not be afforded a valid basis for claiming surprise when an issue adverse to him is asserted as a basis for denying his appeal.

(d) *Denials on jurisdictional grounds.* Regardless of the nature of the claim presented or the statute under which it may be considered, claims denied on jurisdictional grounds which are valid, certain, and not easily overcome and in which for this reason no detailed investigation as to the merits of the claim is conducted, should contain in the denial letter a general statement to the effect that the denial on such grounds is not to be construed as an expression of opinion on the merits of the claim or an admission of liability. If sufficient factual information is available to make a tentative ruling on the merits of the claim, liability may be expressly denied.

(e) *Where claim may be considered under more than one statute.* In cases in which it is doubtful as to whether the MCA (§§ 536.20 through 536.35) or the NGCA (§§ 536.70 through 536.81) or the FTCA (§ 536.50) is the appropriate statute under which to consider the claim, the claimant will be advised of the alternatives, for example, the right to sue or the right to appeal. Similarly, a claimant may be advised of his alternative remedies when the claimant is a military member and the issue of "incident to service" is not clear.

**§ 536.12 Effect of payment.**

Acceptance of an award by the claimant, except for an advance payment, constitutes for the United States, and for the military member or civilian employee whose act or omission gave rise to the claim, a release from all liability to the claimant based on the act or omission.

**§ 536.13 Advance payments.**

(a) *Purpose.* This section implements the Act of 8 September 1961 (75 Stat. 488, 10 U.S.C. 2736), as amended by

Public Law 90–521 (82 Stat. 874), Public Law 98–564 (98 Stat. 2918) and Public Law 100–456. No new liability is created by 10 U.S.C. 2736, which merely permits partial advance payments on meritorious claims as specified in this section.

(b) *Conditions for advance payment.* An advance payment not in excess of $100,000 is authorized in the limited category of claims resulting in immediate hardship arising from incidents that are payable under the provisions of §§ 536.20 through 536.35, 536.70 through 536.81, or the FCA (10 U.S.C. 2734). An advance payment is authorized only under the following circumstances:

(1) The claim must be determined to be cognizable and meritorious under the provisions of either §§ 536.20 through 536.35, and 536.70 through 536.81, or the FCA (10 U.S.C. 2734).

(2) There exists an immediate need of the person who suffered the injury, damage, or loss, or of the family of a person who was killed, for food, clothing, shelter, medical or burial expenses, or other necessities, and other resources for such expenses are not reasonably available.

(3) The payee, so far as can be determined, would be a proper claimant, as is the spouse or next of kin of a claimant who is incapacitated.

(4) The total damage sustained must exceed the amount of the advance payment.

(5) A properly executed advance payment acceptance agreement has been obtained.

## Subpart B—Claims Arising From Activities of Military or Civilian Personnel or Incident to Noncombat Activities

### § 536.20 Statutory authority.

The statutory authority for §§ 536.20 through 536.35 is contained in the Act of 10 August 1956 (70A Stat. 153, 10 U.S.C. 2733) commonly referred to as the Military Claims Act (MCA), as amended by Public Law 90–522, 26 September 1968 (82 Stat. 875), Public Law 90–525, 26 September 1968 (82 Stat. 877), Public Law 91–312, 8 July 1970 (84 Stat. 412) and Public Law 93–336, 8 July 1974 (88 Stat. 291); and the Act of 8 September 1961 (75 Stat. 488, 10 U.S.C. 2736), as amended by Public Law 90–521, 26 September 1968 (82 Stat. 874) and Public Law 98–564, 30 October 1984 (98 Stat. 2918).

### § 536.21 Definitions.

The definitions of terms set forth in § 536.3 are applicable to §§ 536.20 through 536.35.

### § 536.22 Scope.

Sections 536.20 through 536.35 are applicable in all places and prescribe the substantive bases and special procedural requirements for the settlement of claims against the United States for death, personal injury, or damage to or loss or destruction of property caused by military personnel or civilian employees of the DA acting within the scope of their employment, or otherwise incident to the noncombat activities of the DA, provided such claim is not for personal injury or death of a member of the Armed Forces or Coast Guard or a civilian officer or employee whose injury or death is incident to service.

### § 536.23 Claims payable.

(a) *General.* Unless otherwise prescribed, a claim for personal injury, death, or damage to or loss of real or personal property is payable under §§ 536.20 through 536.35 when—

(1) Caused by an act or omission determined to be negligent, wrongful, or otherwise involving fault of military personnel or civilian officers or employees of the Army acting within the scope of their employment, or

(2) Incident to the noncombat activities of the Army.

(b) *Property.* The loss or damage to property which may be the subject of claims under §§ 536.20 through 536.35 includes—

(1) Real property used and occupied under a lease, express or implied, or otherwise (for example, in connection with training, field exercises, or maneuvers). An allowance may be made for the use and occupancy of real property arising out of trespass or other tort, even though claimed as rent.

(2) Personal property bailed to the Government under an agreement, express or implied, unless the owner has expressly assumed the risk of damage or loss. Some losses may be payable using Operations and Maintenance, Army funds. Clothing damage or loss claims arising out of the operation of an Army Quartermaster laundry are considered to be incident to service and are payable only if claimant is not a proper claimant under 31 U.S.C. 3721.

(3) Registered or insured mail in the possession of the Army, even though the loss was caused by a criminal act.

(c) *Effect of FTCA.* A claim arising in the United States may be settled under §§ 536.20 through 536.35 only if the FTCA (28 U.S.C. 2671–2680), § 536.50, has been judicially determined not to be applicable to claims of this nature, or if the claim arose incident to noncombat activities.

(d) *Advance payments.* Advance payments under 10 U.S.C. 2736, as amended, in partial payment of meritorious claims to alleviate immediate hardship are authorized.

### § 536.24 Claims not payable.

A claim is not payable under §§ 536.20 through 536.35 which—

(a) Results wholly from the negligent or wrongful act of the claimant or agent.

(b) Is for reimbursement for medical, hospital, or burial expenses furnished at the expense of the United States.

(c) Is purely contractual in nature.

(d) Arises from private as distinguished from Government transactions.

(e) Is based solely on compassionate grounds.

(f) Is for war trophies or articles intended directly or indirectly for persons other than the claimant or members of his or her immediate family, such as articles acquired to be disposed of as gifts or for sale to another, voluntarily bailed to the Army, or is for precious jewels or other articles of extraordinary value voluntarily bailed to the Army. The preceding sentence is not applicable to claims involving registered or insured mail. No allowance will be made for any item when the evidence indicates that the acquisition, possession, or transportation thereof was in violation of DA directives.

(g) Is for rent, damage, or other payments involving the acquisition, use, possession, or disposition of real property or interests therein by and for the DA, except as authorized by § 536.23(b)(1). Real estate claims founded upon contract are generally processed under AR 405–15.

(h) Is not in the best interests of the United States, is contrary to public policy, or is otherwise contrary to the basic intent of the governing statute (10 U.S.C. 2733); for example, claims by inhabitants of unfriendly foreign countries or by or based on injury or death of individuals considered to be unfriendly to the United States. When a claim is considered to be not payable for the reasons stated in this paragraph, it will be forwarded for appropriate action to the Commander, USARCS, together with the recommendations of the responsible claims office.

(i) If presented by a national, or a corporation controlled by a national, or a country at war or engaged in armed conflict with the United States, or of any country allied with such enemy country unless the settlement authority having jurisdiction over the claim determines that the claimant is and, at the time of the incident, was friendly to the United

States. A prisoner of war or an interned enemy alien is not excluded as to a claim for damage, loss, or destruction of personal property in the custody of the Government otherwise payable.

(j) Is for personal injury or death of a member of the Armed Forces or Coast Guard or a civilian employee thereof which is incident to his or her service (10 U.S.C. 2733(b)(3)).

(k) The types of claims not payable under the FTCA (see § 536.50(j)) are also not payable under §§ 536.20 through 536.35 with the following exceptions:

(1) The foreign country exclusion in 28 U.S.C. 2680(k) does not apply to claims under §§ 536.20 through 536.35.

(2) The *Feres* bar in § 536.50(j)(1) does not apply to claims under §§ 536.20 through 536.35, but see the exclusion in paragraph (j) of this section.

**§ 536.25 Claims also cognizable under other statutes.**

(a) *General.* Claims based upon a single act or incident cognizable under §§ 536.20 through 536.35, which are also cognizable under the FTCA (28 U.S.C. 2671–2680) § 536.50, the Army Maritime Claims Settlement Act (10 U.S.C. 4801–04, 4806) § 536.60, the FCA (10 U.S.C. 2734), or title 31, U.S.C. section 3721 (Personnel Claims), will be considered first under the latter statutes. If not payable under any of those latter statutes, the claim will be considered under §§ 536.20 through 536.35.

(b) *Claims in litigation.* Disposition under §§ 536.20 through 536.35 of any claim of the type covered by this section that goes into litigation in any State or Federal court under any State or Federal statute or ordinance will be suspended pending disposition of such litigation and the claim file will be forwarded to the Commander, USARCS. The Commander, USARCS, in coordination with the U.S. Department of Justice, may determine that final disposition under §§ 536.20 through 536.35 during pendency of the litigation is in the best interests of the United States. This section will also apply to any litigation brought against any agent of the United States in his or her individual capacity which is based upon the same acts or incidents upon which a claim under §§ 536.20 through 536.35 is based.

**§ 536.26 Presentation of claims.**

(a) *When claim must be presented.* A claim may be settled under §§ 536.20 through 536.35 only if presented in writing within 2 years after it accrues, except that if it accrues in time of war or armed conflict, or if war or armed conflict intervenes within 2 years after it accrues, and if good cause is shown, the claim may be presented not later than 2 years after war or armed conflict is terminated. As used in this section, a war or armed conflict is one in which any Armed Force of the United States is engaged. The dates of commencement and termination of an armed conflict must be as established by concurrent resolution of Congress or by determination of the President.

(b) *Where claim must be presented.* A claim must be presented to an agency or instrumentality of the DA. However, the statute of limitations is tolled if a claim is filed with another agency of the Government and is forwarded to the DA within 6 months, or if the claimant makes inquiry of the DA concerning his or her claim within 6 months after it was filed with another agency of the Government. If a claim is received by an official of the DA who is not a claims approval or settlement authority under §§ 536.20 through 536.35, the claim will be transmitted without delay to the nearest claims office or JA office for delivery to such an authority.

**§ 536.27 Procedures.**

So far as not inconsistent with §§ 536.20 through 536.35, the procedures set forth in §§ 536.1 through 536.13 will be followed. Subrogated claims will be processed as prescribed in § 536.5(b).

**§ 536.28 Law applicable.**

(a) As to claims arising in the United States, its territories, commonwealths, and possessions, the law of the place where the act or omission occurred will be applied in determining liability and the effect of contributory negligence on claimant's right to recover damages.

(b) In claims arising in a foreign country, liability of the United States will be assessed by reference to general principles of tort law common to the majority of United States jurisdictions. Absolute liability and similar theories are not a basis for liability under this section. Damages will be determined under § 536.29. If the negligence of the claimant was a partial cause of the injury, loss or damage, recovery will be barred if the negligence of the claimant is greater than that of the United States. In traffic accident cases, questions of negligence, and the degree of the claimant's comparative negligence, will be evaluated based on the traffic and vehicle safety laws and regulations of the country in which the accident occurred, but only to the extent they are not specifically superseded or preempted by the United States military traffic regulations.

**§ 536.29 Compensation for property damage, personal injury, or death.**

(a) *Measure of damages for property claims*—(1) *General.* The measure of damages in property claims arising in the United States or its possessions will be determined in accordance with the law of the place where the incident occurred. The measure of damages in property claims arising overseas will be determined in accordance with general principles of United States tort law.

(2) *Proof of damage.* The information listed below (similar to that required by 28 CFR 14.4(c)) will be submitted by a claimant to substantiate a claim.

(i) Proof of ownership.

(ii) Detailed statement of amount claimed for each item of property.

(iii) Itemized receipt of estimate for all repairs.

(iv) Statement giving date of purchase, price and, where not economically repairable, the salvage value.

(3) *Appraisals.* The assistance of appraisers should be used in all claims where, in the opinion of the claims officer, an appraisal is reasonably necessary and useful in reaching an administrative settlement of claims.

(b) *Measure of damages in injury or death claims arising in the United States or its possessions.* Where an injury or an injury resulting in death arises within the United States or its possessions, the measure of damages will be determined in accordance with the law of the State or possession wherein the injury arises.

(1) The information listed below (similar to that required by 28 CFR 14.4(a)) will be submitted by a claimant to substantiate a wrongful death claim.

(i) Authenticated death certificate or other competent evidence showing date and cause of death and age of decedent.

(ii) Decedent's employment and occupation at time of death, including salary or earnings and duration of last employment or occupation.

(iii) Names, addresses, birthdates, kinship and marital status of survivors.

(iv) Identification of persons dependent on decedent for support at time of death and the degree of support provided.

(v) Decedent's general physical and mental condition at time of death.

(vi) Itemized bills or receipt for medical and burial expenses.

(vii) If damages for pain and suffering are claimed, a physician's statement specifying the injuries suffered, duration of pain and suffering, drugs administered and decedent's physical condition between time of injury and time of death.

(2) The information listed below (similar to that required by 28 CFR 14.4(b)) will be submitted by a claimant to substantiate a personal injury claim.

(i) Written report by attending the physician or dentist setting forth the:

(A) Nature and extent of injury;

(B) Nature and extent of treatment;

(C) Degree of temporary or permanent disability;

(D) Prognosis;

(E) Period of hospitalization; and

(F) Diminished earning capacity.

(ii) Itemized bills or receipts for medical, dental and hospital expenses.

(iii) If the prognosis includes future treatment, a statement of expected expenses for such treatment.

(iv) If the claim includes lost time from employment, a statement by the employer showing the actual time lost and wages and/or salary lost.

(v) If the claim includes lost income by a self-employed claimant, documentary evidence of such loss.

(c) *Measure of damages in injury or death claims arising in foreign countries.* (1) Subject to the limitations in § 636.29e, where an injury, or injury resulting in death arises in a foreign country, the measure of damages will be determined in accordance with established principles of general maritime law (see generally, Moragne v. United States Lines, Inc., 398 U.S. 375 (1970), as interpreted by Federal Court decisions). Where general maritime law provides no interpretation of allowable damages under a particular theory of liability (e.g., wrongful birth), damages will be determined in accordance with general principles of United States tort law.

(2) The information listed in § 536.29(b) (1) and (2), as appropriate, will be submitted by the claimant to substantiate a claim.

(3) A claimant who suffers serious personal injury, resulting in temporary or permanent disability should be examined by an independent physician or other medical specialist (See § 536.8(b)).

(d) *Failure to substantiate a claim.* (1) The government is not obligated to take final action on a claim until it has been supported by the claimant with specific facts substantiated by appropriate documentary evidence, reports of investigation, medical records or witness statements. Upon request, the claimant must:

(i) Provide the documentation required by paragraphs (a), (b) and (c) of this section;

(ii) Undergo necessary medical examinations;

(iii) Permit questioning of the claimant, his or her witness, and treating medical personnel;

(iv) Submit an expert opinion in a professional negligence action.

(2) Failure to comply with these requirements may provide a basis for denial of a claim, in full or in part.

(e) *Damages not payable.* The following damages are not payable in any claim arising under the Military Claims Act:

(1) Punitive or exemplary damages, including damages punitive in nature under 28 U.S.C. 2674.

(2) Interest on any claim settlement.

**§ 536.30 Structured settlements.**

(a) The use of the structured settlement device by approval and settlement authorities is encouraged in all appropriate cases. A structured settlement should not be used when contrary to the desires of the claimant.

(b) Notwithstanding the above, the Commander, USARCS may require or recommend to higher authority that an acceptable structured settlement be made a condition of award notwithstanding objection by the claimant or his or her representative where—

(1) Necessary to ensure adequate and secure care and compensation to a minor or otherwise incompetent claimant over a period of years;

(2) Where a trust device is necessary to ensure the long-term availability of funds for anticipated further medical care;

(3) Where the injured party's life expectancy cannot be reasonably determined.

**§ 536.31 Claims over $100,000.**

Claims cognizable under 10 U.S.C. 2733 and §§ 536.20 through 536.35, which are meritorious in amounts in excess of $100,000, will be forwarded to the Commander, USARCS who will negotiate a settlement subject to approval by the Secretary of the Army or designee, or require the claimant to state the lowest amount that will be acceptable and provide appropriate justification. Tender of a final offer by the Commander, USARCS constitutes an action subject to appeal. The Commander, USARCS will prepare a memorandum of law with recommendations and forward the claim to the Secretary of the Army, or designee, for final action. The Secretary or designee will either disapprove the claim or approve it in whole or in part.

**§ 536.32 Settlement procedures.**

(a) *Procedures.* Approval and settlement authorities will follow the procedures set forth in §§ 536.1 through 536.13 in paying, denying or making final offers on claims. A copy of the notification will be forwarded to Commander, USARCS. The settlement authority will notify the claimant by certified mail (return receipt registered) of a denial or final action and the reason therefore. The letter of notification will inform the claimant of the following:

(1) He or she may appeal, and that no form is prescribed for the appeal.

(2) The title of the authority who will act on the appeal and that the appeal will be addressed to the settlement authority who last acted on the claim.

(3) The claimant must fully set forth the grounds for appeal, or state that he or she appeals on the basis of the record as it exists at the time of denial or final offer.

(4) The appeal must be postmarked not later than 60 days after receipt of notice of action on the claim. If the 60th day falls on a day on which the post office is closed, the next day on which it is open for business will be considered the final day of the appeal period. The 60 day appeal period starts on the day following claimant's receipt of the letter from the settlement authority informing the claimant of the action taken and of the appellant rights. For good cause shown, the Commander, USARCS, or designee, or the chief of a command claims service (if the appellate authority), may extend the time for appeal, but normally such extension will not exceed 90 days.

(5) Where a claim for the same injury has been filed under the FTCA and the denial or final offer applies equally to such claim, the letter of notification must advise the claimant that any suit brought as to any portion of the claim under the FTCA must be brought not later than 6 months from the date of mailing of the notice of denial or final offer. Further, the claimant must be advised that if suit is brought, action on any appeal will be held in abeyance pending final determination of such suit.

(b) *Action on appeal.* (1) The appeal will be examined by the settlement authority who last acted on the claim, or his or her successor, to determine if the appeal complies with the requirements of this section. The settlement authority will also examine the claims investigative file and decide whether additional investigation is required; ensure all allegations or evidence presented by the claimant, agent or attorney are documented in the file; and that all pertinent evidence is included in the file. If the claimant states that he or she appeals but does not submit supporting materials within the 60 day

appeal period or an approved extension thereof, the appeal will be treated as being on the record as it existed at the time of denial or final offer. Unless action under paragraph (b)(2) of this section is taken; the claim with complete investigative file including any additional investigation required and a memorandum of opinion will be forwarded to the appropriate appellate authority for necessary action on the appeal.

(2) If the evidence in the file, including information submitted by the claimant with the appeal and any necessary additional investigation, indicates that the appeal should be granted, in whole or in part, the settlement authority who last acted on the claim or his or her successor will attempt to settle the claim. If settlement cannot be reached, the appeal will be forwarded in accordance with paragraph (b)(1) of this section.

(3) As to an appeal that requires action by TJAG, The Assistant Judge Advocate General (TAJAG), or the Secretary of the Army, or designee, the Commander, USARCS may take the action in paragraph (b)(2) of this section or forward the claim together with a recommendation for action. All matters submitted by the claimant will be forwarded and considered.

(4) Since an appeal under this authority is not an adversary proceeding, no form of hearing is authorized. A request by the claimant for access to documentary evidence in the claims file to be used in considering the appeal should be granted unless access is not permitted by law or regulation.

**§ 536.33 Attorney fees.**

In the settlement of any claim under §§ 536.20 through 536.35, attorney fees shall not exceed 20 percent of the final cost to the United States of the award.

**§ 536.34 Payment of costs, settlements, and judgments related to certain medical and legal malpractice claims.**

(a) Costs, settlements, or judgments cognizable under 10 U.S.C. 1089(f) for personal injury or death caused by any physician, dentist, nurse, pharmacist, or paramedical, or other supporting personnel (including medical and dental technicians, nurse assistants, and therapists) of DA should be forwarded to Commander, USARCS, for action and will be paid, provided:

(1) The alleged negligent or wrongful actions or omissions arose in performance of medical, dental or related health care functions (including clinical studies and investigations) within the scope of employment; and

(2) Such personnel provide prompt notification and delivery of all process served or received, provide such other documents, information, and assistance as requested, and cooperate in the defense of the action on the merits. (See DoD Directive 6000.6.)

(b) Costs, settlements, and judgments cognizable under 10 U.S.C. 1054(f) for damages for injury of loss of property caused by any attorney, paralegal, or other member of a legal staff within the DA should be forwarded to Commander, USARCS, for action and will be paid, provided:

(1) The alleged negligent or wrongful actions or omissions arose in connection with providing legal services while acting within the scope of the person's duties or employment, and

(2) Such personnel provide prompt notification and delivery of all process served or received, provide such other documents, information and assistance as requested, and cooperate in the defense of the action on the merits. (See DoD Directive 6000.6.)

**§ 536.40 Claims under Article 139, Uniform Code of Military Justice.**

(a) *Statutory authority.* The authority for this section is Article 139, Uniform Code of Military Justice (10 U.S.C. 939) which provides for redress of damage to property willfully damaged or destroyed, or wrongfully taken, by members of the armed forces of the United States.

(b) *Purpose.* This section sets forth the standards to be applied and the procedures to be followed in the processing of claims for damage, loss or destruction of property owned by or in the lawful possession of an individual, whether civilian or military, a business, a charity, or a State or local government, where the property was wrongfully taken or willfully damaged by military members of DA. Claims cognizable under other claims statutes may be processed under this section.

(c) *Effect of disciplinary action.* Administrative action under Article 139 and this section is entirely separate and distinct from disciplinary action taken under other articles of the UCMJ or other administrative actions. Because action under Article 139 and this section requires independent findings on issues other than guilt or innocence, the mere fact that a soldier was convicted or acquitted of charges is not dispositive of a claim under Article 139.

(d) *Claims cognizable.* Claims cognizable under Article 139, UCMJ are limited to—

(1) *Claims for property willfully damaged.* Willful damage is damage which is inflicted intentionally, knowingly, and purposefully without justifiable excuse, as distinguished from damage caused inadvertently or thoughtlessly through simple or gross negligence. Damage, loss, or destruction of property caused by riotous, violent, or disorderly acts, or by acts of depredation, or through conduct showing reckless or wanton disregard of the property rights of others may be considered willful damage.

(2) *Claims for property wrongfully taken.* A wrongful taking is any unauthorized taking or withholding of property, not involving the breach of a fiduciary or contractual relationship, with the intent to temporarily or permanently deprive the owner or person lawfully in possession of the property. Damage, loss, or destruction of property through larceny, forgery, embezzlement, fraud, misappropriation, or similar offense may be considered wrongful taking.

(e) *Claims not cognizable.* Claims not cognizable under this section and Article 139 include—

(1) Claims resulting from negligent acts.

(2) Claims for personal injury or death.

(3) Claims resulting from acts or omissions of military personnel acting within the scope of their employment.

(4) Claims resulting from the conduct of reserve component personnel who are not subject to the UCMJ at the time of the offense.

(5) Subrogated claims, including claims by insurers.

(f) *Limitations on assessments*—(1) *Time Limitations.* To be considered, a claim must be submitted within 90 days of the incident out of which the claim arose, unless the special court-martial convening authority (SPCMCA) acting on the claim determines that good cause has been shown for the delay.

(2) *Limitations on amount.* No soldier's pay may be assessed more than $5,000 on a single claim without the approval of the Commander, USARCS, or designee. If the commander acting on the claim determines that an assessment against a soldier in excess of $5,000 is meritorious, he or she will assess the pay of that soldier in the amount of $5,000 and forward the claim to the Commander, USARCS, with his or her recommendation as to the additional amount which should be assessed.

(3) *Direct damages.* Assessments are limited to direct damages for the loss of or damage to property. Indirect, remote, or consequential damages may not be considered under this section.

(g) *Procedure.* Area claims offices and claims processing offices with approval

authority are responsible for publicizing the Article 139 program and maintaining a log for Article 139 claims presented in their areas (see Personnel Claims Adjudication appendix G, Claims Manual). Area claims offices and claims processing offices with approval authority are required to monitor action taken on Article 139 claims and ensure that time requirements are met. If assessment action on a particular claim will be unduly delayed, the office may consider the claim under 31 USC 3721 and chapter 11 of this regulation if it is otherwise cognizable under the authority. The office will counsel the claimant to repay any overpayment if the Article 139 claim is later successful (see para 11–2e).

(1) *Form of a claim and presentment.* A claim must be presented by the claimant or his or her authorized agent orally or in writing. The claim must be reduced to writing, signed, and for a definite sum in U.S. dollars within 10 days after oral presentment.

(2) *Action upon receipt of a claim.* Any officer receiving a claim will forward it within 2 working days to the SPCMCA over the soldier or soldiers against whom the claim is made. If the claim is made against soldiers under the jurisdiction of more than one such convening authority who are under the same general court-martial convening authority, the claim will be forwarded to that general court-martial convening authority, who will designate one SPCMCA to investigate and act on the claim as to all soldiers involved. If the claim is made against soldiers under the jurisdiction of more than one SPCMCA at different locations and not under the same general court-martial convening authority, the claim will be forwarded to the SPCMCA whose headquarters is closest to the situs of the incident, who will investigate and act on the claim as to all soldiers involved. If a claim is made against a member of one of the other military Services, the claim will be forwarded to the commander of the nearest major Army command (MACOM) of that Service.

(3) *Action by the SPCMCA.* Within 4 working days of receipt of a claim, the SPCMCA will appoint an investigating officer to investigate the claim, using the procedures of this section supplemented by the procedures of AR 15–6. The claims officer of a command, if he or she is a commissioned officer, may be appointed as the investigating officer.

(4) *Action by the investigating officer.* The investigating officer will provide notification to the soldier against whom the claim is made.

(i) If the soldier indicates a desire to make voluntary restitution, the investigating officer may, with the convening authority's concurrence, delay proceedings until the end of the next pay period to accomplish this. If the soldier makes payment to the claimant's full satisfaction, the claim will be dismissed.

(ii) In the absence of full restitution, the investigating officer will determine whether the claim is cognizable and meritorious under the provisions of Article 139 and this chapter and the amount to be assessed each offender. This amount will be reduced by any restitution accepted by the claimant from an offender in partial satisfaction. Within 10 working days or such time as the SPCMCA may provide, the investigating officer will make findings and recommendations and submit these to the SPCMCA. The investigating officer will also provide a copy of his or her findings and recommendations to any soldier against whom an assessment is recommended.

(iii) If the soldier is absent without leave so that he or she cannot be provided with notification, the Article 139 claim may be processed in the soldier's absence. If an assessment is approved, a copy of the claim and SPCMCA approval will be forwarded by transmittal letter to the servicing finance and accounting office (FAO) for offset input against the soldier's pay account. In the event the soldier is dropped from the rolls, the servicing FAO will forward the assessment documents to Commander, U.S. Army Finance and Accounting Center, attn: Department 40, Indianapolis, Indiana 46249.

(5) *Legal review.* After completion of the investigating officer's report, the SPCMCA will refer the claim to the area claims office or claims processing office servicing his or her command to review for legal sufficiency and advice. That office will furnish within 5 working days or such time as the SPCMCA will provide a written opinion as to—

(i) Whether the claim is cognizable under the provisions of Article 139 and this chapter.

(ii) Whether the findings and recommendations are supported by evidence.

(iii) Whether there has been substantial compliance with the procedural requirements of Article 139, this chapter, and AR 15–6.

(6) *Final action.* After considering the advice of the claims office, the SPCMCA will disapprove the claim or approve the claim in an amount equal to or less than the amount recommended by the investigating officer. The SPCMCA will notify the claimant, and any soldier subject to his or her jurisdiction, of the determination and the right to request reconsideration. The SPCMCA will then suspend action on the claim for 10 working days pending receipt of a request for reconsideration unless he or she determines that this delay will result in substantial injustice. The SPCMCA will direct the servicing finance officer for the soldier or soldiers against whom assessments are approved to withhold such amount from the soldier or soldiers up to $5000. For any soldier not subject to the SPCMCA's jurisdiction, the SPCMCA will forward the claim to that commander who does exercise special court-martial jurisdiction over the soldier for collection action.

(7) *Assessment.* Subject to any limitations provided in appropriate regulations, the servicing finance officer will withhold the amount directed by the SPCMCA and pay it to the claimant. The SPCMCA's assessment is not subject to appeal and is conclusive on any finance officer. If the servicing finance officer finds that the required amount cannot be withheld because he or she does not have custody of the soldier's pay record or because the soldier is in a no pay due status, the servicing finance officer will promptly notify the SPCMCA of this in writing.

(8) *Post settlement action.* After action on the claim is completed, the claims office servicing the command which took final action will forward one copy of the claim together with a cover sheet and all attachments, to include information that money has or has not been withheld and paid to the claimant by the servicing finance officer, through any command claims service, to the Commander, USARCS.

(9) *Remission of indebtedness.* Title 10, United States Code, section 4837(d), which authorizes the remission and cancellation of indebtedness of an enlisted person to the United States or its instrumentalities, is not applicable and may not be used to remit and cancel indebtedness determined as a result of action under Article 139.

(h) *Reconsideration*—(1) *General.* Although Article 139 does not provide for a right of appeal, either the claimant or a soldier whose pay is assessed may request the SPCMCA or a successor in command to reconsider the action. A request for reconsideration will be submitted in writing and will clearly state the factual or legal basis for the relief requested. The SPCMCA may direct that the matter be reinvestigated.

(2) *Reconsideration by the original SPCMCA.* The original SPCMCA may reconsider the action so long as he occupies that position, regardless of whether a soldier whose pay was assessed has been transferred. If the

original SPCMCA determines that the action was incorrect, he or she may modify it subject to paragraph (h)(4) of this section. If a request for reconsideration is submitted more than 15 days after notification was provided, however, the SPCMCA should only modify the action on the basis of fraud, substantial new evidence, errors in calculation, or mistake of law.

(3) *Reconsideration by a successor in command.* Subject to paragraph (h)(4) of this section, a successor in command may only modify an action on the basis of fraud, substantial new evidence, errors in calculation or mistake of law apparent on the face of the record.

(4) *Legal review and action.* Prior to modifying the original action, the SPCMCA will have the claims office render a legal opinion and fully explain his or her basis for modification as part of the file. If a return of assessed pay is deemed appropriate, the SPCMCA should request the claimant to return the money, setting forth the basis for the request. There is no authority for repayment from appropriated funds.

(5) *Disposition of files.* After completing action on reconsideration, the SPCMCA will forward a copy of the reconsideration action to the Commander, USARCS, and retain one or more additional copies with the claim file.

**§ 536.50 Claims based on negligence of military personnel or civilian employees under the Federal Tort Claims Act.**

(a) *Authority.* The statutory authority for this chapter is the FTCA (60 Stat. 842, 28 U.S.C. 2671–2680), as amended by the Act of 18 July 1966 (Pub. L. 89–506; 80 Stat. 306), the Act of 16 March 1974 (Pub. L. 93–253; 88 Stat. 50), and the Act of 29 December 1981 (Pub. L. 97–124), and as implemented by the Attorney General's Regulations (28 CFR 14.1–14.11).

(b) *Scope.* This section prescribes the substantive basis and special procedural requirements for the administrative settlement of claims against the United States under the FTCA and the implementing Attorney General's Regulations based on death, personal injury, or damage to or loss of property which accrue on or after 18 January 1967. If a conflict exists between the provisions of this section and the provisions of the Attorney General's Regulations, the latter govern.

(c) *Claims payable.* Unless otherwise prescribed, claims for death, personal injury, or damage to or loss of property (real or personal) are payable under this section when the injury or damage is caused by negligent or wrongful acts or omissions of military personnel or civilian employees of the DA or the DoD while acting within the scope of their employment under circumstances in which the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. The FTCA is a limited consent to liability without which the United States is immune. Similarly, there is no Federal cause of action created by the Constitution which would permit a damage recovery because of the Fifth Amendment or any other constitutional provision. Immunity must be expressly waived, as by the FTCA.

(d) "Employee of the Government" (28 U.S.C. 2671) includes the following categories of tortfeasors for which the DA is responsible:

(1) Military personnel (members of the Army), including but not limited to:

(i) Members on full-time active duty in a pay status, including—

(A) Members assigned to units performing active service.

(B) Members serving as ROTC instructors. (Does not include Junior ROTC instructors unless on active duty.)

(C) Members serving as National Guard instructors or advisors.

(D) Members on duty or in training with other Federal agencies, for example, Nuclear Regulatory Commission, National Aeronautics and Space Administration, Departments of Defense, State, Navy, or Air Force.

(E) Members assigned as students or ordered into training at a non-Federal civilian educational institution, hospital, factory, or other industry. This does not include members on excess leave.

(F) Members on full-time duty at nonappropriated fund activities.

(G) Members of the ARNG of the United States on active duty.

(ii) Members of reserve units during periods of inactive duty training and active duty training, including ROTC cadets who are reservists while they are at summer camp.

(iii) Members of the ARNG while engaged in training or duty under 32 U.S.C. 316, 502, 503, 504, or 505 for claims arising on or after 29 December 1981.

(2) Civilian officials and employees of both the DOD and the DA (there is no practical significance to the distinction between the terms "official" and "employee") including but not limited to—

(i) Civil Service and other full-time employees of both DOD and DA paid from appropriated funds.

(ii) Contract surgeons (10 U.S.C. 1091, 4022) and consultants (10 U.S.C. 1091) where "control" is exercised over physician's day to day practice.

(iii) Employees of nonappropriated funds if the particular fund is an instrumentality of the United States and thus a Federal agency. In determining whether or not a particular fund is a "Federal agency," consider whether the fund is an integral part of the DA charged with an essential DA operational function and the degree of control and supervision exercised by DA personnel. Members or users, as distinguished from employees of nonappropriated funds, are not considered Government employees. The same is true of family child care providers. However, claims arising out of the use of certain nonappropriated fund property or the acts or omissions of family child care providers, may be payable from such funds under chapter 12, AR 27–20, as a matter of policy, even when the user is not within the scope of employment and the claim is not otherwise cognizable under any other claims authorization.

(iv) Prisoners of war and interned enemy aliens.

(v) Civilian employees of the District of Columbia National Guard, including those paid under "service contracts" from District of Columbia funds.

(vi) Civilians serving as ROTC instructors paid from Federal funds.

(vii) National Guard technicians employed under 32 U.S.C. 709(a) for claims accruing on or after 1 January 1969 (Pub. L. 90–486, 13 August 1968; 82 Stat. 755).

(3) Persons acting in an official capacity for the DOD or the DA whether temporarily or permanently in the service of the United States with or without compensation including but not limited to—

(i) "Dollar a year" personnel.

(ii) Members of advisory committees, commissions, boards or the like.

(iii) Volunteer workers in an official capacity acting in furtherance of the business of the United States. The general rule with respect to volunteers is set forth in 31 U.S.C. 665(b), which provides that, "No officer or employee of the United States shall accept voluntary service for the United States or employ personal service in excess of that authorized by law, except in cases of emergency involving the safety of human life or the protection of property." (5 U.S.C. 3111(c) specifically provides that student volunteers employed thereunder shall be considered Federal employees for purposes of claims under the FTCA. The same classification is applied by 10 U.S.C. 1588 to museum and family support program volunteers.) The DA is permitted to accept and use certain

volunteer services in Army family support programs. (10 U.S.C. 1588).

(iv) Loaned servants. Employees who are permitted to serve another employer may be considered "loaned servants," provided the borrowing employer has the power to discharge the employee, to control and direct the employee, and to decide how he will perform his tasks. Whoever has retained those powers is liable for the employee's torts under the principle of respondeat superior. Where those elements of direction and control have been found, the United States has been liable, for example, for the torts of Government employees loaned for medical training and emergency assistance, and county and state employees discharging Federal programs.

(e) "Scope of employment" means acting in "line of [military] duty" (28 U.S.C. 2671) and is determined in accordance with principles of respondeat superior under the law of the jurisdiction in which the act or omission occurred. Determination as to whether a person is within a category listed in paragraph (d)(3) of this section will usually be made together with the scope determination. Local law should always be researched, but the novel aspects of the military relationship should be kept in mind in making a scope determination.

(f) "Line of duty" determinations under AR 600–8–1 are not determinative of scope of employment. "Joint venture" situations are likely to be frequent where the Federal employee is performing federally assigned duties but is under actual direction and control of a non-Federal entity, for example, a Federal employee in training at a non-Federal entity or ROTC instructors at civilian institutions. This could also occur where the employee is working for another Federal agency. Furthermore, dual purpose situations are commonplace where benefits to the Government and the member or employee may or may not be concurrent, for example, use of privately owned vehicles at or away from assigned duty station, or permanent change of station with delay en route. (See §§ 536.90 through 536.97 for the handling of certain claims arising out of nonscope activities of members of the Army.)

(g) *Law applicable.* The whole law of the place where the act or omission occurred, including choice of law rules, will be applied in the determination of liability and quantum. Where there is a conflict between the local law and an express provision of the FTCA, the latter governs.

(h) *Subrogation.* Claims involving subrogation will be processed as prescribed in § 536.5(b), except where inconsistent with the provisions of this section or the Attorney General's regulations.

(i) *Indemnity or contribution*— (1) *Sought by the United States.* If the claim arises under circumstances in which the Government is entitled to contribution or indemnity under a contract of insurance or the applicable law governing joint tortfeasors, the third party will be notified of the claim, and will be requested to honor its obligation to the United States or to accept its share of joint liability. If the issue of indemnity or contribution is not satisfactorily adjusted, the claim will be compromised or settled only after consultation with the Department of Justice as provided in 28 CFR 14.6.

(2) *Claims for indemnity or contribution.* Claims for indemnity or contribution from the United States will be compromised or settled under this section, if liability exists under the applicable law, provided the incident giving rise to such claim is otherwise cognizable under this section. As to such claims where the exclusivity of the FECA may be applicable, see 5 U.S.C. 8101–8150.

(3) *ARNG vehicular claims.* When a vehicle used by the ARNG, or a privately owned vehicle operated by a member or employee of the ARNG, is involved in an incident under circumstances which make this section applicable to the disposition of administrative claims against the United States and results in personal injury, death, or property damage, and a remedy against the State or its insurer is indicated, the responsible area claims authority will monitor the action against the State or its insurer and encourage direct settlement between the claimant and the State or its insurer. Where the State is insured, direct contact with State or ARNG officials rather than the insurer is desirable. Regular procedures will be established and followed wherever possible. Such procedures should be agreed on by both local authorities and the appropriate claims authorities subject to concurrence by Commander, USARCS. Such procedures will be designed to ensure that local authorities and United States authorities do not issue conflicting instructions for processing claims and that whenever possible and in accordance with governing local and Federal law, a mutual arrangement for disposition of such claims as in paragraph (i)(4) of this section is worked out. Amounts recovered or recoverable by claimant from any insurer (other than claimant's insurer who has obtained no subrogated interest against the United States) will be deducted from the amount otherwise payable.

(4) *Claims arising out of training activities of ARNG personnel.* Contribution may be sought from the state involved where it has waived sovereign immunity or has private insurance which would cover the incident giving rise to the particular claim. Where the state involved rejects the request for contribution, the file will be forwarded to the Commander, USARCS. The Commander, USARCS, is authorized to enter into an agreement with a State, territory, or commonwealth to share settlement costs of claims generated by the ARNG personnel or activities of that political entity.

(j) *Claims not payable.* The exclusions contained in 28 U.S.C. 2680 are applicable to claims herein. Other types of claims are excluded by statute or court decisions, including, but not limited to, the following:

(1) Claims for the personal injury or death of a member of the Armed Forces of the United States incurred incident to service, or for damage to a member's property incurred incident to service. *Feres* v. *United States,* 340 U.S. 135 (1950). Currently the most significant justification for the incident to service doctrine is the availability of alternative compensation systems, and the fear of disrupting the military command relationship. Other supportive factors often cited by the courts are the service member's duty status, location, and receipt of military benefits at the time of the incident.

(i) The exception applies to members of the Army, Navy, Air Force, Marine Corps, and Coast Guard, including the Reserve Components of the Armed Forces. (See 10 U.S.C. 261.) The exception also applies to service members on the Temporary Disability Retired List, and on convalescent leave, to service academy cadets, to members of visiting forces in the United States under the SOFA between the parties to the North Atlantic Treaty Organization or similar international agreements, and to service members on the extended enlistment program.

(ii) The incident to service doctrine has been extended to derivative claims where the directly injured party is a service member. Third party indemnity claims are barred.

(2) Claims for the personal injury or death of a Government employee for whom benefits are provided by the Federal Employees Compensation Act (5 U.S.C. 8101–8150). Who is a government employee under the Act is defined in the Act itself (5 U.S.C. 8101), but is not limited to Federal Civil Service

employees. The term "government employee" can include certain ROTC cadets (5 U.S.C. 8140) and state or local law enforcement officers engaged in apprehending a person for committing a crime against the United States (5 U.S.C. 8191), certain nurses, interns or other health care personnel, e.g., student nurses, etc. (5 U.S.C. 5351, 8144) and certain Army Community Service Volunteers (10 U.S.C. 1588). This Act provides that benefits paid under the Act are exclusive and instead of all other liability of the United States, including that under a Federal tort liability statute (5 U.S.C. 8116(c)). It extends to derivative claims, to subsequent malpractice for treatment of a covered injury, to injuries for which there is no scheduled compensation, and to employee harassment claims for which other remedies are available (42 U.S.C. 2000e). The exception does not bar third party indemnity claims. When there is doubt as to whether or not this exception applies, the claim should be forwarded through claims channels to the Commander, USARCS, for an opinion.

(3) Claims for the personal injury or death of an employee, including nonappropriated fund employees, for whom benefits are provided by the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 901–950). An employee of a nonappropriated fund instrumentality is covered by that Act (5 U.S.C. 8171). This is the exclusive remedy for covered employees, similar to the exclusivity of the FECA.

(4) Claims for the personal injury or death of any employee for whom benefits are provided under any workmen's compensation law, if the premiums of the workmen's compensation insurance are retrospectively rated and charged as an allowable, allocable expense to a cost-type contract. If, in the opinion of an approval or settlement authority, the claim should be considered payable, for example, the injuries did not result from a normal risk of employment or adequate compensation is not payable under workmen's compensation laws, the file will be forwarded with recommendations through claims channels to the Commander, USARCS, who may authorize payment of an appropriate award.

(5) Claims for damage from or by flood or flood waters at any place. 33 U.S.C. 702c. This exception is broadly construed and includes multi-purpose projects and all phases of construction and operation.

(6) Claims based solely upon a theory of absolute liability or liability without fault. Either a "negligent" or "wrongful" act is required by the FTCA, and some type of malfeasance or nonfeasance is required. *Dalehite* v. *United States*, 346 U.S. 15 (1953); *Laird* v. *Nelms*, 406 U.S. 797 (1972). Thus, liability does not arise by virtue either of United States ownership of an inherently dangerous commodity or of engaging in extra-hazardous activity.

(k) *Procedures*—(1) *General.* Unless inconsistent with the provisions of this section, the procedures for the investigation and processing of claims set forth in §§ 536.1 through 536.13 will be followed.

(2) *Claims arising out of tortious conduct by ARNG personnel as defined in paragraph (d)(1)(iii) of this section*—(i) *Notification.* The procedures prescribed in § 536.75, will be followed in ARNG claims arising under the FTCA.

(ii) Claims against the U.S. Government received by agencies of the State. These claims will be expeditiously forwarded through the State adjutant general to the appropriate U.S. Army area claims office in whose geographic area the incident occurred.

(3) *Statute of Limitations.* (i) To be settled under this section, a claim against the United States must be presented in writing to the appropriate Federal agency within 2 years of its accrual.

(ii) For statute of limitations purposes, a claim will be deemed to have been presented when the appropriate Federal agency as defined in § 536.3(m) receives from a claimant, his or her duly authorized agent, or legal representative an executed SF 95 or written notification of an incident, together with a claim for money damages, in a sum certain, for damage to or loss of property or personal injury or death. For Federal tort claims arising out of activities of the ARNG, receipt of a written claim by any fulltime officer or employee of the ARNG will be considered proper receipt.

(iii) A claim received by an official of the DOD will be transmitted without delay to the nearest Army claims processing office or area claims office. Inquiries concerning applicability of the statute of limitations to claims filed with the wrong Federal agency will be referred to USARCS for resolution.

(4) *Claims within settlement authority of USARCS or the Attorney General.* A copy of each claim which must be brought to the attention of the Attorney General in accordance with his or her regulations (28 CFR 14.6), or one in which the demand exceeds $15,000 or the total amount of all claims, actual or potential, from a single incident exceeds $25,000, will be forwarded immediately to the Commander, USARCS. Subsequent documents should be forwarded or added in accordance with § 536.5(h)(2). USARCS is responsible for the monitoring and settlement of such claims and will be kept informed of the status of the investigation and processing thereof. Direct liaison and correspondence between USARCS and the field claims authority or investigator is authorized on all claims matters, and assistance will be furnished as required.

(5) *Non-Army claims.* Claims based on acts or omissions of employees of the United States, other than military and civilian personnel of the DA, civilian personnel of the DOD, and employees of nonappropriated fund activities of the DA, will be transmitted forthwith to the nearest official of the employing agency, and the claimant will be advised of the referral.

(6) *Acknowledgment of claim.* (i) The claimant and his or her attorney will be kept informed by personal contact, telephonic contact, or mail of the receipt of his or her claim and the status of the claim. Formal acknowledgment of the claim in writing is required only where the claim is likely to result in litigation or is presented in an amount exceeding $15,000. In this event, the letter of acknowledgment will state the date of receipt of the claim by the first agency of the Army receiving the claim.

(ii) If it is reasonably clear to the office acknowledging receipt that a claim filed under the FTCA is not cognizable thereunder; for example, it is a maritime claim under § 536.60, or it falls under §§ 536.20 through 536.35 or 536.70 through 536.81, the acknowledgment will contain a statement advising the claimant of the statute under which his or her claim will be processed. If it is not clear which statute applies, a statement to that effect will be made, and the claimant will be promptly advised on his or her remedy when a decision is made. However, all potential maritime claims will be handled in accordance with § 536.5(h)(5).

(iii ) When a claim has been amended as set forth in § 536.5(f)(4), the amendment will be acknowledged in all cases. Additionally, the claimant will be informed that the amendment constitutes a new claim insofar as concerns the 6 months in which the DA is granted the authority to make a final disposition under 28 U.S.C. 2675(a) and the claimant's option thereunder will not accrue until 6 months after the filing of the amendment.

(iv) When a claim is improperly presented, is incomplete or otherwise does not meet the requirements set forth in § 536.5(d), the claimant or his or her

representative will be promptly informed in writing of the deficiencies and advised that a proper claim must be filed within the 2 year statute of limitations.

(7) *Investigation.* Claims cognizable under this section will be investigated and processed on a priority basis in order that settlement if indicated may be accomplished within the 6 months prescribed by statute.

(8) *Advice to claimant.* (i) A full explanation of claims procedures and of the rights of the claimant will be made to the extent necessitated by the amount and nature of the claim.

(ii) In a case where litigation is likely, or where this course of action is preferred by the claimant, and it appears to be a proper case for administrative settlement, the claimant will be advised as to the advantages of administrative settlement. If the claim is within the jurisdiction of a higher settlement authority, the claim will be discussed with such authority prior to the furnishing of such advice. The claimant should be familiarized with all aspects of administrative settlement procedures including the administrative channels through which his claim must be processed for approval. He or she may be advised that administrative processing can result in more expeditious processing, whereas litigation may take considerable time, particularly in jurisdictions with crowded dockets.

(iii) If appropriate, he or she may be informed that a tentative settlement can be reached for any amount above $25,000, subject to approval by the Attorney General. He or she should be advised that administrative filing of the claim protects him under the statute of limitations for purpose of litigation; suit can be filed within 6 months after the date of mailing of notice of final denial by the DA, thus potentially allowing negotiations to continue indefinitely. An attorney representing a claimant should be advised of the limitations on fees for purposes of administrative settlement (20 percent) and litigation (25 percent). The attorney may also be advised that there is no jury trial under the FTCA.

(9) *Notification to claimant of action on claim.* (i) The filing of an administrative claim and its denial are prerequisite to filing suit. Any suit must be filed not later than 6 months after notification by certified or registered mail of the denial of the administrative claim. Failure of a settlement authority to take final action on a properly filed claim within 6 months may be treated by the claimant as a final denial for the purposes of filing suit. If the claimant has provided insufficient documentation to permit evaluation of the claim, written notice should be given to this effect. Since administrative settlements are a voluntary process, the preferred method of negotiating is to attempt to exchange information on an open basis.

(ii) Upon final denial of a claim, or upon rejection by the claimant of a partial allowance, and further efforts to reach a settlement are not considered feasible (§ 536.5(h)(1)), the settlement authority will inform the claimant of the action on his claim by certified or registered mail. Notification will be made as set forth in § 536.11(b).

(iii) If a claim has been presented to the DA and, also, to other Federal agencies, without any notification to the DA of this fact, final action taken by the DA prior to that of any other agency is conclusive on a claim presented to other agencies, unless another agency decides to take further action to settle the claim. Such agency may treat the matter as a reconsideration under 28 CFR 14.9(b), unless suit has been filed. The foregoing applies likewise to DA claims in which another Federal Agency has already taken final action.

(iv) If, after final denial by another agency, a claim is filed with the DA, the new submission will not toll the 6 months limitation for filing suit, unless the DA treats the second submission as a request for reconsideration under paragraph (k)(9)(iv)(A) of this section.

(A) *Reconsideration.* (*1*) While there is no appeal from the action of an approving or settlement authority under the FTCA and this section, an approving or settlement authority may reconsider a claim upon request of the claimant or someone acting in his behalf. Even in the absence of such a request, an approving or settlement authority may on his own initiative reconsider a claim. He may reconsider a claim which he previously disapproved in whole or in part (even where a settlement agreement has been executed) when it appears that his original action was incorrect in law or fact based on the evidence of record at the time of the action or subsequently received. If he determines that his original action was incorrect, he will modify the action and, if appropriate, make a supplemental payment. The basis for a change in action will be stated in a memorandum included in the file.

(*2*) A successor approving or settlement authority may also reconsider the original action on a claim but only on the basis of fraud, substantial new evidence, errors in calculation or mistake (misinterpretation) of law.

(*3*) A request for reconsideration must be submitted prior to the commencement of suit and prior to the expiration of the 6-month period provided in 28 U.S.C. 2401(b). Upon timely filing, the appropriate authority shall have 6 months from the date of filing in which to make a final disposition of the request, and the claimant's option under 28 U.S.C. 2675(a) shall not accrue until 6 months after the filing of the request.

(*4*) A request for reconsideration should indicate fully the legal or factual basis asserted as grounds for relief. Following completion of any investigation or other action deemed necessary for an informed disposition of the request, the approving or settlement authority will reconsider the claim and attempt to settle it by granting such relief as may appear warranted. When further settlement efforts appear unwarranted, the entire file with a memorandum of opinion will be referred through claims channels to the Commander, USARCS, and the claimant informed of such referral.

**§ 536.60 Maritime claims.**

(a) *Statutory authority.* Administrative settlement or compromise of admiralty and maritime claims in favor of and against the United States by the Secretary of the Army or his designee is authorized by the Army Maritime Claims Settlement Act (10 U.S.C. 4801–04, 4806, as amended).

(b) *Related statutes.* The Army Maritime Claims Settlement Act is supplemented by the following statutes under which suits in admiralty may be brought: the Suits in Admiralty Act of 1920 (41 Stat. 525, 46 U.S.C. 741–752); the Public Vessels Act of 1925 (43 Stat. 1112, 46 U.S.C. 781–790); the Act of 1948 Extending the Admiralty and Maritime Jurisdiction (62 Stat. 496, 46 U.S.C. 740). Similar maritime claims settlement authority is exercised by the Department of the Navy under 10 U.S.C. 7365, 7621–23 and by the Department of the Air Force under 10 U.S.C. 9801–9804, 9806.

(c) *Scope.* 10 U.S.C. 4802 provides for the settlement or compromise of claims for—

(1) Damage caused by a vessel of, or in the service of, the DA or by other property under the jurisdiction of the DA;

(2) Compensation for towage and salvage service, including contract salvage, rendered to a vessel of, or in the service of, the DA or to other property under the jurisdiction of the DA; or

(3) Damage caused by a maritime tort committed by any agent or employee of

the DA or by property under the jurisdiction of the DA.

(d) *Claims exceeding $500,000.* Claims against the United States settled or compromised in a net amount exceeding $500,000 are not payable hereunder, but will be investigated and processed under this section, and, if approved by the Secretary of the Army, will be certified by him to Congress.

(e) *Claims not payable.* A claim is not allowable under this section which:

(1) Is for damage to, or loss or destruction of, property, or for personal injury or death, resulting directly or indirectly from action by the enemy, or by U.S. Armed Forces engaged in armed combat, or in immediate preparation for impending armed combat.

(2) Is for personal injury or death of a member of the Armed Forces of the United States or a civilian employee incurred incident to his service.

(3) Is for personal injury or death of a Government employee for whom benefits are provided by the FECA (5 U.S.C. 8101–8150).

(4) Is for personal injury or death of an employee, including nonappropriated fund employees, for whom benefits are provided by the Longshoremen's and Harbor Workers' Compensation Act (44 Stat. 1424, 33 U.S.C. 901).

(5) Has been made the subject of a suit by or against the United States, except as provided in subparagraph (h)(2) of this section.

(6) Arises in a foreign country and was considered by the authorities of a foreign country and final action taken thereon under Article VIII of the NATO Status of Forces Agreement, Article XVIII of the Treaty of Mutual Cooperation and Security between the United States and Japan regarding facilities and areas and the Status of United States Armed Forces in Japan, or other similar treaty or agreement, if reasonable disposition was made of the claim.

(f) *Claims under other laws and regulations.* (1) Claims of military personnel and civilian employees of the DOD and the Army, including military and civilian officers and crews of Army vessels, for damage to or loss of personal property occurring incident to their service will be processed under the provisions of the Military Personnel and Civilian Employees' Claims Act (31 U.S.C. 3721).

(2) Claims which are within the scope of this section and also within the scope of the FCA (10 U.S.C. 2734) may be processed under that statute when specific authority to do so has been obtained from the Commander, USARCS. The request for such authority should be accompanied by a copy of the report of the incident by the Marine Casualty Investigating Officer, or other claims investigator.

(g) *Subrogation.* (1) An assurer will be recognized as a claimant under this section to the extent that it has become subrogated by payment to, or on behalf of, its assured, pursuant to a contract of insurance in force at the time of the incident from which the claim arose. An assurer and its assured may file a claim either jointly or separately. Joint claims must be asserted in the names of, and must be signed by, or on behalf of, all parties; payment then will be made jointly. If separate claims are filed, payment to each party will be limited to the extent of such party's undisputed interest.

(2) For the purpose of determining authority to settle or compromise a claim, the payable interests of an assurer (or assurers) and the assured represent merely separable interests, which interests in the aggregate must not exceed the amount authorized for administrative settlement or compromise.

(3) The policies set forth in paragraphs (g) (1) and (2) of this section with respect to subrogation arising from insurance contracts are applicable to all other types of subrogation.

(h) *Limitation of settlement.* (1) The period for effecting an administrative settlement under the Army Maritime Claims Settlement Act is subject to the same limitation as that for beginning an action under the Suits in Admiralty Act; that is, a 2-year period from the date of the origin of the cause of action. The claimant must have agreed to accept the settlement, and it must be approved for payment by the Secretary of the Army or his designee prior to the end of such period; otherwise, thereafter the cause of action ceases to exist, except under the circumstances set forth in paragraph (h)(2) of this section. The presentation of a claim, or its consideration by the DA, neither waives nor extends the 2-year limitation period.

(2) In the event that an action has been filed in a U.S. district court before the end of the 2-year statutory period, an administrative settlement may be negotiated by the Commander, USARCS, with the claimant, even though the 2-year period has elapsed since the cause of action accrued, provided the claimant obtains the written consent of the appropriate office of the Department of Justice charged with the defense of the complaint. Payment may be made upon dismissal of the complaint.

(3) When a claim under this section, notice of damage, invitation to a damage survey, or other written notice of an intention to hold the United States liable is received, the receiving installation, office, or person immediately will forward such document to the Commander, USARCS. USARCS will promptly advise the claimant or potential claimant in writing of the comprehensive application of the time limit.

(4) When a claim under this section for less than $10,000 is presented to a Corps of Engineers office and thus may be appropriate for action by the Corps of Engineers pursuant to the delegation of authority set forth in paragraph (i)(2) of this section, the receiving Corps of Engineers office will promptly advise the claimant in writing of the comprehensive application of the time limit (unless such has already been done by USARCS).

(i) *Delegation of authority.* (1) Where the amount to be paid is not more than $10,000, claims under this section may be settled or compromised by the Commander, USARCS, chief of overseas command claims service, or his designee.

(2) When a claim under this section arises from a civil works activity of the Corps of Engineers, engineer area claims offices are delegated authority to approve and pay in full, or in part, subject to the execution of an appropriate settlement agreement, claims presented for $10,000 or less, and compromise and pay claims regardless of the amount claimed, provided an award of $10,000 or less is accepted by the claimant in full satisfaction and final settlement of the claim, subject to such limitations as may be imposed by the Chief of Engineers. Meritorious claims arising from civil works activities of the Corps of Engineers will be paid from Corps of Engineers funds.

## Subpart C—Claims Arising From Activities of National Guard Personnel While Engaged in Duty or Training

### § 536.70 Statutory authority.

The statutory authority for this chapter is contained in the Act of 13 September 1960 (74 Stat. 878, 32 U.S.C. 715), commonly referred to as the National Guard Claims Act (NGCA), as amended by Public Law 90–486, 13 August 1968 (82 Stat. 756), Public Law 90–525, 26 September 1968 (82 Stat. 877), Public Law 91–312, 8 July 1970 (84 Stat. 412), and Public Law 93–336, 8 July 1974, (88 Stat. 291); and the Act of 8 September 1961 (75 Stat. 488, 10 U.S.C. 2736) as amended by Public Law 90–521, 26 September 1968 (82 Stat. 874), Public Law 97–124, 29 December 1981 (95 Stat.

1666), and Public Law 98–564, 30 October 1984 (98 Stat. 2918).

**§ 536.71 Definitions.**

For purposes of §§ 536.70 to 536.81 the following terminology applies:

(a) *ARNG personnel.* A member of the ARNG engaged in training or duty under 32 U.S.C. 316, 502, 503, 504, 505, or 709.

(b) *Claimant.* An individual, partnership, association, corporation, country, State, Commonwealth, territory or a political subdivision thereof, or the District of Columbia, presenting a claim and meeting the conditions set forth in § 536.5. The term does not include the U.S. Government, any of its instrumentalities, except as prescribed by statute, or a State, commonwealth, territory or the District of Columbia which maintains the unit to which the ARNG personnel causing the injury or damage are assigned. This exclusion does not ordinarily apply to a unit of local government which does not control the ARNG organization involved. As a general rule, a claim by a unit of local government other than a State, commonwealth or territory will be entertained unless the item claimed to be damaged or lost was procured or maintained by State, commonwealth, or territorial funds.

**§ 536.72 Scope.**

(a) Sections 536.70 through 536.81 apply in all places and set forth the procedures to be followed in the settlement and payment of claims for death, personal injury, or damage to or loss or destruction of property caused by members or employees of the ARNG, or arising out of the noncombat activities of the ARNG when engaged in training or duty under 32 U.S.C. 316, 502, 503, 504, 505, or 709, provided such claim is not for personal injury or death of a member of the Armed Forces or Coast Guard, or a civilian officer or employee whose injury or death is incident to service.

(b) A claimant dissatisfied with an administrative settlement under §§ 536.70 through 536.81 as the result of activities of the ARNG of a State, Commonwealth, or territory is not entitled to judicial relief in an action against the United States. Whether he or she has a legal cause of action or may file an administrative claim against such a political entity depends upon controlling local law.

(c) Claims arising out of activities of the ARNG when performing duties at the call of the governor of a State maintaining the unit are not cognizable under §§ 536.70 through 536.81 or any other law, regulation or appropriation available to the Army for the payment of claims. Such claims should be returned or referred to the authorities of the State for whatever action they choose to take, and claimants should be informed of the return or referral. Care should be taken to determine the status of the unit and members at the time the claims incident occurred, particularly in civil emergencies as units called by the governor are sometimes "federalized" during the call-up. If the unit was "federalized" at the time the claim incident occurred, the claim will be cognizable under §§ 536.20 through 536.35, 536.50, or 536.90 through 536.97 or other sections pertaining to the Active Army.

**§ 536.73 Claims payable.**

(a) *Tort claims.* All claims for personal injuries, death, or damage to or loss of real or personal property, arising out of incidents occurring on or after 29 December 1981, based on negligent or wrongful acts or omissions of ARNG personnel acting within the scope of employment, within the United States while engaged in training or duty under 32 U.S.C. 316, 502, 503, 504, 505, or 709 will be processed under the FTCA, § 536.50. Such claims arising before 29 December 1981 will, except as modified herein, be processed and settled in accordance with the provisions of §§ 536.20 through 536.35.

(b) *Noncombat activities.* A claim incident to the noncombat activities of the ARNG while engaged in duty or training under 32 U.S.C. 316, 502, 503, 504, 505, or 709 may be settled under §§ 536.70 through 536.81. "Noncombat activities" are defined in § 536.3.

(c) *Subrogated claims.* Subrogated claims will be processed as prescribed in § 536.5(b).

(d) *Advance payments.* Advance payments in partial settlement of meritorious claims to alleviate immediate hardship are authorized as provided in § 536.13.

**§ 536.74 Claims not payable.**

The type of claims listed in § 536.24 as not payable are also not payable under §§ 536.70 through 536.81.

**§ 536.75 Notification of incident.**

Except where claims are regularly paid from State sources, for example, insurance, court of claims, legislative committee, etc., the appropriate adjutant general will ensure that each incident which may give rise to a claim cognizable under §§ 536.70 through 536.81 is reported immediately by the most expeditious means to the area claims office in whose geographic area the incident occurs or to a claims processing office designated by the area claims office. The report will contain the following information:

(a) Date of incident.

(b) Place of incident.

(c) Nature of incident.

(d) Names and organizations of ARNG personnel involved.

(e) Names of potential claimant(s).

(f) A brief description of any damage, loss, or destruction of private property, and any injuries or death of potential claimants.

**§ 536.76 Claims in which there is a State source of recovery.**

Where there is a remedy against the State, as a result of either waiver of sovereign immunity or where there is liability insurance coverage, the following procedures apply:

(a) Where the State is insured, direct contact with State or ARNG officials rather than the insurer is desirable. Regular procedures will be established and followed wherever possible. Such procedures should be agreed on by both local authorities and the appropriate claims authorities subject to concurrence by the Commander, USARCS. Such procedures will be designed to ensure that local authorities and U.S. authorities do not issue conflicting instructions for processing claims, and whenever possible and in accordance with governing local and Federal law, a mutual arrangement for disposition of such claims as in paragraph (c) of this section is worked out. Amounts recovered or recoverable by claimant from any insurer (other than claimant's insurer who has obtained no subrogated interest against the United States) will be deducted from the amount otherwise payable.

(b) If there is a remedy against the State or its insurer, the claimant may be advised of that remedy. If the payment by the State or its insurer does not fully compensate claimant, an additional payment may be made under §§ 536.70 through 536.81. If liability is clear and claimant settles with the State or its insurer for less than the maximum amount recoverable, the difference between the maximum amount recoverable from the State or its insurer and the settlement normally will be also deducted from the payment by the United States.

(c) If the State or its insurer desires to pay less than their maximum jurisdiction or policy limit on a basis of 50 percent or more of the actual value of the entire claim, any payment made by the United States must be made directly to the claimant. This can be accomplished by either having the United States pay the entire claim and

have the State or its insurer reimburse its portion to the United States, or by having each party pay its agreed share directly to the claimant. If the State or its insurer desires to pay less than 50 percent of the actual value of the claim, the procedure set forth in paragraph (d) of this section will be followed.

(d) If there is a remedy against the State and the State refuses to make payment, or there is insurance coverage and the claimant has filed an administrative claim against the United States, forward file with a memorandum of opinion to the Commander, USARCS, including information as to the status of any judicial or administrative action the claimant has taken against the State or its insurer. The Commander, USARCS, will determine whether the claimant will be required to exhaust his remedy against the State or its insurer, or whether the claim against the United States can be settled without such requirement. If the Commander, USARCS, determines to follow the latter course of action, he will also determine whether an assignment of the claim against the State or its insurer will be obtained and whether recovery action will be taken. The State or its insurer will be given appropriate notification in accordance with State law necessary to obtain contribution of indemnification.

**§ 536.77 Claims against the ARNG tortfeasor individually.**

The procedures set forth in § 536.9(f) are applicable. With respect to claims arising before 29 December 1981, an ARNG driver acting pursuant to the authorities cited in § 536.73(a) is not protected by the provisions of the Drivers Act (28 U.S.C. 2670(b)) and the driver may be sued individually in State court. When this situation occurs, it should be monitored closely by ARNG authorities. If possible an early determination will be made as to whether any private insurance of the ARNG tortfeasor is applicable. Where such insurance is applicable and the claim against the United States is of doubtful validity, final actions will be withheld pending resolution of the demand against the ARNG tortfeasor. If, in the opinion of the claims approving or settlement authority, such insurance is applicable and the claim against the United States is payable in full or in a reduced amount, settlement efforts will be made either together with the insurer or singly by the United States. Any settlement will not include amounts recovered or recoverable as in § 536.9. If the insurance is not applicable, settlement or disapproval action will proceed without further delay.

**§ 536.78 When claim must be presented.**

A claim may be settled under §§ 536.70 through 536.81 only if presented in writing within 2 years after it accrues, except that if it accrues in time of war or armed conflict, or if war or armed conflict intervenes within 2 years after it accrues, and if good cause is shown, the claim may be presented not later than 2 years after war or armed conflict is terminated. As used in this section, a war or armed conflict is one in which any Armed Force of the United States is engaged. The dates of commencement and termination of an armed conflict must be established by concurrent resolution of Congress or by determination of the President.

**§ 536.79 Where claim must be presented.**

A claim must be presented to the appropriate Federal agency. Receipt of a written claim by any full time officer or employee of the National Guard will be considered receipt. However, the statute of limitations is tolled if a claim is filed with a State agency, the claim purports to be under the NGCA and it is forwarded to the Army within 6 months, or the claimant makes inquiry of the Army concerning the claim within 6 months. If a claim is received by a DA official who is not a claims approval or settlement authority, the claim will be transmitted without delay to the nearest approval or settlement authority.

**§ 536.80 Procedures.**

(a) The form of a claim under §§ 536.70 through 536.81 will be as described in § 536.5 (d) and (e).

(b) So far as they are not inconsistent with §§ 536.70 through 536.81, the guidance set forth in §§ 536.10 through 536.12 will be followed in processing a claim under §§ 536.70 through 536.81.

(c) The following provisions are applicable to claims under §§ 536.70 through 536.81 and are hereby incorporated by reference:

(1) § 536.28 (applicable law);

(2) § 536.29 (determination of quantum);

(3) § 536.31 (claims over $100,000);

(4) § 536.32 (settlement procedures);

(5) § 536.33 (attorney fees).

**§ 536.81 Settlement agreement.**

Procedures concerning settlement agreements will be in accordance with § 536.10, except that the agreement will be modified to include a State and its National Guard in most cases. A copy of the agreement will be furnished to State authorities and the individual tortfeasor.

## Subpart D—Claims Incident to Use of Government Vehicles and Other Property of the United States Not Cognizable Under Other Law

**§ 536.90 Statutory authority.**

The statutory authority for §§ 536.90 through 536.97 is contained in the act of 9 October 1962 (76 Stat. 767, 10 U.S.C. 2737). This statute is commonly called the "Nonscope Claims Act." For the purposes of §§ 536.90 through 536.97, a Government installation is a facility having fixed boundaries owned or controlled by the Government, and a vehicle includes every description of carriage or other artificial contrivance used, or capable of being used, as a means of transportation on land (1 U.S.C. 4).

**§ 536.91 Scope.**

(a) Sections 536.90 through 536.97 prescribe the substantive bases and special procedural requirements for the administrative settlement and payment, in an amount not more than $1,000, of any claim against the United States not cognizable under any other provision of law for damage to or loss of property, or for personal injury or death, caused by military personnel or civilian employees of the DA or by civilian employees of the DoD incident to the use of a United States vehicle at any place or incident to the use of other United States property on a Government installation.

(b) Any claim in which there appears to be a disputed issue relating to whether the employee was acting within the scope of employment will be considered under §§ 536.20 through 536.35, 536.50, or 536.70 through 536.81 as applicable. Only when all parties, to include an insurer, agree that there is no "in scope" issue will §§ 536.90 through 536.97 be used.

**§ 536.92 Claims payable.**

(a) *General.* A claim for personal injury, death, or damage to or loss of property, real or personal, is payable under §§ 536.90 through 536.97 when

(1) Caused by the act or omission, negligent, wrongful, or otherwise involving fault, of military personnel of the DA or the ARNG, or civilian employees of the DA or the ARNG—

(i) Incident to the use of a vehicle of the United States at any place.

(ii) Incident to the use of any other property of the United States on a Government installation.

(2) The claim may not be settled under any other claims statute and claims regulation available to the DA for the administrative settlement of claims.

(3) The claim has been determined to be meritorious, and the approval or settlement authority has obtained a settlement agreement in an amount not in excess of $1,000 in full satisfaction of the claim prior to approval of the claim for payment.

(b) *Personal injury or death.* A claim for personal injury or death is allowable only for the cost of reasonable medical, hospital, or burial expenses actually incurred and not otherwise furnished or paid by the United States.

(c) *Property loss or damage.* A claim for damage to or loss of property is allowable only for the cost of reasonable repairs or value at time of loss, whichever is less.

**§ 536.93 Claims not payable.**

A claim is not allowable under §§ 536.90 through 536.97 that—

(a) Results wholly or partly from the negligent or wrongful act of the claimant, his or her agent or employee. The doctrine of comparative negligence is not applicable.

(b) Is for medical, hospital, and burial expenses furnished or paid by the United States.

(c) Is for any element of damage pertaining to personal injuries or death other than provided in § 536.92(b). All other items of damage, for example, compensation for loss of earnings and services, diminution of earning capacity, anticipated medical expenses, physical disfigurement, and pain and suffering, are not payable.

(d) Is for loss of use of property or for the cost of a substitute property, for example, a rental.

(e) Is legally recoverable by the claimant under an indemnifying law or indemnity contract. If the claim is legally recoverable in part, that part recoverable by the claimant is not payable.

(f) Is a subrogated claim.

**§ 536.94 When claim must be presented.**

A claim may be settled under §§ 536.90 through 536.97 only if it is presented in writing within 2 years after it accrues.

**§ 536.95 Procedures.**

So far as not inconsistent with §§ 536.90 through 536.97, the procedures for the investigation and processing of claims contained in §§ 536.1 through 536.13 will be followed.

**§ 536.96 Settlement agreement.**

A claim may not be paid under §§ 536.90 through 536.97 unless the amount tendered is accepted by the claimant in full satisfaction. A settlement agreement (§ 536.10) is required before payment.

**§ 536.97 Reconsideration.**

(a) An approval or settlement authority may reconsider the quantum of a claim upon request of the claimant or someone acting in his behalf. In the absence of such a request, an approval or settlement authority may on his own initiative reconsider the quantum of a claim. Reconsideration may occur even in a claim which was previously disapproved in whole or in part (even though a settlement agreement has been executed) when it appears that his or her original action was incorrect in law or fact based on the evidence of record at the time of the action or subsequently received. If he or she determines that the original action was incorrect, he or she will modify the action and, if appropriate, make a supplemental payment. If the original action is determined correct, the claimant will be so notified. The basis for either action will be stated in a memorandum included in the file.

(b) An approval or settlement authority may reconsider the applicability of §§ 536.90 through 536.97 to a claim upon request of the claimant or someone acting in his behalf, or on his own initiative. Such reconsideration may occur even though all parties had previously agreed per § 536.91(b) when it appears that this agreement was incorrect in law or fact based on the evidence of record at the time of the agreement or subsequently received. If he or she determines the agreement to be incorrect, the claim will be reprocessed under the applicable sections of this regulation. If he or she determines the agreement to have been correct, that is, that §§ 536.90 through 536.97 are applicable, he or she will so advise the claimant. This advice will include reference to any appeal or judicial remedies available under the section which the claimant alleges the claim should be processed under.

(c) A successor or higher approval or settlement authority may also reconsider the original action on a claim as in paragraph (a) or (b) of this section, but only on the basis of fraud substantial new evidence, errors in calculation or mistake (misinterpretation) of law.

(d) A request for reconsideration should indicate fully the legal or factual basis asserted as grounds for relief.

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Friday
October 27, 1989

Part III

# Department of Defense

Department of the Army

32 CFR Part 537

Claims on Behalf of the United States; Final Rule

## DEPARTMENT OF DEFENSE

### Department of the Army

### 32 CFR Part 537

### Claims on Behalf of the United States

**AGENCY:** Department of the Army, DOD.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Army announces a change of the regulatory provisions controlling the processing and settlement of administrative claims filed in behalf of the Army. This change will inform third parties of the procedures controlling the processing and settlement of these administrative claims by the Army.

**EFFECTIVE DATE:** November 27, 1989.

**FOR FURTHER INFORMATION CONTACT:** Mr. James A. Mounts, Jr., Deputy Director, U.S. Army Claims Service, Office of The Judge Advocate General, Fort Meade, Maryland 20755–5360, (301) 677–7622.

**SUPPLEMENTARY INFORMATION:** The change to Part 537 reflects some procedural changes in the management of affirmative claims.

### Executive Order 12291

This final rule has been reviewed under Executive Order 12291 and the Secretary of the Army has classified this action as non-major. The effect of the final rule on the economy will be less than $100 million.

### Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 and the Secretary of the Army has certified that this action does not have a significant impact on a substantial number of small entities.

### Paperwork Reduction Act

This final rule does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget under the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

### List of Subjects in 32 CFR Part 537

Claims, Foreign claims, Tort claims.

Dated: October 11, 1989.

Jack F. Lane, Jr.,

*Commanding, United States Army Claims Service, Office of The Judge Advocate General.*

Part 537 is revised to read as follows:

## PART 537—CLAIMS ON BEHALF OF THE UNITED STATES

### Subpart A—Claims for Damage to or Loss or Destruction of Army (DA) Property



### Subpart B—Claims for the Reasonable Value of Medical Care Furnished by the Army



Authority: 10 U.S.C. 3012; sections 537.21 through 537.24 issued under 42 U.S.C. 2651–2653;

## Subpart A—Claims for Damage to or Loss or Destruction of Army (DA) Property

### § 537.1 General.

(a) *Purpose.* This section prescribes, within the limitations indicated in AR 27–20 (AR 27–20 and other Army Regulations referenced herein are available thru: National Technical Information Services, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161), and in paragraph (b) of this section, the procedures for the investigation, determination, assertion, and collection, including compromise and termination of collection action, of claims in favor of the United States for damage to or loss or destruction of Department of the Army (DA) property.

(b) *Applicability and scope.* (1) Other regulations establish systems of property accountability and responsibility; prescribe procedures for the investigation of loss, damage, or destruction by causes other than fair wear and tear in the service; and provide for the administrative collection of charges against military and civilian personnel of the United States, contractors and common carriers, and other individuals and legal entities from whom collection may be made without litigation. When the investigation so prescribed results in preliminary indication of pecuniary liability, and no other method of collection is provided, the matter is referred for action under this section. This relationship exists with regard to—

(i) Property under the control of the DA.

(ii) Property of the Defense Logistics Agency in the custody of the DA.

(iii) Property of nonappropriated funds of the DA (except Army and Air Force Exchange Service property unless a special agreement exists). See AR 215–1 and AR 215–2.

(iv) Federal property made available to the Army National Guard (ARNG).

(2) This section does not apply to—

(i) Claims arising from marine casualties.

(ii) Claims for damage to property funded by civil functions appropriations.

(iii) Claims for damage to property of the DA and Air Force Exchange Service.

(iv) Reimbursements from agencies and instrumentalities of the United States for damage to property.

(v) Collection for damage to property by offset against the pay of employees of the United States, or against amounts owed by the United States to common carriers, contractors, and States.

(vi) Claims by the United States against carriers, warehousemen, insurers, and other third parties for amounts paid in settlement of claims by members and employees of the Army, or the Department of Defense (DOD), for loss, damage, or destruction of personal property while in transit or storage at Government expense.

(3) The commander of a major overseas command, as defined in paragraph (c)(5) of this section, is authorized to establish procedures for the processing of claims in favor of the United States for loss, damage, or destruction of property which may, to the extent deemed necessary, modify the procedures prescribed herein. Two copies of all implementing directives will be furnished Commander, U.S. Army Claims Service (USARCS). Procedures will be prescribed—

(i) To carry out the provisions of DOD Directive No. 5515.8, assigning single service claims responsibility.

(ii) To carry out provisions of treaties and other international agreements which limit or provide special methods for the recovery of claims in favor of the United States.

(c) *Definitions.* For the purpose of this section only, the following terms have the meaning indicated:

(1) *Claim.* The Government's right to compensation for damage caused to Army property.

(2) *Prospective defendant.* An individual, partnership, association, corporation, governmental body, or other legal entity, foreign or domestic, except an instrumentality of the United States, against whom the United States has a claim.

(3) *Damage.* A comprehensive term, including not only damage to, but also loss or destruction of Army property.

(4) *DA property.* Real or personal property of the United States or its instrumentalities and, if the United

States is responsible therefor, real or personal property of a foreign government, which is in the possession or under the control of the DA, one of its instrumentalities, or the ARNG, including that property of an activity for which the Army has been designated the administrative agency, and that property located in an area in which the Army has been assigned single service claims responsibility by appropriate DOD directive.

(5) *Major overseas command.* U.S. Army Europe; U.S. Army Forces Southern Command; Eighth U.S. Army, Korea; Western Command; and any command outside the continental limits of the contiguous States specially designated by The Judge Advocate General (TJAG) under the provisions of AR 27–20.

(6) *Area Claims Office.* The principal office for the investigation, assertion, adjudication and settlement of claims, staffed with qualified legal personnel under the supervision of a Staff Judge Advocate (SJA) or Command Judge Advocate or Corps of Engineers district or Command Legal Counsel under provisions of AR 27–20.

(7) *Recovery judge advocate (RJA).* A JAGC officer or legal adviser responsible for assertion and collection of claims in favor of the United States for medical expenses and property damage.

(d) *Limitation of time.* The Act of July 18, 1966 (80 Stat. 304, 28 U.S.C. 2415) established a 3-year statute of limitations, effective July 19, 1966, upon actions in favor of the United States for money damages founded upon a tort. In computing periods of time excluded under 28 U.S.C. 2416, the RJA concerned shall be deemed the official charged with responsibility and will ensure that action may be brought in the name of the United States within the limitation period.

(e) *Foreign prospective defendants.* Except as indicated below, claims within the scope of this section against foreign prospective defendants will be investigated, processed, and asserted without regard to the nationality of the prospective defendant. Claims against an international organization, a foreign government or a political subdivision, agency, or instrumentality thereof, or against a member of the armed forces or an official or civilian employee of such international organization or foreign government, will not be asserted without prior approval of TJAG. Investigation and report thereof, together with recommendations regarding assertion and enforcement, will be forwarded through command channels to Commander, USARCS, unless the provisions of applicable agreements, or regulations in implementation thereof, negate the requirement for such investigation and report.

(f) *Standards of liability.* (1) The Government's right to compensation for damage caused to Army property will be determined in accordance with the law of the place in which the damage occurred, unless other law may properly be applied under conflict of law rules.

(2) To the extent that the prospective defendant's liability is covered by insurance, liability will be determined without regard to standards of pecuniary liability set forth in other regulations. If no insurance is available, claims will be asserted under this section against military and civilian employees of the United States and of host foreign governments only where necessary to complete the collection of charges imposed upon such persons under the standards established by other regulations.

(g) *Concurrent claims under other regulations.* (1) Claims for damage to DA property and claims for medical care cognizable under §§ 537.21 through 537.24 arising from the same incident will be processed under the sections applicable to each.

(2) If the incident giving rise to a claim in favor of the United States also gives rise to a potential claim or suit against the United States, the claim in favor of the Government will be asserted and otherwise processed only by an RJA who has apparent authority to take final action on the claim against the Government.

(h) *Repayment in kind.* The RJA who asserts a claim under this section may accept, in lieu of full payment of the claim, the restoration of the property to its condition prior to the incident causing the damage, or the replacement thereof. Acceptability of these methods of repayment is conditioned upon the certification of the appropriate staff officer responsible for maintenance, such as is described for motor vehicles in AR 735–5, before a release may be executed. The authority conferred by this paragraph is not limited to incidents involving motor vehicles.

(i) *Delegation of authority.* Subject to the provisions of paragraph (k) of this section, the authority conferred by AR 27–20, to compromise claims and to terminate collection action, with respect to claims that do not exceed $20,000, exclusive of interest, penalties and administrative fees, is further delegated as follows:

(1) An Area Claims Office, as defined in paragraph (c)(6) of this section, is authorized to:

(i) Compromise claims, provided the compromise does not reduce the claim by more than $10,000.

(ii) Terminate collection action, provided the uncollected amount of claim does not exceed $10,000.

(2) The SJA, or if so designated, the chief of the Command Claims Service of a major overseas command, as defined in paragraph (c)(5) of this section, is authorized to:

(i) Compromise claims, not over $20,000 without monetary limitations.

(ii) Terminate collection action, provided the uncollected amount of the claim does not exceed $20,000.

(j) *Compromise and termination of collection action.* (1) The authority delegated in paragraph (j) of this section to compromise claims will be exercised in accordance with the standards set forth in 4 CFR part 104.

(2) The authority delegated in paragraph (j) of this section to terminate collection action will be exercised in accordance with the standards set forth in 4 CFR part 104.

(3) A debtor's liability to the United States arising from a particular incident shall be considered as a single claim in determining whether the claim is not more than $20,000, exclusive of interest, penalties and administrative fees for the purpose of compromise, or termination of collection action.

(4) Only the Department of Justice may approve claims involving:

(i) Compromise or waiver of a claim asserted for more than $20,000 exclusive of interest, penalties and administrative fees.

(ii) Settlement actions previously referred to the Department.

(iii) Settlement where a third party files suit against the United States or the individual federal tortfeaser arising but of the same incident.

(k) *Releases.* The RJA who receives payment of the claim in full, or who receives full satisfaction of an approved compromise settlement, is authorized to execute a release. A standard form furnished by the prospective defendant or his insurer may be executed, provided no indemnity agreement is included.

(l) *Receipts.* The RJA may execute and deliver to a prospective defendant a receipt for payment in full, installment payment or an offered compromise payment, subject to approval of the SJA. DA Form 2135–R (Receipt for Payment for Damage to or Loss of Government Property) be used.

**§ 537.2 Recovery of property unlawfully detained by civilians.**

Whenever information is received that any property belonging to the military service of the United States is unlawfully in the possession of any person not in the military service, the procedures contained in AR 735–11, Para. 3–15, Unit Supply UPDATE 10, should be followed.

**§ 537.6 Maritime casualties; claims in favor of the United States.**

See 32 CFR 536.60, which covers claims on behalf of the United States as well as claims against the United States.

**§ 537.7 Maritime claims.**

(a) *Statutory authority.* Administrative settlement or compromise of admiralty and maritime claims in favor of and against the United States by the Secretary of the Army or his designee, under the direction of the Secretary of Defense, is authorized by Army Maritime Claims Settlement Act of 1956 (70A Stat. 270), as amended (10 U.S.C. 4801–4804, 4806).

(b) *Related statutes.* This statute authorizes the administrative settlement or compromise of maritime claims and supplements the following statutes under which suits in admiralty may be brought; the Suits in Admiralty Act of 1920 (41 Stat. 525, 46 U.S.C. 741–752); the Public Vessels Act of 1925 (43 Stat. 1112, 46 U.S.C. 781–790); the Extention of the Admiralty Act of 1948 (62 Stat. 496, 46 U.S.C. 740). Similar maritime claims settlement authority is exercised by the Department of the Navy under title 10, United States Code (U.S.C.), sections 7365, 7621–7623, and by the Department of the Air Force under 10 U.S.C. 9801 through 9804, 9806.

(c) *Scope.* (1) Section 4803 of title 10, U.S.C., provides for the settlement or compromise of claims of a kind that are within the admiralty jurisdiction of a district court of the United States and of claims for damage caused by a vessel or floating object to property under the jurisdiction of the DA or property for which the Department has assumed an obligation to respond in damages, where the net amount payable to the United States does not exceed $500,000.

(2) Section 4804 of title 10, U.S.C., for the settlement or compromise of claims in any amount for salvage services (including contract salvage and towage) performed by the DA for any vessel. The amounts of claims for salvage services are based upon per diem rates for the use of salvage vessels and other equipment; and materials and equipment damaged or lost during the salvage operation. The sum claimed is intended to compensate the United States for operational costs only, reserving, however, the right of the Government to assert a claim on a salvage bonus basis, in accordance with commercial practice, in an appropriate case.

(d) *Amounts exceeding $500,000.* Maritime claims in favor of the United States, except claims for salvage services, may not be settled or compromised under this section at a net amount exceeding $500,000 payable to the United States. However, all such claims otherwise within the scope of this section will be investigated and reported to the Commander, USARCS.

(e) *Civil works activities.* Rights of the United States to fines, penalties, forfeitures, or other special remedies in connection with the protection of navigable waters, the control and improvement of rivers and harbors, flood control, and other functions of the Corps of Engineers involving civil works activities, are not dealt with in this section. However, claims for money damages which are civil in nature, arising out of civil works activities of the Corps of Engineers and otherwise under this section, for which an adequate remedy is not available to the Chief of Engineers, may be processed under this section.

(f) *Delegation of authority.* Where the amount to be received by the United States is not more than $10,000, claims under this section, except claims for salvage services, paragraph (c)(2) of this section, may be settled or compromised by the Commander, USARCS, or designee, subject to such limitations as may be imposed by the Commander, USARCS and by engineer area claims offices, subject to such limitations as may be imposed by the Chief of Engineers.

(g) *Demands.* Demand for the payment of claims in favor of the United States under this section may be made by the Commander, USARCS, or designee.

## Subpart B—Claims for the Reasonable Value of Medical Care Furnished by the Army

**§ 537.21 General.**

(a) *Authority.* The regulations in §§ 537.21 through 537.24 are in implementation of the Act of September 25, 1962 (76 Stat. 593, 42 U.S.C. 2651–3), Executive Order Number 11060 (27 FR 10925), and Attorney General's Order Number 289–62, as amended (28 CFR part 43), providing for the recovery of the reasonable value of medical care furnished or to be furnished by the United States to a person on account of injury or disease incurred after December 31, 1962, under circumstances creating a tort liability upon some third person.

(b) *Applicability and scope.* (1) Sections 537.21 through 537.24 apply to all claims for the reasonable value of medical services furnished by or at the expense of the Army which result from incidents occurring on or after March 1, 1969. Cases which arise from incidents occurring prior to that date:

(i) And which are the responsibility of an SJA or JA who is designated an RJA will be processed under §§ 537.21 through 537.24;

(ii) And which are the responsibility of an SJA or JA not so designated will be processed under the predecessor regulation until either completed or transferred.

(2) The procedures prescribed herein are to be employed within the DA for the investigation, determination, assertion, and collection, including compromise and waiver, in whole or in part, of claims in favor of the United States for the reasonable value of medical services furnished by or at the expense of DA. TJAG provides general supervision and control of the investigation and assertion of claims arising under the Federal Medical Care Recovery Act.

(3) In Continental U.S., Army SJA's and RJA's will be assigned responsibility under §§ 537.21 through 537.24 on a geographical area basis.

(4) The commander of any major overseas command specified in paragraph (c)(5) of this section is authorized to modify the procedures prescribed herein to accommodate any special circumstances which may exist in the command.

(5) Claims for medical care furnished by the DA on a reimbursable basis (see table 1, AR 40–3) ordinarily will be forwarded for processing directly to the Federal department or agency responsible for reimbursement.

(c) *Definitions.* For the purpose of §§ 537.21 through 537.24 only, the following terms have the meaning indicated.

(1) *Claim.* The Government's right to recover from a prospective defendant the reasonable value of medical care furnished to each injured party.

(2) *Medical care.* Includes hospitalization, out-patient treatment, dental care, nursing service, drugs, and other adjuncts such as prostheses and medical appliances furnished by or at the expense of the United States.

(3) *Injured party.* The person who received an injury or contracted a disease which resulted in the medical care. Such person may be an active duty or retired member, a dependent, or any

other person who is eligible for medical care at DA expense. See section III, AR 40-3, and §§ 577.60 through 577.71 of this chapter.

(4) *Prospective defendant.* A person other than the injured party. An individual partnership, association, corporation, governmental body, or other legal entity, foreign or domestic, against whom the United States has a claim.

(5) *Major overseas command.* U.S. Army Forces Southern Command; the U.S. Army, Europe; Eighth U.S. Army, Korea; Western Command; and any command outside the continental limits of the contiguous states specially designated by TJAG under the provisions of AR 27-20.

(6) *Recovery judge advocate.* A JAGC officer or legal adviser responsible for assertion and collection of claims in favor of the United States for medical expenses.

**§ 537.22 Basic considerations.**

(a) *The right of recovery*—(1) *Applicable law.* The right of the United States to recover the reasonable value of medical care furnished or to be furnished an injured party is based on the Federal Medical Care Recovery Act. It accrues simultaneously with the accrual of the injured party's right to recover damages from the prospective defendant but is independent of any claim which the injured person may have against the prospective defendant. Recovery is allowed only if the injury or diseases resulted from circumstances creating a tort liability under the law of the place where the injury occurred.

(2) *Time limitation.* The Act of 18 July 1966 (28 U.S.C. 2415 et seq.) establishes a 3-year statute of limitation upon actions in favor of the United States for money damages founded upon a tort. The RJA will take appropriate steps within the limitation period to assure that necessary legal action is not barred by the statute.

(3) *Amount.* The Government's right of recovery is limited to amounts expended or to be expended by the United States for medical care from other than Federal sources, and to amounts determined by the rates established by the Office of Management and Budget for medical care from Federal sources, less any amounts reimbursed by the injured party.

(b) *Certain prospective defendants*—(1) *U.S. Government agencies.* No claim will be asserted against any department, agency, or instrumentality of the United States.

(2) *U.S. personnel.* Claims against a member of the uniformed services; or an employee of the United States, its agencies or instrumentalities; or a dependent of a service member or an employee will not be asserted unless the prospective defendant has the benefit of liability insurance coverage or was guilty of gross negligence or willful misconduct. If simple negligence occurring in the scope of a member's or employee's employment is the basis of the claim, no claim will be asserted if such claim is excluded from the coverage of the liability insurance policy involved. No claim, in the absence of specific statutory authorization, will be made directly against a member or employee, or his or her dependents for injuries sustained to himself or herself through acts of simple negligence, gross negligence, or willful misconduct.

(3) *Government contractors.* Claims, the cost or expense of which may be reimbursable by the United States under the terms of a contract, will not be asserted against a contractor without the prior approval of USARCS. Such claims will be investigated and the report thereof, which will include citation to the specific contract clauses involved and recommendations regarding assertion will be forwarded through command channels to Commander, USARCS.

(4) *Foreign persons.* Claims within the scope of §§ 537.21 through 537.24 against foreign prospective defendants will be investigated, processed, and asserted without regard to the nationality of the prospective defendant, unless such action is precluded by treaty or international agreement. Claims against an international organization, or foreign government, will be investigated and reports thereof, together with recommendations regarding assertion and enforcement, will be forwarded through command channels to Commander, USARCS.

(5) *National Guard Members.* Claims arising from the tortious conduct of NG members will be investigated and if assertion appears appropriate, a recommendation shall be made to Commander, USARCS.

(c) *Concurrent claims under other regulations*—(1) *Section 537.1.* Claims for medical care and claims for damage to DA property arising from the same incident will be processed by the RJA in accordance with § 537.1(g). If an RJA lacks settlement authority sufficient to settle a concurrent claim under § 537.1, he may request additional authority under that section from the appropriate major overseas command SJA or area claims authority, who may delegate such additional authority in an amount not exceeding his own settlement authority. Where time is of the essence, telephonic delegations of authority are encouraged, provided they are confirmed in a writing which will be made a part of the case file.

(2) *Counterclaims.* Claims for medical care and claims against the United States which arise from the same incident will be processed by the RJA in accordance with § 537.1(g)(2). If an RJA lacks authority sufficient to settle the claim against the Government, he will coordinate his action with that claims echelon which has the necessary authority to settle the particular claim against the United States.

**§ 537.23 Predemand procedures.**

(a) *Relations with the injured party*—(1) *Advice.* The injured party, or, in appropriate cases, his guardian, next-of-kin, personal representative, or the executor or administrator of his estate, will be advised of the following:

(i) That under the Act of September 25, 1962 (76 Stat. 593, 42 U.S.C. 2651-3, the United States may be entitled to recover the reasonable value of medical care furnished or to be furnished him in the future from the person or persons who injured him, or who were otherwise responsible for his injury or disease; and

(ii) That if he is otherwise entitled to legal assistance under AR 27-3, he should seek guidance from a legal assistance officer regarding any claim he may have for personal injury; and

(iii) That he is required to cooperate in the prosecution of all actions of the United States against the person or persons who injured him; and

(iv) That he is required to furnish a complete statement regarding the facts and circumstances surrounding the incident which resulted in the injury or disease; and

(v) That he is required to furnish information concerning any legal action brought or to be brought by or against the prospective defendant, or to furnish the name and address of the attorney representing him; and

(vi) That he should not execute a release or settle any claim which he may have as a result of his injury without first notifying the RJA.

(2) *Statement.* A written statement will be obtained from the injured party, or his representative, in which he acknowledges receipt of the advice in paragraph (a)(1) of this section, and provides the information required by paragraphs (a)(1) (iv) and (v) of this section. If the injured party or representative fails or refuses to furnish necessary information or cooperation, the originator of the notification of potential claims may be requested to withhold records as to medical history, diagnoses, findings, and treatment, from

the injured party or anyone acting on his behalf pending compliance with the requirements in paragraph (a)(1) of this section. Mere refusal by the injured party or his representative to include the Government's claim in his claim is not sufficient basis, by itself, for this action.

(b) *Determination and assertion*—(1) *Liability.* The RJA will review all the evidence including any claims officer's report of investigation and, after assuring completeness of the file, will make a written determination as to the liability of the prospective defendant and note his reasons for such determination.

(2) *Value.* If the RJA determines that the prospective defendant is liable, he will also ascertain the reasonable value of medical care furnished or to be furnished to the injured party, in accordance with § 537.22(a)(3) and rates established by the Office of Management and Budget. When a military member has been retained in a military hospital for administrative reasons, or where the patient was absent from the hospital or was in a purely convalescent status, the amount of the claim will be recomputed to apply the outpatient rate, if under circumstances warranting only outpatient treatment in a civilian hospital or eliminate such periods altogether if the injured party received no treatment during those periods. In making these determinations the RJA will coordinate with the registrar or other responsible official of the hospital or medical unit in his area of responsibility.

(3) *Amount.* In the event of doubt concerning the extent of medical care furnished or to be furnished an injured party, the RJA will assert the claim in an indefinite amount. Demand will be made in a definite amount at the earliest possible date, based on an estimate of a reasonable value of medical care to be furnished, if appropriate. The RJA will assure that the file contains complete statements of the value of medical care furnished, including all charges by civilian physicians, medical technicians and civilian hospitals.

**§ 537.24 Post demand procedures.**

(a) *Coordination with the injured party's claim.* (1) Every effort will be made to coordinate action to collect the claim of the United States with the injured party's action to collect his own claim for damages, in order that the injured party's recovery for his damages, other than the reasonable value of medical care furnished or to be furnished by the United States, is not prejudiced by the Government's claim.

(2) Attorneys representing an injured party may be authorized to assert the claim on behalf of the government as an item of special damages with the injured party's claim or suit except where prohibited by law. Any agreement to this effect will be in writing, and the agreement should expressly recognize the fact that counsel fees may be neither paid by the Government (5 U.S.C. 3106) nor computed on the basis of the Government's portion of the recovery. The agreement must also require the Government's permission to settle its claim.

(3) If the injured party, denies or his attorney or legal representative, fails or refuses to cooperate in the prosecution of the claim of the United States, independent collection action will be vigorously pursued.

(b) *Independent collection action.* Unless suit between the injured party and the prospective defendant is pending, all available administrative collection procedures will be followed prior to reference of the claim to the Department of Justice under paragraph (e) of this section. Direct contact with the prospective defendant's insurer, if known, is desirable. If the prospective defendant is an uninsured motorist, timely and appropriate action will be taken to collect the claim, or to request suspension of driving and registration privileges under the applicable uninsured motorist fund statute, or to seek compensation from the victim's insurer, or otherwise under financial responsibility laws.

(c) *Delegation of authority.* Subject to the provisions of paragraphs (d) and (e) of this section, authority to compromise or waive, in whole or in part, claims of the United States not in excess of $40,000 exclusive of interest penalties and administrative fees is delegated as follows. The Area Claims Office as defined in paragraph (c)(6) of section 537.1 is authorized to:

(1) Compromise claims, provided the compromise does not reduce the claim by more than $15,000 in any claim not asserted for more than $25,000; and

(2) Waive claims for the convenience of the Government (but not on account of undue hardship upon the injured party) provided the uncollected amount of the claim does not exceed $15,000 in any claim not asserted for more than $25,000; and

(3) Redelegation in an amount not to exceed $5,000 compromise authority to any claim processing office with approval authority is permitted.

(d) *Compromise and waiver of claims*—(1) *General.* A debtor's liability to the United States arising from a particular incident will be considered as a single claim in determining whether the claim is not more than $40,000, for the purpose of compromise or waiver. Claims not resolved within the delegation of authority stated in this section or referred to the Department of Justice, will be forwarded to Commander, USARCS. A claim file forwarded to higher authority will contain a memorandum of opinion supported by necessary exhibits.

(2) *Compromise.* (i) The authority delegated in paragraph (c) of this section to compromise claims will be exercised in accordance with standards set forth in 4 CFR 103. When available funds are insufficient to satisfy both the claim of the United States and that of the injured party, the claim of the United States will be compromised to the extent required to achieve an equitable apportionment of the available funds.

(ii) If appropriate, a request by the injured party or his attorney for waiver on the ground of undue hardship may be treated initially as a suggestion for compromise with the tortfeasor, and the compromised amount of the claim of the United States will be determined. In such cases, RJA's may make offers of compromise within their delegated authority. RJA's may also make counteroffers within their delegated authority to offers of compromise beyond their delegated authority. If settlement within the limits of delegated authority is not achieved, the claim will be referred to higher authority.

(iii) When time is a factor, SJA or major overseas command staff JA's may make telephonic delegation within their compromise authority on a case by case basis. When such verbal delegations are made, they will be confirmed in writing and the writing included in the case file.

(3) *Waiver.* (i) The authority delegated in paragraph (c) of this section to waive claims for the convenience of the Government will be exercised in accordance with standards set forth in 4 CFR part 103.

(ii) If the injured party or his attorney requests waiver of the full or any compromised amount of the claim on the ground of undue hardship, and the request may not be appropriately treated under paragraph (d)(2)(ii) of this section, the file will be forwarded to appropriate major overseas command claims authority or Commander, USARCS. For the purpose of evaluation of the request for waiver, the file will include detailed information concerning the reasonable value of the injured party's claim for permanent injury, pain and suffering, decreasing earning power, and other items of special damages,

pension rights, and other Government benefits accruing to the injured party; and the present and prospective assets, income, and obligations of the injured party, and those dependent on him.

(iii) In the event an affirmative determination is made by TJAG that, as a result of the collection of the Government's claim the injured party has suffered an undue hardship, the RJA will be authorized to direct issuance of the amount waived to the injured party.

(4) A file forwarded to higher authority for waiver of compromise consideration will contain a memorandum by the RJA giving his assessment of the case and his recommendation with regard to the approval or denial of the requested compromise or waiver.

(e) *Only the Department of Justice may approve claims involving.* (1) compromise or waiver of a claim asserted for more than $40,000 exclusive of interest, penalties or administrative fees,

(2) Settlement actions previously referred to the Department,

(3) Settlement where a third party files suit against the United States on the injured party arising out of the same incident.

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Part IV

# Department of Transportation

Federal Aviation Administration

14 CFR Parts 25, 121, and 135
Independent Power Source for Public Address System in Transport Category Airplanes; Final Rule

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Parts 25, 121 and 135**

**[Docket No. 24995; Amdt. Nos. 25-70, 121-209, 135-34]**

**RIN 2120-AB77**

## Independent Power Source for Public Address System in Transport Category Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** These amendments to the airworthiness standards for transport category airplanes and the operating rules for air carrier and air taxi operators of such airplanes ensure the availability of the public address (PA) system during emergency conditions by requiring an independent PA system power source. They are intended to increase airplane safety by facilitating the rapid evacuation of passengers under such conditions. These amendments are applicable to airplanes that are required to have a PA system for use in air carrier, air taxi, or commercial service and that are manufactured on or after a specified date, regardless of the date of application for type certificate. These amendments do not apply to airplanes operated by persons other than air carriers, air taxis, and commercial operators.

**EFFECTIVE DATE:** November 27, 1989.

**FOR FURTHER INFORMATION CONTACT:** Robert F. Hall, FAA, Flight Test and Systems Branch, ANM-111, Transport Airplane Directorate, Aircraft Certification Service, 17900 Pacific Highway South, C-68966, Seattle, WA. 98168; telephone: (206) 431-2143.

**SUPPLEMENTARY INFORMATION:**

### Background

These amendments are based on Notice of Proposed Rulemaking (NPRM) No. 86-5 (51 FR 19140; May 27, 1986), and a correction notice published June 13, 1986 (51 FR 21563). Notice 86-5 proposed, in part, an amendment to part 25 to specify that any public address (PA) system which is required for use in air carrier or air taxi service must be powered by a source that is: (1) Independent of engine and auxiliary power unit (APU) operation, the forward motion of the airplane, and all normal means used by the flightcrew for power source disconnection; and (2) capable of powering the PA system for at least 10 minutes, including an aggregate time duration of at least 5 minutes of announcements made by flight and cabin crewmembers. In determining this capability, all loads which may remain powered by the same source when all other power sources become inoperative would have to be considered. In addition, if the same source is required for emergency power for loads essential to safety of flight or required during emergency conditions, it would also have to be capable of powering the added PA system load for an additional time duration that is appropriate or required for those essential or emergency loads. The proposed rule provided that in all cases the PA system load would be considered as that which exists during its standby state, except for an aggregate time duration of at least 5 minutes of announcements.

Notice 86-5 also proposed to amend § 25.1411(a)(2) to clarify that the PA system microphone accessibility requirement is applicable only when a PA system is required by this chapter.

In addition, Notice 86-5 proposed an amendment to § 121.318 which would incorporate the provisions of the proposed amendment to part 25 by reference and thereby require certain airplanes used in air carrier service to comply with the new standards of part 25 if they are manufactured a year or more after the effective date of the amendment. Because § 135.149(d) incorporates the provisions of § 121.318 by reference, the proposed new standards would be applicable to certain airplanes used in air taxi service as well, if they are manufactured on or after the same date.

The proposed new § 25.1423, in which the new standards would be contained, would allow innovation in providing an acceptable power source; however, as a matter of practicality, the normal airplane battery or another battery would most likely be used.

In regard to the new § 25.1423, as proposed, the notice explained that: (1) The expression "all normal means used by the flightcrew for power source disconnection" means all switches or like devices provided for that purpose, including, but not necessarily limited to, the generator, APU, and battery switches; (2) the use of this expression does not establish any requirements pertaining to the disconnection or connection of loads, however accomplished; (3) the deactivation of circuit breakers is not considered to be a normal means used for power source disconnection; and (4) the expression "standby state" means that condition during which power for making announcements is provided to the PA system but announcements are not being made.

The notice further explained that: (1) Power dependent on engine or APU operation would not be acceptable because the engines and APU would not be operating on the ground during many emergency conditions; (2) power dependent on the forward motion of the airplane, which might be provided by a ram air turbine, would not be acceptable because it would not be available on the ground during either normal or emergency conditions; (3) the proposal would not affect the capability of the flightcrew to disconnect the PA system by using its electrical switch or circuit breaker(s) either to clear electrical faults and protect the airplane and occupants against smoke or fires in the PA system (or its wiring) or to conserve the PA system's power source capacity for other loads powered by the same source that are essential to safety of flight or of higher priority during emergency conditions; and (4) the megaphones presently required by § 121.309(f) could not serve as an adequate means of communication. Sections 121.318(b)(1) and 135.149(d), by reference, require the means of communication to be accessible for immediate use from each of two flight crewmember stations in the pilot compartment. As further explained in the notice, such use of the megaphones by the flightcrew is not considered feasible in view of the high workload during emergency conditions, the directionality of megaphone output relative to the flightcrew's forward location and forward-facing position, and the fact that the flight compartment door is normally locked.

The notice expressly requested comments on the proposed time duration for announcements of at least 5 minutes, and on the possible need for operational procedures or flight or cabin crew training to prevent undisciplined use of the PA system during emergency conditions which could result in a hazardous, premature depletion of its power source capacity.

### Discussion of Comments

One commenter states that these proposed amendments should be considered as part of a total package of proposals involving crashworthiness that the FAA has under study, which includes a proposal to require "push-to-talk" switches for PA system handset microphones and a possible draft advisory circular pertaining to PA system training and the use of megaphones. The FAA disagrees. Because those other proposals are wholly or largely unrelated to the PA

system power source, there would be no significant cost advantage in complying with those proposed standards, should they be adopted, at the same time. Furthermore, combining these proposed amendments with other proposals currently under consideration would unduly delay the safety benefits expected to result from this proposal.

Several commenters question whether or not the proposed amendments would actually result in an increase in emergency cabin evacuation safety. One commenter states that the FAA had provided no quantitative measure of safety improvement, based on demonstrated service experience showing that fatalities or injuries had occurred specifically because a required PA system was not operable during an emergency condition, and that the qualitative justification "lacks persuasiveness." In contrast, other commenters, including the National Transportation Safety Board (NTSB), support the FAA's position that an operable PA system would provide a definite increase in safety. The FAA concurs that the available quantitative data are limited; however, none of the commenters provided convincing reasons as to why this increase in safety would not be realized.

Several commenters state that the portable megaphones required by § 121.309(f) are the primary means for directing emergency evacuations in airplanes operated in air carrier service, and that the proposed amendments are, therefore, unnecessary. The FAA does not concur that megaphones are the primary means for directing evacuations nor that, for reasons stated above in the Background Section, they could serve as adequate means of communication in the event the PA system is disabled. The FAA also notes that portable megaphones may not even be aboard some airplanes operated in air taxi service, because they are not required for those airplanes.

Several commenters express a desire for this proposal to be applied retroactively to existing airplanes. Conversely, other commenters express their concern that the adoption of the proposed amendments would lead to later proposals to apply them retroactively. While a retroactive requirement would be beyond the scope of Notice 86–5 and could not be considered at this time, it must be noted that the FAA did propose a retroactive requirement in Notice 81–1 (46 FR 5487; January 19, 1981). That proposal was later withdrawn because comments showed that it would not be cost-effective. In the absence of any recent information to the contrary, the FAA currently has no plans to again propose a retroactive requirement.

Several commenters object to the proposed amendments, stating that their adoption would result in a mixed fleet, with some airplanes having an independent PA system power source and some not, and that this would cause confusion among flight and cabin crewmembers. They further state that such confusion could cause a hazard if crewmembers were to assume that their announcements would be heard by the passengers, in the mistaken belief that the airplane had an independent power source when, in fact, it did not. The FAA does not concur that such confusion would occur. It is noted that operation with a mixed fleet began around 1965 when a major manufacturer began providing battery power capability to the PA systems in all its large transport airplanes in production at that time, and continued providing it in all such airplanes produced later under amended or new type certificates. The FAA is not aware that any problems occurred during or after the introduction of airplanes with independent power sources for the PA systems.

Several commenters state that if a battery required for emergency power for loads essential to safety of flight or required during emergency conditions were also used as the PA system power source, then discipline must be ensured over the use of the PA system by including appropriate information in the crew operations manual and providing appropriate training to crewmembers. The FAA concurs that such information and training are necessary; however, each operator is required under §§ 121.135(a)(1), 121.417, 135.83(a)(2), and 135.331 to ensure that the crew operations manuals or checklists do include necessary information on the PA system power source, and that flight and cabin crewmembers are adequately trained in emergency procedures. Furthermore, FAA personnel ensure that all affected air carrier and air taxi operators provide all the necessary crew information and training.

In the situation where a battery required for emergency power for loads essential to safety of flight or required during emergency conditions would also be used as the PA system power source, one commenter states that the likelihood that a larger battery capacity would be needed for certain airplanes would be reduced by flight and cabin crew operational procedures and training on disciplined use of the PA system. The FAA concurs; however, the FAA estimates that the proposed amendment would result in a relatively small increase in battery "energy" depletion of approximately 3 ampere-hours. Therefore, the FAA considers that batteries of larger capacity would be required for few, if any, airplanes.

Several commenters state that if a battery required for emergency power for loads essential to safety of flight or required during emergency conditions were also used as the PA system power source, the PA system should not be required to remain operative after disconnecting the battery with its switch, because this design could result in partial or complete battery discharge while the airplane is parked and possibly at other times. According to the commenters, this would be a hazard in itself and would cause unnecessary and expensive battery maintenance. Two commenters state that one possible means to prevent such discharge, an additional switch connecting the PA system to the unswitched or "hot" battery bus, would increase system complexity and therefore decrease reliability, and also add to crew workload. Another commenter states that there must be a means to disconnect power from the PA system during emergency conditions such as electrically caused smoke, but that the proposed rule does not ensure it. The FAA agrees with these comments. After further consideration, the FAA has determined that the regulation should not require the PA system to have a higher priority for power than loads essential to safety of flight or other loads required during emergency conditions, and that it should not, in effect, prohibit providing the flightcrew with a ready means to disconnect the PA system concurrently with other loads after, or in anticipation of, the occurrence of electrical faults or electrically caused smoke or fires. For these reasons, § 25.1423, as adopted, specifies that a required PA system must be powerable, in flight or stopped on the ground, after the shutdown or failure of all engines and auxiliary power units, or the disconnection or failure of all power sources dependent on their continued operation. This language does not preclude loss of power to the PA system as a consequence of disconnecting the battery with its switch. The final rule will not result in unnecessary battery discharges and associated hazards, and will not increase battery maintenance costs above present levels.

One commenter states that the proposed new § 25.1423 is ambiguous as to whether it would require automatic switching. Another commenter states that any switching required to connect

the PA system to the independent power source should be automatic, so as not to increase crew workload. The notice was very specific in stating that the proposed § 25.1423 would not establish any requirements pertaining to the disconnection or connection of loads, however accomplished. Furthermore, although not stated in the notice, the proposed new § 25.1423 was not intended to establish any requirements pertaining to the connection of power sources, such as by using emergency power switches. Because these comments go beyond the scope of the notice, they cannot be considered at this time. In addition, the FAA considers that the capability to restore power to the PA system by a manual switching operation is a considerable improvement over having no means at all to restore it. Furthermore, requiring automatic switching for the PA system would be inconsistent with other emergency operations, such as loadshedding, which are not required to be automatic.

One commenter asks whether the amendments would apply only to airplanes that are newly manufactured after the specified date, or if they would also apply to earlier airplanes that are modified or remanufactured after that date to seat more than 19 passengers. Airplanes manufactured prior to the specified date and later modified to seat more than 19 passengers would not have to comply, regardless of when they are modified. It must be noted, however, that airplanes manufactured after the specified date with 19 or fewer passenger seats would have to comply if they are modified later to seat more than 19 passengers.

One commenter suggests that the language in § 135.149(d), "* * * a passenger seating configuration * * * of more than 19 * * *" be changed to read identically to that in § 121.318(a), "* * * a passenger seating capacity of more than 19 * * *" so as to base the requirements for air taxi operators, as well as for air carrier operators, on the capacity for installing seats, rather than on the actual seating configuration as required by § 135.149(d). The suggested change would have to be the subject of future rulemaking because it goes beyond the scope of Notice 86–5.

One commenter states that certain language in the proposed amendment to § 25.1411(a)(2) would differ from the corresponding language in the proposed amendment to § 121.318(b)(2). The commenter appears to suggest that the language should be identical. Actually, there are minor editorial differences which existed previously between those sections and are not part of the proposed amendments. Nevertheless, it has been brought to the attention of the FAA that both sections are ambiguous in regard to the number of microphones required for adjacent exits. Since there has been considerable confusion as to the number of microphones intended by those sections, editorial changes have been made to each section to clarify that one microphone may serve two adjacent exits. These are nonsubstantive changes which place no additional burden on any person because they reflect the actual intent and are consistent with past FAA interpretation of the two sections.

In regard to the proposed compliance time of 1 year for newly manufactured airplanes, one commenter states that additional time might be needed in order for the Airlines Electronic Engineering Committee (AEEC) to revise PA system equipment characteristics. The FAA disagrees that compliance is dependent on such a revision because a large part of the present fleet has already been equipped with PA system installations that would comply with § 25.1423 without benefit of the revision.

Comments are divided on the proposed requirement for a time duration of at least 10 minutes of PA system operation (which includes at least 5 minutes of announcements). In this regard, one commenter suggests that 30 minutes should be required. The FAA considers that 10 minutes would be sufficient for most emergency conditions. Additional duration would, in most cases, be provided inherently because the same source that provides emergency power to instrument displays and other equipment essential to safety of flight during instrument meteorological conditions would also usually be used to power the PA system. Accepted design practice for compliance with §§ 25.1333(b) and 25.1309(b) for these instruments and equipment would usually ensure at least 30 minutes of PA system power availability, including at least 5 minutes of announcements.

In regard to the proposed requirement for a time duration of at least 5 minutes of announcements made by flight and cabin crewmembers, two commenters state that they do not consider this amount of time to be adequate. Since the two commenters did not provide compelling reasons as to why 5 minutes would not be sufficient, the FAA concurs with the other commenters who believe that 5 minutes is sufficient.

As noted above, the requirements of § 121.318 are presently incorporated by reference in § 135.149. Since the time Notice 86–5 was prepared, it has come to the attention of the FAA that the practice of incorporating certain provisions of part 121 in part 135 by reference may cause confusion. In order to preclude any confusion in this regard, part 135 is amended to include the requirements of § 121.318 and related § 121.319 explicitly rather than by reference. This is a nonsubstantive editorial change that places no additional burden on any person.

Except as discussed above, the amendments are adopted as proposed in Notice 86–5.

**Regulatory Evaluation**

This document summarizes the final cost-benefit assessment of a rule requiring an independent power source for the public address (PA) system in newly manufactured transport category airplanes that are required to have such systems by existing operating rules. The objective of this rulemaking is to ensure that the PA system is available to initiate and direct emergency evacuations and provide instructions to passengers during emergency conditions.

In response to several public comments solicited by the FAA in the Notice of Proposed Rulemaking (NPRM), the FAA has revised this final rule to ensure that disconnection of the airplane battery with its switch would not preclude shutting off power to the PA system. This revision is intended to allow the PA system to be shut off as the battery is disconnected with its switch, in order to prevent the possibility of battery discharges while the airplane is parked. The revised rule also responds to concerns in several of the comments about potential additional costs, by effectively eliminating the need for additional maintenance checks and costs resulting from depleted batteries.

The FAA has updated the economic analysis of this rule from the analysis performed for the NPRM issued in May 1986, based on new information and data received since then. On the basis of the information that is currently available, the FAA concludes that this rule is cost-effective.

*Costs*

This amendment should have some cost impact on one of the two major U.S. manufacturers of transport category airplanes with more than 19 seats. The airplanes produced by the other manufacturer already meet the new standards. The other manufacturer will therefore not incur any additional costs.

The manufacturer not currently in compliance had indicated that the most cost-effective method of complying with

this rule would be to change the type design to locate the PA system circuit breaker at the battery bus. For the affected airplanes, the existing battery system would be sufficient to provide an independent power source for the PA system.

After consultation with industry and other sources, the FAA has determined that approximately 400 design and engineering hours would be necessary for such a redesign. The FAA has adopted the conservative assumption that all of the design and engineering costs will be incurred in the year after this rule is issued, rather than spread out over future years; design and engineering costs therefore are not discounted in this analysis. The estimate of required engineering time has been adjusted upward to 437 hours to account for leave and other absences.

An appropriate rate for valuing engineering hours is $54.58 per hour, after overhead multipliers and fringe benefit factors have been applied to the current average hourly salary figure for aerospace engineers. Total cost for design and engineering is therefore $23,850, incurred in the first year after issuance of this rule.

The FAA estimates that the redesign of the circuit connecting the public address system to the airplane's main battery would add at most $500 in wiring and additional equipment to the production cost of each airplane. Additional labor required for installation is expected to be negligible.

The present value of the total cost of compliance with this regulation between 1988 and the year 2000 is expected to be $192,744, based on a 1987 production forecast of the affected types of airplanes.

*Benefits*

There have been several accidents over the last two decades in which injuries or fatalities may have resulted from a malfunction or disconnection of the public address system on U.S.-operated transport category airplanes. The National Transportation Safety Board recommended in 1974, 1979, and 1981 that the FAA mandate an independent power source for the public address system in such airplanes, stressing that the availability of the PA system is vital for directing emergency evacuations and providing pre-impact instruction.

The extent to which the safety of passengers would be enhanced by compliance with this rule cannot be quantified. Nonetheless, the $192,744 total cost of this regulation would be more than offset if as few as 16 minor injuries, each valued at $21,000, 7 serious injuries, each valued at $54,000, or one fatality, valued at $1 million, were prevented between the date of enactment of this rule and the year 2000. Potential benefits, as well as costs, have been discounted over time in this determination.

It is reasonable to conclude that such a small number of injuries or fatalities could be prevented in a single accident, particularly if the circumstances involve the possibility of fire on the ground. In such emergency situations, the ability of the flight and cabin crew to brief the passengers on emergency procedures just before and once the airplane has landed could well save lives and prevent injuries, if the time required for egress from the airplane were consequently reduced.

*Trade Impact Assessment and Regulatory Flexibility Analysis*

This rule 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 U.S. Furthermore, this rulemaking is expected to cause no significant impact on small entities, since the manufacturer of the transport category airplanes affected by this regulation is a large manufacturer according to the FAA's size threshold criterion.

*Federalism Implications*

The regulations adopted herein do not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, it is determined that such a regulation does not have sufficient federalism implications warranting the preparation of a Federalism Assessment.

**Conclusion**

For the reasons discussed earlier in the preamble, the FAA has determined that this is not a major regulation as defined in Executive Order 12291. In addition, the amendment will have little or no impact on trade opportunities for U.S. firms doing business overseas and foreign firms doing business in the U.S. Since the amendment concerns a matter on which there is substantial public interest, the FAA has determined that this action is significant under Department of Transportation Regulatory Policies and Procedures. In addition, the FAA certifies that under the criteria of the Regulatory Flexibility Act, this amendment will not have a significant economic impact, positive or negative, on a substantial number of small entities. A regulatory evaluation of this action, including a Regulatory Flexibility Determination and a Trade Impact Assessment, has been placed in the regulatory docket. A copy of this evaluation may be obtained by contacting the person identified under "**FOR FURTHER INFORMATION CONTACT.**"

**List of Subjects:**

*14 CFR Part 25*

Air transportation, Aircraft, Aviation safety, Safety.

*14 CFR Part 121*

Air carriers, Air transportation, Aircraft, Airplanes, Aviation safety, Common carriers, Safety, Transportation.

*14 CFR Part 135*

Air carriers, Air taxi, Air transportation, Aircraft, Airplanes, Aviation safety, Safety, Transportation.

**Adoption of the Amendments**

Accordingly, parts 25, 121 and 135 of the Federal Aviation Regulations (FAR), 14 CFR parts 25, 121, and 135, 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, 1982); and 49 CFR 1.47(a).

2. By amending § 25.1411 by revising the paragraph heading for (a) and paragraph (a)(2) to read as follows:

**§ 25.1411 General.**

(a) *Accessibility requirements.* * * *

(2) If a public address system is required by this chapter—

(i) For each required floor-level passenger emergency exit which has an adjacent flight attendant seat, there must be a public address system microphone which is readily accessible to the seated flight attendant, except that—

(ii) One microphone may serve more than one exit, provided the proximity of the exits allows unassisted verbal communication between seated flight attendants.

* * * * *

3. By adding a new § 25.1423 to read as follows:

**§ 25.1423 Public address system.**

A public address system required by this chapter must be powerable, in flight

or stopped on the ground, after the shutdown or failure of all engines and auxiliary power units, or the disconnection or failure of all power sources dependent on their continued operation, for—

(a) A time duration of at least 10 minutes, including an aggregate time duration of at least 5 minutes of announcements made by flight and cabin crewmembers, considering all other loads which may remain powered by the same source when all other power sources are inoperative; and

(b) An additional time duration in its standby state appropriate or required for any other loads that are powered by the same source and that are essential to safety of flight or required during emergency conditions.

## PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

4. The authority citation for part 121 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421 through 1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 49 CFR 1.47(a).

5. By revising § 121.318 to read as follows:

### § 121.318 Public address system.

No person may operate an airplane with a seating capacity of more than 19 passengers unless it is equipped with a public address system which—

(a) Is capable of operation independent of the crewmember interphone system required by § 121.319, except for handsets, headsets, microphones, selector switches, and signaling devices;

(b) Is approved in accordance with § 21.305 of this chapter;

(c) Is accessible for immediate use from each of two flight crewmember stations in the pilot compartment;

(d) For each required floor-level passenger emergency exit which has an adjacent flight attendant seat, has a microphone which is readily accessible to the seated flight attendant, except that one microphone may serve more than one exit, provided the proximity of the exits allows unassisted verbal communication between seated flight attendants;

(e) Is capable of operation within 10 seconds by a flight attendant at each of those stations in the passenger compartment from which its use is accessible;

(f) Is audible at all passenger seats, lavatories, and flight attendant seats and work stations; and

(g) For transport category airplanes manufactured on or after November 27, 1990, meets the requirements of § 25.1423 of this chapter.

## PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

6. The authority citation for Part 135 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421–1431, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 49 CFR 1.47(a).

7. By amending § 135.149 by removing paragraph (d) and marking it [Reserved].

### § 135.149 Equipment requirements: General.

* * * * *

(d) [Reserved]

* * * * *

8. By adding a new § 135.150 to read as follows:

### § 135.150 Public address and crewmember interphone systems.

No person may operate an aircraft having a passenger seating configuration, excluding any pilot seat, of more than 19 unless it is equipped with—

(a) A public address system which—

(1) Is capable of operation independent of the the crewmember interphone system required by paragraph (b) of this section, except for handsets, headsets, microphones, selector switches, and signaling devices;

(2) Is approved in accordance with § 21.305 of this chapter;

(3) Is accessible for immediate use from each of two flight crewmember stations in the pilot compartment;

(4) For each required floor-level passenger emergency exit which has an adjacent flight attendant seat, has a microphone which is readily accessible to the seated flight attendant, except that one microphone may serve more than one exit, provided the proximity of the exits allows unassisted verbal communication between seated flight attendants;

(5) Is capable of operation within 10 seconds by a flight attendant at each of those stations in the passenger compartment from which its use is accessible;

(6) Is audible at all passenger seats, lavatories, and flight attendant seats and work stations; and

(7) For transport category airplanes manufactured on or after [insert a date one year after the effective date of this amendment], meets the requirements of § 25.1423 of this chapter.

(b) A crewmember interphone system which—

(1) Is capable of operation independent of the public address system required by paragraph (a) of this section, except for handsets, headsets, microphones, selector switches, and signaling devices;

(2) Is approved in accordance with § 21.305 of this chapter;

(3) Provides a means of two-way communication between the pilot compartment and—

(i) Each passenger compartment; and

(ii) Each galley located on other than the main passenger deck level;

(4) Is accessible for immediate use from each of two flight crewmember stations in the pilot compartment;

(5) Is accessible for use from at least one normal flight attendant station in each passenger compartment;

(6) Is capable of operation within 10 seconds by a flight attendant at each of those stations in each passenger compartment from which its use is accessible; and

(7) For large turbojet-powered airplanes—

(i) Is accessible for use at enough flight attendant stations so that all floor-level emergency exits (or entryways to those exits in the case of exits located within galleys) in each passenger compartment are observable from one or more of those stations so equipped;

(ii) Has an alerting system incorporating aural or visual signals for use by flight crewmembers to alert flight attendants and for use by flight attendants to alert flight crewmembers;

(iii) For the alerting system required by paragraph (b)(7)(ii) of this section, has a means for the recipient of a call to determine whether it is a normal call or an emergency call; and

(iv) When the airplane is on the ground, provides a means of two-way communication between ground personnel and either of at least two flight crewmembers in the pilot compartment. The interphone system station for use by ground personnel must be so located that personnel using the system may avoid visible detection from within the airplane.

Issued in Washington, DC, on October 20, 1989.

**James B. Busey,**

*Administrator.*

[FR Doc. 89–25329 Filed 10–26–89; 8:45 am]

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Friday
October 27, 1989

Part V

# Department of Transportation

## Federal Aviation Administration

14 CFR Part 29

Airworthiness Standards; Transport Category Rotorcraft Structural Fatigue Evaluation; Final Rule

DEPARTMENT OF TRANSPORTATION

14 CFR Part 29

[Docket No. 23485; Amdt. 29-28]

RIN 2120-AA84

## Airworthiness Standards; Transport Category Rotorcraft Structural Fatigue Evaluation

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

**ACTION:** Final rule.

**SUMMARY:** The rule amends the type certification standards for transport category rotorcraft by adding flaw tolerance requirements to the requirements for fatigue evaluation of structures. The amendment also extends the requirements for fatigue evaluations from flight structures only to all critical structures, including landing gear, and requires consideration of operations having a high number of power cycles per hour. This amendment is intended to avoid or reduce catastrophic fatigue failures in transport category rotorcraft.

**EFFECTIVE DATE:** November 27, 1989.

**FOR FURTHER INFORMATION CONTACT:** Robert T. Weaver, Manager, Regulations Group (ASW-111), Aircraft Certification Service, Rotorcraft Directorate, Federal Aviation Administration, Forth Worth, Texas 76193-0111, telephone (817) 624-5111.

**SUPPLEMENTARY INFORMATION:**

### Background

Flaw tolerance is the capability of rotorcraft structure to continue functioning without catastrophic failure after being subjected to intrinsic/discrete flaws, environmental effects, and accidental damage expected during fabrication and operation of the rotorcraft. The term "flaw tolerance" is used rather than the term "damage tolerance" which appeared in the NPRM since flaw tolerance more clearly describes the factors to be considered (such as intrinsic/discrete flaws during manufacture). This change in terms introduces no substantive change.

The addition of flaw tolerance to the fatigue evaluation of transport category rotorcraft regulations results from an assessment of the potential for preventing crashes and saving lives by the use of redundant structure and other flaw tolerant design features. The addition of the requirements to evaluate other critical structures, including landing gear, and to consider operations having a high number of power cycles per hour in the fatigue evaluation results from the ongoing Rotorcraft Regulatory Review Program. These additions are based on two proposals submitted for consideration at the Rotorcraft Regulatory Review Conference held in New Orleans, Louisiana, in December 1979. Since landing gear requirements are being added to the evaluation in § 29.571, the section title is revised to read "Fatigue evaluation of structure."

As a result of these proposals, the FAA issued Advance Notice of Proposed Rulemaking (ANPRM) No. 83-1 on December 16, 1982 (48 FR 772; January 6, 1983), and Notice of Proposed Rulemaking (NPRM) No. 86-13 on September 12, 1986 (51 FR 33704; September 22, 1986). The comment period for Notice No. 86-13 was reopened until May 4, 1987 (52 FR 11997; April 14, 1987). Public meetings were held in Fort Worth, Texas, on February 8, 1983 (48 FR 772; January 6, 1983), and March 5, 1987 (51 FR 45343; December 18, 1986). All interested persons have been given an opportunity to participate in the making of this amendment and due consideration has been given to all matter presented.

A few changes of an editorial and clarifying nature have been made to the proposals based upon relevant comments received and upon further review by the FAA. Except for the editorial and clarifying changes discussed below, the proposals contained in Notice No. 86-13 are adopted without change.

### Discussions of Comments

Although all commenters basically support the proposals to amend § 29.571 to add a requirement for flaw tolerance, several recommend editorial and clarifying changes.

One commenter recommends that in paragraph (a) the phrase "considering the effects of" be added between the words "fatigue" and "environmental." This change clarifies that paragraph (a) concerns fatigue and avoiding catastrophic failure due to fatigue and not to the environment. The FAA agrees, and this change has been made.

A commenter recommends that the phrase "and detail design points" be removed from paragraph (a)(1)(i). The commenter points out that the evaluation of detail design points is already required by the first sentence in paragraph (a), and it is unnecessary in paragraph (a)(1)(i). The FAA agrees, and the phrase has been removed.

Two commenters recommend that the words "temperature effects" be added to paragraph (a)(1)(ii) after "altitude effects." The FAA disagrees since temperature effects are already included in paragraph (a) under the general term "effects of environment."

A commenter recommends that the word "prevent" in paragraph (a)(2) be changed to "avoid" to be consistent with the wording of paragraph (a). The FAA agrees, and the change has been made.

One commenter recommends that the words "replacement times, or combination thereof" be inserted after "These inspections" in the last sentence of paragraph (a)(2) for a more complete listing of airworthiness limitations section items. The FAA agrees, and for internal consistency the change also has been made to the first sentence.

Two commenters recommend changes to paragraph (b) to clarify the use of crack initiation techniques (safe-life or flaw tolerant safe-life) in conjunction with flaw growth techniques (fail-safe or residual strength evaluation after flaw growth). Another commenter recommends a reorganization of paragraph (b) to list the three fatigue tolerance evaluation methods more explicitly. The FAA agrees with these comments, and paragraph (b) has been reorganized to list: (1) Flaw tolerant safe-life evaluation; (2) fail-safe (residual strength after flaw growth) evaluation; and (3) safe-life evaluation.

A commenter recommends that the clause "unless the applicant establishes that damage tolerance design for a particular structure is impractical" in paragraph (b)(2)(v) be changed to "unless the applicant establishes that these fatigue (flaw) tolerant methods for a particular structure cannot be achieved within the limitations of geometry, inspectability, or good design practice." The commenter emphasizes that the word "impractical" is subject to wide interpretations and more explicit limitations are necessary. The FAA agrees, and the more explicit wording is used in the reorganized paragraph (b). In addition, the heading of paragraph (b), "Fatigue tolerance evaluation (safe-life supplemented by damage tolerance)," has been changed to "Fatigue tolerance evaluation (including tolerance to flaws)" for clarity and imposes no additional burden. The use of the word "flaws" is considered more appropriate than the word "damage" in the heading of paragraph (b) since this amendment requires fatigue tolerance to intrinsic/discrete flaws resulting from manufacturing as well as damage accidentally resulting from manufacturing, maintenance, or operational activities.

One commenter recommends the addition of "wear" to the damage to be included in the fatigue tolerance evaluation of paragraph (b)(2)(i) of the proposal. The commenter also recommends that information on wear

limits be included in advisory circular material. The FAA agrees that information on wear limits is appropriate for advisory circular material but does not agree that mandating consideration of wear effects in the rule is appropriate given state-of-the-art technology. Design practice has been to prevent wear in airframe structure and to prevent or minimize it in mechanisms. This recommended change is, therefore, not adopted.

Another commenter recommends that proposed paragraph (b)(2)(i) be changed by adding the words "including the possibility of concurrent damage at multiple sites" to be more in accord with the requirements of § 25.571(b) for airplanes. This requirement as applied to airplanes basically addresses small concurrent cracks in stiffened shell construction such as in adjacent fastener holes in sheet metal joints. The critical structural elements in helicopters tend to be complex forgings or other shapes which may have fewer fastener holes. The application of multiple site damage to typical helicopter structure needs additional evaluation before it is mandated by rulemaking action. This additional evaluation should also determine the necessity for, as well as feasibility of, multiple site damage assessment and is beyond the scope of this rulemaking action. This recommended change is, therefore, not adopted.

One commenter recommends that the clause "An inspection interval and method should be established" be added to paragraph (b)(2)(iii) of the proposal. The FAA agrees, and the substance of this change has been incorporated as a requirement in new paragraph (b)(2)(ii).

**Regulatory Evaluation Summary**

The following is a summary of the final industry cost impact and benefit assessment of a proposed rulemaking to amend Federal Aviation Regulations (FAR) Part 29—Airworthiness Standards: Transport Category Rotorcraft. The primary objective of the proposal is to avoid or reduce catastrophic fatigue failures in transport category helicopters.

The rule adopts a new airworthiness standard to add flaw tolerance to the fatigue evaluation of rotorcraft structures; extends fatigue evaluation from flight structure to all critical structures, including landing gear; and explicitly requires the consideration of operations having a high number of ground-air-ground or power cycles per hours.

Of special note is the use in the rule of the terminology "flaws" rather than the term "damage" used in the notice stage of rulemaking. The objective of this change is to enhance understanding by adopting a more generic term that includes intrinsic "flaws" as well as service or other damage.

The decision to add flaw tolerance requirements to the fatigue evaluation of rotorcraft structure results from an assessment of the potential for avoiding crashes and saving lives by use of redundant structure and other flaw tolerant design features and from an assessment of the current rotorcraft design "state-of-the-art." The decision to add landing gear and increased frequency of ground-air-ground and other power cycles to the fatigue evaluation is based on proposals submitted for consideration at the Rotorcraft Regulatory Review Conference held in New Orleans, Louisiana, in 1979.

The estimates of economic impacts for the amendment to § 29.571 are based on the best information currently available to the FAA. The estimates of the cost of compliance with the additional requirements of § 29.571 rely to a considerable extent on a report prepared for the FAA by Logical Technical Services Corporation entitled "Estimates of the Cost Difference Resulting from the Introduction of Damage Tolerance to Rotorcraft Structural Fatigue Requirements" (herein referred to as the LTS study). A report on the LTS study is available in the docket of this rulemaking. Information for analysis of benefit was obtained from the safety records of the NTSB and the FAA. The conclusions regarding economic consequences, however, reflect the final judgment of FAA personnel.

Comments on the proposal were submitted by domestic and foreign trade associations representing manufacturers and operators. Although all commenters basically support the proposals to add requirements for flaw tolerance, several recommended editorial changes and clarifications. The FAA has evaluated the public comments and made final determinations regarding their impact. The FAA finds that the costs and benefits estimates for the proposals at the NPRM stage of rulemaking have not significantly changed, but they have been updated to reflect recent accident data and current prices.

At present, the FAA has not determined whether flaw tolerant components will typically experience a longer service life than safe-life components. To allow for the uncertainty inherent in predicting future flaw tolerant component service life, the potential life cycle cost increases or decreases of replacing safe-life components with flaw tolerant components for a fleet of 600 typical transport rotorcraft were analyzed for 3 different service life scenarios: Where flaw tolerant components have the same life as safe-life components, twice the lifetime of safe-life components, and an indefinite lifetime. For any service life scenario, the economic benefit of the proposal is the sum of the safety benefit (i.e., the net present value of the preventable loss, consisting of the costs of mortality, morbidity, hull damage, and investigation) and the life cycle cost impact. Table 1 illustrates the relationship between life cycle costs and various accident prevention scenarios for a fleet of 600 typical transport category rotorcraft. As shown in this table, if the flaw tolerant components can be made to have a lifetime that is twice the life of safe-life components and four accidents per year are avoided, the total net present value of the benefit resulting from the change will be approximately $31 million. In the extreme end, if flaw tolerant components can be made with indefinite life and if ten accidents per year can be avoided by the use of these flaw tolerant parts, the present value of the net benefit is estimated to be about $98 million.

TABLE 1.—THE RELATIONSHIP BETWEEN LIFE CYCLE COSTS AND SAFETY BENEFIT FOR A FLEET OF 600 S-76 CLASS ROTORCRAFT (1987)

| Service life scenario | Present value of life cycle costs savings | Annual number of accidents avoided | Present value of expected value of preventable loss | Present value of net benefits |
|---|---|---|---|---|
| Same as Safe Life | ($26,939,750) | 1 | $4,893,063 | ($22,046,687) |
| | (26,939,750) | 4 | 19,572,273 | (7,367,477) |

TABLE 1.—THE RELATIONSHIP BETWEEN LIFE CYCLE COSTS AND SAFETY BENEFIT FOR A FLEET OF 600 S-76 CLASS ROTORCRAFT (1987)—Continued

| Service life scenario | Present value of life cycle costs savings | Annual number of accidents avoided | Present value of expected value of preventable loss | Present value of net benefits |
|---|---|---|---|---|
| | (26,939,750) | 10 | 48,930,684 | 21,990,934 |
| Twice Safe Life | 11,117,228 | 1 | 4,893,063 | 16,010,291 |
| | 11,117,228 | 4 | 19,572,273 | 30,689,501 |
| | 11,117,228 | 10 | 48,930,684 | 60,047,912 |
| Indefinite Life | 49,508,970 | 1 | 4,893,063 | 54,402,033 |
| | 49,508,970 | 4 | 19,572,273 | 69,081,243 |
| | 49,508,970 | 10 | 48,930,684 | 98,439,654 |

The FAA believes that in most cases the service life of flaw tolerant components will be at least a factor of two or three times greater than current safe-life components as a result of advances in the use of new high strength-to-weight materials and improved design data. Similarly, the number of accidents that will be avoided annually will exceed the average of four accidents per year experienced in the period between 1971 through 1986 because of the increasing size of the transport category rotorcraft fleet. On the basis of the above, the FAA calculates that the midrange of benefits associated with the introduction of flaw tolerance criteria will exceed costs by approximately $16.0 to $60.0 million over the 10-year period following promulgation of this regulation.

**Regulatory Flexibility Determination**

The FAA has determined that under the criteria of the Regulatory Flexibility Act (RFA) of 1980, this amendment will not have a significant economic impact on a substantial number of small entities. The RFA requires agencies to specifically review rules which may have a "significant economic impact on a substantial number of small entities." The FAA has developed guidance for conducting regulatory flexibility analyses and reviews, including criteria and guidelines for determining if a proposed or existing rule has a significant economic impact on a substantial number of small entities. The FAA small entity size standards criteria define a small helicopter manufacturer as an independently owned and managed firm having fewer than 75 emloyees. Presently, no manufacturer subject to the changes to § 29.571 has fewer than 75 employees. Accordingly, this amendment to § 29.571 will not have an economic impact on a substantial number of small entities.

**International Trade Impact Analysis**

The FAA believes that the certification cost which may be imposed by this amendment will not result in a competitive trade disadvantage or advantage for American manufacturers in domestic or foreign markets. This assumption is based on the fact that foreign manufacturers must comply with the certification standards of Federal Aviation Regulations, Part 29, as a condition to entry into U.S. markets. Considering the size of the U.S. market, foreign manufacturers are likely to comply with U.S. certification standards which is the largest segment of their export market. Further, foreign and American manufacturers are expected to pass the new certification costs on to consumers in their respective domestic and foreign markets.

**Federalism Implications**

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

**Conclusion**

In the context of these analyses, the FAA has determined that the benefits of this amendment, in providing an increased level of safety to passengers traveling in rotorcraft while at the same time recognizing and providing for the unique qualities and capabilities of rotorcraft, far outweigh the burdens. This action: (1) Involves a regulation that is not a major rule under Executive Order 12291; and (2) is a significant rule under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). In addition, for the reasons discussed above, I certify that under the criteria of the Regulatory Flexibility Act these amendments will not have a significant economic impact on a substantial number of small entities. Also, these amendments would have little or no impact on trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States. A final regulatory evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

**List of Subjects 14 CFR Part 29**

Air transportation, Aircraft, Aviation safety, Safety, Rotorcraft.

**Adoption of the Amendment**

Accordingly, part 29 of the Federal Aviation Regulations (14 CFR Part 29) is amended as follows:

## PART 29—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY ROTORCRAFT

1. The authority citation for part 29 continues to read as follows:

**Authority:** 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

2. By revising § 29.571 to read as follows:

**§ 29.571 Fatigue evaluation of structure.**

(a) *General.* An evaluation of the strength of principal elements, detail design points, and fabrication techniques must show that catastrophic failure due to fatigue, considering the effects of environment, intrinsic/discrete flaws, or accidental damage will be avoided. Parts to be evaluated include, but are not limited to, rotors, rotor drive systems between the engines and rotor hubs, controls, fuselage, fixed and movable control surfaces, engine and transmission mountings, landing gear,

and their related primary attachments. In addition, the following apply:

(1) Each evaluation required by this section must include—

(i) The identification of principal structural elements, the failure of which could result in catastrophic failure of the rotorcraft;

(ii) In-flight measurement in determining the loads or stresses for items in paragraph (a)(1)(i) of this section in all critical conditions throughout the range of limitations in § 29.309 (including altitude effects), except that maneuvering load factors need not exceed the maximum values expected in operations; and

(iii) Loading spectra as severe as those expected in operation based on loads or stresses determined under paragraph (a)(1)(ii) of this section, including external load operations, if applicable, and other high frequency power cycle operations.

(2) Based on the evaluations required by this section, inspections, replacement times, combinations thereof, or other procedures must be established as necessary to avoid catastrophic failure. These inspections, replacement times, combinations thereof, or other procedures must be included in the airworthiness limitations section of the Instructions for Continued Airworthiness required by § 29.1529 and section A29.4 of Appendix A of this part.

(b) *Fatigue tolerance evaluation (including tolerance to flaws).* The structure must be shown by analysis supported by test evidence and, if available, service experience to be of fatigue tolerant design. The fatigue tolerance evaluation must include the requirements of either paragraph (b) (1), (2), or (3) of this section, or a combination thereof, and also must include a determination of the probable locations and modes of damage caused by fatigue, considering environmental effects, intrinsic/discrete flaws, or accidental damage. Compliance with the flaw tolerance requirements of paragraph (b) (1) or (2) of this section is required unless the applicant establishes that these fatigue flaw tolerant methods for a particular structure cannot be achieved within the limitations of geometry, inspectability, or good design practice. Under these circumstances, the safe-life evaluation of paragraph (b)(3) of this section is required.

(1) *Flaw tolerant safe-life evaluation.* It must be shown that the structure, with flaws present, is able to withstand repeated loads of variable magnitude without detectable flaw growth for the following time intervals—

(i) Life of the rotorcraft; or

(ii) Within a replacement time furnished under section A29.4 of appendix A to this part.

(2) *Fail-safe (residual strength after flaw growth) evaluation.* It must be shown that the structure remaining after a partial failure is able to withstand design limit loads without failure within an inspection period furnished under section A29.4 of appendix A to this part. Limit loads are defined in § 29.301(a).

(i) The residual strength evaluation must show that the remaining structure after flaw growth is able to withstand design limit loads without failure within its operational life.

(ii) Inspection intervals and methods must be established as necessary to ensure that failures are detected prior to residual strength conditions being reached.

(iii) If significant changes in structural stiffness or geometry, or both, follow from a structural failure or partial failure, the effect on flaw tolerance must be further investigated.

(3) *Safe-life evaluation.* It must be shown that the structure is able to withstand repeated loads of variable magnitude without detectable cracks for the following time intervals—

(i) Life of the rotorcraft; or

(ii) Within a replacement time furnished under section A29.4 of appendix A to this part.

Issued in Washington DC on October 23, 1989.

**James B. Busey,**

*Administrator.*

[FR Doc. 89-25352 Filed 10-26-89; 8:45 am]

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federal register

Friday
October 27, 1989

Part VI

# Department of Transportation

## Federal Aviation Administration

**14 CFR Parts 43, 65 and 145**
**Repair Station and Repairmen Certification Rules; Regulatory Review; Meetings; Proposed Rule**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Parts 43, 65, and 145**

**[Docket No. 25965]**

**RIN 2120-AC38**

## Repair Station and Repairmen Certification Rules; Regulatory Review; Meetings

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

**ACTION:** Notice of public meetings.

**SUMMARY:** By notice of July 14, 1989 (54 FR 30866; July 24, 1989), the Federal Aviation Administration (FAA) announced four public meetings in which the FAA will solicit information from the public concerning revision of the repair station rules, repairmen certification rules, and sections of the maintenance, preventive maintenance, rebuilding, and alteration rules as applicable to repair stations.

**DATES:** The public meetings will be held on October 24 and 25, 1989, in Washington, DC; on November 7 and 8, 1989, in Fort Lauderdale, Florida; on November 28 and 29, 1989, in Dallas, Texas; and on December 12 and 13, 1989, in San Francisco, California.

**ADDRESSES:** The public meetings will be held at the following locations:

(1) On October 24 and 25, 1989, at the Federal Aviation Administration Building, Third Floor Auditorium, 800 Independence Avenue SW., Washington, DC.

(2) On November 7 and 8, 1989, at Fort Lauderdale Airport Hilton, 1870 Griffin Road, Dania, Florida.

(3) On November 28 and 29, 1989, at Holiday Inn D/FW Airport North, 4441 Highway 114 and Esters Boulevard, Irving, Texas.

(4) On December 12 and 13, 1989, at Amfac Hotel, San Francisco International Airport, 1380 Old Bayshore Highway, Burlingame, California. Due to earthquake damage, this location may be changed. In such event, a further notice will be issued.

**FOR FURTHER INFORMATION CONTACT:** Questions concerning the logistics of the meeting should be directed to Barbara Crawford, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3780. For questions concerning the subject matter of the meetings, contact Leo Weston, Aircraft Maintenance Division (AFS-320), Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8263.

**SUPPLEMENTARY INFORMATION:** To enhance the effectiveness of public rulemaking hearings and meetings, the FAA is modifying its public hearing and meeting procedures by providing time before the formal opening of the hearing or meeting for informal discussion of proposed rules or issues by FAA representatives and the participating public. This time period will be an opportunity for the participants to clarify and discuss their understanding of pertinent issues before oral statements are presented. Accordingly, although the public meetings on repair station issues will formally commence each day at 9:00 a.m., FAA members of the panel on repair stations will be available each day at the meeting location at 8:00 a.m. for such informal discussions.

Issued in Washington, DC on October 24, 1989.

**Daniel C. Beaudette,**

*Acting Director, Flight Standards Service.*

[FR Doc. 89-25440 Filed 10-25-89; 8:45 am]

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## LIST OF PUBLIC LAWS

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

**S.J. Res. 213/Pub. L. 101-124**

To designate October 22 through October 29, 1989, as "National Red Ribbon Week for a Drug-Free America". (Oct. 24, 1989; 103 Stat. 761; 2 pages) Price: $1.00

**H.R. 2987/Pub. L. 101-125**

To name the Department of Veterans Affairs medical center in Leavenworth, Kansas, as the "Dwight D. Eisenhower Department of Veterans Affairs Medical Center". (Oct. 24, 1989; 103 Stat. 763; 1 page) Price: $1.00

**H.R. 2087/Pub. L. 101-126**

Child Abuse Prevention Challenge Grants Reauthorization Act of 1989. (Oct. 25, 1989; 103 Stat. 764; 6 pages) Price: $1.00

**H.R. 2088/Pub. L. 101-127**

Children With Disabilities Temporary Care Reauthorization Act of 1989. (Oct. 25, 1989; 103 Stat. 770; 3 pages) Price: $1.00

In the list of Public Laws printed in the **Federal Register** on October 25, 1989, Public Laws 101-120 through 101-122 were inadvertently omitted. They are as follows:

**H.R. 1300/Pub. L. 101-120**

Head Start Supplemental Authorization Act of 1989. (Oct. 23, 1989; 103 Stat. 700; 1 page) Price: $1.00

**H.R. 2788/Pub. L. 101-121**

Making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1990, and for other purposes. (Oct. 23, 1989; 103 Stat. 701; 56 pages) Price: $1.50

**H.J. Res. 400/Pub. L. 101-122**

Designating October 27, 1989, as "National Hostage Awareness Day". (Oct. 23, 1989; 103 Stat. 757; 2 pages) Price: $1.00