Agriculture Department
See also Animal and Plant Health Inspection Service; Commodity Credit Corporation; Forest Service; Soil Conservation Service
NOTICES
Agency information collection activities under OMB review, 63706

Air Force Department
NOTICES
Environmental statements; availability, etc.: Base realignments and closures—Ellsworth Air Force Base, SD, 63718
Privacy Act: Systems of records, 63718

Animal and Plant Health Inspection Service
RULES
Exportation and importation of animals and animal products: Horses from countries affected with contagious equine metritis, 63627
PROPOSED RULES
Exportation and importation of animals and animal products: Ostriches and other ratites, 63694
Ports of embarkation and export inspection facilities—Kansas City, MO, 63693

Army Department
NOTICES
Meetings: Science Board, 63729

Coast Guard
RULES
Ports and waterways safety: Kiptopeke Beach Ferry Terminal, Lower Chesapeake Bay, VA; safety zone, 63680
PROPOSED RULES
Drawbridge operations: Florida, 63701
Regattas and marine parades: Jacksonville Gator Bowl Light Parade, 63700
NOTICES
Meetings: Houston-Galveston Navigation Safety Advisory Committee, 63764
(3 documents)

Commerce Department
See also Economics and Statistics Administration; International Trade Administration; National Institute of Standards and Technology; National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities under OMB review, 63707

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles: Hong Kong, 63718

Commodity Credit Corporation
NOTICES
Market promotion program (1992 FY), 63706

Commodity Futures Trading Commission
NOTICES
Meetings: Sunshine Act [Editorial Note: Federal Register document published at 56 FR 61475, December 3, 1991, was incorrectly indexed]

Customs Service
RULES
Financial and accounting procedures: User fees, 63846

Defense Department
See also Air Force Department; Army Department; Navy Department
NOTICES
Agency information collection activities under OMB review, 63717
Civilian health and medical program of uniformed services (CHAMPUS):
DRG-based payment system—Revised weights, thresholds, and per diem rates; correction, 63718
Meetings: Electron Devices Advisory Group, 63718

Delaware River Basin Commission
NOTICES
Hearings, 63729

Economics and Statistics Administration
NOTICES
CD-ROM readers; open and nonexclusive list of distributors, 63708

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
PROPOSED RULES
Air programs: Outer Continental Shelf Regulations, 63774
Hazardous waste: Identification and listing—Wood preserving operations and surface protection processes, 63848
NOTICES
Health risk assessment; guidelines, etc.: Developmental toxicity, 63798

Executive Office of the President
See Science and Technology Policy Office

Federal Aviation Administration
RULES
Airworthiness directives: Bell, 63631
Boeing, 63629
British Aerospace, 63628
Fokker, 63632
McDonnell Douglas, 63633
Transport category airplanes—
Landing gear aural warning systems, 63760

Federal Communications Commission

RULES
Common carrier services and special radio services:
Public mobile services and private operational-fixed
microwave service—
Government and non-government fixed services;
frequency bands 932-935 and 941-944 MHz usage,
63662
Radio stations; table of assignments:
Indiana, 63663
Louisiana, 63663
Texas, 63664

PROPOSED RULES
Radio stations; table of assignments:
Oklahoma, 63704
Television stations; table of assignments:
Oklahoma et al., 63704

Federal Deposit Insurance Corporation

NOTICES
Meetings; Sunshine Act, 63757

Federal Election Commission

NOTICES
Meetings; Sunshine Act, 63757

Federal Energy Regulatory Commission

RULES
Natural Gas Policy Act:
Interstate pipelines—
Facilities construction and replacement; technical
conference, 63648

NOTICES
Electric rate, small power production, and interlocking
directorate filings, etc.:
Consumers Power Co. et al., 63731
Natural gas certificate filings:
Tennessee Gas Pipeline Co. et al., 63732
Natural gas companies:
Small producer certificates, applications, 63732
Applications, hearings, determinations, etc.:
Green Canyon Pipe Line Co., 63736

Federal Maritime Commission

NOTICES
Casualty and nonperformance certificates:
Majesty Cruise Line, Inc., et al., 63736
Freight forwarder licenses:
John J. Moylan & Co., Inc., et al., 63736

Federal Reserve System

NOTICES
Applications, hearings, determinations, etc.:
Barnett Banks, Inc., et al., 63736
Kulhavi, John G., 63737

Fish and Wildlife Service

PROPOSED RULES
Alaska National Interest Lands Conservation Act; Title VIII
implementation (subsistence priority), 63702
Endangered and threatened species:
Mitchell’s satyr butterfly, 63705

Food and Drug Administration

NOTICES
Food additive petitions:
Ciba-Geigy Corp., 63737
(2 documents)
Food for human consumption:
Identity standards deviation; market testing permits—
Fruit cocktail without cherries, 63737
Human drugs:
Chelsea Laboratories, Inc.; approval withdrawn, 63740
Export applications—
Amantadine hydrochloride capsules, 63739
Carbicarb injection (sodium bicarbonate and sodium
carbonate, anhydrous injection), 63739
New drug applications—
Chelsea Laboratories, Inc.; approval withdrawn, 63740

Foreign Claims Settlement Commission

NOTICES
Meetings; Sunshine Act, 63757

Forest Service

PROPOSED RULES
Alaska National Interest Lands Conservation Act; Title VIII
implementation (subsistence priority), 63702

NOTICES
Environmental statements; availability, etc.:
Bitterroot National Forest, MT, 63707

Health and Human Services Department

See Food and Drug Administration

Housing and Urban Development Department

NOTICES
Grants and cooperative agreements; availability, etc.:
Shelter plus care program, 63826-63842
(2 documents)

Interior Department

See Fish and Wildlife Service; Land Management Bureau;
Minerals Management Service; Surface Mining
Reclamation and Enforcement Office

International Trade Administration

PROPOSED RULES
Antidumping duties; assessment and collection procedures,
63696

NOTICES
Antidumping:
Roller chain, other than bicycle, from Japan, 63708
Uranium from Union of Soviet Socialist Republics, 63711
Countervailing duties:
Pistachios, roasted in-shell, from Iran, 63712
Refrigeration compressors from Singapore, 63713
Short supply determinations:
Hexagonal and trilobe steel tubes, 63714

Interstate Commerce Commission

NOTICES
Railroad services abandonment:
Staten Island Railroad Corp., 63746

Justice Department

See also Foreign Claims Settlement Commission

NOTICES
Pollution control; consent judgments:
Air Products & Chemicals, Inc., 63746
Land Management Bureau
NOTICES
Alaska Native claims selection:
NANA Regional Corp., Inc., 63741
Closure of public lands:
Nevada, 63741
Environmental statements; availability, etc.:
California Desert Conservation Area—
West Mojave coordinated management plan, 63741
John Day River, OR, 63742
Meetings:
Vernal District Grazing Advisory Board, 63742
Realty actions; sales, leases, etc.:
Idaho, 63742
Survey plat filings:
Colorado, 63743
Idaho, 63743
Oregon and Washington, 63743
Withdrawal and reservation of lands:
Idaho, 63744
New Mexico, 63744
Oregon, 63745
Minerals Management Service
RULES
Royalty management:
Oil and gas produced from sliding-scale leases; rates and
gross production calculation; interpretation, 63661
National Highway Traffic Safety Administration
RULES
Motor vehicle safety standards:
Seat belt assembly anchorages, 63676, 63682
(2 documents)
NOTICES
Motor vehicle safety standards; exemption petitions, etc.:
Blue Bird Body Co., 63755
National Institute of Standards and Technology
NOTICES
Meetings:
Fastener Quality Act Advisory Committee, 63715
National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Summer flounder, 63685
Marine sanctuaries:
Flower Garden Banks National Marine Sanctuary, LA and
TX, 63684
NOTICES
Deep seabed mining: exploration licenses, 63716
Meetings:
New England Fishery Management Council, 63716
Permits:
Marine mammals, 63716
Navy Department
RULES
Acquisition regulations:
Shipbuilding contracts: price adjustments, 63664
NOTICES
Environmental statements; availability, etc.:
Naval Air Station Miramar, CA, 63729
Personnel Management Office
NOTICES
Agency information collection activities under OMB review,
63746
Public Health Service
See Food and Drug Administration
Research and Special Programs Administration
RULES
Pipeline safety:
Offshore gas and hazardous liquid pipelines; inspection
and burial, 63764
Science and Technology Policy Office
NOTICES
Meetings:
President’s Council of Advisors on Science and
Technology, 63747
Securities and Exchange Commission
NOTICES
Self-regulatory organizations:
Clearing agency registration applications
International Securities Clearing Corp., 63747
Self-regulatory organizations; proposed rule changes:
New York Stock Exchange, Inc., 63747
Applications, hearings, determinations, etc.:
DR Funds Inc., 63750
Robert W. Baird & Co. Inc., 63751
Soil Conservation Service
NOTICES
Environmental statements; availability, etc.:
Follansbee, WV, 63707
State Department
NOTICES
Committees; establishment, renewal, termination, etc.:
International Law Advisory Committee, 63753
Foreign assistance determinations:
Romania, 63653
Surface Mining Reclamation and Enforcement Office
RULES
Permanent program and abandoned mine land reclamation
plan submissions:
Maryland, 63649
PROPOSED RULES
Permanent program and abandoned mine land reclamation
plan submissions:
Utah, 63699
Susquehanna River Basin Commission
NOTICES
Project review regulations and procedures: hearing, 63753
Textile Agreements Implementation Committee
See Committee for the Implementation of Textile
Agreements
Transportation Department
See Coast Guard; Federal Aviation Administration;
National Highway Traffic Safety Administration;
Research and Special Programs Administration
Treasury Department
See Customs Service
Veterans Affairs Department
NOTICES
Agency information collection activities under OMB review,
63755
Committees: establishment, renewal, termination, etc.:
  Special Medical Advisory Group, 63755
Privacy Act:
  Computer matching programs, 63755

Separate Parts in This issue

Part II
Department of Transportation, Federal Aviation Administration, 63760

Part III
Department of Transportation, Research and Special Programs Administration, 63764

Part IV
Environmental Protection Agency, 63774

Part V
Environmental Protection Agency, 63798

Part VI
Department of Housing and Urban Development, 63828

Part VII
Department of Housing and Urban Development, 63842

Part VIII
Environmental Protection Agency, 63848

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.

<table>
<thead>
<tr>
<th>CFR</th>
<th>Part</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>9 CFR</td>
<td>92</td>
<td>63627</td>
</tr>
<tr>
<td></td>
<td>91</td>
<td>63693</td>
</tr>
<tr>
<td></td>
<td>92</td>
<td>63694</td>
</tr>
<tr>
<td>14 CFR</td>
<td>28</td>
<td>63760</td>
</tr>
<tr>
<td></td>
<td>39 (5 documents)</td>
<td>63628, 63633, 63660, 63670, 63670</td>
</tr>
<tr>
<td></td>
<td>121</td>
<td>63760</td>
</tr>
<tr>
<td></td>
<td>125</td>
<td>63760</td>
</tr>
<tr>
<td>15 CFR</td>
<td>943</td>
<td>63634</td>
</tr>
<tr>
<td>18 CFR</td>
<td>2</td>
<td>63648</td>
</tr>
<tr>
<td></td>
<td>154</td>
<td>63648</td>
</tr>
<tr>
<td></td>
<td>157</td>
<td>63648</td>
</tr>
<tr>
<td></td>
<td>254</td>
<td>63648</td>
</tr>
<tr>
<td></td>
<td>390</td>
<td>63648</td>
</tr>
<tr>
<td>19 CFR</td>
<td>24</td>
<td>63648</td>
</tr>
<tr>
<td></td>
<td>353</td>
<td>63696</td>
</tr>
<tr>
<td>30 CFR</td>
<td>920</td>
<td>63649</td>
</tr>
<tr>
<td></td>
<td>944</td>
<td>63699</td>
</tr>
<tr>
<td>33 CFR</td>
<td>165</td>
<td>63660</td>
</tr>
<tr>
<td></td>
<td>100</td>
<td>63700</td>
</tr>
<tr>
<td></td>
<td>117</td>
<td>63701</td>
</tr>
<tr>
<td>36 CFR</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>242</td>
<td>63702</td>
</tr>
<tr>
<td>40 CFR</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>55</td>
<td>63774</td>
</tr>
<tr>
<td></td>
<td>261</td>
<td>63848</td>
</tr>
<tr>
<td></td>
<td>264</td>
<td>63848</td>
</tr>
<tr>
<td></td>
<td>265</td>
<td>63848</td>
</tr>
<tr>
<td></td>
<td>302</td>
<td>63848</td>
</tr>
<tr>
<td>43 CFR</td>
<td>3160</td>
<td>63661</td>
</tr>
<tr>
<td>47 CFR</td>
<td>1</td>
<td>63662</td>
</tr>
<tr>
<td></td>
<td>22</td>
<td>63662</td>
</tr>
<tr>
<td></td>
<td>73 (3 documents)</td>
<td>63663, 63664, 63664</td>
</tr>
<tr>
<td></td>
<td>94</td>
<td>63662</td>
</tr>
<tr>
<td></td>
<td>73 (2 documents)</td>
<td>63704</td>
</tr>
<tr>
<td>48 CFR</td>
<td>5243</td>
<td>63664</td>
</tr>
<tr>
<td></td>
<td>5252</td>
<td>63664</td>
</tr>
<tr>
<td>49 CFR</td>
<td>190</td>
<td>63764</td>
</tr>
<tr>
<td></td>
<td>191</td>
<td>63764</td>
</tr>
<tr>
<td></td>
<td>192</td>
<td>63764</td>
</tr>
<tr>
<td></td>
<td>195</td>
<td>63764</td>
</tr>
<tr>
<td></td>
<td>571 (2 documents)</td>
<td>63676, 63676</td>
</tr>
<tr>
<td>50 CFR</td>
<td>625</td>
<td>63685</td>
</tr>
<tr>
<td></td>
<td>17</td>
<td>63702</td>
</tr>
<tr>
<td></td>
<td>100</td>
<td>63702</td>
</tr>
</tbody>
</table>
This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510. The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 92
[Docket No. 91–152]

Specifically Approved States Authorized To Receive Mares and Stallions Imported From CEM-Affected Countries

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are adding Florida to the list of States approved to receive certain mares and stallions imported into the United States from countries affected with contagious equine metritis (CEM). We are taking this action because Florida has entered into an agreement with the Administrator of the Animal and Plant Health Inspection Service (APHIS) as meeting conditions necessary to ensure that the horses are free of CEM. These conditions, which concern inspection, treatment, and testing of the horses, are contained in § 92.304(a)(5) of the regulations for stallions and in § 92.304(a)(8) for mares. Florida has agreed to abide by the regulations concerning horses imported from countries where CEM exists, and to enter into a written agreement with the Administrator, APHIS, to enforce its State laws and regulations to control CEM.

On August 2, 1991, we published in the Federal Register (56 FR 37025–37026, Docket Number 91–081), a proposal to add Florida to the list of States approved to receive mares and stallions imported into the United States from certain countries where CEM exists. We solicited comments on the proposed rule, which were required to be received on or before October 1, 1991. We did not receive any comments. Therefore, based on the rationale set forth in the proposed rule, we are adopting the provisions of the proposal as a final rule without change.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We anticipate that fewer than 20 mares and stallions over 731 days old will be imported into the State of Florida annually from countries where CEM exists. Approximately 225 mares and stallions over 731 days old and from countries where CEM exists were imported into the entire United States in fiscal year 1990. During this same period, approximately 34,715 horses of all classes were imported into the United States.

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

Paperwork Reduction Act

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

Executive Order 12372

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

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife. Accordingly, 9 CFR part 92 is amended as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for part 92 continues to read as follows:

§ 92.304 [Amended]
2. In § 92.304, paragraphs (a)(4)(ii) and (a)(7)(h) are amended by adding the words “the State of Florida” in alphabetical order.

Done in Washington, D.C., this 29th day of November 1991.

Robert Melland,
Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-29184 Filed 12-4-91; 8:45 am]
BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION
Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-NM-134-AD; Amendment 39-8108; AD 91-25-07]

Airworthiness Directives, British Aerospace Model ATP Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain British Aerospace Model ATP series airplanes, which currently requires repetitive visual inspections to detect cracks in the rudder lower hinge attachment brackets, and to check the security of the fasteners in this area, and repair, if necessary. The actions required by that AD are intended to prevent reduced directional control of the airplane due to impairment of the operation of the rudder. This amendment provides an additional terminating action for the repetitive inspections required by the existing AD. This amendment is prompted by a further evaluation by the FAA of a modification which provides terminating action for the currently required repetitive inspections.


The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 9, 1992.

ADDRESSES: The applicable service information may be obtained from British Aerospace, PLC, Librarian for British Aerospace Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1001 Lind Avenue SW., Renton, Washington or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 227-2146; fax (206) 227-1320. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1001 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 91-09-13, Amendment 39-6979 (56 FR 18697, April 24, 1991), applicable to certain British Aerospace Model ATP series airplanes, was published in the Federal Register on August 5, 1991 (56 FR 37167). AD 91-09-13 currently requires repetitive visual inspections to detect cracks in the rudder lower hinge attachment brackets, and to check the security of the fasteners in this area, and repair, if necessary. The actions proposed by that AD are intended to prevent reduced directional control of the airplane due to impairment of the operation of the rudder. This amendment provides an additional terminating action for the currently required repetitive inspections.

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 supported the proposed rule.

Another commenter noted that paragraph (d) of the proposed rule limits the terminating action to modifications installed in accordance with British Aerospace Service Bulletin ATP 55-5, Revision 1, dated January 3, 1991, and disregards the original issue of that service bulletin, dated November 30, 1990. The commenter inquired whether the modification described in the original issue of the service bulletin would also comply with paragraph (d) of the rule. After further review, the FAA has determined that the modification procedures described in British Aerospace Service Bulletin ATP 55-5, dated November 30, 1990, would constitute an alternative method of complying with paragraph (d) of the rule to terminate the requirement for the repetitive inspections. The final rule has been revised accordingly.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed with the change previously described. The FAA has determined that this change will neither significantly increase the economic burden on any operator, nor increase the scope of the AD.

It is estimated that 4 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required inspections, and that the average labor cost will be $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $220.

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 11004, 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 Rules 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, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR 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) and 14 CFR 11.88.

§ 39.13 [Amended]
2. Section 39.13 is amended by removing Amendment 39-6979 and by adding the following new airworthiness directive:
Applicability: All Model ATP series airplanes which have not installed Modification 10170A (described in British Aerospace Service Bulletin ATP-55-5), certificated in any category.
Compliance: Required as indicated, unless previously accomplished.
To prevent reduced directional control of the airplane due to impairment of the
Modification 10165A configuration: Prior to Amendment 39-6979, whichever occurs later, or within 125 hours time-in-service after May following:

1. If cracking or local distortion is found on the angles or doubling plate flanges on the front face of the rudder spar, prior to further flight, remove the bolts and doubling plates, and perform a detailed visual inspection of the angle brackets attaching the hinge ribs at Stations 27.582 and 29.582 for cracks, and a detailed visual inspection of the fasteners attaching the reinforcing plates for security, in accordance with paragraph 2.A. of British Aerospace Service Bulletin ATP 55-3, Revision 4, dated June 28, 1990.

2. All items found cracked and all rivets found distorted or insecure must be replaced with a serviceable part prior to further flight, in accordance with paragraph 2.B. of the service bulletin.

(b) For airplanes with rudders fitted with Modification 10165A during production: Prior to the accumulation of 6,250 hours time-in-service, or within 30 days after May 28, 1991 (the effective date of AD 91-09-13, Amendment 39-6979), whichever occurs later, and thereafter at intervals not to exceed 500 hours time-in-service, perform a detailed visual inspection of the angle brackets attaching the hinge ribs at Stations 27.582, 29.582, and 30.582 for cracks, and a detailed visual inspection of the fasteners attaching the reinforcing plates for security, in accordance with paragraph 2.C. of the service bulletin.

(c) For airplanes with rudders fitted with Modification 10165A in accordance with British Aerospace Service Bulletin ATP-55-4, or by previous repair or replacement action: Prior to the accumulation of 500 hours time-in-service following installation, or within 30 days after May 28, 1991 (the effective date of AD 91-09-13, Amendment 39-6979), whichever occurs later, and thereafter at intervals not to exceed 500 hours time-in-service, perform a detailed visual inspection of the angle brackets attaching the hinge ribs at Stations 27.582 and 29.582 for cracks, and a detailed visual inspection of the fasteners attaching the reinforcing plates for security, in accordance with paragraph 2.A. of British Aerospace Service Bulletin ATP 55-3, Revision 4, dated June 28, 1990.

14 CFR Part 39

[Docket No. 91-1MF-07-AD; Amendment 39-619; AD 91-25-02]

Airworthiness Directives; Boeing Model 747 Series Airplanes Equipped With BFGoodrich Single-Place Ramp/Slide Door 3 Evacuation Systems

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 installation of a modified evacuation ramp/slide regulator assembly. This amendment is prompted by reports of delayed regulator function during ramp/slide deployment. This condition, if not corrected, could result in loss of use of the Door 3 evacuation system by passengers and crew during an emergency evacuation.


The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 9, 1992.

ADDRESSES: The applicable service information may be obtained from BFGoodrich Company, Aircraft Evaluation Systems, 3414 South 5th Street, Phoenix, Arizona 85040. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 1100 L Street NW., room 401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Andrew R. Gfrerer, Aerospace Engineer, Los Angeles Aircraft Certification Office, ANM-131L, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5338.

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 requires installation of a modified evacuation ramp/slide regulator assembly, was published in the Federal Register on February 25, 1991 (56 FR 7361). Interested persons have been afforded an opportunity to participate in the making of this amendment. Due
consideration has been given to the comments received.

Several commenters stated that the proposed 12-month compliance period may be too restrictive and would place an unwarranted burden upon operators. Other commenters requested that the compliance time be extended up to 36 months so that the modification may be accomplished during regularly scheduled maintenance periods. The FAA does not concur that additional time is warranted. In developing an appropriate compliance time, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the availability of required parts and the practical aspect of installing the required modifications during operators' normal maintenance schedules. The FAA considers that the compliance time as proposed represents the maximum interval of time allowable wherein the modification could reasonably be accomplished, parts could be obtained, and an acceptable level of safety could be maintained.

Since issuance of the Notice, the FAA has reviewed and approved BFGoodrich Service Bulletin No. 4A3416-25-233, Revision 1, dated October 1, 1991, which describes procedures to modify the regulator assembly using an alternative regulator assembly, P/N 4A3474-3. The final rule has been revised to reference this revision of the service bulletin as an acceptable alternative source of service information. Paragraph (b) of the final rule has been revised to specify the current procedures for submitting requests for approval of alternative methods of compliance.

The economic analysis paragraph, below, has been revised to increase the specified hourly labor rate from $40 per manhour (as cited in the preamble to the Notice) to $55 per manhour. The FAA has determined that it is necessary to increase this rate used in calculating the cost impact associated with AD activity to account for various inflationary costs in the airline industry.

The format of the final rule has been restructured to be consistent with the standard Federal Register style. 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 with the changes previously described. The FAA has determined that these changes will neither significantly increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 491 Boeing Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 117 airplanes of U.S. registry will be affected by this AD, that it will take approximately 34 manhours per airplane to accomplish the required actions, and that the average labor cost will be $55 per manhour. The cost of parts to accomplish this modification is expected to be nominal. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $218,790.

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 12012, 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 Rules 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, Incorporation by reference, Safety.

Adoption of the Amendment
Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR 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. 1384(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]
2. Section 39.13 is amended by adding the following new airworthiness directive:

Docket 91–NM-07–AD.
Applicability: Model 747 series airplanes, equipped with BFGoodrich single-piece ramp/slide, part numbers (P/N) 7A4118–1 through –16, for Door 3 evacuation system; certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent failure of the Door 3 evacuation system, accomplish the following:
(a) Within 12 months after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD:
(1) Modify the regulator assembly, P/N 4A3474–1 (a subassembly of reservoir assembly P/N 4A3416–1), to the P/N 4A3474–2 or 4A3474–3 configuration, by installing improved inner components in accordance with paragraph 2. Accomplishment Instructions, of BFGoodrich Service Bulletin No. 4A3416–25–233, dated December 14, 1990; or Revision 1, dated October 1, 1991.
(2) Reidentify the Door 3 ramp/slide in accordance with paragraph 3.B.

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles ACO.

(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 requirements of this AD.

(d) The modification requirements shall be done in accordance with BFGoodrich Service Bulletin No. 4A3416–25–233, dated December 14, 1990; or BFGoodrich Service Bulletin No. 4A3416–25–233, Revision 1, dated October 1, 1991. 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 BFGoodrich Company, Aircraft Evaluation Systems, 3414 South 5th Street, Phoenix, Arizona 85040. Copies may be inspected at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue S.W., Renton, Washington; or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 1100 L Street NW, room 8401, Washington, DC.

(e) This amendment (39–8103), AD 91–25–02, becomes effective on January 9, 1992.

Issued in Renton, Washington, on November 14, 1991.

Leroy A. Keith,
Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–29127 Filed 12–4–91; 8:45 am]
BILLING CODE 4910–13–M
Airworthiness Directives; Bell Helicopter Textron, Inc. (BHTI), Model 206B and 206L Series Helicopters Equipped With Allison 250-C20R Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), that requires a revision to the limitation section of the FAA-approved Rotorcraft Flight Manual Supplement (RFMS) and replacement of the engine revolution-per-minute (RPM) sensor on Bell Model 206B and 206L series helicopters equipped with Allison 250-C20R engines by a Soloy supplemental type certification program. This AD is prompted by a manufacturer's report of false engine-out warnings experienced during a production flight test. This condition, if not corrected, could result in a false engine-out warning to a pilot when practicing autorotation procedures and lead to an unnecessary and potentially hazardous emergency autorotative landing.


Comments for inclusion in the Rules Docket must be received by January 21, 1992.

ADDRESSES: The applicable AD-related material may be obtained from: Soloy Conversions, Ltd., 450 Pat Kennedy Way SW., Olympia, Washington 98502, or may be examined at the Rules Docket, Office of the Assistant Chief Counsel, 4400 Blue Mound Road, Bldg. 3B, room 158, Fort Worth, Texas.

Submit comments in triplicate to: Rules Docket, Office of the Assistant Chief Counsel, FAA, 4400 Blue Mound Road, Bldg. 3B, room 158, Fort Worth, Texas, 76139-0007, or deliver in triplicate to room 158, Building 3B, at the above address.

Comments must be marked: Docket No. 91-ASW-16. Comments may be inspected at the above location between the hours of 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.


SUPPLEMENTARY INFORMATION: Recently, the FAA received a report that during a production flight-autorotation test, a momentary undershoot of the engine idle speed setting resulted in a false engine-out warning, on a Bell Model 206 series helicopter equipped with an Allison 250-C20R engine. Subsequently the FAA verified with flight tests that the false engine-out warnings can be induced during the reported conditions. This condition, if not corrected, could result in a false engine-out warning to a pilot during a practice autorotation, leading to an unwarranted, and potentially hazardous emergency autorotative landing in an undesirable area and possible loss of the helicopter and/or occupants.

Since this situation is likely to exist or develop on other helicopters of the same type design as this AD is being issued which requires a revision to the limitation section of the Rotorcraft Flight Manual Supplement and replacement of the engine revolution-per-minute (RPM) sensor on Bell Model 206B and 206L series helicopters equipped with Allison 250-C20R engines in accordance with STC's SH4169NM, SH4797NM and SH4720NM.

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

Request for Comments

Although this action is a final rule that involves flight safety and, thus, was not preceded by notice and public procedure, interested persons are invited to submit such written data, views, or arguments as they may desire regarding this AD. Communications should identify the docket number and be submitted in triplicate to the address specified above. All communications received by the deadline date indicated above will be considered and the AD may be changed in light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule. All comments submitted will be available both before and after the closing date for comments, in the Rules Docket, Office of Assistant Chief Counsel, FAA, room 158, Building 3B, 4400 Blue Mound Road, Fort Worth, Texas, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: Comments to Docket Number 91-ASW-16. The postcard will be date stamped and returned to the commenter.

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 various levels of government. Therefore, in accordance with Executive Order 12291, 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 document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 28, 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, Incorporation by reference, and Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR Part 30 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. 1344(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.
§ 39.13—[Amended]

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

Applicability: All Model 206B and 200L series helicopters equipped with Allison 230-C29 engines in accordance with STC's SHA166NM, SHA179NM, and SHA127NMS, certificated in any category.
Compliance: Required as indicated, unless previously accomplished.

To prevent false engine-out warnings due to momentary undershooting of the engine-idle-speed setting, accomplish the following:

(a) Within 10 days after the effective date of this AD, review the Limitation Section of the FAA-approved STC Rotorcraft Flight Manual Supplement (RFMS) by adding the following instructions. This may be accomplished by inserting a copy of this AD in the RFMS.

(b) Alter the engine RPM sensor in accordance with AFM changes and 1 manhour to accomplish the required replacement. The average labor cost would be $55 per manhour. The cost for required parts is negligible. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,200.

The regulations adopted herein will not have substantial direct effects on the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12812, 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 12991; (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 Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

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

Airworthiness Directives; Fokker Model F-28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F-28 Mark 0100 series airplanes, which requires a revision to the Limitations Section of the Airplane Flight Manual to prohibit the use of the FLEX mode until the multifunction display units (MFDU) have been replaced. This proposal is prompted by reports indicating that the engine pressure ratio target is set too low, due to the current parameters programmed in the MFDU. This condition, if not corrected, could result in failure to achieve climb performance and reduction of obstacle clearance margins.

DATES: Effective January 9, 1992. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 9, 1992.

ADDRESS: The applicable service information may be obtained from Fokker Aircraft USA, Inc., 1190 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, D.C. FOR FURTHER INFORMATION CONTACT: Mr. Mark Quan, Standardization Branch, ANM–113; telephone (202) 227–2145. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to certain Fokker Model F-28 Mark 0100 series airplanes, which requires a revision to the Limitations Section of the Airplane Flight Manual to prohibit the use of the FLEX mode until the multifunction display units (MFDU) have been replaced, was published in the Federal Register on April 23, 1991 (56 FR 19954). Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

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

It is estimated that 20 airplanes of U.S. registry would be affected by this AD. It would take approximately 1 manhour per airplane to accomplish the required AFM changes and 1 manhour to accomplish the required replacement. The average labor cost would be $55 per manhour. The cost for required parts is negligible. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,200.

The regulations adopted herein will not have substantial direct effects on the States, or 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 12812, 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 12991; (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 Rules Docket. A copy of it may be obtained from the Rules Docket.
**PART 39—[AMENDED]**

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


§ 39.13—[Amended]

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

- **91–23–11. Fokker: Amendment 39–8030.**
  - Docket No. 91–NM–89–AD.
  - Applicability: Model F–29 Mark 100 series airplanes; Serial Numbers 11244 through 11901, 11906, 11910, and 11912 through 11914; certificated in any category.
  - Compliance: Required as indicated, unless previously accomplished.

To prevent failure to achieve climb performance and reduction of obstacle clearance margins, accomplish the following:

1. Within 10 days after the effective date of this AD, accomplish the following:
   - Delete all references to FLEX takeoff from section 2. Limitations Section of the FAA-approved Airplane Flight Manual (AFM); specifically, sections 2.02.02 “General Limitations” and 2.06.01 “Power Plant and APU Limitations”; and
   - Add the following to the Limitations Section of the FAA-approved AFM; specifically, section 2.06.01 “Power Plant and APU Limitations”, subsection “Thrust Rating Panel.” This may be accomplished by inserting a copy of this AD in the AFM.

Use of FLEX Takeoff is Not Approved

B. Within one year after the effective date of this AD, replace the multifunction display units (MFDU), Part Number (P/N) 822–8047–401, with P/N 822–8047–411, in accordance with Fokker Service Bulletin F100–31–017, dated December 12, 1990, and Collins Service Bulletin DL–1000A–34–10, Revision 1, dated July 24, 1990, following the replacement of the MFDU’s, prior to further flight:

1. Add all references to the FLEX takeoff section that were removed from the Limitations Section of the FAA-approved Airplane Flight Manual in accordance with paragraph A.1 of this AD; and
2. Remove the limitations that were provided by paragraph A.2 of this AD.

C. An alternative method 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–131, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Avionics Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM–131.

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.

E. The replacement requirements shall be done in accordance with Fokker Service Bulletin F100–31–017, dated December 12, 1990, and Collins Service Bulletin DL–1000A–34–10, Revision 1, dated July 24, 1990, which includes the following list of effective pages:

<table>
<thead>
<tr>
<th>Page number</th>
<th>Revision level</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>1, 4</td>
<td></td>
<td>July 24, 1990</td>
</tr>
<tr>
<td>2, 3, 5, 6</td>
<td>(Original)</td>
<td>June 27, 1990</td>
</tr>
</tbody>
</table>

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 5. Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexander, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW, Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW, room 8401, Washington, D.C.

This amendment (39–8030, AD 91–23–11) becomes effective January 9, 1992.


Darrell M. Pederson, Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FDR Doc. 91–20198 Filed 12–4–91; 8:45 am]

BILLING CODE 4910–13–M

**14 CFR Part 39**

[Docket No. 91–NM–89–AD; Amendment 39–8033; AD 91–23–14]

**Airworthiness Directives: McDonnell Douglas Model DC-10 and KC-10A (Military) Series Airplanes**

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC-10 and KC-10A (Military) series airplanes, which requires a modification to the Master Caution Indicating System to indicate when the hydraulic system number 3 automatic shutoff valve has closed. This amendment is prompted by a report that a Model DC-10 descended below the glide path after the automatic shutoff valve had closed, and the flight engineer’s annunciator light was not noticed. This condition, if not corrected, could result in an airplane descending below the glide slope and consequently contacting the ground prior to reaching the runway.

**DATES:** Effective January 9, 1992.

**AIRWORTHINESS DIRECTIVES: McDonnell Douglas Model DC-10 and KC-10A (Military) Series Airplanes**

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC-10 and KC-10A (Military) series airplanes, which requires a modification to the Master Caution Indicating System to indicate when the hydraulic system number 3 automatic shutoff valve has closed. This amendment is prompted by a report that a Model DC-10 descended below the glide path after the automatic shutoff valve had closed, and the flight engineer’s annunciator light was not noticed. This condition, if not corrected, could result in an airplane descending below the glide slope and consequently contacting the ground prior to reaching the runway.

**DATES:** Effective January 9, 1992.

**AIRWORTHINESS DIRECTIVES: McDonnell Douglas Model DC-10 and KC-10A (Military) Series Airplanes**

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC-10 and KC-10A (Military) series airplanes, which requires a modification to the Master Caution Indicating System to indicate when the hydraulic system number 3 automatic shutoff valve has closed. This amendment is prompted by a report that a Model DC-10 descended below the glide path after the automatic shutoff valve had closed, and the flight engineer’s annunciator light was not noticed. This condition, if not corrected, could result in an airplane descending below the glide slope and consequently contacting the ground prior to reaching the runway.

**DATES:** Effective January 9, 1992.

**ADDRESS:** The applicable service information may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801, ATTN: Group Leader, MD-11/DC-10 and DC-3–8, Service Change Operations, Mail Code 73–30.

This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW, Renton, Washington; or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 1100 L Street NW, room 8401, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mauricio J. Kutler, Aerospace Engineer, Los Angeles Aircraft Certification Office, ANM–131, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California; telephone (213) 988–5355.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to certain McDonnell Douglas Model DC–10, and KC–10A (Military) series airplanes, was published in the Federal Register on May 2, 1991 (56 FR 20153). That action proposed to require modification of the Master Caution Indicating System to indicate when the hydraulic system number 3 automatic shutoff valve was closed.

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

Five commenters concurred with the proposed rule.

One commenter requested that the proposed rule be revised to include an alternative installation of the wiring to the Master Caution System from the flight engineer’s annunciator panel. The FAA notes that paragraph (b) of the final rule provides for the submittal of alternative methods of compliance which, when substantiated and approved, can be used lieu of the requirement specified in the final rule.

Some commenters, stated that the proposed six-month compliance period may be too restrictive and would place an unwarranted burden upon operators during a peak season of operation. Commenters requested that the compliance time be extended to one year or 18 months. The FAA does not concur that additional time is warranted. In developing an appropriate compliance time, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the availability of required parts and the practical aspect of installing the required modifications during operators’ normal maintenance schedules. Since the subject
Regulatory Policies and Procedures (with Executive Order 12612, it is estimated that the compliance time as proposed, represents the maximum interval of time allowable wherein the modification could reasonably be accomplished, parts could be obtained, and an acceptable level of safety could be maintained.

Since issuance of the Notice, the FAA has reviewed and approved McDonnell Douglas DC-10 Service Bulletin 29-132, Revision 1, dated August 26, 1991. This revision of the service bulletin corrects certain part numbers, drawing numbers, and functional test procedures. The final rule has been revised to reference this service bulletin as the appropriate source of service information.

The format of the final rule has been restructured to be consistent with the standard Federal Register style.

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, with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 428 McDonnell Douglas Model DC-10 and KC-10A (Military) series airplanes of the affected design in the worldwide fleet. It is estimated that 243 airplanes of U.S. registry will be affected by this AD, that it would take approximately 3 manhours per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. The cost of parts to accomplish this modification is estimated to be $70 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $57,105.

The regulations adopted herein will not have substantial direct effects on the States, or 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 12862, 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 12312; (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, Incorporation by reference, Safety.

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

PART 39—[AMENDED]
§ 39.13—[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); and 14 CFR 11.89.

§ 39.13—[Amended]
2. Section 39.13 is amended by adding the following new airworthiness directive:


To prevent an unobserved indication that the hydraulic system number 3 shutoff valve has closed, accomplish the following:
(a) Within 6 months after the effective date of this AD, modify the Master Caution Warning System by installing a wire in accordance with paragraph 2.
(b) Accomplishment Instructions, of McDonnell Douglas DC-10 Service Bulletin 29-132, Revision 1, dated August 26, 1991.
(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Avionics Inspector, who may concur or comment and then send it to the Manager, Los Angeles ACO.

39.13(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.

39.13(d) The modification requirements shall be done in accordance with McDonnell Douglas DC-10 Service Bulletin 29-132, Revision 1, dated August 26, 1991. 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 McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California, 90801. ATTN: Group Leader, MD-11/DC-10 and DC-8/7-8, Service Change Operations, Mail Code 73-30. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1901 Lind Avenue SW., Renton, Washington, or at the Los Angeles Aircraft Certification Office, 3230 East Spring Street, Long Beach, California, or at the Office of the Federal Register, 1100 L Street NW., room 4901, Washington, DC.

This amendment (39-8083, AD 91-23-14) becomes effective on January 9, 1992.

Darrell M. Pederson,
Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
15 CFR Part 943
[Docket No. 80851-1105]
RIN 0648-AB49

Flower Garden Banks National Marine Sanctuary Regulations

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of National Marine Sanctuary designation; final rule; interim final rule; and summary of final management plan.

SUMMARY: The National Oceanic and Atmospheric Administration, by the Designation Document contained in this notice, designates two separate areas of ocean waters over and surrounding the East and West Flower Garden Banks, and the submerged lands thereunder including the Banks, in the northwestern Gulf of Mexico, as the Flower Garden Banks National Marine Sanctuary (the “Sanctuary”). The area designated at the East Bank is located approximately 110 nautical miles south-southwest of Cameron, Louisiana, and encompasses 19.20 square nautical miles, and the area designated at the West Bank is located approximately 110 nautical miles southeast of Galveston, Texas, and encompasses 22.50 square nautical miles.

Further, NOAA by this notice issues
consistent with the provisions of the Designation Document.

DATES: Effective Date: Pursuant to section 304(b) of the Marine Protection, Research, and Sanctuaries Act (16 U.S.C. 1434(b)), Congress has forty-five days of continuous session beginning on the day on which this notice is published to review the designation and regulations before they take effect. After forty-five days, the designation automatically becomes final and takes effect, and the regulations automatically become final or interim final, as the case may be (see SUPPLEMENTARY INFORMATION section below), and take effect, unless the designation or any of its terms is disapproved by Congress through enactment of a joint resolution. A document announcing the effective date will be published in the Federal Register.

Comments: Comments are invited on §§ 943.3(a)(5), (6), (7), (9), (12), (14), and (15), §§ 943.5(a)(1), (11), (12), (13), and (14), and § 943.6 and will be considered if submitted in writing to the address below on or before February 3, 1992.


FOR FURTHER INFORMATION CONTACT: Annie Hillary, (202) 606-4122.

SUPPLEMENTARY INFORMATION: As indicated above, NOAA by this notice issues final and interim final regulations to implement the designation by regulating activities affecting the Sanctuary consistent with the provisions of the Designation Document. Sections 943.3(a)(5), (6), (7), (9), (12), (14), and (15), §§ 943.5(a)(1), (11), (12), (13), and (14), and § 943.6 are issued as final regulations. Comments on these sections are invited and will be considered in connection with the issuance of final regulations if submitted in accordance with the instructions appearing in the DATES section below. All other sections of the regulations are issued as final regulations.

I. Background

Title III of the Marine Protection, Research, and Sanctuaries Act, as amended (the “Act”), 16 U.S.C. 1431 et seq., authorizes the Secretary of Commerce to designate discrete areas of the marine environment as national marine sanctuaries if, as required by section 303 of the Act (16 U.S.C. 1433), the Secretary finds, in consultation with Congress, a variety of specified officials, and other interested persons, that the designation will fulfill the purposes and policies set forth in section 303(b) (16 U.S.C. 1431(b)) and: (1) The area proposed for designation is of special national significance due to its resource or human-use values; (2) existing state and Federal authorities are inadequate to ensure coordinated and comprehensive conservation and management of the area, including resource protection, scientific research, and public education; (3) designation of the area as a national marine sanctuary will facilitate the coordinated and comprehensive conservation and management of the area; and (4) the area is of a size and nature that will permit comprehensive and coordinated conservation and management.

Before the Secretary may designate an area as a national marine sanctuary, section 303 (16 U.S.C. 1433) requires him or her to make the above described findings and § 204 (16 U.S.C. 1434), setting forth the procedures for designation issued to him or her to publish in the Federal Register regulations implementing the designation and to advise the public of the availability of the FEIS/MP.

The authority of the Secretary to designate national marine sanctuaries has been delegated to the Under Secretary for Oceans and Atmosphere by DOC Organization Order 10-15, section 3.01(x), January 11, 1988. The authority to administer the other provisions of the Act has been delegated to the Assistant Administrator for Ocean Services and Coastal Zone Management of NOAA by NOAA Circular 83-38, Directive 05-50, September 21, 1983, as amended.

The Flower Garden Banks are two of over thirty major outer-continental shelf geological features in the northwestern Gulf of Mexico. The East and West Flower Garden Banks, separated by eight nautical miles of open water, sustain the northernmost living coral reefs on the United States continental shelf. The complex and biologically productive reef communities that cap the Banks are in delicate ecological balance because of the fragile nature of coral and the fact that the Banks lie on the extreme northern edge of the zone in which extensive reef development can occur. In addition to their coral reefs, the Banks harbor the only known oceanic brine seep in continental shelf waters of the Gulf of Mexico. Because of these features, the Flower Garden Banks offer a combination of esthetic appeal and recreational and research opportunity matched in few other ocean areas.

In April 1979, NOAA published proposed regulations (44 FR 22081) and a draft environmental impact statement (DEIS) for the proposed designation of the East and West Flower Garden Banks as a national marine sanctuary. However, a FEIS was not prepared. NOAA withdrew the DEIS in April 1982, and removed the site from the list of areas being considered for designation. One of the major reasons for this action was that a fishery management plan for Coral and Coral Reefs in the Gulf of Mexico and South Atlantic (FMP) was about to be implemented. It was expected that the FMP and its implementing regulations would protect the coral formations in the area of the proposed national marine sanctuary from being damaged by large vessels by prohibiting these vessels from anchoring. However, the final regulations implementing the FMP (49 FR 29607 (1984)) did not include the expected “no-anchoring” provision.
The continued lack of a ban on large-vessel anchoring led to renewed interest in ensuring the area’s protection by designating it as a national marine sanctuary, and on August 2, 1984, NOAA announced (49 FR 30986) that the Flower Garden Banks had again become an Active Candidate for designation as a sanctuary. On June 24, 1986, NOAA sponsored a public scoping meeting in Galveston, Texas, to solicit public comment on the scope and significance of issues involved in designating the sanctuary. Again the response was generally favorable to proceeding with the designation.

NOAA published proposed regulations including a proposed Designation Document (54 FR 7953) and a DEIS/MP for the proposed designation of the Flower Garden Banks as a national marine sanctuary in February 1989. Public hearings to receive comments on the proposed designation, proposed regulations, and DEIS/MP were held in Houston, Texas, on March 30, 1989. All comments received by NOAA in response to the Federal Register notice and at the public hearings were considered and, where appropriate, were incorporated. The significant comments on the proposed regulations and the regulatory elements of the DEIS/MP and NOAA’s responses to them follow:

(1) Comment: A number of commentors advocated the selection of the largest regulatory/boundary alternative. Alternative 3. Alternative 3 was advocated both because it would enclose the four-mile buffer zones beyond the no-activity zones and because it would incorporate into the Sanctuary regulations the Minerals Management Service (MMS) biological lease stipulations for lease sale 112, which prohibit activities associated with exploration for or production of hydrocarbons within the no-activity zones and require that drilling wastes disposed of in the buffer zones be shunted to within 10 meters of the bottom. These stipulations are currently imposed by the Department of the Interior (DOI) on a lease by lease basis and therefore do not provide permanent protection.

Response: NOAA recognizes that activities occurring in the four-mile buffer zones may potentially generate pollutants that could threaten the significant resources of the Flower Garden reefs. NOAA therefore agrees that the reefs must be protected from the possible adverse impacts of buffer zone activities. Alternative 1 requires that drilling operations comply with a Sanctuary regulation prohibiting discharges and deposits that enter the Sanctuary and injure a Sanctuary resource or Sanctuary quality. NOAA believes that this regulation, applying to other discharges and deposits as well as drilling wastes, provides broad protection to Sanctuary resources. NOAA has also modified Alternative 1 by including a shunting requirement for oil and gas activities in the Sanctuary (which are allowed only in the areas outside the no-activity zones). NOAA has therefore concluded that the Alternative 1 boundaries, which encompass the present boundaries of the no-activity zones, rounded out to allow more easy identification of the boundaries of the Sanctuary for enforcement purposes, are more in keeping than the Alternative 3 boundaries with § 922.1(c)(2) of the National Marine Sanctuary Program regulations (15 CFR part 922), which states that sanctuary size will be no larger than necessary to ensure effective management.

With respect to activities within the no-activity zones, NOAA agrees that the Alternative 3 provision explicitly prohibiting hydrocarbon exploration, development or production within these zones would provide stronger protection than the prohibition on altering the seabed, the primary means of regulating hydrocarbon activities within the zones under Alternative 1. NOAA has therefore modified Alternative 1 by incorporating into it an explicit prohibition of hydrocarbon exploration, development and production activities within the no-activity zones. Thus modified (see also the SUMMARY section above), Alternative 1 remains the preferred alternative.

(2) Comment: Two commentors stated that the stipulations in current leases are adequate to protect the Banks from the adverse effects of oil and gas operations. Such operations should therefore be exempt from the regulation prohibiting discharges that occur outside of the Sanctuary and then drift into it and injure Sanctuary resources.

Response: NOAA disagrees. These stipulations are applied on a lease by lease basis. The Sanctuary regulations, in contrast, prohibit oil and gas exploration, development and production in the no-activity zones, and cannot be discontinued without a regulatory amendment. The regulations also now require shunting in areas if the Sanctuary where oil and gas activities are not prohibited.

(3) Comment: Several commentors were concerned about or misinterpreted the effect of Sanctuary regulations on oil and gas operations occurring outside of the no-activity zones but within Sanctuary boundaries.

Response: Language has been added to subsection 943.5 to make clear that necessary activities incidental to oil and gas operations, including the use, when necessary, of explosives for platform removal, that take place within the Sanctuary, but outside of the no-activity zones, are allowed.

(4) Comment: Several commentors expressed concern that shunted drilling wastes or other contaminant discharges at or near the seafloor surrounding the Banks might be swept up to the coral reefs and injure resources.

Response: In analyzing the flow of water at the base of the Flower Garden Banks, Rezak et al., 1985, reported that “the strength of the stratification is so great that little vertical motion is possible as the flow encounters the bank.” They conclude that “from both theory and order magnitude estimates, one would expect the flow to diverge around the banks with a very modest vertical excursion (on the order of 10 m) on the point of the bank where the flow diverges.” These findings indicate that the contaminants from subsurface spills, instead of being deposited on the reefs, would be swept around the Banks by the currents.

(5) Comment: A number of commentors recommended that mooring buoys be emplaced and all anchoring be prohibited.

Response: NOAA agrees that mooring buoys should be emplaced over the coral reefs. Through a local cooperative effort and in consultation with NOAA, mooring buoys have been installed over the reefs. The Sanctuary regulations have been revised to prohibit anchoring in all areas of the Sanctuary where mooring buoys are installed. NOAA will amend the regulations appropriately if the anchoring that is allowed in areas where buoys are not available is found to have an adverse impact on Sanctuary resources.

(6) Comment: Two commentors recommended that NOAA develop a proposal that the International Maritime Organization (IMO) designate the Flower Garden Banks as an “Area To Be Avoided.”

Response: NOAA, in consultation with the U.S. Coast Guard (USCG) and the Department of State, will work to develop a proposal for the designation by the IMO of the Flower Garden Banks as an “Area To Be Avoided”.

(7) Comment: A number of commentors advocated prohibiting all fishing activities within the Sanctuary. The proposed Sanctuary regulations would have prohibited all fishing except...
by use of conventional hook and line or spearfishing gear. These commentors were, in general, concerned that hook and line gear could snag and damage coral.

Response: One of the goals of the National Marine Sanctuary Program as set forth in the Act is "to facilitate, to the extent compatible with the primary objective of resource protection, all public and private uses of marine resources not prohibited pursuant to other authorities." As the DEIS/MP notes, most recreational and commercial fishing at the Flower Gardens Banks is done with conventional hook and line gear and at the fringes of the reefs in waters of 100 to 150 foot depths where snorkers and groupers are most abundant. NOAA has no evidence that this fishing is depleting Flower Garden Bank resources. However, if NOAA later determines that such fishing has an adverse impact on Sanctuary resources, NOAA has the authority to regulate such fishing on a temporary emergency basis during which time NOAA can consult with the Gulf of Mexico Fishery Management Council to decide on more permanent measures for resolving the problem. (See also the response to comment 8 below.)

(8) Comment: Many commentors recommended prohibiting spearfishing at the time of designation instead of merely listing it for possible future regulation.

Response: The recommendation was adopted. Spearfishing is now prohibited. Studies on the effects of piscivorous predator removal of coral reef fish communities reveal that spearfishing is detrimental to fisheries resources and causes selective removal of large predator species (Bohnsack, 1982). At the Flower Garden Banks spearfishing would have a negative influence on the resident reef fish population because of the nature of recruitment of juvenile fish species.

(9) Comment: Several commentors advocated prohibiting all live collecting.

Response: The proposed regulations would have prohibited all collecting and this prohibition has been maintained.

(10) Comment: Several commentors recommended that the emphasis of the interpretation and education program should be on projects that provide information to user groups whose activities could have an adverse impact on Flower Garden Banks resources. This emphasis was lacking in the draft management plan description of the education programs although the DEIS/MP did note that, in light of the Sanctuary's remoteness and the concomitant problems that will be encountered in surveillance and enforcement operations, the dissemination of information must be emphasized in the education program.

II. Designation Document

Section 304(a)(4) of the Act requires that the designation include the geographic area included within the Sanctuary; the characteristies of the area that give it conservation, recreational, ecological, historical, research, educational, or esthetic value; and the types of activities that will be subject to regulation by the Secretary to protect these characteristics. The section also specifies that the terms of the designation may be modified only by the same procedures by which the original designation was made. Thus the terms of the designation serve as a constitution for the Sanctuary.

The Designation Document for the Flower Garden Banks National Marine Sanctuary follows:

Designation Document for the Flower Garden Banks National Marine Sanctuary

Under the authority of title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended (the "Act"), 16 U.S.C. 1431 et seq., two separate areas of ocean waters over and surrounding the East and West Flower Garden Banks, and the submerged lands thereunder including the Banks, in the northwestern Gulf of Mexico, as described in Article II, are hereby designated as the Flower Garden Banks National Marine Sanctuary for the purposes of protecting and managing the conservation, ecological, recreational, research, educational, historic and esthetic resources and qualities of these areas.

Article I. Effect of Designation

The Act authorizes the Secretary of Commerce to issue such final regulations as are necessary and reasonable to implement the designation, including managing and protecting the conservation, recreational, ecological, historical, research, educational, and esthetic resources and qualities of a sanctuary. Section 1 of Article IV of this Designation Document lists those activities that may have to be regulated on the effective date of designation or at some later date in order to protect Sanctuary resources and qualities. Thus, the act of designation empowers the Secretary of Commerce to regulate the activities listed in Section 1.
The Flower Garden Banks National Marine Sanctuary consists of two separate areas of ocean waters over and surrounding the East and West Flower Garden Banks, and the submerged lands thereunder including the Banks, in the northwestern Gulf of Mexico. The area designated at the East Bank is located approximately 120 nautical miles south-southwest of Cameron, Louisiana, and encompasses 19.20 square nautical miles, and the area designated at the West Bank is located approximately 110 nautical miles southwest of Galveston, Texas, and encompasses 22.50 square nautical miles. The two areas encompass a total of 41.70 square nautical miles (143.21 square kilometers), Appendix I to this designation document sets forth the precise Sanctuary boundaries.

The Flower Garden Banks sustain the northernmost living coral reefs on the U.S. continental shelf. They are isolated from other reef systems by over 300 nautical miles (550 kilometers) and exist under hydrographic conditions generally considered marginal for tropical reef formation. The composition, diversity and vertical distribution of benthic communities on the Banks are strongly influenced by this physical environment. Epibenthic populations are distributed among several interrelated biotic zones, including a Diploria-Montastrea-Fortis zone, a Madracis mirabilis zone, and an algal sponge zone. The complex and biologically productive reef communities that cap the Banks offer a combination of aesthetic appeal and recreational and research opportunity matched in few other ocean areas. These reef communities are in delicate ecological balance because of the fragile nature of coral and the fact that the Banks lie on the extreme northern edge of the zone in which extensive reef development can occur. In addition to their coral reefs, the Banks contain the only known oceanic brine seep in continental shelf waters of the Gulf of Mexico. Because of these features, the Flower Garden Banks are particularly valuable for scientific research.

Article IV. Scope of Regulations
Section 1. Activities Subject to Regulation
The following activities are subject to regulation, including prohibition, to the extent necessary and reasonable to ensure the protection and management of the conservation, recreational, ecological, historical, research, educational and esthetic resources and qualities of the area:

a. Anchoring or otherwise mooring within the Sanctuary;

b. Discharging or depositing, from beyond the boundaries of the Sanctuary, any material or other matter;

c. Drilling into, dredging or otherwise altering the seabed of the Sanctuary; or constructing, placing or abandoning any structure, material or other matter on the seabed of the Sanctuary;

d. Exploring for, developing or producing oil, gas or minerals within the Sanctuary;

e. Taking, removing, catching, collecting, harvesting, feeding, injuring, destroying or causing the loss of, or attempting to take, remove, catch, collect, harvest, feed, injure, destroy or cause the loss of, a Sanctuary resource;

g. Possessing within the Sanctuary a Sanctuary resource or any other resource, regardless of where taken, removed, caught, collected or harvested, that, if it had been found within the Sanctuary, would be a Sanctuary resource;

h. Possessing or using within the Sanctuary any fishing gear, device, equipment or means;

i. Possessing or using airguns or explosives or releasing electrical charges within the Sanctuary.

j. Interfering with, obstructing, delaying or preventing an investigation, search, seizure or disposition of seized property in connection with enforcement of the Act or any regulation or permit issued under the Act.

Section 2. Consistency With International Law
The Sanctuary regulations shall be applied to foreign persons and foreign vessels in accordance with generally recognized principles of international law, and in accordance with treaties, conventions, and other international agreements to which the United States is a party.

Section 3. Emergencies
Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality, or minimize the imminent risk of such destruction, loss or injury, any and all activities, including those not listed in section 1 of this Article, are subject to immediate temporary regulation, including prohibition.

Article V. Effect on Other Regulations, Leases, Permits, Licenses, and Rights
Section 1. Fishing Regulations, Licenses, and Permits
The regulation of fishing is authorized under Article IV. All regulatory programs pertaining to fishing, including fishery management plans promulgated under the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 et seq., shall remain in effect. Where a valid regulation promulgated under these programs conflicts with a Sanctuary regulation, the regulation deemed by the Secretary of Commerce or designee as more protective of Sanctuary resources and qualities shall govern.

Section 2. Other
If any valid regulation issued by any Federal authority of competent jurisdiction, regardless of when issued, conflicts with a Sanctuary regulation, the regulation deemed by the Secretary of Commerce or designee as more protective of Sanctuary resources and qualities shall govern.

Pursuant to section 304(c)(1) of the Act, 16 U.S.C. 1434(c)(1), no valid lease, permit, license, approval, or other authorization issued by any Federal authority of competent jurisdiction, or any valid right of subsistence use or access, may be terminated by the Secretary of Commerce or designee as a result of this designation or as a result of any Sanctuary regulation if such authorization or right was in existence on the effective date of this designation. However, the Secretary of Commerce or designee may regulate the exercise of such authorization or right consistent with the purposes for which the Sanctuary is designated.

Accordingly, the prohibitions set forth in the Sanctuary regulations shall not apply to any activity authorized by any valid lease, permit, license, approval, or other authorization in existence on the effective date of Sanctuary designation and issued by any Federal authority of competent jurisdiction, or by any valid right of subsistence use or access in existence on the effective date of Sanctuary designation, provided that the holder of such authorization or right complies with Sanctuary regulations regarding the certification of such authorizations and rights [e.g., notifies
If the Sanctuary regulations prohibit oil, gas, or mineral exploration, development or production in any area of the Sanctuary, the Secretary or designee may in no event permit or otherwise approve such activities in that area, and any leases, licenses, permits, approvals, or other authorizations issued after the effective date of Sanctuary designation authorizing the exploration, development, or production of oil, gas, or minerals in that area shall be invalid.

 ARTICLE VI. Alterations to This Designation

The terms of designation may be modified only by the same procedures by which the original designation is made, including public hearings, consultation with any appropriate Federal, State, regional and local agencies, review by the appropriate Congressional committees and approval by the Secretary of Commerce or designee.

APPENDIX I—Flower Garden Banks National Marine Sanctuary Boundary Coordinates

III. Summary of the Final Management Program

The FEIS/MP for the Flower Garden Banks National Marine Sanctuary recognizes the need for a balanced approach to management that reflects the multiple use character of the area as well as the paramount need to protect its resources. The MP guides management of the Sanctuary during the first five years of operation. In describing the Sanctuary's location, resources and uses, the MP discusses programs for resource protection, research, and interpretation and details agency administrative roles and responsibilities.

As part of the National Marine Sanctuary Program attention is focused on the value of the area's resources. To ensure that these resources are protected, the Sanctuary resource protection program includes: (1) Coordination of policies and procedures among the agencies sharing responsibilities for resource protection; (2) participation by interested agencies and organizations in the development of procedures to address specific management concerns (e.g., monitoring and emergency-response programs); and (3) the enforcement of Sanctuary regulations in addition to other regulations already in place.

Effective management of the Sanctuary requires the initiation of a Sanctuary research program that addresses management issues. The Sanctuary research program will be directed to improving knowledge of the Sanctuary's resources and environment and of how they may be affected by various types of human activity. To avoid duplication of effort and achieve maximum benefits from the research, NOAA will coordinate its research efforts with those of other agencies.

Increased public understanding and appreciation of the value of Flower Garden Banks natural resources is essential for their protection. The interpretation program for the Sanctuary will be directed to developing public awareness of the Sanctuary, its resources, and the regulations designed to protect them.

The Sanctuary will be managed initially by NOAA's Sanctuaries and Reserves Division in Washington, DC.

IV. Summary of Regulations

The regulations set forth the boundaries of the Sanctuary; prohibit a relatively narrow range of activities; establish requirements applicable to certain activities; establish procedures for applying for National Marine Sanctuary permits to conduct prohibited activities; establish certification procedures for existing leases, licenses, permits, approvals, or other authorizations, or rights to authorize the conduct of a prohibited activity; establish notification and review procedures for applications for leases, licenses, permits, approvals, or other authorizations to conduct a prohibited activity; set forth the maximum per-day penalties for violating Sanctuary regulations; and establish procedures for administrative appeals.

Specifically, the regulations add a new part 943 to title 15, Code of Federal Regulations.

Section 943.1 sets forth as the purpose of the regulations to implement the designation of the Flower Garden Banks National Marine Sanctuary by regulating activities affecting the Sanctuary consistent with the terms of the designation in order to protect and manage the conservation, ecological, recreational, research, educational, historical and aesthetic resources and qualities of the area.

Section 943.2 and the appendix following § 943.13 sets forth the boundaries of the Sanctuary.

Section 943.3 defines various terms used in the regulations. Other terms appearing in the regulations are defined at 15 CFR 922.2 and/or in the Marine Protection, Research, and Sanctuaries Act of 1972, as amended. Section 943.3 adds several definitions not contained in proposed § 943.3 and deletes others not needed because of these additions and...
other revisions to the regulations. Definitions have been added for "Sanctuary," "Sanctuary designation," "historical resource," "no-activity zone," "Sanctuary quality," "shunt" and "vessel." Comments on these new definitions are invited.

Section 943.4 allows all activities except those prohibited by § 943.5 to be undertaken subject to the requirements of § 943.6, any emergency regulation promulgated pursuant to § 943.7 and all prohibitions, restrictions, and conditions validly imposed by any other Federal authority of competent jurisdiction. Thus, e.g., vessels of 100 feet or less in registered length could anchor in areas of the Sanctuary where mooring buoys are not available, subject to certain restrictions on their use of anchoring gear, and fish could be caught by use of conventional hook and line fishing gear. Section 943.5 prohibits a variety of activities and thus make it unlawful for any person to conduct them. However, any of the prohibited activities except for exploring for, developing, or producing oil, gas, or minerals in the no-activity zones defined by these regulations could be conducted lawfully if one of the following four situations apply:

(1) The activity is necessary to respond to an emergency threatening life, property, or the environment; authorized by a National Marine Sanctuary permit issued under § 943.10; or authorized by a Special Use permit issued under section 310 of the Act.

(2) With regard to Department of Defense activities, the activity is being carried out as of the effective date of Sanctuary designation; the activity has no potential for any significant adverse impacts on Sanctuary resources or qualities; or the activity, although having the potential for significant adverse impacts, is exempted by the Director of the Office of Ocean and Coastal Resource Management after consultation between the Director and the Department of Defense. The regulations require that the Department of Defense carry out its activities in a manner that minimizes any adverse impact on Sanctuary resources and qualities and that it, in the event of threatened or actual destruction of, loss of, or injury to a Sanctuary resource or quality resulting from an untoward incident, including but not limited to spills and groundings, caused by it, promptly coordinate with the Director for the purpose of taking appropriate actions to respond to and mitigate the harm and, if possible, restore or replace the Sanctuary resource or quality. The interim final regulation regarding Department of Defense activities differs from the proposed regulation by: (i) Making all activities being carried out by the Department of Defense on or after the effective date of Sanctuary designation exempt from the Sanctuary regulatory prohibitions, not just those determined necessary for the national defense; (ii) with regard to new Department of Defense activities, exempting those with no potential for any significant adverse impact on Sanctuary resources or qualities from the requirement of obtaining a case-by-case exemption from the Sanctuary regulatory prohibitions; (iii) adding the requirement of minimizing adverse impacts; and (iv) adding the requirement of prompt coordination, in the event of an untoward incident, for the purpose of taking appropriate actions. Rather than focusing on determining what activities are necessary for the national defense, the regulation as modified focuses on potential impacts of Department of Defense activities on Sanctuary resources and qualities. Comments are invited.

(3) The activity is authorized by a certification by the Director of the Office of Ocean and Coastal Resource Management under section 943.11 of a valid lease, permit, license, or other authorization issued by any Federal authority of competent jurisdiction and in existence on (or conducted pursuant to any valid right of subsistence use or access in existence on) the effective date of this designation, subject to complying with any terms and conditions imposed by the Director as he or she deems necessary to achieve the purposes for which the Sanctuary was designated.

(4) The activity is authorized by a valid lease, permit, license, approval or other authorization issued by any Federal, State, or local authority of competent jurisdiction after the effective date of Sanctuary designation, provided that the Director or designee was notified of the application in accordance with the requirements of § 943.12, the applicant complies with the requirements of § 943.12, the Director or designee notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization, and the applicant complies with any terms and conditions the Director or designee deems necessary to protect Sanctuary resources and qualities.

The regulations shall be applied to foreign persons and foreign vessels in accordance with generally recognized principles of international law, and in accordance with treaties, conventions, and other international agreements to which the United States is a party.

The first activity prohibited is the exploration for, development, or production of oil, gas, or minerals within the no-activity zones in the Sanctuary. The proposed regulations did not explicitly contain such a prohibition but as discussed in the response to comment 1 above, the proposed prohibition on altering the seabed was intended to bar such activities. To make the intended prohibition clearer, an explicit prohibition on the exploration for, development, or production of oil, gas, or minerals within the no-activity zones in the Sanctuary has been added. The intent of this regulation is to protect Sanctuary resources and qualities. Comments are invited.

The second activity prohibited is anchoring or otherwise mooring within the Sanctuary a vessel greater than 100 feet in registered length. The third activity prohibited is anchoring within the Sanctuary a vessel of 100 feet or less in registered length where a mooring buoy is available. The fourth activity prohibited is anchoring within the Sanctuary a vessel using more than 15 feet of chain or wire rope attached to the anchor. The fifth activity prohibited is anchoring a vessel within the Sanctuary using anchor lines (exclusive of such chain or wire rope) that are not constructed of soft fiber or nylon, polyethylene, or similar material.

These regulations on anchoring and other mooring are necessary to protect the fragile benthic communities of the Sanctuary from damage. Although the regulations would permit vessels of 100 feet or less in registered length to anchor subject to the limitations on anchoring gear and the availability of mooring buoys, should such anchoring by these vessels damage the benthic communities, it could be prohibited or otherwise regulated.

The sixth activity prohibited is discharging or depositing from within the boundaries of the Sanctuary any material or other matter, except fish, fish parts, chumming material or bait used in or resulting from fishing operations in the Sanctuary, marine sanitation device biodegradable effluent, water generated by routine vessel operations, and engine exhaust. The seventh activity prohibited is depositing or discharging, from beyond the boundaries of the Sanctuary, any material or other matter, except for the exclusions listed above, if it enters the Sanctuary and injures a Sanctuary resource or quality. The intent of these prohibitions is to protect Sanctuary resources and qualities.

The eighth activity prohibited is constructing, placing or abandoning any structure, material or other matter on the
The ninth activity prohibited is injuring, removing, or attempting to injure or remove, any coral or other bottom formation, coralline algae or other plant, marine invertebrate, benth- 
seep biota, or carbonate rock within the Sanctuary. The intent of this prohibition is to protect Sanctuary resources and qualities. 
The tenth activity prohibited is taking any marine mammal or turtle within the Sanctuary, except as permitted by regulations, as amended, promulgated under the Marine Mammal Protection Act and Endangered Species Act. The intent of this prohibition is to protect Sanctuary resources. 
The eleventh activity prohibited is injuring, catching, harvesting or feeding or attempting to injure, catch, collect, harvest or feed any fish in the Sanctuary by use of bottom longlines, traps, nets, bottom trawls or any other gear, device, equipment or means except by use of conventional hook and line gear. The intent of this prohibition is to protect Sanctuary resources. The 
regulation encompasses a prohibition on spearfishing, which was not included in the proposed regulations. A prohibition on feeding fish was also not included in the proposed regulations. Comments are invited. 
The twelfth activity prohibited is possessing within the Sanctuary [regardless of where collected, caught, removed, or harvested], except for valid law enforcement purposes, any carbonate rock, coral or other bottom formation, coralline algae or other plant, marine invertebrate, benth-seep biota or fish (except for fish caught, collected or harvested by use of conventional hook and line gear). The intent of 
this prohibition, which was not included in the proposed regulations, is to facilitate the enforcement of the above prohibitions against injuring, collecting, harvesting, removing or catching, or attempting to injure, collect, harvest, remove or catch, Sanctuary resources. Because it often would not be possible for an enforcement officer to determine whether a marine resource in the possession of someone within the Sanctuary was collected, harvested, removed, or caught in the Sanctuary, by prohibiting the possession of these items while in the Sanctuary, if the enforcement officer finds one of them in a person's possession, the person would be in violation of this prohibition. Comments are invited. 
The thirteenth activity prohibited is possessing or using within the Sanctuary, except possessing while passing without interruption through it or for valid law enforcement purposes, any fishing gear, device, equipment or means except conventional hook and line gear. The intent of this prohibition, which was not included in the proposed regulations, is to facilitate the 
enforcement of the above prohibitions against injuring, catching, harvesting or collecting, or attempting to injure, catch, harvest or collect, any fish in the Sanctuary except by conventional hook and line gear. Comments are invited. 
The fourteenth activity prohibits possessing, except for valid law enforcement purposes, or using explosives or releasing electrical charges within the Sanctuary. The intent of this prohibition is to protect Sanctuary resources from the harmful effects of explosives and electrical charges. The use of explosives and electrical charges in seismic operations, for example, has been documented to be lethal or damaging to fish eggs and larvae, disturbing to the fish and other marine life, and possibly destructive to commercial fishing gear (Gulf of Mexico Sales 131, 135, and 137; Central, Western and Eastern Planning Areas DEIS, USDOL, MMS, 1990). The prohibitions do not apply to necessary activities conducted in areas of the Sanctuary outside the no-activity zones incidental to exploration for, development of, or production of oil and gas in those areas. If any valid regulation issued by any Federal authority of competent jurisdiction, regardless of when issued, conflicts with a Sanctuary regulation, the regulation deemed by the Director or designee as more protective of Sanctuary resources and qualities governs. 
Section 943.10 sets forth the procedures for applying for a National Marine Sanctuary permit to conduct a prohibited activity and the duration of its effects, permitting reissue of seized property appear at part 904, title 15, Code of Federal Regulations. Section 943.10 sets forth the 
procedures for applying for a National Marine Sanctuary permit to conduct a prohibited activity and the criteria 
governing the issuance, denial, amendment, suspension, and revocation of such permits. Permits may be granted by the Director of the Office for Ocean and Coastal Resource Management or designee if he or she finds that the activity will: Further research related to Sanctuary resources; further the educational, natural or historical resource value of the Sanctuary; further salvage or recovery operations in or near the Sanctuary in connection with a recent air or marine casualty; or assist in the management of the Sanctuary. In deciding whether to issue a permit, the Director or designee would be required to consider such factors as the professional qualifications and financial ability of the applicant as related to the proposed activity, the duration of the activity and the duration of its effects, the appropriateness of the methods and procedures proposed by the applicant included in the proposed regulations, but was added for the reasons stated in the response to Comment 2 above. Comments are invited. 
Section 943.7 authorizes the regulation, including prohibition, on a temporary basis of any activity where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality, or minimize the imminent risk of such destruction, loss or injury. Section 943.8 sets forth the maximum statutory civil penalty per day for conducting a prohibited activity—$50,000. Each day of a continuing violation constitutes a separate violation. Section 943.9 repeats the provision in section 312 of the Act that any person who destroys, causes the loss of, or injures any sanctuary resource is liable to the United States for response costs and damages resulting from such destruction, loss, or injury, and any vessel used to destroy, cause the loss of, or injure any sanctuary resource is liable in rem to the United States for response costs and damages resulting from such destruction, loss, or injury. The purpose of §§ 943.8 and 943.9 is to notify the public of the liability. Regulations setting forth the procedures governing administrative proceedings for assessment of civil penalties, permit sanctions and denials for enforcement reasons, issuance and use of written warnings, and release or forfeiture of seized property appear at part 904, title 15, Code of Federal Regulations.
for the conduct of the activity, the extent to which the conduct of the activity may diminish or enhance Sanctuary resources and qualities, the cumulative effects of the activity, and the end value of the activity. In addition, the Director or designee would be authorized to consider any other factors she or he deems appropriate.

Section 943.11 sets forth procedures for requesting certification of leases, licenses, permits, approvals, other authorizations, or rights in existence on the date of Sanctuary designation authorizing the conduct of an activity prohibited under § 943.5(a)(2)–(14). Pursuant to § 943.5(g), the prohibitions in § 943.5(a)(2)–(14) do not apply to any activity authorized by a valid lease, permit, license, approval, or other authorization in existence on the effective date of Sanctuary designation and issued by any Federal authority of competent jurisdiction, or by any valid right of subsistence use or access in existence on the effective date of Sanctuary designation, provided that the holder of such authorization or right complies with the requirements of § 943.11 (e.g., notifies the Director or designee of the existence of, requests certification of, and provides requested information regarding such authorization or right) and complies with any terms and conditions on the exercise of such authorization or right imposed as a condition of certification by the Director or designee as she or he deems necessary to achieve the purposes for which the Sanctuary was designated.

Section 943.11 allows the holder 90 days from the effective date of Sanctuary designation to request certification. The holder is allowed to conduct the activity without being in violation of § 943.5(a) pending final agency action on his or her certification request. The holder has complied with all requirements of § 943.11.

Section 943.11 also allows the Director or designee to request additional information from the holder and to seek the views of other persons.

As a condition of certification, the Director or designee will impose such terms and conditions on the exercise of such lease, permit, license, approval, other authorization, or right as she or he deems necessary to achieve the purposes for which the Sanctuary was designated. This is consistent with the Secretary’s authority under section 304(c)(2) of the Act.

The holder may appeal any objection by, or terms or conditions imposed by, the Director or designee to the Assistant Administrator or designee in accordance with the procedures set forth in § 943.13. Any amendment, renewal or extension not in existence as of the date of Sanctuary designation of a lease, permit, license, approval, other authorization or right is subject to the provisions of § 943.12.

Section 943.12 states that consistent with § 943.5(h), the prohibitions of § 943.5(a)(2)–(14) do not apply to any activity authorized by any valid lease, permit, license, approval or other authorization issued after the effective date of Sanctuary designation by any Federal authority of competent jurisdiction, provided that the applicant notifies the Director or designee of the application for such authorization within 15 days of the date of filing of the application or of the effective date of Sanctuary designation, whichever is later, that the applicant is in compliance with the other provisions of § 943.11, that the Director or designee notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization, and that the applicant complies with any terms and conditions the Director or designee deems necessary to protect Sanctuary resources and qualities.

Section 943.12 allows the Director to request additional information from the applicant and to seek the views of other persons.

The applicant may appeal any objection by, or terms or conditions imposed by, the Director or designee to the Assistant Administrator or designee in accordance with the procedures set forth in § 943.13. An application for an amendment to, an extension of, or a renewal of an authorization is also subject to the provisions of § 943.12.

Section 943.13 sets forth the procedures for appealing to the Assistant Administrator or designee actions of the Director or designee with respect to: (1) The granting, conditioning, amendment, denial, suspension or revocation of a National Marine Sanctuary permit under § 943.10 or a Special Use permit under section 310 of the Act; (2) the granting, denial, conditioning, amendment, suspension or revocation of a certification under § 943.11; or (3) the objection to issuance or the imposition of terms and conditions under § 943.12.

Prior to conditioning existing or future leases, permits, licenses, approvals, other authorizations, or rights, NOAA intends to consult with relevant issuing agencies as well as holders or applicants. NOAA’s policy is to encourage best available management practices for the Sanctuary.

V. Miscellaneous Rulemaking Requirements

Executive Order 12291

Under Executive Order 12291, the Department must judge whether the regulations in this notice are “major” within the meaning of section 1 of the Order, and therefore subject to the requirement that a Regulatory Impact Analysis be prepared. The Administrator of NOAA has determined that the regulations in this notice are not major because they are not likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions;

(3) Significant adverse effects on competition, employment, investment, productivity, innovation or trade;

(4) Significant adverse effects on competition, employment, investment, productivity, innovation or trade of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The regulations in this notice allow all activities to be conducted in the Sanctuary other than a relatively narrow range of prohibited activities. The procedures in these regulations for applying for National Marine Sanctuary permits to conduct prohibited activities, for requesting certifications for preexisting leases, licenses, permits, approvals, other authorizations or rights authorizing the conduct of a prohibited activity, and for notifying NOAA of applications for leases, licenses, permits, approvals, other authorizations or rights authorizing the conduct of a prohibited activity will all act to lessen any adverse economic effect on small entities. The regulations, in total, will not have a significant economic impact on a substantial number of small entities, and when they were proposed the General Counsel of the Department of Commerce so certified to the Chief Counsel for Advocacy of the Small Business Administration. As a result, neither an initial nor final Regulatory Flexibility Analysis was prepared.

Paperwork Reduction Act

This rule contains a collection of information requirement subject to the requirements of the Paperwork Reduction Act (Pub. L. 96-649). The collection of information requirement applies to persons seeking permits to conduct prohibited activities and is necessary to determine whether the activities are consistent with the management goals for the Sanctuary.
The collection of information requirement contained in the rule was submitted to the Office of Management and Budget for review under section 3504(b) of the Paperwork Reduction Act and was approved under OMB Control No. 0648-0141. The public reporting burden per respondent for the collection of information contained in this rule is estimated to average 1.83 hours annually. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments from the public on the collection of information requirement are specifically invited and should be addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn: Desk Officer for NOAA); and to Richard Roberts, room 305, 6010 Executive Boulevard, Rockville, MD 20852.

Executive Order 12812

This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 12812, Federalism Considerations in Policy Formulation and Implementation (52 FR 41685, Oct. 26, 1987).

National Environmental Policy Act

In accordance with section 304(a)(2) of the Act (16 U.S.C. 1434(a)(2)) and the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370(a)), a DEIS/MP was prepared for the designation and the proposed regulations. As required by section 304(a)(2) of the Act, the DEIS/MP included the resource assessment report required by section 303(b)(3) of the Act (16 U.S.C. 1433(b)(3)), maps depicting the boundaries of the designated area, and the existing and potential uses and resources of the area. Copies of the DEIS/MP were made available for public review on February 16, 1990, with comments due on April 28, 1990. Public hearings were held in Houston, Texas on March 30, 1990. All comments were reviewed and, where appropriate, incorporated into the FEIS/MP and these regulations.

List of Subjects in 15 CFR Part 944

Administrative practice and procedure, Environmental protection, Marine resources, Natural resources, and Reporting and recordkeeping requirements.


Frank W. Maloney,
Acting Assistant Administrator for Ocean Services and Coastal Zone Management.

Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program

Accordingly, for the reasons set forth above, 15 CFR ch. IX is amended as follows:

1. Part 943 is added to subchapter A to read as follows:

PART 943—FLOWER GARDEN BANKS NATIONAL MARINE SANCTUARY

Sec. 943.1 Purpose.

943.1 Purpose.

943.2 Boundaries.

943.3 Definitions.

943.4 Allowed activities.

943.5 Prohibited activities.

943.6 Shunting requirements applicable to hydrocarbon-drilling discharges.

943.7 Emergency regulations.

943.8 Penalties for commission of prohibited activities.

943.9 Response costs and damages.

943.10 National Marine Sanctuary permits—application procedures and issuance criteria.

943.11 Certification of pre-existing leases, licenses, permits, approvals, other authorizations, or rights to conduct a prohibited activity.

943.12 Notification and review of applications for leases, licenses, permits, approvals, or other authorizations to conduct a prohibited activity.

943.13 Appeals of administrative action.

Appendix I to part 943—Flower Garden Banks National Marine Sanctuary Boundary Coordinates.

§ 943.1 Purpose.

The purpose of the regulations in this part is to implement the designation of the Flower Garden Banks National Marine Sanctuary by regulating activities affecting the Sanctuary consistent with the terms of that designation in order to protect and manage the conservation, ecological, recreational, research, educational, historical and esthetic resources and qualities of the area.

§ 943.2 Boundaries.

The Flower Garden Banks National Marine Sanctuary consists of two separate areas of ocean waters over and surrounding the East and West Flower Garden Banks and the submerged lands thereunder including the Banks, in the northwestern Gulf of Mexico. The area designated at the East Bank is located approximately 120 nautical miles southwest of Cameron, Louisiana, and encompasses 10.20 square nautical miles, and the area designated at the West Bank is located approximately 110 nautical miles southeast of Galveston, Texas, and encompasses 22.50 square nautical miles. The two areas encompass a total of 41.70 square nautical miles (143.21 square kilometers). The boundary coordinates for each area are listed in appendix I to this part.

§ 943.3 Definitions.


(2) Administrator or Under Secretary means the Administrator of the National Oceanic and Atmospheric Administration/Under Secretary of Commerce for Oceans and Atmosphere.

(3) Assistant Administrator means the Assistant Administrator for Ocean Services and Coastal Zone Management, National Ocean Service, National Oceanic and Atmospheric Administration.

(4) Conventional hook and line gear means any fishing apparatus operated according to a conventional hook and line gear application procedures and issuance criteria.

(5) Director means the Director of the Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration.

(6) Effective date of Sanctuary designation means the date the regulations implementing the designation of the Sanctuary become effective.

(7) Historical resource means a resource possessing historical, cultural, archaeological or paleontological significance, including sites, structures, districts, and objects significantly associated with or representative of earlier people, cultures, and human activities and events.

(8) Injury means change adversely, either in the long or short term, a chemical, biological or physical attribute of, or the viability of. To “injure” therefore includes, but is not limited to, to cause the loss of and to destroy.

(9) No-activity zone means one of the two geographic areas delineated by the Department of the Interior in stipulations for OCS lease sale 112 over and surrounding the East and West
Flower Garden Banks as areas in which activities associated with exploration for, development of, or production of hydrocarbons are prohibited. The precise coordinates of these areas are provided in appendix II. These particular coordinates define the geographic scope of the "no-activity zones" for purposes of the regulations in this Part. These coordinates are based on the "4° 14′ 1/2" system formerly used by the Department of the Interior, a method that delineates a specific portion of a block rather than the actual underlying isobath.

(10) Person means any private individual, partnership, corporation, or other entity; or any officer, employee, agent, agency, department or instrumentality of the Federal government, or of any State or local unit of government, or of any foreign government.

(11) Sanctuary means the Flower Garden Banks National Marine Sanctuary.

(12) Sanctuary quality means a particular and essential characteristic of the Sanctuary, including but not limited to water quality and air quality.

(13) Sanctuary resource means any living or non-living resource of the Sanctuary that contributes to its conservation, recreational, ecological, historical, research, educational or esthetic value, including, but not limited to, carbonate rock, corals and other bottom formations, coralline algae and other plants, marine invertebrates, brine-seep biota, fish, turtles and marine mammals.

(14) Shunt means to discharge expended drilling cuttings and fluids near the ocean seafloor.

(15) Vessel means a watercraft of any description capable of being used as a means of transportation in the waters of the Sanctuary.

(b) Other terms appearing in the regulations in this Part are defined at 15 CFR 922.2 and/or in the Marine Protection, Research, and Sanctuaries Act of 1972, as amended (33 U.S.C. 1401 et seq. and 16 U.S.C. 1431 et seq.).

§ 943.4 Allowed activities.

All activities except those prohibited by § 943.5 may be undertaken subject to the requirements of § 943.8, subject to any emergency regulations promulgated pursuant to § 943.7, and subject to all prohibitions, restrictions, and conditions validly imposed by any other Federal authority of competent jurisdiction. If any valid regulation issued by any Federal authority of competent jurisdiction, regardless of when issued, conflicts with a Sanctuary regulation, the regulation deemed by the Director or designee as more protective of Sanctuary resources and qualities shall govern.

§ 943.5 Prohibited activities.

(a) Except as specified in paragraphs (c) through (h) of this section, the following activities are prohibited and thus unlawful for any person to conduct or cause to be conducted:

(1) Exploring for, developing or producing oil, gas or minerals within a no-activity zone.

(2) Anchoring or otherwise mooring within the Sanctuary a vessel greater than 100 feet (30.48 meters) in registered length.

(3) Anchoring a vessel of less than or equal to 100 feet (30.48 meters) in registered length within an area of the Sanctuary where a mooring buoy is available.

(4) Anchoring a vessel within the Sanctuary using more than fifteen feet (4.57 meters) of chain or wire rope attached to the anchor.

(5) Anchoring a vessel within the Sanctuary using anchor lines (exclusive of the anchor chain or wire rope permitted by paragraph (a)(4) of this section) other than those of a soft fiber or nylon, polypropylene, or similar material.

(6) Discharging or depositing, from within the boundaries of the Sanctuary, any material or other matter except:

(i) Fish, fish parts, chumming materials or bait used in or resulting from fishing with conventional hook and line gear in the Sanctuary;

(ii) Biodegradable effluents incidental to vessel use and generated by marine sanitation devices approved in accordance with section 312 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1322;

(iii) Waste generated by routine vessel operations (e.g., cooling water, deck wash down, and graywater as defined by section 312 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1322) excluding oily wastes from bilge pumping; or

(iv) Engine exhaust.

The prohibitions in paragraphs (a)(1) through (a)(4) of this section do not apply to the discharge, in areas of the Sanctuary outside the no-activity zones and incidental to exploration for, development of, or production of oil or gas in those areas unless such discharge injures a Sanctuary resource or quality. (See § 943.8 for the hunting requirement applicable to such discharges.)

(7) Discharging or depositing, from beyond the boundaries of the Sanctuary, any material or other matter, except those listed in paragraphs (a)(6)(i) through (iv) of this section, that subsequently enters the Sanctuary and injures a Sanctuary resource or quality.

(8) Drilling into, dredging or otherwise altering the seabed of the Sanctuary (except by anchoring); or constructing, placing or abandoning any structure, material or other matter on the seabed of the Sanctuary.

(9) Injuring or removing, or attempting to injure or remove, any coral or other bottom formation, coralline algae or other plant, marine invertebrate, brine-seep biota or carbonate rock within the Sanctuary.

(10) Taking any marine mammal or turtle within the Sanctuary, except as permitted by regulations, as amended, promulgated under the Marine Mammal Protection Act, as amended, 16 U.S.C. 1361 et seq., and the Endangered Species Act, as amended, 16 U.S.C. 1531 et seq.

(11) Injuring, catching, possessing, collecting or feeding, or attempting to injure, catch, harvest, collect or feed, any fish within the Sanctuary by use of bottom longlines, traps, nets, bottom trawls or any other gear, device, equipment or means except by use of conventional hook and line gear.

(12) Possessing within the Sanctuary (regardless of where collected, caught, harvested or removed), except for valid law enforcement purposes, any carbonate rock, coral or other bottom formation, coralline algae or other plant, marine invertebrate, brine-seep biota or fish (except for fish caught by use of conventional hook and line gear).

(13) Possessing or using within the Sanctuary, except possessing while passing without interruption through it or for valid law enforcement purposes, any fishing gear, device, equipment or means except conventional hook and line gear.

(14) Possessing, except for valid law enforcement purposes, or using explosives or releasing electrical charges within the Sanctuary.

(b) The regulations in this Part shall be applied to foreign persons and foreign vessels in accordance with generally recognized principles of international law, and in accordance with treaties, conventions, and other international agreements to which the United States is a party.

(c) The prohibitions in paragraphs (a)(2), (4), (5), (8) and (14) of this section do not apply to necessary activities conducted in areas of the Sanctuary outside the no-activity zones and incidental to exploration for, development of, or production of oil or gas in those areas.

(d) The prohibitions in paragraphs (a)(2) through (14) of this section do not
apply to activities necessary to respond to emergencies threatening life, property, or the environment.

(e)(1) The prohibitions in paragraphs (a)(2) through (14) of this section do not apply to activities being carried out by the Department of Defense as of the effective date of Sanctuary designation. Such activities shall be carried out in a manner that minimizes any adverse impact on Sanctuary resources or qualities. The prohibitions in paragraphs (a)(2) through (14) of this section do not apply to any new activities carried out by the Department of Defense that do not have the potential for any significant adverse impacts on Sanctuary resources or qualities. Such activities shall be carried out in a manner that minimizes any adverse impact on Sanctuary resources or qualities. New activities with the potential for significant adverse impacts on Sanctuary resources or qualities may be exempted from the prohibitions in paragraphs (a)(2) through (14) of this section by the Director or designee after consultation between the Director or designee and the Department of Defense. If it is determined that an activity may be carried out, such activity shall be carried out in a manner that minimizes any adverse impact on Sanctuary resources or qualities.

(2) In the event of threatened or actual destruction of, loss of, or injury to a Sanctuary resource or quality resulting from an untoward incident, including but not limited to spills and groundings, caused by a component of the Department of Defense, the cognizant component shall promptly coordinate with the Director or designee for the purpose of taking appropriate actions to respond to and mitigate the harm and, if possible, restore or replace the Sanctuary resource or quality.

(f) The prohibitions in paragraphs (a)(2) through (14) of this section do not apply to any activity authorized by a valid lease, permit, license, approval, or other authorization in existence on the effective date of Sanctuary designation and issued by any Federal authority of competent jurisdiction, or by any valid right of subsistence use or access in existence on the effective date of Sanctuary designation, provided that the holder of such authorization or right complies with § 943.11 and with any terms and conditions on the exercise of such lease, permit, license, approval, other authorization, or right imposed by the Director or designee as a condition of certification as he or she deems necessary to achieve the purposes for which the Sanctuary was designated.

(g) The prohibitions in paragraphs (a)(2) through (14) of this section do not apply to any activity authorized by any lease, permit, license, approval or other authorization issued after the effective date of Sanctuary designation, provided that the applicant complies with § 943.12, the Director or designee notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization, and the applicant complies with any terms and conditions the Director or designee deems necessary to protect Sanctuary resources and qualities.

(h) Notwithstanding paragraphs (f), (g) and (h) of this section, in no event may the Director or designee issue a National Marine Sanctuary permit under § 943.10 or a Special Use permit under section 310 of the Act authorizing, or otherwise approve, the exploration for, development of, or production of oil, gas or minerals in a no-activity zone, and any leases, licenses, permits, approvals, or other authorizations authorizing the exploration for, development of, or production of oil, gas or minerals in a no-activity zone and issued after the effective date of Sanctuary designation shall be invalid.

§ 943.6 Shunting requirements applicable to hydrocarbon-drilling discharges.

Persons engaged in the exploration for, development of, or production of oil or gas in areas of the Sanctuary outside the no-activity zones must shunt all drilling cuttings and drilling fluids to the seabed through a downpipe that terminates an appropriate distance, but no more than ten meters, from the seabed.

§ 943.7 Emergency regulations.

Where necessary to prevent or minimize the destruction of loss of, or injury to a Sanctuary resource or quality, or minimize the imminent risk of such destruction, loss or injury, any and all activities are subject to immediate temporary regulation, including prohibition.

§ 943.8 Penalties for commission of prohibited activities.

(a) Each violation of the Act, any regulation in this part, or any permit issued pursuant thereto, is subject to a civil penalty of not more than $56,000. Each day of a continuing violation constitutes a separate violation.

(b) Regulations setting forth the procedures governing administrative proceedings for assessment of civil penalties, permit sanctions and denial for enforcement reasons, issuance and use of written warnings, and release or forfeiture of seized property appear at 15 CFR part 904.

§ 943.9 Response costs and damages.

Under section 312 of the Act, any person who destroys, causes the loss of, or injures any sanctuary resource is liable to the United States for the costs and damages resulting from such destruction, loss, or injury, and any vessel used to destroy, cause the loss of, or injure any sanctuary resource is liable in rem to the United States for response costs and damages resulting from such destruction, loss, or injury.

§ 943.10 National Marine Sanctuary permits—Application procedures and issuance criteria.

(a) A person may conduct an activity prohibited by § 943.5(a)(2) through (14) if conducted in accordance with the scope, purpose, terms, and conditions of a permit issued under this section.

(b) Applications for such permits should be addressed to the Director of the Office of Ocean and Coastal Resource Management, ATTN: Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1825 Connecticut Avenue, NW., Washington, DC 20235. An application must include a detailed description of the proposed activity including a timetable for completion of the activity and the equipment, personnel, and methodology to be employed. The qualifications and experience of all personnel must be set forth in the application. The application must set forth the potential effects of the activity, if any, on Sanctuary resources and qualities. Copies of all other required licenses, permits, approvals, or other authorizations must be attached.

(c) Upon receipt of an application, the Director or designee may request such additional information from the applicant as he or she deems necessary to act on the application and may seek the views of any persons.

(d) The Director or designee, at his or her discretion, may issue a permit, subject to such terms and conditions as he or she deems appropriate, to conduct an activity prohibited by § 943.5(a)(2) through (14) if the Director or designee finds that the activity will further research related to Sanctuary resources: further the educational, natural or
§ 943.11 Certification of pre-existing leases, licenses, permits, approvals, or other authorizations, or rights to conduct a prohibited activity.

(a) The prohibitions set forth in § 943.5(a)(2) through (14) do not apply to any activity authorized by a valid lease, permit, license, approval, or other authorization in existence on the effective date of Sanctuary designation and issued by any Federal authority of competent jurisdiction, provided that:

(1) The holder of such authorization or right notifies the Director designee, in writing, within 90 days of the effective date of Sanctuary designation, of the existence of such authorization or right and requests certification of such authorization or right;

(2) The holder complies with the other provisions of this § 943.11; and

(3) The holder complies with any terms and conditions on the exercise of such authorization or right imposed as a condition of certification by the Director or designee, to achieve the purposes for which the Sanctuary was designated.

(b) The holder of a valid lease, permit, license, approval or other authorization in existence on the effective date of Sanctuary designation and issued by any Federal authority of competent jurisdiction, or of any valid right of subsistence use or access in existence on the effective date of Sanctuary designation, authorizing an activity prohibited by § 943.5(a)(2) through (14) may conduct the activity without being in violation of § 943.5, pending final agency action on his or her certification request, provided the holder is in compliance with this § 943.11.

(c) Any holder of a valid lease, permit, license, approval, or other authorization in existence on the effective date of Sanctuary designation and issued by any Federal authority of competent jurisdiction, or any holder of a valid right of subsistence use or access in existence on the effective date of Sanctuary designation, authorizing an activity prohibited by § 943.5(a)(2) through (14) may conduct the activity without being in violation of § 943.5, pending final agency action on his or her certification request, provided the holder is in compliance with this § 943.11.

(d) Any holder of a valid lease, permit, license, approval, or other authorization in existence on the effective date of Sanctuary designation and issued by any Federal authority of competent jurisdiction, or any holder of a valid right of subsistence use or access in existence on the effective date of Sanctuary designation, authorizing an activity prohibited by § 943.5(a)(2) through (14) may conduct the activity without being in violation of § 943.5, pending final agency action on his or her certification request, provided the holder is in compliance with this § 943.11.

(e) The Director or designee may request additional information from the certification requester as or he deems necessary to condition appropriately the exercise of the certified authorization or right to achieve the purposes for which the Sanctuary was designated. The information requested must be received by the Director or designee within 45 days of the postmark date of the request. The Director or designee may seek the views of any persons on the certification request.

(f) The Director or designee may amend any certification made under this section whenever additional information becomes available justifying such an amendment.

(g) The Director or designee shall communicate any decision on a certification request or any action taken with respect to any certification made under this section, in writing, to both the holder of the certified lease, permit, license, approval, other authorization or right, and the issuing agency, and shall set forth the reason(s) for the decision or action taken.

(h) Any time limit prescribed in or established under this section may be extended by the Director or designee for good cause.

(i) The holder may appeal any action conditioning, amending, suspending, or revoking any certification in accordance with the procedures set forth in § 943.13.

(j) Any amendment, renewal or extension not in existence on the effective date of Sanctuary designation, authorizing an activity prohibited by § 943.5(a)(2) through (14) is subject to the provisions of § 943.12.

§ 943.12 Notification and review of applications for leases, licenses, permits, approvals, or other authorizations to conduct a prohibited activity.

(a) The prohibitions set forth in § 943.5(a)(2) through (14) do not apply to any activity authorized by any valid lease, permit, license, approval, or other authorization issued after the effective date of Sanctuary designation by any Federal authority of competent jurisdiction, provided that:


(b) The Director or designee may request additional information from the certification requester as or he deems necessary to condition appropriately the exercise of the certified authorization or right to achieve the purposes for which the Sanctuary was designated. The information requested must be received by the Director or designee within 45 days of the postmark date of the request. The Director or designee may seek the views of any persons on the certification request.

(c) The Director or designee may amend any certification made under this section whenever additional information becomes available justifying such an amendment.

(d) The Director or designee shall communicate any decision on a certification request or any action taken with respect to any certification made under this section, in writing, to both the holder of the certified lease, permit, license, approval, other authorization or right, and the issuing agency, and shall set forth the reason(s) for the decision or action taken.

(e) Any time limit prescribed in or established under this section may be extended by the Director or designee for good cause.

(f) The holder may appeal any action conditioning, amending, suspending, or revoking any certification in accordance with the procedures set forth in § 943.13.

(g) Any amendment, renewal or extension not in existence on the effective date of Sanctuary designation, authorizing an activity prohibited by § 943.5(a)(2) through (14) is subject to the provisions of § 943.12.

(h) Any time limit prescribed in or established under this section may be extended by the Director or designee for good cause.

(i) The holder may appeal any action conditioning, amending, suspending, or revoking any certification in accordance with the procedures set forth in § 943.13.

(j) Any amendment, renewal or extension not in existence on the effective date of Sanctuary designation, authorizing an activity prohibited by § 943.5(a)(2) through (14) is subject to the provisions of § 943.12.

(k) Any time limit prescribed in or established under this section may be extended by the Director or designee for good cause.

(l) The holder may appeal any action conditioning, amending, suspending, or revoking any certification in accordance with the procedures set forth in § 943.13.

(m) Any amendment, renewal or extension not in existence on the effective date of Sanctuary designation, authorizing an activity prohibited by § 943.5(a)(2) through (14) is subject to the provisions of § 943.12.
(2) The applicant complies with the other provisions of this § 943.12.

(3) The Director or designee notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization (or amendment, renewal or extension); and

(4) The applicant complies with any terms and conditions the Director or designee deems necessary to protect Sanctuary resources and qualities.

(b) Any potential applicant for a lease, permit, license, approval or other authorization from any Federal authority (or for an amendment, renewal or extension of such authorization) may request the Director or designee to issue a finding as to whether the activity for which an application is intended to be made is prohibited by § 943.5(a)(2) through (14).

(c) Notification of findings should be addressed to the Director, Office of Ocean and Coastal Resource Management; ATTN: Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1825 Connecticut Avenue NW., Washington, DC 20235. A copy of the application must accompany the notification.

(d) The Director or designee may request additional information from the applicant as he or she deems necessary to determine whether to object to issuance of such lease, permit, approval or other authorization (or to issuance of an amendment, extension or renewal of such authorization), or what terms and conditions are necessary to protect Sanctuary resources and qualities. The information requested must be received by the Director or designee within 45 days of the postmark date of the request. The Director or designee may seek the views of any other persons on the application.

(e) The Director or designee shall notify, in writing, the agency to which the application has been made of his or her decision in accordance with the procedures set forth in § 943.13.

§ 943.13 Appeals of administrative action.

(a) Except for permit actions taken for enforcement reasons (see subpart D of 15 CFR part 904 for applicable procedures), an applicant for, or a holder of, a § 943.10 National Marine Sanctuary permit, an applicant for, or a holder of, a section 310 of the Act Special Use permit, or a § 943.11 certification requester, or a § 943.12 applicant (hereinafter appellant) may appeal to the Assistant Administrator or designee:

(1) The grant, denial, conditioning, amendment, suspension, or revocation by the Director or designee of a National Marine Sanctuary or Special Use permit;

(2) The conditioning, amendment, suspension, or revocation of a certification under § 943.11; or

(3) The objection to issuance or the imposition of terms and conditions under § 943.12.

(b) An appeal under paragraph (a) of this section must be in writing, state the action(s) by the Director or designee appealed and the reason(s) for the appeal, and be received within 30 days of the action(s) by the Director or designee. Appeals should be addressed to the Assistant Administrator, Office of Ocean and Coastal Resource Management, ATTN: Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1825 Connecticut Avenue NW., Washington, DC 20235.

(c) While the appeal is pending, appellants requesting certification pursuant to § 943.11 who are in compliance with such section may continue to conduct their activities without being in violation of the prohibitions in § 943.5(a) (2) through (14). All other appellants may not conduct their activities without being subject to the prohibitions in § 943.5(a) (2) through (14).

(d) The Assistant Administrator or designee may request the appellant to submit such information as the Assistant Administrator or designee deems necessary in order for him or her to decide the appeal. The information requested must be received by the Assistant Administrator or designee within 45 days of the postmark date of the request. The Assistant Administrator may seek the views of any other persons. The Assistant Administrator or designee may hold an informal hearing on the appeal. If the Assistant Administrator or designee determines that an informal hearing should be held, the Assistant Administrator or designee may designate an officer before whom the hearing shall be held. The hearing officer shall give notice in the Federal Register of the time, place, and subject matter of the hearing. The appellant and the Director or designee may appear personally or by counsel at the hearing and submit such material and present such arguments as deemed appropriate by the hearing officer. Within 60 days after the record for the hearing closes, the hearing officer shall recommend a decision in writing to the Assistant Administrator or designee.

(e) The Assistant Administrator or designee shall decide the appeal using the same regulatory criteria as for the initial decision and shall base the appeal decision on the record before the Director or designee and any information submitted regarding the appeal, and, if a hearing has been held, on the record before the hearing officer and the hearing officer's recommended decision. The Assistant Administrator or designee shall notify the appellant of the final decision and the reason(s) therefor in writing. The Assistant Administrator or designee's decision shall constitute final agency action for the purposes of the Administrative Procedure Act.

(f) Any time limit prescribed in or established under this section other than the 30 day limit for filing an appeal may be extended by the Assistant Administrator, designee, or hearing officer for good cause.

Appendix I to Part 943—Flower Garden Banks National Marine Sanctuary Boundary Coordinates

The boundary coordinates are based on geographic positions of the North American Datum of 1927 (NAD 27).

<table>
<thead>
<tr>
<th>Point No.</th>
<th>Latitude</th>
<th>Longitude</th>
</tr>
</thead>
<tbody>
<tr>
<td>E-1</td>
<td>27°52'13.13&quot;</td>
<td>90°37'40.52&quot;</td>
</tr>
<tr>
<td>E-2</td>
<td>27°52'38.81&quot;</td>
<td>90°38'22.37&quot;</td>
</tr>
<tr>
<td>E-3</td>
<td>27°55'13.31&quot;</td>
<td>90°38'39.07&quot;</td>
</tr>
<tr>
<td>E-4</td>
<td>27°57'30.14&quot;</td>
<td>90°38'22.26&quot;</td>
</tr>
<tr>
<td>E-5</td>
<td>27°58'27.79&quot;</td>
<td>90°37'42.93&quot;</td>
</tr>
<tr>
<td>E-6</td>
<td>27°59'00.29&quot;</td>
<td>90°35'29.56&quot;</td>
</tr>
</tbody>
</table>
### West Flower Garden Bank

<table>
<thead>
<tr>
<th>Point No.</th>
<th>Latitude</th>
<th>Longitude</th>
</tr>
</thead>
<tbody>
<tr>
<td>W-1</td>
<td>27°49'09.24&quot;</td>
<td>93°50'43.35&quot;</td>
</tr>
<tr>
<td>W-2</td>
<td>27°50'10.23&quot;</td>
<td>93°52'07.96&quot;</td>
</tr>
<tr>
<td>W-3</td>
<td>27°51'31.24&quot;</td>
<td>93°52'48.79&quot;</td>
</tr>
<tr>
<td>W-4</td>
<td>27°52'49.55&quot;</td>
<td>93°52'18.89&quot;</td>
</tr>
<tr>
<td>W-5</td>
<td>27°54′09.08&quot;</td>
<td>93°54′21.58&quot;</td>
</tr>
<tr>
<td>W-6</td>
<td>27°54′59.08&quot;</td>
<td>93°55′41.87&quot;</td>
</tr>
<tr>
<td>W-7</td>
<td>27°57′06.00&quot;</td>
<td>93°56′38.02&quot;</td>
</tr>
<tr>
<td>W-8</td>
<td>27°57′35.00&quot;</td>
<td>93°56′40.56&quot;</td>
</tr>
<tr>
<td>W-9</td>
<td>27°54′13.51&quot;</td>
<td>93°56′48.06&quot;</td>
</tr>
<tr>
<td>W-10</td>
<td>27°53′37.67&quot;</td>
<td>93°56′50.67&quot;</td>
</tr>
<tr>
<td>W-11</td>
<td>27°52′56.44&quot;</td>
<td>93°57′14.10&quot;</td>
</tr>
<tr>
<td>W-12</td>
<td>27°53′36.31&quot;</td>
<td>93°57′22.56&quot;</td>
</tr>
<tr>
<td>W-13</td>
<td>27°49′11.23&quot;</td>
<td>93°58′42.59&quot;</td>
</tr>
</tbody>
</table>

### East Flower Garden Bank

<table>
<thead>
<tr>
<th>Point No.</th>
<th>Latitude</th>
<th>Longitude</th>
</tr>
</thead>
<tbody>
<tr>
<td>E-7</td>
<td>27°58′56.22&quot;</td>
<td>93°35′00.91&quot;</td>
</tr>
<tr>
<td>E-8</td>
<td>27°55′20.23&quot;</td>
<td>93°34′33.75&quot;</td>
</tr>
<tr>
<td>E-9</td>
<td>27°54′03.35&quot;</td>
<td>93°34′18.42&quot;</td>
</tr>
<tr>
<td>E-10</td>
<td>27°52′35.95&quot;</td>
<td>93°35′02.79&quot;</td>
</tr>
<tr>
<td>E-11</td>
<td>27°52′31.14&quot;</td>
<td>93°36′57.59&quot;</td>
</tr>
</tbody>
</table>

### SUPPLEMENTARY INFORMATION

Order No. 555 adopted a final rule governing the construction and operation of natural gas pipeline facilities. [Revisions to Regulations Governing Authorizations for Construction of Natural Gas Pipeline Facilities, III FERC Stats. & Regs., § 30,923 (1991)]. The rule was published in the Federal Register on October 18, 1991 (56 FR 52530). By order issued on November 13, 1991, the Commission postponed the effective date of the final rule until 30 days after publication in the Federal Register of an order on rehearing.

A transcript will be made of the technical conference. All persons intending to make a presentation should include in their notice of intent to participate the amount of time desired for presentation. Presentations will be restricted to lesser periods of time if necessary to afford each participant an opportunity to speak.

Lois D. Cashell, Secretary.

### DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2, 154, 157, 284, and 380

(Docket No. RM90-1-003)

Revisions to Regulations Governing Authorizations for Construction of Natural Gas Pipeline Facilities


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

**ACTION:** Final rule; notice of technical conference.

**SUMMARY:** On September 20, 1991, the Federal Energy Regulatory Commission (Commission) issued a Final Rule in Order No. 555 (56 FR 52530, October 18, 1991) adopting new regulations that govern the construction and operation of natural gas pipeline facilities. The Commission is convening a technical conference on the non-environmental aspects of the final rule. All persons are invited to attend and participate.

**DATES:** The conference will be held on Tuesday, January 7, 1992, beginning at 10 a.m; notices of intent to participate should be filed by December 31, 1991.

**ADDRESSES:** The conference will be held at the Commission's offices at 810 First Street, Washington, DC; notices of intent to participate should be filed with the Secretary of the Commission, 825 N. Capitol Street, NE, Washington, DC 20426.

**FOR FURTHER INFORMATION CONTACT:** Lois D. Cashell, Secretary of the Commission, (202) 206-3400.

### DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 24

(T.D. 91-95)

Customs Regulations Amendments Relating to User Fees

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

**ACTION:** Final rule.

**SUMMARY:** On April 15, 1991, T.D. 91-33 was published in the Federal Register (56 FR 15930) setting forth interim amendments to the Customs Regulations to reflect changes to the Customs user fee statute (19 U.S.C. 58c) effected by section 111 of the Omnibus Budget Reconciliation Act of 1990. This document adopts those interim regulations as a final rule without change.

**EFFECTIVE DATE:** December 5, 1991.

**FOR FURTHER INFORMATION CONTACT:** Operational Aspects: Harry Barnes, Office of Inspection and Control (202-556-8648); Legal Aspects: William Rosoff, Office of Regulations and Rulings (202-556-8586).
SUPPLEMENTARY INFORMATION:

Background

On April 15, 1991, Customs published in the Federal Register T.D. 91-33, 56 FR 15036, which amended part 24 of the Customs Regulations on an interim basis to implement changes to the Customs user fee statute (19 U.S.C. 58c) effected by section 111 of the Omnibus Budget Reconciliation Act of 1990, Public Law 101-166, as amended by section 10001 of the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508. The statutory changes reflected in the interim regulations include a new fee structure to cover the costs of processing merchandise, consisting of an ad valorem rate with maximum and minimum fees in the case of merchandise subject to formal entry or release procedures, a surcharge on warehouse and merchandise which is formally entered or released through manual procedures, and flat-rate fees for informal entry or release except in the case of certain user fee facilities for which lump sum payments are prescribed. Other statutory changes covered by the interim regulations include the addition of a conditional exemption from the fees for products of Israel, the inclusion of a limitation on the fee chargeable for U. S. agricultural products processed and packed in a foreign-trade zone, the inclusion of a provision allowing daily aggregation of the ad valorem fee for temporary monthly entry programs, the inclusion of a provision treating the fees as Customs duties for administrative, enforcement and judicial purposes, and a modification to the fee limitation applied to the arrival of railroad cars originating and terminating in the same country.

The interim regulatory amendments went into effect on the date of publication, and the notice prescribed a public comment period which closed on June 14, 1991. On June 5, 1991, Customs published a document in the Federal Register at 56 FR 25721 setting forth minor editorial corrections to the interim regulations.

No comments on the interim regulations were received during the public comment period. Accordingly, Customs believes that the interim regulatory amendments, as corrected, should be adopted as a final rule without change.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), it is certified that the amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, the amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Drafting Information

The principal author of this document was Francis W. Foote, Office of Regulations and Rulings, U. S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 24

Accounting, Claims, Taxes, Wages, User fees.

Amendments to the Regulations

Accordingly, under the authority of 19 U.S.C. 66 and 1624, the interim rule amending 19 CFR part 24 which was published at 56 FR 15036 on April 15, 1991, and which was corrected at 56 FR 25721 on June 5, 1991, is adopted as a final rule without change.


Michael Schmitz,
Acting Commissioner of Customs.

Approved:
Peter K. Nunez,
Assistant Secretary of the Treasury.

BILLING CODE 4820-02-M

DEPARTMENT OF THE INTERIOR
Office of Surface Mining Reclamation and Enforcement
30 CFR Part 920

Maryland Regulatory Program, Public Notice; Performance Bonds

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendments.

SUMMARY: OSM is announcing the approval, with certain exceptions, of proposed amendments to the Maryland regulatory program (hereinafter referred to as the Maryland program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments are intended to revise the Maryland rules for the purpose of establishing a single flat rate performance bond; establishing an alternative bonding system within the Bituminous Coal Open-Pit Mining and Reclamation Fund (Reclamation Fund); and authorizing the Maryland Department of Natural Resources (MDDNR) to expedite, under certain circumstances, the replacement of water supplies adversely affected by open-pit and deep mining operations.

The amendments are intended to incorporate rule changes initiated by the State.

EFFECTIVE DATE: December 5, 1991.

FOR FURTHER INFORMATION CONTACT:
Robert J. Biggi, Director, Harrisburg Field Office, Office of Surface Mining Reclamation and Enforcement, Harrisburg Transportation Center, Third Floor, suite 3C, 4th and Market Streets, Harrisburg, Pennsylvania 17101. Telephone: (717) 782-4036.

SUPPLEMENTARY INFORMATION:

I. Background on the Maryland Program

On February 18, 1982, the Secretary of the Interior approved the Maryland program. Information regarding the general background of the Maryland program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Maryland program can be found in the Federal Register 47 FR 7214. Actions taken subsequent to the approval of the Maryland program are identified at 30 CFR 920.15 and 920.36.

II. Submission of Amendments

By letter dated June 14, 1989, Maryland Bureau of Mines (MDBC) submitted copies of Maryland State House Bill 1384 and proposed changes to the Code of Maryland Administrative Regulations (COMAR) 08.13.09.15, to OSM for processing as formal amendments to the Maryland program in accordance with 30 CFR 732.17(g) (Administrative Record No. MD-405). The amendments include the creation of a bond supplement reserve fund within the Reclamation Fund and revisions to bond performance requirements.

OSM announced receipt of the proposed amendments in the July 16, 1989, Federal Register (54 FR 30066), and in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendments. The comment period closed on August 17, 1989.

By letter dated June 10, 1988 (Administrative Record No. MD-376),
Maryland submitted copies of House Bill 817 for processing as a formal amendment in accordance with 30 CFR 732.17(g). As part of the amendment package, specific statutory provisions at sections 7-507(a)(3), 7-514.1 and 7-519 of the Natural Resource Article of the Maryland Administrative Code (MAC) were proposed for the establishment of a fund for the replacement of water supplies adversely affected by open-pit mining.

OSM announced receipt of the proposed amendment in the April 11, 1989, Federal Register (54 FR 14367), and opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on May 11, 1989.

By letter dated June 15, 1989, Maryland submitted, as part of a larger package of amendments, copies of Maryland Senate Bill 118 to OSM for processing as formal amendments to the Maryland program in accordance with 30 CFR 732.17(g) (Administrative Record No. MD-403). As part of the larger amendment package specific statutory provisions were proposed to amend MAC 7-5A-05.2, 7-5A-09 and 7-5A-10 concerning the deep mining regulations to require the operator of a deep mine to replace water supplies damaged by his or her deep mining operation and to allow the regulatory authority to use the Deep Mining Fund to expedite the replacement of affected water supplies.

OSM announced the receipt of the proposed amendments in the August 11, 1989, Federal Register (54 FR 33042), in which was also published the opening of the public comment period and provided an opportunity for public hearing on the adequacy of the proposed amendments. The comment period closed September 11, 1989.

In both the March 21, 1991, Final rule (55 FR 11934) approving Senate Bill 118, and the June 5, 1990, Final rule (55 FR 22904) approving House Bill 817, the Director announced his decision to defer action on the proposed provisions to establish a water replacement reserve fund until all proposed amendments affecting the disposition of funds from the Reclamation Fund and the Deep Mine Fund could be evaluated together.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal Regulations at 30 CFR 732.17, are the Director's findings concerning the proposed amendments submitted on June 14, 1988, June 10, 1988, and April 11, 1989. Any revisions not specifically discussed below are found to be no less stringent than SMCRA and no less effective than the Federal regulations. In addition, revisions which contain nonsubstantive wording changes, the inserted appendices and paragraph notations to reflect organizational changes resulting from this amendment are not discussed.

A. Revisions to Maryland's Regulations that are Substantively Identical to the Applicable Provisions of Counterpart Federal Regulations.

| Maryland regulation | COMAR 08.13.09.15 | Subject | Federal counterpart
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>C(2) Minimum bond amount</td>
<td>800.14(b)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>F(2)(c) Collateral bonds</td>
<td>800.21(a)(3)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>K(4) Bond forfeiture</td>
<td>800.50(d)(1)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

B. Revisions to Maryland's Rules that are not Substantively Identical to the Corresponding Federal Regulations.

1. Section 08.13.09.15A Performance Bonds, Bond Requirements

a. Maryland is proposing to revise subsections A (1) and (2) by replacing the requirements that an operator file two bonds, a general bond and a reclamation bond, prior to initiating mining, with provisions for a single performance bond to cover the entire approved area or an identified increment of land within the approved area upon which the operator will initiate and conduct surface coal mining and reclamation operations. The counterpart Federal regulations at 30 CFR 800.11(a) and (b)(1) and section 509 of SMCRA require that a bond be filed but do not require the filing of two separate bonds or bond specifically designated for reclamation responsibilities. However, the Federal regulations do require that performance bonds be conditioned upon the faithful performance of all the requirements of the Act, the regulatory program, the permit and the reclamation plan. Maryland's proposed regulations would limit liability of the bond to faithful performance of every requirement of the regulatory program. The Director finds that this limitation would render the State rules less effective than the 30 CFR 800.11(a). Therefore, the Director is approving the proposed revision to replace the current dual bonding requirement with a single bond, except to the extent that the proposed rules would limit the liability of the performance bond to the requirements of the regulatory program. Accordingly, the Director is requiring Maryland to further amend Section 08.13.09.15A(2) to require that all bonds be conditioned upon the operator's faithful performance of all requirements of the Act, the regulatory program, the permit and the reclamation plan.

b. Maryland is proposing to amend section 08.13.09.15A(5), in addition to making several nonsubstantive wording changes, by deleting the requirements that, under an incremental bonding schedule, the amount of bond for each increment be filed at least 30 days before the commencement of mining of the incremental area. The amendment proposes to add language to require that the operator shall file with the regulatory authority the required bond amount for succeeding increments prior to initiating surface coal mining and reclamation operations on such increments. The Federal counterpart regulations at § 800.11(b)(2) and (b)(3) are similar to the proposed State regulation, except that the Federal rules require that the operator also specify the bond amount to be provided for each area or increment. Maryland's rules contain a similar requirement at subsection A(4) that requires the operator to provide an incremental bond schedule. Therefore, the Director finds Maryland's proposed rules at section 08.13.09.15A(5), when taken together with the provision of section 08.13.09.15A(4), to be no less effective than the cited Federal regulations.

c. Maryland is also proposing to combine the provisions in sections 08.13.09.15A(5) and 08.13.09.15F(3)(i) concerning loss of a permittee's bond coverage as a result of the incapacity of a surety by reason of bankruptcy, insolvency or loss of their charter or license and to move the combined rules to section 08.13.09.15F(5). The State is proposing to revise these provisions in section 08.13.09.15F(5) to add language concerning the regulatory authority's responsibilities upon notification that the permittee is without bond coverage. While the proposed language is substantively identical to the Federal counterpart at 30 CFR 800.10(e)(2), Maryland has substituted the word "permittee" for "operator" as used in the Federal regulation. Specifically, upon notification that the permittee is without adequate bond coverage, the Federal regulations require that the "operator" shall cease coal extraction and shall immediately begin to conduct reclamation. Maryland's use of "permittee" could be interpreted to be less effective than the Federal regulations in cases where the permittee and the operator are different entities. In such a case, an order requiring the permittee to cease coal extraction may not result in the immediate cessation of the operator's coal extraction activities.
To resolve any misinterpretation, Maryland submitted a letter dated September 30, 1991, which clarified that the use of the term “permitted” will not affect the requirement that mining will cease in the event that adequate bond is not posted within the specified timeframe (Administrative Record No. MD-547-G1). Therefore, the Director finds that the proposed rules at section 08.13.09.15F(5), taken together with the assurance provided by Maryland, are no less effective than the counterpart Federal regulations at 30 CFR 800.16(e)(2).

2. Section 08.13.09.15C. Amount of Performance Bond

Maryland is proposing to amend section 08.13.09.15C concerning the calculation of the minimum performance bond amount by deleting the existing language that required the bond amount be based upon the estimated cost to perform the reclamation required to achieve compliance with the Regulatory Program and the requirements of the permit in the event of a forfeiture. The revised rule would establish a flat rate $900 per acre or a fraction thereof based on the number of acres of land to be permitted and an additional $1,500 per acre or fraction thereof for the open-acre limit approved by the Regulatory Authority in the permit application.

As part of this proposed amendment, Maryland has also submitted proposed statutory revisions to MAC section 7-514.2 to establish a Bond Supplement Reserve Fund within the Reclamation Fund. The Bond Supplement Reserve Fund would be used to supplement the amount of the performance bond assessed each surface mining site and would provide a reserve of funds necessary to complete the reclamation plan of any site which may be in default at any time. Under 30 CFR 800.11(e)(1), OSM may approve an alternative bonding system provided the State demonstrates that the alternative will assure that the regulatory authority will have available sufficient money to complete the reclamation plan for any areas which may be in default at any time. As discussed in Finding B-10c of this notice, the proposed bonding system raises concerns about Maryland’s ability to meet the requirements of 30 CFR 800.11(e). Therefore, the Director is conditionally approving section 08.13.09.15C pending a demonstration by Maryland that the revenues generated through the collection of the flat rate bond schedule combined with the funds of the alternative bonding system will be sufficient to ensure that the State will be able to meet the requirements of 30 CFR 800.11(e). Until Maryland makes such a demonstration and the results are approved by the Director, the performance bond amount shall be calculated in accordance with the current program rules under section 08.13.09.15C.

3. Section 08.13.09.15D. Adjustment of Bond Amount

a. Maryland is proposing to amend section 08.13.09.15D(1) by replacing the word “shall” with “may” in the phrase: “the amount of the performance bond liability applicable to a permit shall be adjusted by the Bureau” and by deleting the phrase “as acreage in the permit area is revised, methods of mining operation change, standards of reclamation change.” The revised language provides that the regulatory authority “may” adjust the amount of the bond liability when the cost of future reclamation or restoration work changes.

The Federal regulation at 30 CFR 800.15(a) requires that the regulatory authority “shall” adjust the amount of the bond as the area requiring bond coverage is increased or where the cost of future reclamation changes. Maryland’s proposed revisions allow the regulatory authority discretion as to the adjustment of the bond amount when the cost of future reclamation changes. The proposed amendment is predicated upon the approval of the minimum flat rate bond amount proposed in section 08.13.09.15C. Further, Maryland’s proposal also deletes the requirement that mandates an adjustment in the bond amount when the area requiring bond coverage is increased. This provision would leave the Maryland program without the authority to increase the required amount of bond, calculated according to the proposed flat rate bond schedule, when the operator increased the number of acres under permit.

Therefore, the Director is conditionally approving the replacement of the word “shall” with “may” pending the approval of the demonstration of solvency of the proposed bonding system discussed in Finding B-2, except to the extent that the proposed rules delete the mandatory requirement that the regulatory authority shall adjust the amount of bond as the area requiring bond coverage is increased.

Accordingly, the Director is requiring Maryland to further amend its program to ensure that amount of bond posted under section 08.13.09.15C is adjusted as the area under the permit is increased.

Until Maryland makes the required demonstration found in Finding B-2 and the results are approved by the Director, bond amounts shall be adjusted in accordance with the current program rules under section 08.13.09.15D(1).

b. Maryland is proposing to add language to section 08.13.09.15D(1) to require the regulatory authority to notify the surety and any person with a property interest in collateral who has requested notification of actions pursuant to the bond be notified of any proposed bond adjustment. Since the Federal counterpart at § 800.15(b)(1) contains a substantively identical requirement, the Director finds the proposed revision is no less effective than 30 CFR 800.15(b)(1).

c. Maryland is proposing to further amend section 08.13.09.15D(1) to delete the requirement that the regulatory authority re-evaluate each outstanding performance bond at the time that permits are renewed. The Federal counterpart at § 800.15(b)(1) provides that the regulatory authority may specify periodic times or set a schedule for reevaluation and adjusting the bond amount when necessary. Since the existing State rules at section 08.13.09.15D(3), require at a minimum, that each performance bond be re-evaluated and adjusted as necessary when the permittee submits the annual mining and reclamation progress report for a permit, the Director finds that the deletion will not render the State rules less effective than the cited Federal regulations.

d. Maryland is proposing to revise section 08.13.09.15D(3) by deleting the provisions for the Land Reclamation Committee (LRC) to provide advice to the regulatory authority on the amount of bond required to assure completion of the reclamation and revegetation plans when the permittee submits the annual mining and reclamation progress report. Since the Federal regulations at § 800.15 require that the regulatory authority periodically evaluate the adequacy of the bond and since the States proposed revision will not adversely affect the requirements for the regulatory authority to accomplish this task, the Director finds that the proposed deletion will not render the State rules less effective than the cited Federal counterpart.

4. Section 08.13.09.15E(2). Duration of Performance Bonds

Maryland is proposing to revise section 08.13.09.15E(2) by deleting reference to revegetation bonds in accordance with the revisions that establish a single performance bond. Maryland is also proposing to delete the phrase “before bond release,” from the provisions concerning the period of liability when augmented seeding.
fertilizing, irrigation or other work is ordered by the regulatory authority. Federal counterpart regulations at § 800.13(a)(1) require that the performance bond liability shall be for the duration of the surface coal mining and reclamation operation and for a period of extended responsibility for successful revegetation. Since the proposed changes to the Maryland regulations do not affect the period of liability for successful revegetation, the Director finds that the proposed revisions to section 08.13.09.15E(2) would not render the State program less effective than the Federal rules at § 800.13(a)(1).

5. Section 08.13.09.15F. Conditions of Bonds

a. Maryland is proposing to delete the section 08.13.09.15F(1)(b) concerning the regulatory authority's responsibility not to accept a single surety bond in excess of a company's maximum single obligation, or multiple surety bonds from a single company for any person, on all permits held by that person, in excess of three times the company's maximum single obligation. Since the corresponding Federal regulation at 30 CFR 800.20 imposes no similar or related restrictions on surety bonds, the Director finds that the deletion of these restrictions will not render the State rule less effective than its Federal counterpart.

b. Maryland is proposing to add section 08.13.09.15F(2)(h) to require banks that issue certificates of deposit which are used as collateral bonds give prompt notice to the regulatory authority and the permittee of any notice received or action filed alleging insolvency or bankruptcy of the bank, or alleging any violations of regulatory requirements which could result in suspension or revocation of the banks charter or license to do business. The proposed rule is similar to the Federal counterpart at 30 CFR 800.16(e)(1) except that the Federal regulation also requires the bank provide prompt notice of any notice received or action filed alleging insolvency or bankruptcy of the bank, or alleging any violations of regulatory requirements which could result in suspension or revocation of the banks charter or license to do business. The proposed rule is similar to the Federal counterpart at 30 CFR 800.16(e)(1) except that the Federal regulation also requires that the bank provide a mechanism for the bank to give prompt notice to the regulatory authority of any notice received or action filed alleging the insolvency or bankruptcy of the permittee.

c. As discussed in Finding B-1c Maryland is proposing to combine the provisions of section 08.13.09.15F(3)(f) with 08.13.09.15A(5) and incorporate these provisions of section 08.13.09.15F(5).

6. Section 08.13.09.15H Criteria and Schedule for Release of Performance Bond

a. Maryland is proposing to revise section 08.13.09.15H(1) by deleting the requirement that the regulatory authority may release portions of the liability under performance bonds following completion of reclamation phases on incremental areas within the permit area. Counterpart Federal regulations at 30 CFR 800.40(c) provide that the regulatory authority may release all or part of the bond for the entire permit area or incremental areas. Since the revised rule still provides for the release of bond on portions of the permit, which would include increments within the permit, the proposed deletion will not eliminate the release of bond for incremental areas within the permit. Therefore, the Director finds that the proposed deletion is a nonsubstantive wording change and will not render the State rule less effective than the Federal counterpart at § 800.40(c).

b. Maryland is proposing to delete section 08.13.09.15H(2) concerning the requirement that the maximum liability under performance bonds applicable to a permit which may be released at any time before the release of all acreage from the permit area shall be such that the remaining portion of the bond is sufficient to assure completion of the reclamation plan by the Bureau in the event of forfeiture. Since the Maryland program contains substantively identical requirements in subsection H(3), the Director finds that the deletion of H(2) will not render the State program less effective than § 800.14(b).

c. Maryland is also proposing to delete the $10,000 minimum bond release requirement at sections 08.13.09.15H(2) and 08.13.09.15H(5)(d). Although section 509 of SMCRA requires the performance bond for the entire area under one permit to be no less than $10,000, section 516(c) of SMCRA further provides for the release of the bond as reclamation activities are completed. The counterpart Federal regulation at § 800.14(b) requires that the $10,000 minimum applies only to the total bond "initially" posted and not to the bond amount retained following partial bond release. Therefore, the Director finds that the deletion of sections 08.13.09.15H(2) and 08.13.09.15H(5)(d) regarding the retention of $10,000 minimum bond will not render the Maryland rules less effective than 30 CFR 800.14(b).

d. Maryland is proposing to revise section 08.13.09.15H(3) by, in addition to renumbering it as subsection (2), by revising the language to provide that a permit may be terminated only after final reclamation has been completed on the entire permit. Although there is no direct Federal counterpart, the Federal regulations at 30 CFR 773.11(a) are similar and provide that obligations under a permit are discontinued upon completion of surface coal mining and reclamation operations. Therefore, the Director finds the proposed rule, section 08.13.09.15H(2) is consistent with the requirements of 30 CFR 773.11(a).

e. Maryland is proposing to renumber section 08.13.09.15H(5) as section 08.13.09.15H(4) and to amend the language of subsections (a) through (c) concerning the requirements of the bond in accordance with completion of reclamation under Phase I, II and III. The proposed revisions reflect Maryland's proposed change to a single performance bond for a surface mining activity and correct the cross reference to the revised alternative bonding system provisions in section 08.13.09.15C and as such are nonsubstantive wording changes.

f. Maryland is proposing to amend section 08.13.09.15H(6) by adding a provision in subsection (b)(v) which provides that the Land Reclamation Committee (LRC) must inspect and approve the revegetation of a reclaimed area before the Reclamation Phase II can be judged to have been completed by the regulatory authority. The Federal regulations at 30 CFR 733.11 requires that a state implement, administer, enforce and maintain its program in accordance with SMCRA and the implementing regulations. The Director recognizes that defining the
duties of the LRC is an internal, administrative action within Maryland’s authority and, therefore, not inconsistent with the provision of 30 CFR 733.11. The Director also recognizes that although the LRC does not possess the authority to perform decision-making functions for the State, it does constitute an advisory board on which member represent multiple interests and does perform a function or duty under the Act. As such, each member of the LRC must comply with the requirements of 30 CFR 705.4(d) which requires that each member shall recuse themselves from proceedings which may affect their direct or indirect financial interests and with 30 CFR 705.11(a) which requires each member to file a statement of employment and financial interests. Under the Maryland program the members of the LRC are not required to file financial interest forms and are not required to recuse themselves from proceedings which may affect their financial interest.

Therefore, the Director finds that the proposed revisions are no less effective than the counterpart Federal regulations, except to the extent that Maryland does not require each member of the LRC to file with the state regulatory authority a statement of financial interest and does not require LRC members to recuse themselves from proceedings which may affect their financial interest. Accordingly, the Director is requiring Maryland to further amend its rules to be no less effective than the requirement under 30 CFR 705.4(d) and 705.11(a) by requiring members of the LRC to file with the State, financial interest statements and to recuse themselves from any proceedings which may affect their financial interests.

In addition, in making this revision, Maryland inadvertently failed to renumber this section from section 08.13.09.15I{h} to H(5) as a result of the deletion of subsection H(2). Maryland has indicated in a letter dated September 30, 1991 (Administrative Record No. MD-547.01), that it is aware of the error and is in the process of correcting as soon as possible.

7. Section 08.13.09.15I. Procedures for Release of Bonds

a. Maryland is proposing to revise 15.I{a) pertaining to the release of bonds by deleting the reference to the general bond consistent with the combination of the general and revegetation bonds into a single performance bond. The applicable Federal regulation at 30 CFR 800.12 provides the regulatory authority with the authority to prescribe the form of the performance bond.

However, in making this change, Maryland inadvertently omitted cross reference to subsection A{1). Maryland has indicated in a letter dated September 30, 1991 (Administrative Record No. MD-547.01), that it is aware of the error and is in the process of adding the reference to subsection (A){1). In the interim, the Director finds that the context in which the cross-reference is used, clearly indicates that the rule intended to reference both the provision of section 08.13.09.15A (1) and (2); he is approving the amendment with the stipulation that the rule be so interpreted.

b. Maryland is also proposing to further revise section 08.13.09.15I{a pertaining to procedures for applying for bond release by deleting references to the release of the “general” bond, completion of Phase 1 reclamation, and to release bond on “the entire permit area, or an area approved for incremental filling and release of bond liability.” Since the remaining language of subsection I{a} contains language that is substantially identical to the counterpart Federal regulations at 30 CFR 800.40{a}(1), the Director finds that the proposed revision renders the State rule no less effective than the Federal counterpart.

c. The State is also proposing to delete the requirements in section 08.13.09.15I{a} that applications for bond release may only be filed at times or seasons established by the regulatory authority, that allow the regulatory authority to properly evaluate the success of the reclamation presented in the application as having been completed. Counterpart Federal regulations at § 800.40{a}(1) require that the application may be filed only at times or during seasons either specified in the States approved regulatory program or specifically identified and approved by the regulatory authority in the permit’s mining and reclamation plan. The Federal regulations ensure that bond release applications may only be submitted during appropriate times in the growing season to allow the regulatory authority to accurately evaluate the revegetative success of the reclamation. The Federal regulations also contain provisions to allow the State to establish the times for the operator to request bond release in either the regulatory program or in the mining and reclamation plan. Maryland does not contain provisions for the establishments for when a bond release application may be submitted for review on a case-by-case basis. Therefore, the Director finds that proposed amendment would render the Maryland rules less effective than the Federal regulations at 30 CFR 800.40{a}(1) and is not approving the proposed deletion of the requirement in section 08.13.09.15I{a} that applications for bond release may be filed only at times or seasons, established by the regulatory authority, that allow the regulatory authority to adequately evaluate the success of the reclamation.

d. Maryland is proposing to amend section 08.13.09.15I{b}{ii} to add to the requirement that the application for bond release contain copies of letters the permittee has sent to adjoining property owners, surface owners, local government bodies, planning agencies, swage and water treatment authorities, and water companies in the locality of the permit area, the requirement that the letter also notify these entities of their opportunity to submit comments, objections, or requests for an informal conference. Counterpart Federal regulations at § 800.40{a}(2) require that the application for bond release contains copies of letters the permittee has sent to landowners and government authorities, notifying them of the intention to seek bond release. Since the State’s proposed regulations provide additional assurances that those receiving the notification of a pending bond release application will be aware of their rights to submit comments or objections, the Director finds that the addition of subsection 15.I{b}{ii} will not render the Maryland rules less effective than the counterpart Federal regulations at 30 CFR 800.40{a}(2).

e. Maryland is proposing to revise section 08.13.09.15I{b} concerning the information that must be included in an application for bond release. The amendment proposes to add requirements in subsection b{iv} that the advertisement include the total amount of bond in effect for the permit area; in subsection b{v} that the advertisement include a description of the reclamation results achieved as related to compliance with the Regulatory Program and the approved permit; and in subsection b{vi} a statement that requests for an informal conference may be submitted to the regulatory authority. While similar to the requirements of the Federal counterpart at 30 CFR 800.40{a}(2), the Federal regulations also include the requirements that the advertisement...
Maryland's informal conference and adjudicatory hearing procedures provide notice and opportunity to be heard comparable to the Federal regulations at 30 CFR 800.40(f), he finds that the proposed revisions to section 08.13.09.15(3) are not inconsistent with these Federal regulations.

g. Maryland is proposing to delete the provisions in section 08.13.09.15(4) that provide the surface owner, agent, or lessee with notification that a bond release inspection will be conducted and of the opportunity for such persons to participate with the regulatory authority in making such an inspection.

Counterpart Federal regulations at § 800.40(b)(1) require that the surface owner, agent, or lessee shall be given notice of the bond release inspection and provided with the opportunity to participate with the regulatory authority in the inspection. The proposed amendment would not provide those persons with a direct interest in the reclaimed lands with the full opportunity to evaluate the success of the reclamation and would not provide the regulatory authority with the necessary citizen involvement that is necessary to help ensure that its decisions are grounded on complete information. Therefore, the Director is not approving the proposed amendment at section 08.13.09.15(4) to delete the opportunity for those with a direct interest in the success of the reclamation to participate with the regulatory authority in making the bond release inspection.

h. Maryland is proposing to add provisions in section 08.13.09.15(4) that grant the regulatory authority the right to waive the required bond release inspection if (a) No objections or requests for an informal hearing were submitted and (b) the regulatory authority had conducted the required complete inspection of the area within the four month period prior to receiving the bond release application and the inspection did not identify any reason for denying bond release.

Counterpart Federal regulations at § 800.40(b)(1) explicitly require that the regulatory authority conduct a bond release inspection within 30 days of the receipt of the bond release application. They do not provide for any waiver of these requirements as they are crucial in determining both the success of the reclamation, the degree of difficulty to complete any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of future occurrence of such pollution and the estimated cost of abating such pollution. Therefore, the Director is not approving the proposed amendment to section 08.13.09.15(4) that provides the regulatory authority with the right to waive required bond release inspections.

8. Section 08.13.09.15j. Procedures for Release of Revegetation Bonds

Maryland is proposing to delete, in its entirety section 08.13.09.15j concerning the procedures for the release of the revegetation bond. This change is consistent with the State's intention to delete the provisions for a separate revegetation bond, at section 08.13.09.15A and replace it with a single performance bond. Since the Maryland program will retain the provisions concerning bond release procedures at section 08.13.09.15i, the Director finds that the revision will not render the State's rule less effective than the Federal regulations at § 800.40(b).

9. Section 08.13.09.15l(1) Deep-Mine Bonding Requirements

Maryland is proposing to delete the reference in section 08.13.09.15l(1) to submission of both a general and a revegetation bond. Since the Federal regulations at 30 CFR 800.12 provide that the State may prescribe the form of the performance bond the Director finds that the proposed deletion will not render the State program less effective than the Federal program, or the State Program as originally proposed.

10. Bond Supplement Reserve (House Bill 1394)

a. Maryland is proposing to revise MAC section 7-507.1(2) to clarify that the Regulatory Authority shall assess a 15 cent mine reclamation surcharge for each ton of coal removed by open-pit or strip methods. The revision further amends this section by, in addition to renumbering sections 7-507.1(2) and (3) as 7-507.1 (b)(1) and (b)(2), by revising the existing language to clarify that 9 cents of the reclamation surcharge collected will be deposited to the credit of the Reclamation Fund and that the remaining 6 cents of the reclamation surcharge will be remitted to the fiscal authority of the county in which the coal was removed. Since the intent of the existing provisions are not changed, the Director finds that the clarifying revisions do not constitute a substantive change in the approved Maryland Program.

b. Maryland is proposing to delete the existing provisions at 7-507.1(b)(2)(i) (1) and (2) concerning the requirement that unpaid mine reclamation surcharges shall be a lien on personal property and on the real property of the owner of the
personal property and shall be attached to the real property only after notice thereof has been duly recorded in the office of the clerk of the circuit court in the county where the land lies. Since the corresponding Federal regulations for bonding under 30 CFR part 800 do not impose similar specific requirements, the Director finds that the deletion of these requirements will not render the State rules inconsistent with SMCRA or the Federal regulations.

c. Maryland is proposing to add statutory provisions at MAC, 7–514.2. Bond Supplement Reserve, to authorize the establishment of a Bond Supplement Reserve fund within the Reclamation Fund. MAC section 7–514. Disposition of Funds Right of Entry is proposed to be modified to allow funds from the proposed Bond Supplement Reserve to be used for reclamation purposes when the original bond is not sufficient to reclaim the site for which it was posted in the event of forfeiture. Maryland is also proposing to add provisions to MAC 7–507.1, Mine Reclamation Surcharge Bond Supplement Surcharge, to fund the Bond Supplement Reserve by: diverting 2 cents of the 9 cents per ton of coal removed that currently is deposited in the Reclamation Fund in accordance with 7–507.1(b)(1); by diverting the entire 6 cents per ton of coal removed that currently is remitted to the fiscal authority of the county in which the coal was removed as required by 7–507.1(b)(2); and, by creating a new 2 cent surcharge on each ton of coal mined by open-pit or strip mining methods in accordance with MAC 7–507.1(d). Therefore, a total of 10 cents per ton of coal removed by strip or open-pit mining methods will be deposited in the Bond Supplemental Reserve Fund to fund the reclamation of mining sites where the operator has forfeited on his or her obligation to reclaim the site in accordance with the permit.

The diversion of funds from 7–507.1(b)(1) and (2) would continue until the amount of money in the Bond Supplemental Reserve equals or exceeds $300,000. Furthermore, the 2 cents per ton Bond Supplement Reserve surcharge under 7–507.1(d) will end temporarily when the amount of the Bond Supplemental Reserve equals or exceeds $300,000 and when the amount that had been diverted from the Reclamation Reserve under 7–507.1(b)(1) and the amount diverted from the county funds collected under 7–507.1(b)(2) has been reimbursed by this assessment. The payments into the Bond Supplemental Reserve will resume when the amount in the Bond Supplemental Reserve is less than $200,000.

Under 30 CFR 800.11(e), the Director may approve an alternative bonding system provided the State has demonstrated that it will have available sufficient funds to complete the reclamation plan for any areas which may be in default at any time. Maryland’s proposed regulations at section 08.13.09.15C and the proposed statutory provisions under House Bill 1384 constitute the establishment of an alternative bonding system or bond pool. These proposed revisions raise questions concerning the ability of the Bond Supplemental Reserve to meet the requirements of 30 CFR 800.11(e).

Specifically, the Director is concerned whether the funds generated by the Bond Supplemental Reserve will provide sufficient revenues to supplement the flat rate performance bond, proposed in section 08.13.09.15C, and provide the regulatory authority with sufficient funds to comply with the requirements of § 800.11(e). Therefore, because of this concern, the Director is conditionally approving the proposed amendments to House Bill 1384 pending a demonstration by Maryland that the revenues generated through collection of the Bond Supplemental Reserve surcharge under MAC 7–507.1(d) and the diversion of Reclamation Fund surcharge funds in accordance with provisions at 7–514(b)(1) and 7–514.2(b)(2) will be sufficient to supplement the funds received from the bonds collected under section 08.13.09.15C to ensure that the State will be able to meet the requirements of 30 CFR 800.11(e). Such a demonstration shall be made through a certified actuarial study showing the Bond Supplement Reserve Fund’s soundness and financial solvency. Furthermore, until the results of the actuarial study are approved by the Director, the performance bond amount shall be calculated in accordance with the current program rules of section 08.13.09.15C.

d. Maryland is proposing to add provisions at 7–514.2(g) to require the Secretary provide the LRC with 30 days to submit comments and recommendations concerning proposed expenditures from the newly created Bond Supplemental Reserve. The Federal regulations at 30 CFR 733.11 requires that a state implement, administer, enforce and maintain its program in accordance with SMCRA and its implementing regulations. The Director recognizes that defining the duties of the LRC is an internal, administrative action within Maryland’s authority. Therefore, the Director finds the proposed statutory provisions at 7–514.2(g) consistent with the general provisions at 30 CFR 733.11.

11. Bond Forfeiture, Replacement of Water Supplies Impacted by Open-Pit Mining (House Bill 817)

a. Maryland is proposing to revise its statutory provision at MAC, title 7, subtitle 5, section 7–519 to expedite the replacement of water supplies determined by the regulatory authority to have been damaged by open-pit mining operations. Specifically, Maryland is proposing to add a provision to section 7–514(a)(3) and 7–514.1(a) to establish within the Reclamation Fund a Water Supply Replacement Reserve to fund the replacement of damaged water supplies after all bonds have been released. The Water Supply Replacement Reserve would be funded, as provided for in new sections MAC 7–514(b) and (c), by diverting 1 cent of the 9 cent Reclamation Fund surcharge assessed for each ton of coal removed by open-pit or strip method to the Water Supply Replacement Reserve. For water supplies determined to have been damaged prior to bond release, Maryland is proposing to amend MAC section 7–519, to allow the regulatory authority to use money in the general Reclamation Fund, to expedite the replacement of damaged water supplies prior to release of all bonds on a permit provided that either the operator or the property owner reimburses the Reclamation Fund. The proposed rules in subsections (c) through (f) are added to define the circumstances under which the Reclamation Fund may be used to expedite water replacement. These circumstances are as follows:

(1) On the request of the operator, provided the operator agrees to reimburse the fund for money expended to replace the water supply, if the regulatory authority has determined that the operator’s open-pit mining operation adversely affected the water supply, and, if challenged, an administrative and judicial review upheld that determination (7–514(d)(1) and (f)(1)).

(2) On the request of the owner of the affected water supply if the operator has failed to replace the damaged water supply, provided the owner agrees to reimburse the fund if, upon an administrative and judicial review, it was determined that the damage to the water supply did not result from the open pit mining operation (7–514(d)(2) and (f)(2)).

(3) The regulatory authority determines that the water supply has
been damaged by open-pit mining operations after the bonds on the site have been forfeited and the forfeited bond amount is not sufficient to replace the water supply (7-519(e)(1)).

(4) The operator requests reimbursement for the operator’s eligible costs to replace the water supply from the Reclamation Fund if it is determined that damage to the water supply did not proximately result from the operators open-pit mining operation, and if the operator has replaced the water supply (7-519(f)(3)(i) and (ii)).

Section 7-519(e)(2) requires the Water Supply Replacement Reserve to be used to replace the water supply if the regulatory authority determines that the water supply has been affected by open-pit mining operations after bonds on the site have been fully released instead of requiring the operator to replace the water supply.

Maryland is also proposing to add MAC section 7-519(g)(1) and (2) to require that the operator shall be liable for any expenditures from the Reclamation Fund if the amount received from the forfeiture is not sufficient to cover the entire cost of replacement of the water supply damaged by the open-pit mining operation.

Although both the Federal regulations at 30 CFR 816.41(h) and Maryland’s rules at section 08.13.09.23 K contain substantively identical requirements which require that any person who conducts surface mining shall replace water supplies damaged by the mining activities, there are no Federal counterparts for the regulatory authority to provide a source of funds to replace damaged water supplies. Since the proposal to use funds from the Reclamation Fund or the Water Supply Replacement Reserve will expedite that replacement of water supplies damaged by open-pit mining operations, the Director finds that the establishment and funding of the Water Supply Replacement Reserve under 7-514 and 7-514.1 is not inconsistent with the Federal regulations.

However, MAC sections 7-519(b) and 7-519(e)(2) require the regulatory authority to use funds from the Water Supply Replacement Reserve after all bonds on the operation have been fully released, instead of requiring the operator to replace the water supply. Section 717 of SMCRA and the Federal regulations at 30 CFR 816.41(h) do not allow for this exemption of the operator’s responsibility to replace water supplies damaged by surface mining operations. Therefore, the Director is not approving the provisions of section 7-510(b) and 7-510(e)(2) which specifically exempt an operator from the requirement to replace water supplies after all bonds on the permit have been fully released, as they would render the State rules less effective than the Federal regulations at 30 CFR 816.41(h).

12. Deep Mining of Coal (Senate Bill 116)

a. Maryland is proposing to add statutory provisions at MAC section 7-5A-0.52 to require that the operator of a deep mine shall replace the water supply of an owner who obtains all or part of their supply of water for a legitimate use from an underground or surface source if the regulatory authority determines that such water supply has been adversely affected by the deep mining operation. The proposed provisions provide the regulatory authority with the authority to use funds from the Deep Mining Fund to expedite the replacement of damaged water supplies under specific circumstances by defining the regulatory authority’s responsibility. Under these circumstances the regulatory authority may use money from the Deep Mining Fund if:

(1) On request from the operator, the operator provides the fund, if the regulatory authority has determined, and if challenged, an administrative and judicial review has upheld the determination, that the operators underground mining operation adversely affected the water supply.

(2) On the request of the owner of the affected water supply when the operator fails to replace the water supply as ordered by the regulatory authority, the owner provides the fund, if upon an administrative and judicial review it was determined that the damage to the water supply did not result from the open pit mining operation.

(3) The amount of the forfeited bonds are insufficient to replace the water supply and the regulatory authority has determined that the water supply was damaged by the deep mining operation for which the bonds were forfeited.

(4) The bonds on the site have been fully released prior to the regulatory authority’s determination that the deep mining operation for which the bonds had been fully released was responsible for the damage to the water supply.

(5) The operator requests reimbursement for his or her eligible costs to replace the water supply from the Deep Mining Fund if it is determined that damage to the water supply did not proximately result from the operators deep mining operation.

Maryland is also proposing to add MAC section 7-5A-0.52(1) to require that the operator shall be liable for any expenditure from the Deep Mining Fund to replace a damaged water supply in excess of the funds received from the forfeiture of the bonds on the site.

SMCRA and the Federal regulations do not specifically require the replacement of the water supply damaged by underground mining activities, instead Federal regulations at 30 CFR 817.41(a) require all underground mining and reclamation activities be conducted to minimize disturbance of the hydrologic balance outside the permit area, and to support approved postmining land uses in accordance with the terms and conditions of the approved permit. Notwithstanding, in the case of a bond forfeiture, SMCRA does not require the bond be used to replace water supplies damaged by underground mining operations. Whereas, Maryland’s proposed statutory provisions provide for additional protection of the landowner’s water rights by requiring the replacement of damaged or lost water supplies, it is not clear that the bond received from the forfeiture would be used first to fully reclaim the site in accordance with the approved permit and reclamation plan as required by SMCRA. Therefore, the Director is approving the proposed amendment, so long as in cases of a bond forfeiture, the amount necessary for water replacement does not render the balance of the bond insufficient to fully reclaim the surface effects of underground mining.

13. Section 7-5A-09 (c) Bond: Amount; Period of Liability

a. Maryland is proposing to revise section 7-5A-09(c) to modify the language concerning the bond liability with respect to deep mining operations. The revised language stipulates that a bond may not be fully released until all requirements of subtitle 5A, Deep Mining Control, regulations adopted in accordance with this subtitle, and permit conditions have been met. The proposed change renders the Statute substantially identical to, and, therefore, no less effective than the Federal regulations at 30 CFR 800.13(a)(1).

14. Section 7-5A-10 (d), Forfeiture of Bond or Deposit: Disposition of Proceeds, Uses

Maryland is proposing to add provisions to section 7-5A-10(d)(1) and
is added to require that funds received from the forfeiture of bonds on deep mining sites. Section 7-5A-10(d)(1) is added to require that funds received from bond forfeitures shall be used to reclaim the land affected by the operation on which the liability was charged. The Director finds that the revised State rule is substantively identical to, and, therefore, no less effective than its Federal counterpart at 30 CFR 800.50(b)(2) which authorizes the use of forfeited funds for the completion of the reclamation plan.

Section 7-5A-10(d)(2) states that funds received on a bond forfeiture in excess of the amount required to reclaim the bonded land may be used to reclaim any other land affected by deep mining. As discussed in the approval of similar provisions pertaining to excess bond forfeiture funds received from open-pit mining operations (55 FR 22905, June 5, 1990), Maryland’s proposed rule is not dependent upon SMCRA for its authority to use excess portions of forfeited bond funds to pay for other reclamation costs of State programs. Maryland relies upon independent statutory bases, State law, for the use of excess bond forfeited funds for other reclamation costs and is, therefore, well within the discretion provided by Section 505 of SMCRA to propose more stringent regulations than do the provisions of SMCRA and its implementing regulations. Therefore, the Director finds the Maryland proposed rule at MAC section 7-5A-10-(d)(2) to be not inconsistent with the requirements of SMCRA and the Federal regulations at 30 CFR part 800.

IV. Summary and Disposition of Comments

Public Comments

The public comment period and opportunity to request a public hearing announced in the July 18, 1989, Federal Register (54 FR 30096) ended on August 17, 1989. Comments were not received and a public hearing was not held as no one requested an opportunity to provide testimony.

The public comment period and opportunity to request a public hearing on House Bill 817, announced in the April 11, 1989, Federal Register ended on May 11, 1989, and on Senate Bill 817, announced in the August 11, 1989, Federal Register, ended on September 11, 1989. A public hearing was not held for either proposed rule as no one requested an opportunity to provide testimony.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.27(b)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Maryland program. The Department of Labor, Mine Safety and Health Administration; the Department of the Interior, Bureau of Land Management; and the Department of the Interior, Fish and Wildlife Service, concurred without comment.

V. Director’s Decision

Based on the above findings, the Director is approving the program amendments submitted by Maryland on June 14, 1989, June 10, 1988, and June 15, 1989, with the exceptions noted below.

As discussed in Finding B-1a, the Director is approving section 08.13.09.15A(2) except to the extent that the liability of the performance bond is limited to the requirements of the regulatory program. Accordingly, the Director is requiring that the rule be amended to require that all bonds be conditioned upon the operator’s faithful performance of all requirements of the Act, the regulatory program, the permit, and the reclamation plan.

As discussed in Finding B-2, the Director is conditionally approving section 08.13.09.15C pending a demonstration by Maryland that the revenues collected through the revised flat rate bond schedule combined with the proposed revenues generated through the establishment of an alternative bonding system in MAC 7-514.2 will be sufficient to ensure that the State will meet the requirements of 30 CFR 800.11(e). Until such a demonstration has been made and is approved by the Director, Maryland must continue to calculate the performance bond amount in accordance with the current rules under section 08.13.09.15C.

As discussed in Finding B-3a, the Director is conditionally approving section 08.13.09.15D(1) pending the approval by OSM of the demonstration of solvency of the alternative bonding system, except to the extent that the proposed rule does not require that the bond be adjusted as acreage in the permit area is increased. Until Maryland makes the finding required in Finding B-2 and the results are approved by the Director, bond amounts shall be adjusted in accordance with approved program rules.

As discussed in Finding B-5b, the Director is approving section 08.13.09.15F(2)(h) except to the extent that the banks that issue certificates of deposit are not required to provide the regulatory authority with prompt notice of any notice received or action filed alleging the insolvency or bankruptcy of the permittee. In addition, the Director is requiring that the rule be further amended to require that the bond provide a mechanism for the bank to provide prompt notice to the regulatory authority of any notice received or action filed alleging the insolvency or bankruptcy of the permittee.

As discussed in Finding B-6e, the Director is conditionally approving the revision to new section 08.13.09.15H(4) pending the approval of the demonstration of solvency required in Finding B-2.

As discussed in Finding B-6f, the Director is approving section 08.13.09.15F(6) except to the extent that the Maryland program does not require each member of the LRC to file a statement of financial interest with the regulatory authority and does not require each member to recuse themselves from proceedings which may affect their financial interest.

As discussed in Finding B-7c, the Director is not approving deletion of section 08.13.09.15F(1)(a) which requires that applications for bond release may only be filed at times or seasons, established by the regulatory authority, that allow the regulatory authority to adequately evaluate the success of the reclamation.

As discussed in Finding B-7e, the Director is approving section 08.13.09.15F(2)(b), except to the extent that the proposed rules do not include the requirement that the advertisement of a bond release application include the identification of the permit’s approval date, the type of bond filed, and the appropriate dates of the reclamation work performed. Accordingly, the Director is requiring that the rule be further amended to include that the advertisement of an application for bond release include the date of the permit’s approval, the type of bond filed, and the appropriate dates of reclamation work performed.

As discussed in Finding B-7g, the Director is not approving the deletion of the provision in section 08.13.09.15F(4) which requires that surface owner, agent, or lessee be provided with the opportunity to participate with the
Effect of Director's Decision

Section 503(b)(2) of SMCRA and 30 CFR 732.17(b)(ii), require the Director to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with all provisions of a state program amendment which relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 et seq.) or the Clean Air Act (42 U.S.C. 7401 et seq.). EPA responded on August 17, 1989, and concurred with the proposed amendments. EPA did, however, offer comments regarding the higher costs associated with the reclamation of forfeiture sites which have potential to produce acid mine drainage. EPA expressed concern regarding the ability of the alternative bonding system to assure sufficient funds will be available to provide prevention or treatment of acidic-discharges in case of bankruptcy and bond forfeiture.

Maryland’s rules at section 08.13.08.34.D(1) require that all acid- and toxic-forming materials be handled and backfilled so as to neutralize the acidity or toxicity in order to prevent water pollution. Further, Maryland’s rules at section 08.13.08.03.A(3) require that the regulatory authority make a finding in writing that the operation proposed in the permit application has been designed to prevent damage to the hydrologic balance outside the proposed mine plan area before approving the permit application. Therefore, under Maryland’s existing rules, a permit can only be approved if the mining and reclamation plan demonstrates to the regulatory authority’s satisfaction that the formation of acid- or toxic-mine drainage will be prevented.

However, if conditions arise which are not accounted for in the permit and present the potential for acid- or toxic-discharge from a mining site in default, the Director agrees with the EPA that the proposed alternative bonding system must be capable of providing funds to accomplish prevention or remediation of such discharges. Section 519(b) of SMCRA requires the regulatory authority, when evaluating bond release requests, to consider whether pollution of surface and ground water is occurring, the probability of any continuing pollution and estimated cost of abating such pollution. Section 519(c)(3) of SMCRA further provides that no bond shall be fully released until all the reclamation requirements of SMCRCA have been met. These requirements include abatement of surface- and ground-water pollution resulting from the operation. Therefore, to be in accordance with SMCRA, an alternative bonding system must provide for abatement or treatment of pollutants emanating from bond forfeiture sites. As discussed in Finding B-10, the Director is requiring Maryland to demonstrate how the proposed alternative bonding system will comply with the Federal regulations at 30 CFR 800.11(e). Such a demonstration must necessarily include an analysis to determine whether the proposed alternative bonding system can reasonably be expected to generate the funds needed to fully reclaim forfeiture sites with existing acid- or toxic-discharges or which have the potential to generate acid- or toxic-discharges.

Procedural Determinations

National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1282(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from the preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 520

Intergovernmental relations, Surface mining, Underground mining.

Carl C. Close,
Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 920—MARYLAND

1. The authority citation for part 920 continues to read as follows:

Authority: 30 U.S.C. 1201 et seq.

2. In § 920.15, a new paragraph (n) is added to read as follows:

§ 920.15 Approval of regulatory program amendments.

(n) With the exception of those provisions identified herein, the amendments submitted to OSM on June 14, 1989, June 10, 1988 and June 15, 1989 are approved effective December 5, 1991.

(1) Revisions of the following regulations of the Code of Maryland Administrative Regulations:

- 08.13.09.15A Performance Bonds (except to the extent that the liability of the performance bond is not conditioned upon the operator's faithful performance of all the requirements of the Act, the permit and the reclamation plan in section 08.13.09.15A(2)).
- 08.13.09.15B Form of Performance Bonds.
- 08.13.09.15C Amount of Performance Bonds in conditionally approved pending a demonstration that the flat rate bond schedule when taken together with the proposed alternative bonding system under House Bill 1384 will provide sufficient funds to satisfy the requirements of 30 CFR 800.11(e).
- 08.13.09.15D Adjustment of Bond Amount is conditionally approved pending the approval by OSM of the demonstration of equity of the alternative bonding system and except to the extent that the proposed rule does not require that the bond be adjusted as acreage in the permit area is increased.
- 08.13.09.15E Duration of Performance Bonds.
- 08.13.09.15F Conditions of Bonds (except to the extent that it does not require that the bond provide a mechanism for the bank to give prompt notice to the regulatory authority of any notice received or action filed alleging the insolvency of the permittee in section 08.13.09.15F(2)(h). In addition, subsection F(5) is approved, as interpreted in letter dated September 30, 1991, Administrative Record No. MD-547.01 is approved.
- 08.13.09.15H Criteria and Schedule for Release of Performance Bonds (except section 08.13.09.15H(4)) is conditionally approved pending the approval of the proposed revisions to section 08.13.09.15C, which established flat rate performance bond schedule as part of the alternative bonding system proposed by House Bill 1384, and section 06.13.09.15H(6) is approved except to the extent that members of the Land Reclamation Committee to file with the State, financial interest statements and to rescuse themselves from any proceedings which affect their financial interest).
- 08.13.09.15I Procedures for Release of Bonds (except:

Section 08.13.09.15I(1)(a) concerning the deletion of the requirement that applications for bond release may only be filed at times or seasons of the year that the regulatory authority to adequately evaluate the success of the reclamation, is not approved;
- Section 08.13.09.15I(2)(b) is approved except to the extent that the advertisement of bond release is not required to include the identification of the permit approval date, the type of the bond filed, and the appropriate dates of reclamation work performed;
- Section 08.13.09.15I(4) concerning the deletion of the requirement that the surface owner, agent or lessee shall be given notice of the bond release inspection and provided with an opportunity to participate with the regulatory authority in making the bond release inspection, is not approved; and
- Section 08.13.09.15I(4) (a) and (b) concerning the addition of provisions which would allow the regulatory authority to waive the requirement for a bond release inspection if no objections or requests for an informal hearing were submitted and the regulatory authority had conducted the required complete inspection of the area within the four month period prior to receipt of the bond release application and the complete inspection did not identify any reason for denying bond release, is not approved.)
- 08.13.09.15L Bond Forfeiture (Approved revision numbers former section L as new section K).

(2) Revisions to the following Statutes to the Maryland Annotated Code:

- 7-507.4 Mine Reclamation Surcharges; Bond Supplement Surcharge.
- 7-514 Disposition of Funds is conditionally approved pending a demonstration by Maryland that the alternative bonding system will contain sufficient funds to assure that the Bond Supplemental Reserve Fund can be operated in a manner that will meet the requirements of 30 CFR 800.11(e).
- 7-514.1 Bond Supplement Reserve is conditionally approved pending a demonstration by Maryland that the alternative bonding system will contain sufficient funds to assure that the Bond Supplemental Reserve Fund can be operated in a manner that will meet the requirements of 30 CFR 800.11(e).
- 7-514.2 Water Supply Replacement Reserve.
- 7-519 Protection of Interest in Water Resources: Replacement of Water Supplies (except that the provisions of section 7-519(b) and 7-519(e)(2) which specifically exempt an operator from the requirement to replace water supplies after all bond on the permit have been fully released, are not approved).

7-5A-04.2 Replacement of Water Supplies so long as in cases of bond forfeiture, the amount necessary to replace the water supplies does not render the balance of the bond insufficient to fully reclaim the surface effects of underground mining.

7-5A-08(c) Bond: Amount; Period of Liability.

7-5A-10(d) Forfeiture of bond or Deposit: Disposition of Proceeds; Uses.

§ 920.16 [Amended]

3. In § 920.16 new paragraphs (h) through (n) are added to read as follows:

(h) By March 1, 1992, Maryland shall amend section 08.13.09.15A(2) or otherwise amend its program to be no less effective than 30 CFR 800.11(a) to require that all performance bonds also be conditioned upon the operator's faithful performance of all requirements of the Act, the permit and the reclamation plan.

(i) By November 1, 1992, Maryland shall submit information, sufficient to demonstrate that the revenues generated by the flat rate bond schedule in section 08.13.09.15C in combination with the revenues generated through implementation of the alternative bonding system established by MAC 7-514.2, will assure that the alternative bonding system can be operated in a manner that will meet the requirements of 30 CFR 800.11(e).

(j) Upon the approval of the alternative bonding system, Maryland shall amend section 08.13.09.15D(1) or otherwise amend its program to be no less effective than 30 CFR 800.11(e) by requiring that the regulatory authority shall adjust the amount of bond when the area requiring bond coverage is increased.

(k) By March 1, 1992, Maryland shall amend section 08.13.09.15F(2)(b) or otherwise amend its program to be no less effective than 30 CFR 800.14(e)(1) to require that the bond shall provide a mechanism for the bank to give prompt notice to the regulatory authority of any notice received or action filed alleging the insolvency or bankruptcy of the permittee.

(l) By March 1, 1992, Maryland shall amend its program to be no less effective than 30 CFR 705.4(d) by requiring that each member of the Land Reclamation Committee shall recuse themselves from proceedings which may affect their direct financial interests and to be no less effective than 30 CFR 705.11(d) by requiring each member of the Land Reclamation Committee to file a statement of employment and financial interest.
DEPARTMENT OF TRANSPORTATION
Coast Guard
33 CFR Part 165
[COTP Hampton Roads, Regulation 91–10]
Safety Zone Regulations; Lower Chesapeake Bay
AGENCY: Coast Guard, DOT.
ACTION: Temporary final.
SUMMARY: The Coast Guard is establishing a temporary safety zone to include the area within 50 feet of each of the nine concrete ships forming a breakwater off the Kiptopeke Beach Ferry Terminal, Kiptopeke, VA and the contractor’s work barge, operating between the concrete ships and the terminal. This safety zone is in effect from November 9, 1991, until December 21, 1991, or until terminated sooner by the Captain of the Port. The safety zone is established for public safety during oil removal operations at the site. Entry into this zone is prohibited unless authorized by the Captain of the Port or his designated representative.

EFFECTIVE DATE: This regulation is effective at 4 p.m. on November 9, 1991, and shall continue until December 21, 1991, or until terminated sooner by the Captain of the Port, Hampton Roads, Virginia.

FOR FURTHER INFORMATION CONTACT: Lt. J.L. Duffy, Marine Environmental Response Officer, Captain of the Port, Hampton Roads, telephone number (804) 441–3516.

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 a NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to protect mariners operating in the vicinity of the Kiptopeke Beach Ferry Terminal, Kiptopeke, VA, located in the lower Chesapeake Bay.

Drafting Information
The drafters of this regulation are Lt. J.L. Duffy, Marine Environmental Response Officer, Captain of the Port, Hampton Roads and CDR Stephen R. Campbell, project attorney, Fifth Coast Guard District Legal Office.

Discussion of Regulation
The circumstance requiring the regulation in the oil removal operations currently being conducted by the U.S. Coast Guard on the nine Kiptopeke concrete ships. The safety zone is needed to ensure the safety of mariners and others in the vicinity of these operations. Entry into this zone is prohibited unless authorized by the Captain of the Port or his designated representatives. This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 is set out in the authority citation for all of part 165.

Regulatory Evaluation
This regulation is considered to be non-major under Executive Order 12291 and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. This regulation is temporary in nature and will not impede the flow of normal commercial traffic that is currently allowed to transit the lower Chesapeake Bay. Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities. The regulation contains no information collection or record keeping requirements.

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

List of Subjects in 33 CFR Part 165
Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation
In consideration of the foregoing, subpart P 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), 10.04—1, 10.04—9, and 160.5; and 49 CFR 1.46.

2. A new temporary 165.T0552 is added to read as follows:

§ 165.T0552 Safety Zone: Lower Chesapeake Bay, Eastern Shore, Virginia.

(a) Location: The following area is a safety zone: The area within 50 feet of each of the nine concrete ships forming a breakwater off the Kiptopeke Beach Ferry Terminal and the contractor’s work barge, while in the same area.

(b) Effective date: This regulation is effective at 4 p.m., on November 9, 1991. It will continue until December 21, 1991, unless terminated by the Captain of the Port sooner.

c) Regulations: (1) In accordance with the general regulations in § 165.23 of this part, entry into the zone is prohibited unless authorized by the Captain of the Port, Hampton Roads, Virginia, or his designated representative. The general requirements of § 165.23 also apply to this regulation.

(2) Persons or vessels requiring entry into or passage through the safety zone must first request authorization from the Captain of the Port, or his designated representative. The designated representative of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Hampton Roads, Virginia, to act on his behalf. The following officers have been designated by the Captain of the Port: the senior Coast Guard commissioned, warrant or petty officer monitoring cleanup efforts within the safety zone and the Duty Officer at the Marine Safety Office Hampton Roads, VA. The Captain of the Port, Hampton Roads, and the Duty Officer at the Marine Safety Office, Hampton Roads, Virginia can be contacted at telephone number (804) 441–3307.
The operator of any vessel in the immediate vicinity of this safety zone shall immediately stop any vessel or proceed as directed by any commissioned, warrant or petty officer of the U.S. Coast Guard.


G. E. Thornton,
Captain, U.S. Coast Guard, Captain of the Port
Hampton Roads.

[FR Doc. 91–29143 Filed 12–4–91; 8:45 am]
BILLCODE 4510–14–M

DEPARTMENT OF THE INTERIOR
Minerals Management Service
43 CFR Part 3160
RIN 1010–AB59
Royalty Rates on Oil; Sliding- and Step-Scale Leases (Public Land Only)
ACTION: Notice of interpretation.
SUMMARY: The Department of the Interior hereby gives notice of its interpretation of 43 CFR 3162.7–4. The purpose of this notice is to clarify how gross production from the lease is to be calculated in determining the applicable royalty rate for those onshore Federal oil and gas leases where the royalty rate is based upon the average daily production per well for the month or upon the average production per day (applicable only to gas produced from sliding-scale leases).

EFFECTIVE DATE: January 19, 1990.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service (MMS), Royalty Management Program, Royalty Valuation and Standards Division, Oil and Gas Valuation Branch, Denver Federal Center, Building 41, P.O. Box 25165, Mail Stop 3520, Denver, Colorado 80225. Attention: John L. Price, Telephone (303) 231–3392.

SUPPLEMENTARY INFORMATION: The principal authors of this notice are Bob Casey and John L. Price of the Royalty Valuation and Standards Division of the Royalty Management Program, MMS. On January 19, 1990, the Interior Board of Land Appeals (IBLA) issued a decision in an appeal involving the issue of the use of the term “production” when determining the applicable royalty rate for a sliding-scale lease, Sun Exploration and Production Co., 112 IBLA 373 (1990). The principal issue in the decision was whether production should be defined as only that volume of oil upon which royalty was due or the total production from the lease, including oil used on the lease for operational purposes.

Sun Exploration and Production Company (Sun) appealed from an August 13, 1987, decision of the Director, MMS, MMS–86–0202–O&G and MMS–89–0307–O&G, stating that Sun had failed to properly apply the sliding-scale royalty provisions of its lease when determining the royalty rate applicable to oil production during the period from January 1987 through January 1983, based on the gross production removed or sold from the lease. The Director concluded that Sun had improperly calculated the average daily production by not including the oil consumed in lease operations. This resulted in Sun’s misapplication of the sliding-scale royalty rates to the oil sold and its failure to deliver the total volumes of royalty-in-kind oil due. The Director instructed the responsible MMS office to assign lease use volumes to each category of the reassignment of the total volume of oil used on the lease to each category. Sun appealed the decision to IBLA. In its decision, IBLA ruled that both methods were consistent with the royalty provisions in the Mineral Leasing Act, 30 U.S.C. 181 et seq., and the regulations, but MMS could only apply its interpretation prospectively since the lessee was not notified of the procedural change and MMS had accepted the lessee’s royalty accounting procedure as previously interpreted for several years. The IBLA viewed the new interpretation as an abrupt change from a well-established practice that the lessee had relied upon during the entire audit period. The new interpretation also would have imposed an additional royalty burden on the lessee which outweighed the statutory interest and purpose sought to be protected.

After further consideration of IBLA’s decision, the Department has determined that it should continue to interpret gross production in a manner consistent with the well-established practice that lessees have historically relied on. Therefore, for production sold in the same month it is produced, gross production from a lease under 43 CFR 3162.7–4 will be synonymous with sales from a lease. Volumes that are not subject to royalty, i.e., production used on the lease and/or unavoidably lost, are not to be included in the determination of royalty rates.

The Department also wants to clarify that general reliance on sales volumes in the determination of royalty rates for sliding- and step-scale leases does not affect the royalty rate applicable to volumes produced from a lease in a given month but not sold until a later month. Thus, the royalty rate applicable to any oil or gas is determined by the production volume in the month in which that oil or gas is produced, not the month in which it is sold. To further clarify the Department’s interpretation of this rule, the following examples are provided:

Examples:


<table>
<thead>
<tr>
<th>Lease</th>
<th>Beginning inventory (barrels)</th>
<th>Oil produced during the month (barrels)</th>
<th>Oil sold during the month (barrels)</th>
<th>Ending inventory (barrels)</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>0</td>
<td>1,000</td>
<td>700</td>
<td>300</td>
</tr>
<tr>
<td>B</td>
<td>0</td>
<td>1,000</td>
<td>1,000</td>
<td>0</td>
</tr>
</tbody>
</table>

Lease A

In January, 1,000 barrels are produced during the month and 700 barrels are sold leaving 300 barrels as the ending inventory. In February, 2,000 barrels are produced during the month (thus, for purposes of illustration, incurring a higher royalty rate) and 1,200 barrels are sold leaving 1,100 barrels as the ending inventory. The royalty rate for the 700 barrels sold in January is based upon all of January’s production, 1,100 barrels. The inventory carried over into February will be the first oil sold in February. The royalty rate on the 300 barrels produced during January and sold in February would be determined based on the royalty rate established for January production, not on the royalty rate for February production. The royalty rate for the 900 barrels produced and sold in February is the royalty rate established for February based upon the 2,000 barrels produced. Royalty on the 1,100 barrels remaining in inventory at the end of February will also be at the royalty rate calculated for February when that production is sold.

Lease B

In January and February, the production and sales volumes are identical, therefore, the royalty rates will be established based upon either the production or the sales volumes for each month. There is no carry over of inventories or royalty rates into succeeding months.

The Department therefore is providing notice that its interpretation regarding the calculation of production as used in 43 CFR 3162.7–4, will be consistent with
its historical practice. The term "gross production," as used in 43 CFR 3162.7-4 for calculating applicable royalty rates, will be interpreted to mean all production from the lease excluding any production used on the lease or unavoidably lost. This notice of interpretation is effective as of the date of the IBLA decision, January 19, 1990.

Any inquiries regarding this Notice or the calculation of the applicable royalty for production under sliding- or step-scale leases should be directed to MMS at the address shown under FOR FURTHER INFORMATION CONTACT.  


David C. O'Neal,  
Assistant Secretary—Land and Minerals Management.  

[FR Doc. 91-29188 Filed 12-4-91; 8:45 am]  
BILLING CODE 4310-MR-M  

FEDERAL COMMUNICATIONS COMMISSION  

47 CFR Parts 1, 22, and 94  

[General Docket No. 82-243; DA 91-1419]  

Service and Technical Rules for Government and non-Government Fixed Service Usage of the Frequency Bands 932-935 and 941-944 MHz  

AGENCY: Federal Communications Commission.  

ACTION: Final rule.  

SUMMARY: This action amends the Commission's Rules pertaining to the fee type codes and addresses for private and common carrier license applications for point-to-multipoint frequencies at 932-932.5/941-941.5 MHz. The objective of this action is to facilitate Commission processing of the 932/932.5/941-941.5 MHz applications.  

EFFECTIVE DATE: December 5, 1991.  

FOR FURTHER INFORMATION CONTACT: Tom Mooring, telephone (202) 653-8114.  

SUPPLEMENTARY INFORMATION: The Order was adopted November 26, 1991 and released November 27, 1991.  

Order  

By the Office of the Managing Director, Common Carrier Bureau, and Private Radio Bureau:

1. This Order amends our rules pertaining to the fee type codes and addresses, 47 CFR 1.1102 and 1.1105, for private radio and common carrier license applications in the Government/non-Government fixed service for the point-to-multipoint frequencies at 932-932.5/941-941.5 MHz (932/941 MHz). The Order also modifies our rules pertaining to the initial filing period for these frequencies, 47 CFR 22.27(b)(2) and 94.25(k). The amendments are necessary to facilitate Commission processing of the 932/941 MHz applications.  

2. The fee type code for private radio applications is PEP. The fee is $155 per application. Each private radio application requiring a fee must have the following inscription on the face of its envelope and be sent to: Federal Communications Commission, 932/941 MHz Point-to-Multipoint Channels, Private Radio Bureau, P.O. Box 358675, Pittsburgh, PA 15250-5675.

Each private radio application not requiring a fee must have the following inscription on the face of its envelope and be sent to: Federal Communications Commission, 932/941 MHz Point-to-Multipoint Channels, 1270 Fairfield Road, Gettysburg, PA 17325-7245.  

3. The fee type code for common carrier applications is CMP. The fee is $230 per transmitter. Each common carrier application requiring a fee must have the following inscription on the face of its envelope and be sent to: Federal Communications Commission, 932/941 MHz Point-to-Multipoint Channels, 1270 Fairfield Road, Gettysburg, PA 17325-7245.

Each common carrier application not requiring a fee must have the following inscription on the face of its envelope and be sent to: Federal Communications Commission, 932/941 MHz Point-to-Multipoint Channels, Common Carrier Bureau, P.O. Box 358624, Pittsburgh, PA 15231-5924.

Each common carrier application not requiring a fee must be filed with or sent to: Federal Communications Commission, 932/941 MHz Point-to-Multipoint Channels, Office of the Secretary, room 222, 1919 M Street, N.W., Washington, DC 20554.  

4. We are also modifying the initial filing period for the applications for 932/941 MHz frequencies from one week for all applications to two days for five different groups of applications. This change is necessary because of the large initial volume of applications anticipated for these frequencies. Permitting only one week for the submission of all initial 932/941 MHz applications would result in an excessive burden on Commission processing facilities. Accordingly, we are dividing the United States and its outlying areas into five groups and will accept applications from each group during separate two-day filing periods. While the two-day filing period for each group is shorter than previously specified, we note that such a filing period has been recently used successfully with respect to the submission of 220-222 MHz license applications (FR Docket No. 89-552).  

5. This action is taken pursuant to authority found in Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), and pursuant to sections 0.231(d), 0.291, and 0.331 of the Commission's Rules, 47 CFR 0.231(d), 0.291, and 0.331. These rule changes pertain to agency management and procedure, and therefore public comment is not required by the Administrative Procedure Act. see 5 U.S.C. 553(a)(2), (b)(A). This Order is effective upon publication in the Federal Register.  

List of Subjects:  

47 CFR Part 1  

Administrative practice and procedure.  

47 CFR Part 22  

Communications common carriers, public mobile service.  

47 CFR Part 94  

Private operational-fixed microwave service, Radio.  

Rule Changes  

I. Part 1 of title 47 of the Code of Federal Regulations is amended as follows:  

PART 1—PRACTICE AND PROCEDURE  

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

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303; Implement, 5 U.S.C. 552, unless otherwise noted.  

2. Section 1.1102 is amended by adding an entry for (3)(e) to read as follows:  

§ 1.1102 Schedule of charges for private radio service.
3. Section 1.1105 is amended by adding an entry for [2][a] to read as follows:

§ 1.1105 Schedule of charges for common carrier services.

<table>
<thead>
<tr>
<th>Action</th>
<th>FCC form No.</th>
<th>Fee amount</th>
<th>Fee type code</th>
<th>Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.</td>
<td>3. 932-932.5/941-941.5 MHz Point-to-Multipoint Channels (per transmitter).</td>
<td>FCC 401 &amp; FCC 155</td>
<td>230.00</td>
<td>CMP</td>
</tr>
</tbody>
</table>

II. Part 22 of title 47 of the Code of Federal Regulations is amended as follows:

PART 22—PUBLIC MOBILE SERVICE

1. The authority citation in part 22 continues to read as follows:

Authority: 47 U.S.C. 154, 303, unless otherwise noted.

2. Section 22.27 is amended by revising paragraph (b)(2) to read as follows:

§ 22.27 Public notice period.

(b) * * *

(2) Applications for frequencies in the 932-932.5/941-941.5 MHz bands shall be filed initially during one of five two-day periods to be announced by public notice. After the initial filing period for both these frequencies and the frequencies at 932.5-935/941.5-944 MHz, applications for the 932-935/941-944 MHz bands will not be accepted until further public notice is given by the Commission. During the initial filing period, applications for frequencies in the 932-932.5/941-941.5 MHz bands need not specify the frequencies requested; but thereafter must do so. Applications for frequencies in the 932.5-935/941.5-944 MHz bands must specify the frequencies requested.

Federal Communications Commission.

Richard M. Firestone,
Chief, Common Carrier Bureau.

[FR Doc. 91-29098 Filed 12-4-91; 8:45 am]
BILLING CODE 6712-01-M

III. Part 94 of title 47 of the Code of Federal Regulations is amended as follows:

PART 94—PRIVATE OPERATIONAL-FIXED MICROWAVE SERVICE

1. The authority citation in part 94 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303, unless otherwise noted.

2. Section 94.25 is amended by revising paragraph (k) to read as follows:

§ 94.25 Filing of applications.

(k) Applications for frequencies in the 932-932.5/941-941.5 MHz bands shall be filed initially during one of five two-day periods to be announced by public notice. After the initial filing period for both these frequencies and the frequencies at 932.5-935/941.5-944 MHz, applications for the 932-935/941-944 MHz bands will not be accepted until further public notice is given by the Commission. During the initial filing period, applications for frequencies in the 932-932.5/941-941.5 MHz bands need not specify the frequencies requested; but thereafter must do so. Applications for frequencies in the 932.5-935/941.5-944 MHz bands must specify the frequencies requested.

Federal Communications Commission.

Richard M. Firestone,
Chief, Common Carrier Bureau.

[FR Doc. 91-29098 Filed 12-4-91; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91-244; RM-7776]

Radio Broadcasting Services;
Churubusco, IN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 242B1 for Channel 242A at Churubusco, Indiana, and modifies the permit for Station WKQM(FM) to specify operation on the higher powered channel, as requested by Robert M. Peters. See 56 FR 41813, August 23, 1991. Coordinates for Channel 242B1 at Churubusco are 41-11-32 and 85-14-02. Consent of the Canadian government to Channel 242B1 at Churubusco has been obtained. With this action, the proceeding is terminated.


FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91-244, adopted November 13, 1991, and released November 29, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting

47 CFR Part 73

[MM Docket No. 91-247; RM-7768]

Radio Broadcasting Services;
Clayton, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Annette V. Antzes, allots Channel 300A to Clayton, Louisiana. See
56 FR 41814, August 23, 1991. Channel 300A can be allotted to Clayton, Louisiana, in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.7 kilometers (1.7 miles) north to avoid a short-spacing to a construction permit for Channel 299A, Woodville, Mississippi. The coordinates for the allotment of Channel 300A to Clayton are North Latitude 31-44-42 and West Longitude 91-32-54. With this action, this proceeding is terminated.


FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91-231, adopted November 13, 1991, and released November 29, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73
Radio broadcasting.

PART 73—[AMENDED]
1. The authority citation for part 73 continues to read as follows:


§ 73.202 [Amended]
2. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by adding Channel 300A, Clayton.

Federal Communications Commission.
Michael C. Reger,
Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-29190 Filed 12-4-91; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73
[MM Docket No. 91-231; RM-7233] Radio Broadcasting Services; Odessa, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Oil Patch Broadcasting Partnership, allots Channel 299C2 to Odessa, Texas. See 56 FR 40296, August 14, 1991. Channel 299C2 can be allotted to Odessa in compliance with the Commission's minimum distance separation requirements with a site restriction of 28.8 miles kilometers (17.9 miles) south to avoid a short-spacing to a construction permit (BPTH-90712MK) for Station KYMI-FM, Channel 300C2, Los Ybane, Texas. The coordinates for Channel 299C2 at Odessa are North Latitude 31-36-44 and West Longitude 102-28-21. With this action, this proceeding is terminated.


FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91-231, adopted November 13, 1991, and released November 29, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73
Radio broadcasting.

PART 73—[AMENDED]
1. The authority citation for part 73 continues to read as follows:


§ 73.202 [Amended]
2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 299C2 at Odessa.

Federal Communications Commission.
Michael C. Reger,
Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-29191 Filed 12-4-91; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE
Department of the Navy
48 CFR Parts 5243 and 5252
Navy Acquisition Procedures Supplement; Adjustments to Prices Under Shipbuilding Contracts

AGENCY: Department of the Navy, DOD.

ACTION: Interim rule and request for comments.

SUMMARY: The Department of the Navy is promulgating part 5243, subpart 5243.1 of the Navy Acquisition Procedures Supplement (NAPS) and an amendment to part 5232 to add the text of a solicitation provision and a contract clause to implement the requirements of 10 U.S.C. 2405.

DATES: Effective date: December 5, 1991. The interim rule is effective for contracts entered into after December 7, 1983.

Comment date: Comments on the interim rule should be submitted in writing at the address shown below on or before February 3, 1992, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments on the interim rule to: Office of the Assistant Secretary of the Navy (Research, Development and Acquisition (OASN(RD&A)), Attn: Richard Moye, APIA-PP, Washington, DC 20350–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Moye, OASN(RD&A), APIA–PP, (703) 692–2807.

SUPPLEMENTARY INFORMATION:

A. Background

10 U.S.C. 2405 provides as follows:
(a) The Secretary of a military department may not adjust any price under a shipbuilding contract entered into after December 7, 1983, for an amount set forth in a claim, request for equitable adjustment, or demand for payment under the contract (or incurred due to the preparation, submission, or adjudication of any such claim, request or demand) arising out of events occurring more than 18 months before the submission of the claim, request or demand.

(b) For the purposes of subsection (a), a claim, request or demand shall be considered to have been submitted only when the contractor has provided the certification required by section 6(c)(1) of the Contract Disputes Act of 1978 (41 U.S.C. 605(c)(1)) and the supporting data for the claim, request or demand.

B. Public Comments

The Department of the Navy published proposed rules on price adjustments under shipbuilding
contracts in the Federal Register. 54 FR 47689, November 16, 1989. A correction to the November 18, 1989 notice, which also extended the comment period, was published in the Federal Register. 55 FR 33541, August 16, 1990, and 55 FR 43150, October 26, 1990. Written and oral comments were received from four corporations, one industry association, one law firm. Revised proposed rules and notice of additional public comment and a public hearing were published in the Federal Register. 55 FR 20708, June 29, 1990. Comments were received on the revised proposed rules on behalf of five corporations, one industry association, one bar association and one law firm. Revised proposed rules and notice of additional public comment and a public hearing were published in the Federal Register. 55 FR 33541, August 16, 1990, and 55 FR 43150, October 26, 1990. Written and oral comments were received from four corporations, one industry association, and two law firms. The changes incorporated as a result of the public comments and internal review are significant and it is necessary to publish an interim rule to provide another opportunity for comment. The following is a summary of the comments received and the Navy's action relating to those comments.

As a preliminary matter, one association, two corporations and one law firm requested specific citations to the legislative history wherever the legislative history is relied upon in rejecting a comment. The legislative history has been accumulated and made available to the public as a part of the administrative record. Citations to the legislative history as included in the administrative record are provided where applicable, as Administrative Record, Tab ____, at page ______ (hereinafter, Tab ____ , page ____ ).

The lengthy comment and review process this rule has undergone is attributable in large part to the contractors' strongly expressed concern that they may be precluded from a reasonable opportunity to recover on meritorious claims, requests or demands. If it were to turn out that there were instances where identification of an event, and assessment and documentation of the consequences of an event, were not possible in 18 months, fairness would require that contractors be given an opportunity for recovery. By the same token, however, contractors should not be free to develop claims long after-the-fact in attempts to get well under unprofitable contracts. Tainting and problem that resulted in the massive shipbuilding claims of the 1970's, and is the problem that Congress addressed in this legislation.

To the extent that the statute and its legislative history are clear, the rule must adhere to the intentions expressed therein. Congress selected a period of 18 months as a reasonable time in which contractors could be expected to identify, quantify, document and submit claims and requests to the government. The legislative history shows that Congress believed its action was essential for maximizing the resolution of claims by negotiated settlement rather than through costly, disputatious and time-consuming litigation. This statute expressly applies to all shipbuilding contracts entered into by the military departments after December 7, 1983. Congress determined that shipbuilding contracts should be treated differently in this regard than other contracts. Congress' determination as to the need for such a limitation for shipbuilding contracts and the appropriateness of the 18-month period is not now subject to question by the Navy. The Navy's goal in promulgating the rule has been to be true to the Congressional intent underlying the 18-month limitation; that more specific categories of events should be identified and that a "knew or should have known" standard should be incorporated in the definition.

a. "Events" As A Single Culminating Act

As a starting point, upon review of the legislative history of the statute, it is inescapable that Congress viewed "events" as individual matters that arise in the course of contract performance and not as a single culminating act at or towards the end of contract performance, such as contract completion or ship delivery. The second area involves quantification of the consequences of those events and certification and submission of the claim, request or demand in accordance with the Contract Disputes Act (CDA), and ways to ensure meritorious claims, requests or demands are not precluded unfairly should consequences not be quantifiable within the 18-month period. The third area involves questions of the scope of the 18-month limitation. And the fourth area involves the question of retroactive application of the new rule.
None of these examples are consistent with the commenters' recommended definitions of "events." Rather, these examples demonstrate that the definition of "events" adopted in the rule, i.e., "the Government action(s), Government inaction(s), Government conduct, or occurrence(s) which give rise to the contractor's claim, request for equitable adjustment, or demand for payment" is compelled by the legislative history.

The commenters position that the 18-month period under 10 U.S.C. 2405 should be triggered by a final, single culminating act or event is based in part upon the argument that under the Tucker Act and other statutes of limitation the clock is triggered by such a final event—that argument is without merit. The Tucker Act and the other statutes of limitation prescribe limitations on submitting claims to a judicial body for relief. By contrast, the 18-month restriction addresses prompt notification and submission of the claim, request or demand when submitted to the contracting officer, which is a necessary precursor to judicial relief.

The commenters comparisons of the 18-month limitation to the Tucker Act's
six-year period are misplaced. With the passage of the Contract Disputes Act of 1978, the six-year Tucker Act limitations period for contract claims was replaced by a one-year limitations period (90 days if an appeal is to a board of contract appeals). This limitations period is triggered not by contract completion or ship delivery, but rather by the issuance of a contracting officer’s final decision on individual matters arising in the course of contract performance. Under both the Tucker Act and the CDA, the limitations period applied to submission of claims to a court. There was no limitations period in effect for the submission of claims to a contracting officer. A contractor had virtually an unlimited time in which to make such a submission. The absence of any time limit for submitting claims to the contracting officer was cited as one of the causes contributing to the shipbuilding claims problems of the 1970’s. The House Committee on Appropriations noted, at Tab 11, page 179: “The delay allowed for claims submission [to the contracting officer] has undoubtedly been a major factor in the inability to settle claims and enactment of a time limit should help.” GAO cited, at Tab 10, page 49, the House Committee on Appropriations investigative staff finding that: “without such a time limit, the Navy never knows when a claim may be submitted and remains ‘on the hook’ until a shipbuilder chooses to sign a release to close out a contract.”

With regard to limitations periods applicable to submission of claims to a contracting officer, the CDA changed from the Tucker Act’s focus on the single act of contract completion to focus on issuance by the contracting officer of a final decision on individual matters that arise in the course of contract performance. Similarly, the legislative history of the 18-month limitation on submission of a claim, request or demand to a contracting officer reflects a Congressional intent that actions in individual matters of contract performance trigger the 18-month period. There is no basis in the legislative history for reversion to contract completion as the triggering event, or for using ship delivery as the triggering event. Had Congress intended the time period here to be interpreted in the same manner as the cited statutes of limitation, it would have used the same language.

Thus, the definition of “events” in the rule appropriately focuses on individual matters that arise in the course of contract performance. Comments on this point have repeated arguments made to and rejected by the GAO and Congress at the time the 18-month restriction was under consideration. See Tab 10, page 90.

c. “Knew Or Should Have Known” Standard

Two corporations, two associations and three law firms objected to the definition of “events” for failure to employ a “knew or should have known” standard. There is language in the legislative history which would support application of the restriction by a “knew or should have known” standard. See Tab 16, page 257.

For most types of claims, requests or demands, the rule eliminates the need for a “knew or should have known” standard by identifying objective, knowable events that will trigger the running of the 18-month clock. Except with regard to a few specific circumstances, discussed further below, commenters did not challenge the identification of objective events which trigger the running of the 18-month clock in the specified categories of liability.

However, during its review and consideration of the comments, the Navy concluded that under certain circumstances not specifically identified in the rule—such as claims of breach of contract, mistake, misrepresentation, superior knowledge, impossibility, impracticability and unconscionability—a precise, objective, knowable standard would be difficult to articulate and administer. In these instances, the Navy has adopted the contractors’ recommendation that the 18-month period should begin when a contractor “knew or should have known” of the event. Accordingly, contractors will not be precluded from recovery in any situation by a triggering event which it is not reasonable to conclude they should, have known.

To minimize disputes, the rule includes a definition of “knew or should have known”: “the totality of the combined actual and constructive knowledge of all agents or employees (including a subcontractor, its agents and employees, where and to the extent a subcontractor is involved).” The rule also imposes an obligation on the shipbuilder to identify the facts underlying its assertion as to when the events were known or should have been known.

2. Quantification of the Consequences of Events and Certification of the Claim

Congress premised the statute on the assumption that the consequences of events would be quantifiable within 18-months and that it, thus, would be possible to submit a claim, request or demand within that period. In that connection, the Senate Armed Services Committee specifically noted that it was “not aware of any evidence that 18-months is not a sufficient time for contractors to assess the consequences of an event, assemble all pertinent documentation to support their claimed amount, and submit this documentation with their claim properly certified as provided in the Contract Disputes Act of 1978.” Tab 16, pages 257-58.

The commenters insist that there are circumstances under which the consequences of events will be difficult to quantify within the allotted time. At the core of this concern is the requirement in the CDA that a contractor certify “that the claim is made in good faith, that the supporting data are accurate and complete to the best of his knowledge and belief, and that the amount requested accurately reflects the contract adjustment for which the contractor believes the government is liable.” 41 U.S.C. 605(c)(1). As the commenters have pointed out repeatedly, uncertainty as to the quantification of the claim, request or demand may create difficulties in making such a certification.

The contractors’ concerns in this regard seem overstated. It is a common practice of shipbuilders to certify proposals, claims and requests for price adjustment before costs have been incurred. Under the contractors’ current rationale, such shipbuilder certifications covering prospective costs would be improper. Moreover, the point in time when a claim, request or demand becomes “quantifiable” is unduly subjective, and likely would lead to considerable litigation.

It is clear from the legislative history that Congress was aware of the contractors’ contentions that the ability to quantify a claim, request or demand should be required to trigger the 18-month period, but concluded that it was reasonable to assume that claims would be quantifiable within the 18-month period. For example, see GAO’s comment (at Tab 10, pages 49-50) in this regard: “A legal expert who represents a number of shipbuilders said the 1-year time limit would put a disproportionate burden on contractors because they often cannot identify every constructive change that has increased costs within that time, much less fully document each claim.” [footnote omitted]; see also Newport News Shipbuilding’s comment to GAO regarding the proposed statute, at Tab 10, Appendix VI, page 5: “NNS believes the one year limit is totally inadequate. There are numerous

63667
instances in which the contractor is unable to determine the extent of his costs and damages as a result of legitimate contract changes. See also Tab 16, page 257-58, quoted above.

Notwithstanding these complaints, Congress imposed an 18-month limitations period triggered by the occurrence of "events"—individual matters that arise in the course of contract performance. It would be harsh, however, if the statute were to result in preclusion of meritorious claims, requests or demands because the consequences of an event could not be quantified, and thus a CDA certification could not be made, within the allotted time. Two methods have been evaluated by the Navy for avoiding this result: allowing supplementation of the certified claim, request or demand to take account of information that becomes available later; and tolling of the 18-month period pending the availability of all information that may be relevant to quantification of the claim, request or demand.

a. Certification and Supplementation of Claims

Under the certification and supplementation approach, a contractor would certify and submit the claim, request or demand within the 18-month period based on the best information available at the time. If relevant information later became available, the claim, request or demand submission could be supplemented or revised, as appropriate.

Two law firms and an association challenged the adequacy of supplementation of a claim, request or demand as a remedy to quantification difficulties. In addition, one commenter stated that supplementation should only be permissible within the 18-month period according to the language of the statute, while another commenter objected to any restriction on the data with which supplementation can be made.

Contractors are duly concerned about certifying a claimed amount which may be no more than a best estimate at the time or one in a range of possible entitlement amounts. The certification requirement is included for the very purpose of ensuring that due consideration and high level attention are given to a contractor's claim, request or demand before it is submitted. Contractors should and must take the certifications seriously and ensure they are well founded. Contractors should be reluctant to certify claims, requests or demands without adequate supporting data. Moreover, CDA case law does not permit qualification or conditioning of the required certification language. Consequently, if contractors certified claims, requests or demands while affirmatively acknowledging that they were contingent upon further price analysis, an argument could be made that the claims, requests or demands were not properly certified. Similarly, contractors have expressed concerns that the case law may not adequately protect their ability to supplement claims, requests or demands.

Notwithstanding these concerns, claim supplementation is permissible under existing CDA case law, and is acceptable for purposes of the 18-month limitation to the extent permitted under the CDA. A contractor is required to certify to the amount the contractor then believes is due and that the underlying data are accurate and complete to the best of his knowledge and belief. However, both the amount claimed and the supporting data may be subsequently updated and supplemented, as appropriate, both within and beyond the 18-month period. Moreover, waiting for work completion does not always eliminate the necessity for estimating the amount of a requested price adjustment. Even when all work is complete, contractor accounting systems may not be capable of segregating each and every cost element of a change with precision—some estimation of costs, particularly in the areas of impact or disruption, may be required. See Tab 8, page 10.

The Navy does not deem it unreasonable to require a certification based upon the best information available within the 18-month period—as long as supplementation is clearly available. A certification which is understood by all to be based upon available data which can be supplemented, if necessary, should not make contractors feel unduly uneasy—and should be able to be made without conditions that invalidate the certification. As provided in the rule, at 5243.105-93(d), if the initial certification and supporting data are adequate under the requirements of the rule, a contractor's supplementation of its initial submission will not affect the adequacy of the initial certification. However, it is unnecessary to leave shipbuilders subject to uncertainty regarding their ability to supplement claims, requests or demands within the constraints of 10 U.S.C. 2405. Therefore, the following binding representation by the Navy should alleviate these concerns: the Navy will not challenge—and by virtue of this representation shall be estopped from challenging—the adequacy of an otherwise valid certification on the basis that the claim, request or demand was subsequently supplemented by additional supporting data or revision of the amount requested or theory of recovery, provided that the supplementation does not constitute a new claim, request or demand by changing the underlying events. In view of the foregoing, the Navy finds that the supplementation allowed by the rule adequately avoids unnecessary preclusion of meritorious contractor claims, requests or demands.

b. Tolling of the 18-month Period

Tolling would involve staying the running of the 18-month period under certain circumstances. Equitable tolling is a principle that is used sparingly where considerations of fairness mitigate against an unbending application of a statutory limitations period. The principle represents a limited exception to the general rule of construction that the limitation period Congress prescribed meant that length of time and no more.

The commenters have proposed various means for tolling the 18-month period to allow for full quantification of claims, requests or demands when it is not possible to quantify the claim within 18-months of the triggering event. The equities surrounding quantification of the consequences of events in certain situations could conceivably justify tolling the 18-month period if the process of certification and supplementation did not eliminate concerns about fairness. As discussed above, in writing the statute Congress assumed that there would be no significant problems with quantifying claims within 18-months. In any event, however, inasmuch as the certification and supplementation process described above seems to adequately protect against preclusion of meritorious claims, requests or demands, tolling of the 18-month period appears neither necessary nor appropriate.

Nonetheless, there is no need to completely close the door on the possibility that a contractor could in an individual case show that the equities favor relief in the nature of tolling. Unlikely as it may be that such relief will be required, the possibility of an extreme case merits consideration of such relief need not be and is not precluded. While the Navy has every expectation that significant quantification problems will not arise, and that any that were to arise would be adequately addressed through supplementation, the Navy has the authority to grant such relief, through exercise of extraordinary contract relief pursuant to Public Law 85-804, in the
event that a contractor makes a compelling showing in an individual case that the equities require such relief.

c. Application of CDA Regulations

An issue related to the certification and supplementation process involves existing submissions which have been determined not to be properly certified under the CDA and its implementing regulations, Federal Acquisition Regulation (FAR) 33.207. An invalid certification leaves the agency with no jurisdiction to consider a claim. While the remedy for defective certifications in most instances is simply to have a more senior official recently the claim, in the case of shipbuilding claims, requests or demands, 10 U.S.C. § 2405 would make such a recertification ineffective after the 18-month period had run. This could preclude claims, requests or demands that otherwise would have been reviewed by a contracting officer except for the seniority of the certifying official. A commenter argues that this harsh result could be avoided if the Navy agreed that the CDA regulations do not apply to certified claims, requests or demands submitted under 10 U.S.C. 2405.

On its face, the statute states that the certification must be in accordance with requirements of the CDA. Where the CDA itself applies, the regulations promulgated thereunder do also. As a practical matter, it is difficult to know in advance whether instances will arise where application of the CDA regulations would result in unfairness by precluding shipbuilding claims, requests or demands solely on the basis that a timely certification was signed by an official lacking adequate seniority. What is clear, however, is that the Navy lacks the authority to consider claims that are not properly certified under the CDA. Thus, any relief under such circumstances must come from a change in the CDA regulations or through exercise of extraordinary relief authority. The problem cannot be addressed by simply not applying the CDA regulations.

d. Additional Comments on Certification and Supporting Data Requirements

Two corporations and one association suggested that the contracting officer's authority to reject claims, requests or demands based on a certification or supporting data deficiency should be subject to a requirement for timely notification to the contractor of such deficiency. If such notice is not provided to a contractor in a timely fashion, the 18-month period should be tolled or the Government should be estopped from challenging the validity of the submission. These suggestions were not adopted. The requirement for certification and submission of the supporting data cannot be waived by a contracting officer. The responsibility for certification and submission of a properly documented claim, request or demand lies with the shipbuilder. A contracting officer's failure to provide notification of a submission deficiency within a specific timeframe does not relieve the shipbuilder of such responsibility and, thus, does not affect the operation of the statute.

One law firm objected to the contracting officer's ability to reject claims on the basis of a failure to comply with certification or supporting data submission requirements. It was argued that the contracting officer should not be authorized to reject non-compliant claims but only to deny such claims by final decision. Rejection of a claim is not a final decision and, thus, is not appealable to a board of contract appeals or to court, whereas denial of a claim would be so appealable. Rejection of claims under these rules is consistent with the CDA and case law thereunder, as well as with the legislative history. See Tab 4, page 7. Any submission which is not adequate, whether due to the certification or the supporting data, is not a claim under the CDA and, therefore, a contracting officer's final decision may not be issued. Further, if a proper claim was rejected, a contractor may appeal such rejection, contending that the contracting officer has failed to issue a timely final decision under the CDA, and have the propriety of the contracting officer's claim rejection heard in accordance with the procedures of the CDA.

One association and one corporation suggested that language recognizing that the identified supporting data may not be applicable or reasonably available in every instance should be included in the rule. This language was deleted from the originally proposed rule in response to prior industry comments. The rule recognizes that adequacy of data depends on the particular circumstances of the events at issue. No change in the rule is necessary to respond to these comments.

One law firm objected to the reference to CDA supporting data requirements, contending that CDA requirements are those necessary to satisfy CDA requirements. The statute invokes CDA requirements. This new objection was not adopted.

Two associations and one law firm suggested that submission of data should not be the only means of satisfying the supporting data requirement—identification of the supporting data should also be sufficient, consistent with the implementation of the Truth in Negotiations Act (Pub. L. 67-653). The statute and its legislative history expressly require submission of supporting data. Tab 16, pages 257-58. Therefore, physical delivery of supporting data is required. In accommodation of industry concerns, however, the Navy recognizes that the parties may agree as to what constitutes "physical submission" in a particular case—this may eliminate the need for delivery of voluminous data to government offices in appropriate circumstances.

e. Additional Comments on Quantification of the Consequences of Events

i. Subcontractor claims. One law firm, one association and one corporation suggested that subcontractor claims should be separately addressed and that a longer period of time was necessary to accommodate of industry concerns. This suggestion also raised the difficulty of certifying subcontractor claims where their validity may not be clear.

The statute addresses a price adjustment to the prime contract—whether or not such a price adjustment involves subcontracted effort, the identification of what constitute events does not change. This is primarily attributable to the lack of privity between the government and subcontractors. The government only has authority to make changes to the prime contract—it has no authority to direct or authorize subcontractor efforts. That is the responsibility of the prime contractor. Therefore, any events giving rise to subcontractor claims, requests or demands for price adjustment should be known by the prime contractor when they are known by the subcontractor. If this result may require in certain instances that practice conform to contractual requirements, this is a minimal hardship to pay. Contractors can ensure subcontractor claims are timely raised by including in subcontracts a clause that imposes the 18-month restriction on subcontractors.

With this approach, identification of claims by subcontractors within the 18-month period would reduce the time
available for a prime contractor to evaluate the merits of the claim and submit the claim to the government. Depending upon the time available for the prime contractor's submission, it may be necessary for a prime contractor to make a protective filing. If such is the case, a certified protective filing may be made in the form of a request or demand, fully disclosing the facts in accordance with the requirements of the rule. It is expected, however, that claim materials developed by the subcontractor would be transferable to the prime contractor and usable in its submission to the government. As these suggestions should relieve the commenters' concerns within the framework of the existing rule, no changes to the rule itself are necessary.

ii. Correction of defective government property or information without government direction. Three corporations, two associations and three law firms objected to application of the restriction to shipbuilder correction of defective government furnished property (GFP) or information (GFI) where contracting officer direction is not first received. They commented that what constitutes commencement of a correction is uncertain—in fact, what constitutes correction itself is unclear, particularly where such effort is unsuccessful. It was also questioned whether contractor commencement of correction fit the definition of "events" keyed to Government conduct.

Contractors are currently required to provide notice of a change whenever they believe the Government is responsible for changing contract requirements. This may arise not only as a result of Government actions, inactions or conduct but also as a result of contractor or third party conduct—therefore, the definition of "events" includes "occurrences"—which are not tied to Government conduct. If a contractor bases a claim, request or demand on its correction of a deficiency, then the restriction applies. However, the Navy recognizes that it may not always be clear precisely what effort constitutes correction of a defect. The rule has been revised to more clearly explain what constitutes commencement of corrective efforts. In such situations, the 18-month period will begin only when the contractor has undertaken work that is not consistent with contract requirements. Contractors reasonably should know and be held responsible when they undertake work that is not consistent with contract requirements.

iii. Interactive changes. One law firm and one association questioned the applicability of the definition of "events" to interactive changes, changes issued without scope and changes for developmental effort because the consequences of the first change or direction may not be fully quantifiable without knowing the scope and cost of later changes or directions. Where work is authorized, there must be an understanding of the work to be performed or the contractor could not proceed, irrespective of whether the effort is affected by subsequent changes, is "without scope" or is developmental. This understanding must be priced within 18 months of authorization of the work in question. Where the cost and/or scope of a change is affected by subsequent changes, multiple events have occurred, and the costs of the subsequent changes should include any impacts on existing work, including earlier changes. These comments did not require a change in the rule.

iv. Other comments. One association recommended that the triggering events for late GFI should be different than those for late GFP because a contractor cannot quantify late GFI until the GFI is received, whereas a contractor can plan for late GFP prior to receiving it. This recommendation was not adopted. Just as a contractor can and does submit price proposals in response to solicitations without seeing the GFI which is to be provided under the resulting contracts, a contractor can price the impact of receiving GFI later than contractually required without seeing the GFI. Should the GFI prove to be defective, a separate triggering event would occur.

One law firm questioned whether deficient GFP is the same as defective GFP for purposes of the restriction. An adjustment may be warranted whenever GFI is received in an unsuitable condition. Unsuitable has been construed to include GFP both defective and deficient to contract requirements. No change was made in response to this comment.

One law firm asked for clarification of the phrase "receipt of the contracting officer's direction or notification by the contractor" used in several categories of events to indicate when the limitation period is triggered. The phrase has been clarified to indicate that the triggering event is receipt by the contractor of the contracting officer's direction or notification.

One corporation, two law firms and two associations objected to the lack of a standard for distinguishing between a sequence of occurrences and multiple events. This objection is attributable, at least in part, to an error in the comment accompanying the revised proposed rule published in the Federal Register, 55 FR 28709, June 29, 1990. During the hearing, this error was acknowledged and the following statement was made (Tab 61, page 7):

"The cited language contains an error. The phrase should have read, "In this example, there is a sequence of actions and occurrences" rather than "In this example there are multiple events". The difference between a sequence of occurrences and multiple events is that in a sequence of occurrences there is more than one action, inaction, conduct or occurrence which gives rise to a single basis for entitlement, i.e., there was a single constructive change. Multiple events give rise to multiple bases of entitlement, i.e., a determination that more than a single constructive change has occurred. Multiple events involve matters which have not been submitted separately, but are submitted as a single claim, etc."

The requested distinction is included in the above correction. No change in the rule itself was required to be made in response to these comments.

One law firm questioned when the 18-month period would start relative to quantification of costs stemming from a board of contract appeals decision on a non-monetary claim. This question reflects a misunderstanding—a claim which involves quantification of costs is not a "non-monetary claim." No change was made in response to this comment.

One corporation requested identification of occurrences which stop the running of the statute. The rule, at 5243.105-92(a), is explicit on this point: the 18-month period stops upon pricing of a modification addressing the events (including maximum-price modifications) or upon the submission of a claim, request or demand that is certified, if required, and accompanied by the required supporting data. This comment required no change to the rule.

3. The Scope of the 18-Month Limitation

A number of issues have been raised that relate to the scope of application of the 18-month limitation. Comments relating to these issues are discussed below.

a. Claims "Arising Under" And Claims "Relating To" a Contract

One corporation, two law firms and an association objected to the proposed application of the 18-month restriction based on the historical distinction between claims "arising under a contract" and claims "relating to a contract." According to this distinction, claims "arising under a contract" involved claims for which a remedy was provided by a contract clause, and claims "relating to a contract" involved claims for which no remedy existed.
under the contract (e.g., breach or mutual mistake claims). This distinction arose because courts had held that boards of contract appeals had no authority to resolve claims based on an alleged breach of a government contract since the boards' authority was derived from the contract "Disputes" clause. Claims relating to a contract could be resolved only in federal court. The Commenters further noted that the restriction was not intended to apply to claims relating to a contract. Commenters further noted that the restriction applies solely to "price adjustments," language they contend is consistent with this limited interpretation.

It is not at all clear that Congress intended the phrase "under the contract" to involve this historical distinction. The definition of claims arising under a contract has been significantly expanded by boards of contract appeals. Using the concept of a constructive change, the boards have asserted pre-CDA jurisdiction to what had previously been considered breach claims. The CDA further weakened the continuing effect of this distinction by permitting boards of contract appeals as well as courts to resolve claims relating to a government contract. Thus, the distinction between claims "arising under" and claims "relating to" a contract was blurred and, since 1978, has lost practical significance.

Inasmuch as the historical distinction no longer had practical significance when the statute was enacted, it is doubtful that it should be imputed to Congress. Further, nothing in the legislative history supports the revitalization of this distinction in 10 U.S.C. 2405. Not applying the statute to claims, requests or demands relating to a contract would permit contractors to sue relief long after-the-fact—and, indeed, would allow contractors to follow the practice of developing claims, requests or demands after ship delivery in the event profits were not realized during ship construction. Such delays and practices in asserting claims, requests or demands create significant practical problems in assessing and resolving them. The shipbuilding claims of the 1970's involved many breach claims, and adopting the view that the statute did not apply to such claims would emasculate the intended effect of the statute. Congress recognized that the greater the delay in reaching agreement on price under a contract, the more likely a dispute would ensue. See Tab 8, page 21; Tab 10, page 51.

Further, the fact that a change may be formally issued is no guarantee that a dispute will not subsequently arise in the pricing of the change. Often it is not clear whether a change is a dispute and the matter is disputed. Congress recognized that the faster the delay in reaching agreement on price for an issue, the more likely a dispute would ensue. See Tab 8, page 21; Tab 10, page 51.

d. Downward Price Adjustments

By its terms, 10 U.S.C. 2405 applies to adjustment of "any price under a shipbuilding contract." Based on this language, one law firm argued that downward price adjustments as well as upward price adjustments should be subject to preclusion by the 18-month limitation. However, upon closer examination, the position...
makes little sense—in view of the full context of the statute and the legislative history. The statute precludes a price adjustment "for an amount set forth in a claim, request for equitable adjustment or demand for payment" submitted by a contractor. Government-directed reductions in the scope of work are not contemplated by the statute. Nothing in the legislative history suggests that the statute was intended to limit the government's reduction of contract price. Rather, the focus of the legislative history is on avoiding price increases resulting from omnibus, after-the-fact contractor claims. There is no compelling reason to conclude that the statute was intended to limit price reductions by the government. Further, adoption of this comment could permit contractors to prevent downward price adjustments simply by not submitting them to the Government, a result Congress could not reasonably have intended. Therefore, this comment was not adopted.

e. Additional Comments on the Scope of the Limitation

Two corporations, an association and a law firm objected to the definitions of "claim," "request for equitable adjustment" and "demand for payment" as being overbroad. In addition to issues related to these definitions already discussed above, e.g., breach claims, an objection was made to the definition of "claim" for varying from the CDA/FAR definition. Objections were also made to each definition for including amounts not included in the contract price. The definitions contained in the rule are consistent with the CDA and the FAR. The Navy has adopted the commenters' view that the 18-month limitation does not preclude relief other than price adjustments—that is, it does not bar schedule adjustments or payments expressly excluded from the contract price (such as escalation, insurance and interest).

One contractor requested examples of non-events, such as solicitations and forward pricing rate agreements. The universe of non-events is too large and diverse. Moreover, examples would unnecessarily lengthen and complicate the rule. Therefore, only events will be identified in the rule.

4. Whether the Rule Has Retroactive Application

One law firm commented that the rule should not be applied to existing contracts but only to future contracts, because shipbuilders could not have known the manner in which the statute would be implemented. This commenter argues that fairness and due process require that the rule be given prospective effect only.

It would be unfair to apply retroactively a rule that the contractors had no reason to know would be applied. However, for the most part that is not the case here. The statute has been in effect. The contractors have been aware of its terms. The Navy cannot abdicate its responsibility to enforce it. The major elements of the rule are clearly established from the plain meaning of the wording of the statute and the legislative history. They represent the only reasonable interpretation of the statute, and therefore will be applied retroactively. Contractors should have known that the statute would be applied in this way—and consequently there is no unfairness in doing so.

Several additional revisions, minor in nature, were made in response to comments or in clarification of the rule. Also, the rule has been renumbered in accordance with the requirements of the 1991 edition of DFARS.

C. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601, et seq.

D. Paperwork Reduction Act

This interim rule does not change any information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Parts 5243 and 5252

Contract modifications, Documentation requirements, Government procurement, Shipbuilding contracts, Solicitation provisions and Contract clauses.

Therefore, title 48 of the Code of Federal Regulations is amended as follows:

1. Part 5243 is added, to read as follows:

PART 5243—CONTRACT MODIFICATIONS

Subpart 5243.1 General

Sec. 5243.105 Availability of funds.
5243.105-90 Adjustments to prices under shipbuilding contracts.
5243.105-91 Definitions.
5243.105-92 Prohibited actions and procedures.
5243.105-93 Documentation and certification requirements.

5243.105-94 Solicitation provision and contract clause.
Events means the Government action(s), Government inaction(s), Government conduct, or occurrence(s) which give rise to the contractor's claim, request for equitable adjustment, or demand for payment. The term events does not require the incurrence of costs and/or performance of additional work resulting from the action(s), inaction(s), conduct or occurrence(s) except where a contractor's commencement of the correction of defective GFI (including Government-furnished drawings and specifications) constitutes the final occurrence. For the purpose of this subpart, the date of the final Government action, Government inaction, Government conduct or occurrence is the date on which the 18 month period commences. The final Government action, Government inaction, Government conduct or occurrence and the date thereof for specific categories of liability are as follows:

(1) Formal changes (including changes based on engineering change proposals (ECPs) and non-engineering change proposals (NECPs)). The final Government action for a formal written change is the contracting officer's authorization or direction to proceed. The date the final Government action occurs is the date of receipt by the contractor of the contracting officer's authorization or direction to proceed. If the contracting officer unilaterally establishes the price of a previously issued maximum-priced modification, the unilateral pricing action is the final Government action. In this latter case, the date the final Government action occurs is the date of receipt by the contractor of the contracting officer's unilateral price determination.

(2) Defective Government-furnished property. The final Government action is the direction from the contracting officer regarding correction, replacement or repair of the property or notification that the property is not defective. The date the final Government action occurs is the date of receipt by the contractor of the contracting officer's direction regarding corrective action or notification that the drawing is not defective. Commencement of correction is the performance of work which is inconsistent with or not required by the specifications and development of one or more potential solutions to correct such defect constitutes the commencement of correction. Commencement of correction is the performance of work which is inconsistent with the other than the identification of the defect and possible solutions. In this latter case, the date of the final occurrence is the date the contractor commences the correction, replacement or repair of the property.

(3) Defective Government-furnished specifications. The final Government action is the contracting officer's direction regarding corrective action or notification that the specifications are not defective. The date the final action occurs is the date of receipt by the contractor of the contracting officer's direction or notification. If a contractor proceeds to correct a deficiency in a specification without direction from the contracting officer regarding the correction, the final occurrence is the contractor's commencement of the correction. Commencement of correction is the performance of work which is inconsistent with or not required by the specifications other than the identification of the defect and possible solutions. In this latter case, the date of the final occurrence is the date the contractor commences the correction.

(4) Defective Government-furnished drawing. The final Government action is the contractor's receipt of a revised corrective drawing, if receipt constitutes authorization or direction to proceed, otherwise, it is the contracting officer's direction regarding corrective action or notification that the drawing is not defective. The date the final Government action occurs is the date of receipt by the contractor of the revised corrective drawing, if receipt constitutes authorization or direction to proceed, otherwise it is the date of receipt by the contractor of the contracting officer's direction regarding corrective action or notification that the drawing is not defective. Commencement of correction is the performance of work which is inconsistent with or not required by the specifications other than the identification of the defect and possible solutions. In this latter case, the date of the final occurrence is the date the contractor commences the correction.

(5) Late Government-furnished property and information (including Government furnished equipment, material, specifications, drawings and other information). The final Government action is the actual delivery of the Government-furnished property or information to the contractor, unless the contractor has previously received a notification from the contracting officer establishing a revised delivery date for the property or information, in which case such notification is the final Government action. The date the final Government action occurs is the date the contractor receives such property or information. For assertions of breach of contract, impossibility, impracticability, unconscionability, mistake, misrepresentation and superior knowledge. These theories do not always allow an objective definition of the final Government action.

(6) Constructive changes (other than those specifically addressed in other sections of this subpart). The final Government action, Government inaction, Government conduct or occurrence is the constructive authorization or direction to perform other than in accordance with the requirements of the contract. The date of the final Government action, Government inaction, Government conduct or occurrence is the date the contractor receives such constructive authorization or direction from an authorized Government representative.

(7) Breach of contract, impossibility, impracticability, unconscionability, mistake, misrepresentation and superior knowledge. For assertions of breach of contract, impossibility, impracticability or unconscionability, the date of the final occurrence is the date on which the contractor knew or should have known of the breach of contract, impossibility, impracticability or unconscionability. For assertions of mistake or misrepresentation, the date of the final occurrence is the date on which the contractor knew or should have known of the mistake or misrepresentation. For assertions of
superior knowledge, the date of the final occurrence is the earlier of the date on which the contractor knew or should have known of the superior knowledge or the date on which the contractor knew or should have known of the information that was not disclosed.

_knew or should have known_ includes the totality of the combined actual and constructive knowledge of all agents or employees (including a subcontractor, its agents and employees, where and to the extent a subcontractor is involved).

**Price adjustment** means an increase in the fixed price, target price, ceiling price, or final price of a fixed price type contract, or an increase in the fee structure of a cost reimbursement type contract, or monetary damages or other payment resulting from a contractor claim, request for equitable adjustment, or demand for payment. An adjustment to the sharing ratio or to any other pricing formula, procedure or provision, which has the effect of increasing the fixed price, target price, ceiling price, final price, or fee of the contract, is a price adjustment. A schedule adjustment, whether requested as part of a submission seeking a price adjustment or as the sole relief, or an adjustment for any matter which, pursuant to the terms of the contract is separate from or not included in the fixed price, target price, ceiling price or final price of a fixed price contract or the fee structure of a cost reimbursement contract, is not a price adjustment. The bilateral definitization of a maximum-price modification within the maximum price is not a price adjustment. A routine invoice or other request for payment or reimbursement in accordance with the terms of the contract, even if in dispute, which, if paid, would not result in an increase in the price of the contract is not a price adjustment. For the purpose of this subpart, relief granted pursuant to a request for extraordinary contractual relief under Public Law 85-604 does not constitute a price adjustment.

**Request for equitable adjustment** means a written request for a price adjustment under the contract.

**Shipboard means** a contract which provides for the construction of a ship which is of a type that is designated as a ship. (If the Navy is entering into a contract on behalf of another department, agency or activity of the federal Government, and such department, agency or activity involved designates the item being constructed as a ship, the contract is a shipbuilding contract.) A contract which includes items in addition to the construction of a ship is a shipbuilding contract. A contract for the conversion, reactivation, overhaul, or repair of a ship is not a shipbuilding contract. A contract for the acquisition of any type of vessel which type is not designated as a ship is not a shipbuilding contract.

5243.105-92 **Prohibited actions and procedures.**

(a) This subpart does not preclude: (1) Bilateral modifications which are fully priced or maximum-priced prior to the contractor being authorized or directed to proceed by the contracting officer, (2) any pricing action which is either fully priced or maximum-priced, based on events which occurred less than 18 months prior to the execution of the bilateral modification incorporating the pricing action, or (3) the bilateral definitization of a maximum price within the maximum price established through an action identified in paragraph (a) (1) or (2) of this section.

(b) Contracting officers may not adjust any price under a shipbuilding contract entered into after December 7, 1983, for an amount set forth in a claim, request for equitable adjustment, or demand for payment arising out of events occurring more than 18 months before the submission of a claim, request, or demand accompanied by adequate supporting data and, if the matter is over $50,000, the certification required by section 6(c)(1) of the Contract Disputes Act.

(c) In reviewing a claim, request for equitable adjustment, or demand for payment to determine whether the claim, request or demand, or any part thereof, is subject to the prohibition set forth in paragraph (b) of this section, contracting officers shall consider the theory upon which the contractor relies, the terms of the contract, and all pertinent Government action(s), Government inaction(s), Government conduct and occurrence(s). Claims, requests or demands arising out of different events included in a single claim, request, or demand shall be reviewed based on the events appropriate to each individual claim, request or demand and a determination of the application of the prohibition set forth in paragraph (b) of this section shall be made for each such claim, request or demand.

5243.105-93 **Documentation and certification requirements.**

(a) For the purpose of this subpart, a claim, request for equitable adjustment, or demand for payment is not submitted until the contractor has furnished to the contracting officer adequate supporting data and, if the matter is over $50,000, the certification required by section 6(c)(1) of the Contract Disputes Act. If either the supporting data or the certification, if required, is deficient, the claim, request, or demand shall not be considered to be submitted until any such deficiency is corrected.

(b) Adequate supporting data. (1) The contractor has the burden and obligation to provide adequate supporting data to the contracting officer. Supporting data for a claim, request for equitable adjustment, or demand for payment is necessary not only to satisfy the statutory requirement but also to apprise the contracting officer of the underlying facts and the theory upon which the contractor relies in support of its entitlement to a price adjustment. To be considered adequate, a claim, request or demand must be accompanied by supporting data which fulfills these purposes in accordance with the requirements of the Contract Disputes Act. A submission containing the following information will be deemed to have been submitted with adequate supporting data:

(i) A narrative statement of the nature of the event(s), the time when the event(s) occurred (including the factual basis supporting the contractor's designation of the time the event(s) occurred), and the causal relationship between the event(s) and the impact on the cost of performance of the contract, including a description of how the event(s) affected scheduled performance;

(ii) A description of the relevant effort the contractor was required to perform in the absence of the event(s);

(iii) A description of the relevant effort the contractor was actually required or will be required to perform;

(iv) A description of components, equipment, and other property involved;

(v) A cost breakdown of the additional effort by element in accordance with the contractor's normal procedures for pricing of changes;

(vi) A description of all property which will no longer be needed by the contractor;

(vii) A description of any delay caused by the event(s);

(viii) A description of any disruption caused by the event(s).

(2) If any submission does not contain the data listed above, the submission shall be reviewed to determine if the data submitted is adequate to meet the requirements of the Contract Disputes Act. The contractor shall be notified of the nature of any deficiency in the supporting data which results in a determination that the submission is not adequate.

(c) Certification. (1) A claim, request for equitable adjustment, or demand for
payment in excess of $50,000 must be certified in accordance with the requirements of section 6(c)(1) of the Contract Disputes Act. (See FAR 33.207.) If any submission does not contain a proper certification, the contractor shall be informed of any deficiency in the certification.

[2] A claim, request for equitable adjustment, or demand for payment certified in accordance with DFARS 233.7000(a) shall be considered to meet the certification requirements set forth in (c)(1) of this section.

(d) Once a claim, request for equitable adjustment, or demand for payment has been properly certified and accompanied by adequate supporting data, the date of proper certification and submission of adequate supporting data shall be operative for purposes of this subpart, even if additional certification(s) or data submission(s) is required of, or provided by, the contractor supplementing the original submission or revising the amount requested or theory of recovery, unless the additional certification or data submission is required or provided because the contractor has submitted a new or essentially new claim, request, or demand based on different events.

5243.105-94 Solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at 5252.243-9000, Notification of Applicability of 10 U.S.C. 2405, in all solicitations for shipbuilding contracts.

(b) The contracting officer shall insert the clause at 5252.243-9001, Requirements for Adequate Supporting Data and Certification of Any Claim, Request for Equitable Adjustment, or Demand for Payment in all shipbuilding solicitations and shipbuilding contracts.

PART 5252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for part 5252 is revised to read as follows:


2. New §§ 5252.243-9000 and 5252.243-9001 are added, to read as follows:


As prescribed at 5243.105-94(a), insert the following provision:

Notification of Applicability of 10 U.S.C. 2405 (Nov 1991)

The contract which will result from an award made pursuant to this solicitation is a shipbuilding contract, and, therefore, any claim, request for equitable adjustment, or demand for payment submitted by the contractor seeking a price adjustment under this contract is subject to 10 U.S.C. 2405.

(d) Certification of the claim, request for equitable adjustment, or demand for payment is required if the requested price adjustment is over $50,000. The certification requirements are those set forth in the CDA and implementing regulations.

(e) For the purpose of this clause, the following terms have the meanings set forth below:

(1) Claim means a written demand or written assertion by the contractor seeking, as a matter of right, a price adjustment under the contract. The term includes any claim the contractor seeks the price adjustment does not determine whether a particular matter is a claim. The term includes a submission asserting any theory supporting a price adjustment, including but not limited to constructive change, breach of contract, or mistake, which, if valid, would result in contractor entitlement to a price adjustment. A voucher, invoice or other routine request for payment that is not in dispute when submitted is not a claim. A claim does not include a request for equitable adjustment or demand for payment, as defined below.

(2) Demand for payment means a written demand for payment, the granting of which results in a price adjustment under the contract. A demand for payment does not include a routine request for payment in accordance with the payment terms of the contract.

(3) Events means the Government action(s). Government inaction(s), Government conduct, or occurrence(s) which give rise to the contractor’s claim, request for equitable adjustment, or demand for payment. The term applies even if the event occurs more than 18 months before the submission of the claim, request or demand.

(4) Knew or should have known includes the totality of the combined actual and constructive knowledge of all agents or employees (including a subcontractor, its agents and employees, where and to the extent a subcontractor is involved).

(5) Price adjustment means an increase in the fixed price, target price, ceiling price, or final price of a fixed price type contract, or an increase in the fee structure of a cost reimbursement type contract, or monetary damages or other payment resulting from a contractor claim, request for equitable adjustment, or demand for payment. The term includes, but is not limited to, an adjustment to the sharing ratio or to any other pricing formula, procedure or provision, which has the effect of increasing the fixed price, target price, ceiling price, final price, or fee of the contract, is a price adjustment. A schedule adjustment, whether requested as part of a submission seeking a price adjustment or as the sole relief, or an adjustment for any matter which, pursuant to the terms of the contract is separate from or not included in the fixed price, target price, ceiling price or final price of a fixed price contract, is a price adjustment.

Cite to Federal Register

Federal Register / Vol. 56, No. 234 / Thursday, December 5, 1991 / Rules and Regulations 63875
contract or the fee structure of a cost reimbursement contract, is not a price adjustment. The bilateral definition of a maximum-price modification within the maximum price is not a price adjustment. A routine invoice or other request for payment or reimbursement in accordance with the terms of the contract, even if in dispute, which, if paid, would not result in an increase in the price of the contract is not a price adjustment. For the purpose of this subpart, relief granted pursuant to a request for extraordinary contractual relief under Public Law 85-804 does not constitute a price adjustment.

(6) Request for equitable adjustment means a written request for a price adjustment under the contract.

(End of Clause).

Wayne T. Baudino, LT, JAGC, USNR,
Alternate Federal Register Liaison Officer.
[FR Doc. 91-28927 Filed 12-4-91; 8:45 am]
BILLING CODE 3810-AE-M

DEPARTMENT OF TRANSPORTATION
National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 87-02; Notice 4]

RIN 2127-AD43

Federal Motor Vehicle Safety Standards; Seat Belt Assembly Anchorages

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

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: In April 1990, this agency published a final rule making several amendments to the safety standard regulating seat belt assembly anchorages. NHTSA received 7 petitions for reconsideration of this rule. In response to these petitions, the agency is making several changes to the final rule published in April 1990. Specifically, this rule:

1. Excludes the attachment hardware for automatic belts and for those dynamically tested manual belts that are the only restraint at a seating position from the Standard No. 210 strength test;
2. Modifies the regulatory language to specify that the geometry of the webbing is to be duplicated “at the initiation of the test.”
3. Extends the effective date of the increased lap belt minimum angle requirement one year for rear seats;
4. Removes all redundant anchorage requirements;
5. Amends the simultaneous testing requirement; and
6. Substitutes the term “hip point” for the term “seating reference point” in the definition of “outboard designated seating position”.

DATES: The amendments made in this rule are effective September 1, 1992.

Any petitions for reconsideration of this rule must be received by NHTSA no later than January 6, 1992.

ADDRESSES: Any petitions for reconsideration should refer to the document and notice number of this notice and be submitted to: Docket Section, room 4007, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. (Docket Room hours are 9:30 a.m.–4 p.m., Monday through Friday)


SUPPLEMENTARY INFORMATION:

Background

On April 30, 1990 (55 FR 17970), NHTSA published a final rule amending Standard No. 210, Seat Belt Assembly Anchorages (49 CFR 571.210). The rule made several amendments to the safety standard, specifically:

1. Increasing the minimum lap belt angle to reduce the likelihood of occupant submarining in a crash;
2. Excluding front outboard designated seating positions equipped with automatic safety belts from the requirement that those positions also be equipped with anchorages for manual shoulder belts;
3. Permitting the optional use of some new test equipment for compliance testing to make the compliance tests simpler and less costly to perform; and
4. Removing some ambiguities in the current compliance testing procedures so that all parties would know precisely how compliance testing will be conducted by the agency.

The agency received 7 petitions for reconsideration of this rule. This notice responds to those petitions. In addition, General Motors' (GM) petition included five requests for interpretation of the final rule which will also be discussed in this notice.

Petition Issues

I. Attachment Hardware Definition and Testing

A. Exclude Attachment Hardware

The final rule extended the applicability of Standard No. 210 to the attachment hardware of a safety belt system. Navistar International Transportation Corporation (Navistar), Ford Motor Company (Ford), and the Motor Vehicle Manufacturers Association of the United States Incorporated (MVMA) submitted petitions opposing this amendment. All three petitioners stated that this amendment was unnecessary because Standard No. 208, Seat Belt Assemblies, already specifies performance requirements for the strength of attachment hardware. All three petitioners argued that the Standard No. 208 dynamic test and the Standard No. 209 static test are reasonable and sufficient tests, by themselves, to test the performance of the attachment hardware of safety belt systems. In addition, MVMA argued that the inclusion of attachment hardware in Standard No. 201 was in conflict with Standard No. 208, Occupant Crash Protection. Section 575.3.4 of Standard No. 208 excludes automatic safety belt systems, including the attachment hardware, from the performance requirements of Standard No. 209. Thus, MVMA argued that the amendment to Standard No. 210 effectively reinstated a static test performance requirement for the attachment hardware of an automatic safety belt system.

After the April 30, 1991 final rule, the attachment hardware for different belt systems were subject to different testing requirements. The attachment hardware for automatic belts that were tested during the Standard No. 208 crash test, were excluded from Standard No. 209's static tests, but were subject to Standard No. 210's static tests. The attachment hardware for dynamically tested manual belts were tested during the Standard No. 208 crash test and the Standard No. 209 and 210 static tests. The attachment hardware for other manual belts were not crash tested under Standard No. 208, but were subject to the static tests of Standards No. 209 and 210.

On April 18, 1991, NHTSA published a final rule making the requirements of Standard No. 209 identical for automatic belts and those dynamically tested manual belts that are the only occupant restraint at a seating position (56 FR 18235). As a result of this rulemaking action, the attachment hardware for both automatic and dynamically tested manual belts are now excluded from Standard No. 209's static tests. The agency explained that Standard No. 209's static test procedures were a surrogate for Standard No. 208's crash test and that the surrogate was unnecessary for attachment hardware that have been crash tested. NHTSA has determined that this reasoning is equally
persuasive for attachment hardware under the Standard No. 210 static tests. Therefore, this rule excludes the attachment hardware for seat belt assemblies that meet the frontal crash protection requirements of S4.1 of Standard No. 208. It should be noted, as explained in the April 16, 1991 notice, the agency does not consider a manual belt installed at a seating position that is also equipped with an air bag to be dynamically tested, and, therefore, the attachment hardware for these belts would be subjected to the Standard No. 210 strength tests.

The requirement to test attachment hardware under Standard No. 210 is not redundant or unnecessary for manual safety belt systems that are not dynamically tested. Attachment hardware is an integral part of the transfer of safety belt loads to the vehicle structure. The strength conditions in Standard No. 210 are intended to subject the vehicle to anchorage to force levels that are sufficiently high than one can be reasonably certain that the safety belt will remain attached to the vehicle structure, even when exposed to severe crash conditions. If the attachment hardware were not subjected to those same force levels, during the Standard No. 210 test, the test would be less useful. A belted occupant will not be well protected in a crash if the attachment hardware breaks, but the rest of the anchorage withstands the crash loading. To minimize the chances of the attachment hardware breaking during a crash, the agency is not rescinding the requirement to test attachment hardware for non-dynamically tested safety belts.

In addition, the agency continues to believe that the attachment hardware originally installed at a seating position should be used during Standard No. 210 compliance tests for the anchorage for all safety belt systems, including those whose attachment hardware is excluded from the requirements of S4.1.1 and S4.1.2, in order to ensure that the load application onto the anchorage is as realistic as possible. The agency has considered conducting the compliance tests using replacement fixtures which duplicate the geometry. However, the agency is concerned that developing a fixture which would accurately simulate every attachment would be very difficult. The agency cannot justify devoting the time necessary to solve this difficult problem, because such a fixture would be less representative of the particular attachment hardware in the vehicle being tested. However, for safety belts excluded from the compliance test “duplicates the geometry” of the original equipment webbing. Specifically, they stated that the agency has provided no clarification regarding what geometry a manufacturer is to simulate for compliance testing. Therefore, GM concludes, the manufacturer must either test with the seat belt assembly installed as original equipment or risk that its own interpretation of “duplicate the geometry” will agree with NHTSA’s interpretation should a question of Standard No. 210 compliance arise.

The agency continues to believe that the phrase “duplicate the geometry” is necessary for the enforcement of this standard. The phrase simply means that the direction of loading and the orientation of the attachment hardware should be the same as it would be for the original equipment webbing. The phrase was included in conjunction with the use of substitute webbing material to protect vehicle manufacturers from the agency identifying apparent noncompliance cases based upon test conditions with unrealistic loading. However, as evidenced by GM’s petition for reconsideration stated that the final rule did not establish an objective test procedure for testing attachment hardware. Some of the issues that Ford indicated needed to be resolved include: adjusted position of adjustable attachment hardware for D-rings and automatic belts, status of adjustment mechanisms, amount of webbing on the retractor spools, retractor locking mechanism status, door latch and lock status, and convertible top and movable window status. As explained below, the agency does not further clarification of these issues is necessary, and therefore, denies these aspects of these petitions.

As a general matter, when a standard does not specify a particular test condition, there is a presumption that the requirements of the standard must be met at all such test conditions. This presumption that the standard must be met at all positions of unspecified test conditions may be rebutted if the language of the standard as a whole or its purposes indicate an intention to limit unspecified test conditions to a particular condition or conditions.

In the case of the strength requirements in Standard No. 210, nothing in the language of the standard suggests that the strength requirements were only to be measured with the safety belt or other vehicle features at certain adjustment positions. Indeed, the purpose of the standard is to reduce the likelihood that an anchorage will fail in a crash. To serve this purpose, the anchorage must be capable of meeting the strength requirements with the safety belt and other vehicle features at any adjustment, since those features could be at any adjustment position during a crash.

C. Rescind the Requirement to "Duplicate the Geometry"

In the final rule, Standard No. 210 was amended to require that the test setup “duplicate the geometry” of the original equipment webbing at that seating position. In its petition for reconsideration, GM requested that the agency reconsider this test requirement. GM stated that the agency has not provided any information regarding the connection of the cables, chains or webbing to the attachment hardware to allow vehicle manufacturers to determine objectively that their

II. Lap Belt Minimum Angle

A. Reduce Lap Belt Angle Back to 20 Degrees

In the final rule, based on test data that showed that the occurrence of occupant submarining is diminished as the lap belt angle is increased, the agency increased the minimum lap belt angle from 20 degrees to 30 degrees above the horizontal, measured from the seating reference point (SrRP) to either the anchorage or the point where the safety belt contacts the seat frame. In its petition for reconsideration, GM requested that the agency rescind this change. While agreeing with the agency that increasing the lap belt angle will decrease the possibility of submarining, GM argued that increasing the lap belt angle from 20 to 30 degrees cannot be objectively quantified as an enhancement of motor vehicle safety. In its petition for reconsideration, Jaguar Cars, Incorporated (Jaguar) also asked the agency to reconsider this amendment and reduce the rear lap belt angle back to 20 degrees to harmonize
implement the necessary design changes to anchorages persuasive. To allow for implementation. GM asserted that, on the grounds that more time is needed for implementation. GM asserted that, although some seat belt anchorages may be moved with minimal vehicle modification, other anchorages cannot be relocated without first addressing the overall performance of the seat/restraint system at that location. GM also stated that the increased lap belt angle requirement would significantly affect rear seating positions in several GM vehicles and provided a list of 9 body component changes and assembly component changes affected by this amendment. GM did not suggest a possible date that this requirement should be effective.

Jaguar stated that a one-year extension to September 1, 1993 was necessary to meet the new requirements, including design and development, compliance testing, and introduction into production. Like GM, Jaguar stated that relocation of the safety belt anchorages in the rear seats would involve the hardest and most time-intensive design changes. The agency recognized that the final rule would require relocation of the safety belt anchorages, and for this reason provided two and one-half years lead time to implement these changes. However, the agency finds GM's and Jaguar's explanation of the special difficulties in relocation of the rear seat anchorages persuasive. To allow manufacturers sufficient time to implement the necessary design changes from the anchorage location requirements in Standard No. 210. Thus, the anchorages to which automatic or dynamically tested manual safety belts originally installed in a vehicle are attached are not required to comply with the location requirements of Standard No. 210.

However, if the anchorages for any automatic or dynamically tested manual safety belts originally installed at a front outboard seating position in a passenger car do not comply with the location requirements of Standard No. 210, the standard provided (prior to the April 30, 1990 final rule) that anchorages for a manual lap/shoulder belt that comply with the anchorage location requirements must also be installed at that seating position. This redundant anchorage requirement was partially rescinded by the final rule by the addition of section S4.1.3(b) which stated that redundant upper anchorages for manual safety belts were not required in the front outboard seats of passenger cars equipped with dynamically tested or automatic safety belts.

On November 23, 1987, the agency amended Standard No. 208 to require dynamic testing of manual lap/shoulder belts installed in the front outboard seating positions of trucks and multipurpose passenger vehicles with a gross vehicle weight rating (GVWR) of 8,500 pounds or less [LTV's] manufactured on or after September 1, 1991. On March 12, 1996, the agency excluded the anchorages for dynamically tested manual belts from the anchorage location requirements in Standard No. 210. If the anchorages do not comply with the location requirements additional anchorages which do comply with the location requirements must be installed in these vehicles.

Volkswagen of America, Incorporated's [Volkswagen] and MVMA's petitions for reconsideration requested that the agency extend the deletion of redundant upper anchorages to all vehicles equipped with dynamically tested or automatic safety belts. In addition, Volkswagen noted that S4.1.2 of Standard No. 210 still requires a redundant or unused (for manufacturers who have chosen to comply with Standard No. 208 using a shoulder belt and a knee bolster) Type 1 safety belt anchorage.

The notice of proposed rulemaking [NPRM] for this rulemaking requested
Thomas Built Buses, Incorporated

because they have never observed an pound requirement for each belt's requirement on either 2,500 pounds per would not be practicable to design Type 2 safety belt anchorage at the right comments to the NPRM. The agency another manufacturer of testing indicates low crash test loads. The agency disagrees with this assertion. The highest load any floor would be subject to during testing would be 15,000 pounds. This would be during the anchorage test for a 3-passenger bench seat. Thomas' assertion appears to be based on an incorrect interpretation that the standard requires simultaneous testing of the entire row, i.e., two laterally adjacent 3-passenger bench seats.

Second, the agency has seen evidence from two manufacturers of small school buses, Lewis Manufacturing and Blue Bird, that the floors on two different makes of small school buses can comply with the 15,000-pound load on existing flooring, with only minor reinforcement of the bolt holes. The floor structure itself, even when not the original flooring from the first stage manufacturer, did not have to be reinforced.

Finally, the agency would like to emphasize that, during an actual crash, the floor will be subject to loads at least this high, if not higher, due to the loading of all safety belts and seat backs. In the absence of a dynamic test, the agency feels that the 5,000-pound requirement is warranted. The agency is not convinced by Thomas' assertions of no known failures or upon measures of low crash test loads on individual safety belts.

VI. Simultaneous Testing

Prior to the final rule, Standard No. 210 required all floor-mounted anchorages for adjacent designated seating positions to be tested simultaneously for anchorage strength. ECE Regulation No. 14 requires all anchorages common to a single seat assembly, whether floor-mounted or mounted on a seat frame, to be tested simultaneously. In the NPRM, the agency proposed:

Except for seat belt anchorages common to forward-facing and rearward-facing seats, all floor-mounted and seat-mounted seat belt anchorages for a set of laterally adjacent designated seating positions shall be tested by simultaneously loading * * *

The agency was attempting to clarify the existing requirement. The agency was concerned that the term "adjacent" in the existing regulation was imprecise and could be misinterpreted as specifying simultaneous testing for front and rear outboard seating positions on the same side of a vehicle, or for bucket seats in the front separated by a console or some other structure. In addition, the agency was proposing to extend the simultaneous testing requirement to seat-mounted seat belt anchorages.

In the final rule, the reference to "adjacent designated seating positions" was deleted and a requirement for simultaneous testing of all designated seating positions that face in the same direction and are common to the same occupant seat was substituted. Thus, the final rule deleted the requirement to test adjacent bucket seats.

Ford petitioned the agency to reconsider this final rule for bucket seats. It pointed out that the amendment of S4.24 would specify non-simultaneous loading of anchorages for three separate but immediately adjacent bucket seats, even if those seats used common floor-mounted anchorages and/or common attachment hardware. Ford stated that these seating arrangements are becoming more common in multipurpose passenger vehicles, and that S4.24 is inadequate to meet the need for motor vehicle safety for vehicles using such a seat design.

The agency agrees with Ford that the anchorages for such seating arrangements should be simultaneously tested. The intent of S4.24 is to require simultaneous testing for safety belt anchorages that are likely to significantly affect the strength of each other. During this rulemaking, the agency expressly considered the bucket seats in the front of passenger vehicles. These seats are usually separated by either the transmission tunnel or an instrument console and, therefore, are unlikely to significantly affect each other. The agency also expressly considered the extremely high test loads that might be required for the floors of small school buses if an entire row had to be tested simultaneously. The agency did not see a need to test two bench seats in a small school bus simultaneously as these are separated by an aisle and are, therefore, unlikely to significantly affect each other.

The agency did not explicitly consider seating positions that are not on the same seat, but are not separated by an aisle, transmission tunnel, or the like. Examples of these types of seats would include the split bench seats in the front seats of passenger vehicles and the adjacent bucket seats in the rear of vans and multipurpose passenger vehicles.

Therefore, the agency is amending S4.24 to require simultaneous testing of anchorages for designated seating positions which are either common to the same occupant seat or, although not
common to the same occupant seat, are laterally adjacent and have anchorages that are within 12 inches of each other. The agency believes the 12 inch measurement is a practical means of identifying anchorages whose position is likely to significantly affect the performance of other anchorages. The agency believes that front bucket seats are not likely to be affected by this requirement because they are separated by a transmission tunnel or console and therefore the distance between the anchorages usually exceeds 12 inches. Similarly, laterally adjacent bench seats in a small school bus would be unaffected as the anchorages are mounted on the seat and the aisle is required to be at least 12 inches.

**VII. Upper Anchorage Zone**

In the final rule, the agency redefined the method for locating the upper anchorage zone. Specifically, the point of reference was redefined as the H-point rather than the SgRP. In its petition, Ford stated its belief "that the only anchorages affected by this amendment are those in front seats of trucks and MPVs with either a GVWR of more than 5500 pounds or not greater than 10,000 pounds or with an unloaded vehicle weight greater than 5500 pounds and an GVWR of 10,000 pounds or less, as well as convertible trucks, walk-in vans, Postal Service vehicles, motor homes, etc." Ford requested that the agency rescind this amendment because "Ford believes that it was not the agency's intent to apply new anchorage location requirements solely to this low volume, complex, and diverse group of vehicles."

The agency believes that Ford's request is based upon two misconceptions. First, the agency does not perceive the redefinition as having changed the location requirements. Prior to the final rule, § 5.2 of Standard No. 210 stated that the seat must be in the rearmost position with the template's "H" point at the SgRP. The agency has always interpreted this to require the template to be positioned fully rearward in the seat. While the SgRP is usually located with the seat in its rearmost position, the agency substituted a requirement that the template's "H" point be located at the design "H" point of the seat, rather than at the SgRP because of confusion which arose when the SgRP is not the rearmost position as required by the standard, for example, if the seat has "extended travel."

Therefore, while the names changed, the positions of the seat and the template for determining compliance with the anchorage location requirements did not change.

Second, Ford apparently overlooked the rear seats in automobiles, light trucks and MPVs that still must comply with the upper anchorage zone requirement. § 4.3 of Standard No. 210 states that all anchorages for automatic seat belt assemblies and for dynamically tested seat belt assemblies that meet the frontal crash protection requirements of § 5.1 of Standard No. 208 are excluded from the location requirements of Standard No. 210. Notwithstanding this exclusion, anchorages at each of the following outboard seats must comply with the upper anchorage location requirements:

- The seats behind the first row of seats on automobiles, MPVs and light trucks
- Trucks with a GVWR above 8,500 pounds but under 10,000 pounds
- Trucks with an unloaded weight above 5,500 pounds but a GVWR under 10,000 pounds
- Convertibles, open-body type vehicles, walk-in van-type trucks, motor homes, vehicles designed to be exclusively sold to the U.S. Postal Service, and vehicles carrying chassis-mounted campers.

Ford did not provide any data to show that there was no degradation of safety when upper anchorages of non-dynamically tested safety belts are allowed to be placed outside the specified zone. The agency has clearly stated its concern with permitting anchorages forward of the occupant. See, 55 FR 17970, 17975; April 30, 1990. Since the agency believes that there would be a negative safety effect as a result of deleting this upper anchorage zone requirement, Ford's petition is denied.

**VIII. Technical Errors**

In its petition for rulemaking, Ford pointed out three errors in the final rule. First, Ford noted that, in § 5.2, the reference to the upper body block, and references to the published Figure 3 were omitted. Second, Ford noted that the onset rate and test time is repeated in § 5.2. These errors were corrected in a June 15, 1990 technical amendment (55 FR 24240).

Third, Ford pointed out that the definition of "outboard designated seating position" at 49 CFR 571.3 references the SgRP and the shoulder reference point "as shown in Figure 1 of Standard No. 210." However, SgRP is no longer shown in Figure 1. In the final rule, Figure 1, used to locate the upper anchorage zone, was amended to substitute the Hip-Point (H-Point) with the seat in its full rearward and full downward position for the SgRP. According to Ford, this substitution also changed the location of the shoulder reference point in Figure 1.

The agency contacted Ford to determine what change it saw in the location of the shoulder reference point. Ford stated that by substituting the H-point for the SgRP, both the hips and the shoulders of the template were moved back in movable seats, to the rearmost position. In a Ford vehicle, this would typically be about one inch backwards and one-tenth of an inch down.

As discussed previously, the agency does not agree with the Ford's belief that this new Figure 1 changed the position of the template rearward. However, the agency agrees it is appropriate to substitute the term H-point for SgRP in the definition of "outboard designated seating position" in § 571.3.

Finally, in reviewing the Ford petition, the agency discovered an inadvertent error in § 5.2. The end of the second sentence currently reads, "with an initial force application angle of not less than 5 degrees more than 15 degrees above the horizontal." The sentence should have included the word "nor", as follows: "with an initial force application of not less than 5 degrees nor more than 15 degrees above the horizontal."

**Requests for Interpretation**

1. Which seats must comply with the 5,000 pound test and which must comply with the 3,000 pound test?

At the outset, the test requirement for the safety belt anchorages at any seat is either 5,000 pounds or 6,000 pounds. A technical error in the final rule deleted mention of the upper shoulder restraint body block, creating the impression of a 3,000 pound test. This error was corrected in the June 15, 1990 technical amendment. Thus, there is a 3,000 pound test load on the pelvic body block, and a 5,000 pound test load on the upper torso body block.

The final rule specifies which load shall be applied in § 4.2.1 and § 4.2.2. § 4.2.1 requires a minimum load of 5,000 pounds on the pelvic body block for the anchorages for seating positions which may not have a shoulder belt, or for seating positions whose shoulder belt anchorages are not required to be tested. This includes the anchorages for:

- (1) a Type 1 safety belt,
- (2) a shoulder belt which is not required by Standard No. 208 ("a voluntarily installed" shoulder belt) and therefore is not subject to Standard No. 210, and
- (3) a detachable shoulder belt (permitted for automatic belts under § 4.5.3.2 of Standard No. 208). For other anchorages,
S4.2.2 requires a test load of 3,000 pounds on the lap belt body block and 3,000 pounds on the shoulder belt body block.

II. Clarification of the definition of attachment hardware

GM requested an interpretation of the term "attachment hardware" for Standard No. 210. Specifically, GM was concerned with certain Type 2 seat belt assembly designs that incorporate a buckle and latchplate near the seat belt anchorage. GM stated that, although these designs meet the requirements of Standard No. 208, it is unclear whether they would be considered "attachment hardware" and therefore subject to the performance requirements of Standard No. 210. Elsewhere in today's edition of the Federal Register, the agency has published a final rule amending the definition of "seat belt anchorage." In that final rule, the agency stated that the definition did not include the webbing, straps or similar device, or the buckles which comprise the seat belt itself.

III. What is the meaning of "duplicate the geometry"?

For an explanation of this term, see section IC of the discussion on petition issues.

IV. Define "voluntarily installed."

The agency considers a "voluntarily installed" seat belt system to be a system which is neither required by Standard No. 208 nor necessary to pass the dynamic test in Standard No. 208. Requests for interpretation regarding specific safety belt systems should be directed to the Office of Chief Counsel, NHTSA, 490 Seventh Street SW, Washington, DC 20590.

V. Is a manual 3-point belt installed at a seating position equipped with a supplemental inflatable restraint (SIR) system regarded as a dynamically tested belt?

As discussed in the recent rulemaking to exclude dynamically tested safety belts from static testing requirements, the agency does not consider a manual 3-point belt installed at a seating position equipped with an SIR system to be a dynamically tested belt. See 56 FR 15295, 15297; April 16, 1991. However, since a March 14, 1988 interpretation letter to Mr. Karl-Heinz Faber of Mercedes Benz, the agency has considered a manual 3-point belt installed at a seating position equipped with an SIR system to be exempt from the location requirements of Standard No. 210. Because of the confusion associated with the phrase "dynamically tested," the agency is amending S4.3 to clarify, consistent with agency interpretation of this section, that the anchorages for all seat belt assemblies that meet the frontal crash protection requirements of S5.1 of Standard No. 208 are exempt from the location requirements.

In reviewing this request for interpretation, the agency noted that the final sentence of the introductory text in S4.3 exempts anchorages for the upper torso portion of a Type 2 seat belt assembly installed at a forward facing rear outboard seating position of a passenger car manufactured on or after December 11, 1989, and before September 1, 1990, from the requirements of S4.3.2. Since this exemption no longer has any substantive effect, this sentence has been deleted.

List of Subjects in 49 CFR Part 571
Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

PART 571—[AMENDED]

1. The authority citation for part 571 continues to read as follows:

§ 571.3 [Amended]
2. Section 571.3 is amended by revising the definition of "outboard designated seating position" in paragraph (b), to read as follows:
(b) Other definitions.

"Outboard designated seating position means a designated seating position where a longitudinal vertical plane tangent to the outboard side of the seat cushion is less than 12 inches from the innermost point on the inside surface of the vehicle at a height between the design H-point and the shoulder reference point (as shown in fig. 1 of Federal Motor Vehicle Safety Standard No. 210) and longitudinally between the front and rear edges of the seat cushion."

§ 571.210 [Amended]
3. S4.1.3 of Standard No. 210 is revised to read as follows:
S4.1 Type.
S4.1.3 (a)
S4.1.2 of this standard that seat belt anchorages for a Type 1 or a Type 2 seat belt assembly shall be installed for certain designated seating positions does not apply to any such seating positions that are equipped with a seat belt assembly that meets the frontal crash protection requirements of S5.1 of Standard No. 208 (49 CFR 571.208).

S4.2.2 of Standard No. 210 as published April 30, 1990 (55 FR 17970) effective Sept. 1, 1992, is amended by adding S4.2.2.1 and revising S4.2.2.2 and S4.2.4 to read as follows:
S4.2.2 Strength.
S4.2.2.1 Except as provided in S4.2.5, and except for side-facing seats, the anchorages, attachment hardware, and attachment bolts for all of the following seat belt assemblies shall withstand a 5,000-pound force when tested in accordance with S5.1 of this standard:
(a) Type 1 seat belt assembly;
(b) Lap belt portion of either a Type 2 or automatic seat belt assembly, if such seat belt assembly is voluntarily installed at a seating position; and
(c) Lap belt portion of either a Type 2 or automatic seat belt assembly, if such seat belt assembly is equipped with a detachable upper torso belt.

S4.2.2.2 Except as provided in S4.2.5, the anchorages, attachment hardware, and attachment bolts for all Type 2 and automatic seat belt assemblies that are installed to comply with Standard No. 208 (49 CFR 571.208) shall withstand 3,000-pound forces when tested in accordance with S5.2.

S4.2.4 Anchorages, attachment hardware, and attachment bolts shall be tested by simultaneously loading them in accordance with the applicable procedures set forth in S6 of this standard if the anchorages are either:
(a) for designated seating positions that are common to the same occupant seat and that face in the same direction.
(b) for laterally adjacent designated seating positions that are not common to the same occupant seat, but that face in the same direction, if the vertical centerline of the bolt hole for at least the one of the anchorages for one of those designated seating positions is within 12 inches of the vertical centerline of the bolt hole for an anchorage for one of the adjacent seating positions.

S4.2.5 The attachment hardware of a seat belt assembly, which is subject to the requirements of S5.1 of Standard No. 208 (49 CFR 571.208) by virtue of any provision of Standard No. 208 other than S4.1.2.1(c)(2) of that standard, does not have to meet the requirements of S4.2.1 and S4.2.2 of this standard.

S4.3.3 of Standard No. 210 is amended by revising the introductory
text of S4.3 and by adding a new section S4.3.1.5, to read as follows:

**S4.3 Location.** As used in this section, "forward" means the direction in which the seat faces, and other directional references are to be interpreted accordingly. Anchorages for seat belt assemblies that meet the frontal crash protection requirements of S8.1 of Standard No. 208 [49 CFR 571.208] are exempt from the location requirements of this section.

---

[S4.3.1.5 Notwithstanding the provisions of S4.3.1.1 through S4.3.1.4, the lap belt angle for seats behind the front row of seats shall be between 20 degrees and 75 degrees for vehicles manufactured between September 1, 1990 and September 1, 1992.]

---

6. S9 through S.5.2 of Standard No. 210 as published April 30, 1990 (55 FR 17970) effective September 1, 1992, is revised to read as follows:

**S9 Test procedures.** Each vehicle shall meet the requirements of S4.2 of this standard when tested according to the following procedures. Where a range of values is specified, the vehicle shall be able to meet the requirements at all points within the range. For the testing specified in these procedures, the anchorage shall be connected to material whose breaking strength is equal to or greater than the breaking strength of the webbing for the seat belt assembly installed as original equipment at that seating position. The geometry of the attachment duplicates the geometry, at the initiation of the test, of the originally installed seat belt assembly.

**S5.1 Seats with Type 1 or Type 2 seat belt anchorages.** With the seat in its rearmost position, apply forces of 3,000 pounds in the direction in which the seat faces simultaneously to a pelvic body block as described in Figure 2A, and an upper torso body block, as described in Figure 3, in a plane parallel to the longitudinal centerline of the vehicle, with an initial force application angle of not less than 5 degrees nor more than 15 degrees above the horizontal. Apply the force at the onset rate of not more than 30,000 pounds per second. Attain the 3,000 pound forces in not more than 30 seconds and maintain it for 10 seconds. At the manufacturer's option, the pelvic body block described in Figure 2B may be substituted for the pelvic body block described in Figure 2A to apply the specified force to the center set(s) of anchorages for any group of three or more sets of anchorages that are simultaneously loaded in accordance with S4.2.4 of this standard. Issued on November 27, 1991.

Jerry Ralph Curly, Administrator.

[FR Doc. 91-28995 Filed 12-4-91; 8:45 am]

BILLING CODE: 4910-59-M

49 CFR Part 571

[Docket No. 90-26; Notice 2]

RIN 2127-AD44

Federal Motor Vehicle Safety Standards; Seat Belt Assembly Anchorages

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

ACTION: Final rule.

SUMMARY: This rule amends Standard No. 210, Seat Belt Assembly Anchorages, to clarify the definition of "seat belt anchorages". The amended definition explicitly states that any vehicle part or component that transfers the load from a safety belt to the vehicle structure is part of the anchorage. This amendment will ensure that the safety belt system remains attached to the vehicle, even when exposed to severe crash forces.

DATES: The amendments made in this rule are effective September 1, 1992.

Any petitions for reconsideration must be received by NHTSA no later than January 6, 1992.

ADDRESSES: Any petitions for reconsideration should refer to the docket and notice number of this notice and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

(Docket Room hours are 9:30 a.m.-4 p.m., Monday through Friday).


SUPPLEMENTARY INFORMATION: Federal Motor Vehicle Safety Standard No. 210, Seat Belt Assembly Anchorages, specifies performance requirements for safety belt anchorages to reduce the likelihood of the anchorages' failure in a crash. The requirements, which apply to passenger cars, trucks, buses, and multipurpose passenger vehicles, specify the forces that an anchorage must be capable of withstanding during a static strength test.

On October 31, 1990, the agency published a notice of proposed rulemaking [NPRM] proposing to amend the definition of "seat belt anchorage" in Standard No. 210. This notice was initiated in response to questions about the scope of Standard No. 210 that had arisen during the agency's compliance tests, for example, instances when seat belts had separated from the vehicle floor when testing seat-mounted anchorages before the required loads were reached. Since Standard No. 210 is intended to ensure that the safety belt remains attached to the vehicle, the agency proposed a new definition intending to clarify the scope of Standard No. 210. The proposed definition was:

Seat belt anchorages means any component, other than the safety belt webbing, involved in transferring seat belt assembly loads to the vehicle structure, including, but not limited to, the attachment hardware, seat frames, seat pedestals, the vehicle structure itself, and any part of the vehicle whose failure causes separation of the belt from the vehicle structure.

NHTSA received 12 comments in response to this NPRM. The commenters included seat, seat belt, and vehicle manufacturers, a private citizen, and a state government. All comments were considered while formulating this final rule and the most significant comments are addressed below.

Attachment Hardware

Seven commenters: the Automotive Occupant Restraints Council (AORC), Chrysler Corp. (Chrysler), Ford Motor Company (Ford), General Motors Corp. (GM), Mitsubishi Motors Corp. (Mitsubishi), Navistar International Transportation Corp. (Navistar), and Volkswagen of America, Inc. (VW), objected to the inclusion of attachment hardware in the definition. Various
reasons were given for these objections. Ford, GM, Mitsubishi, and VW stated that testing attachment hardware under Standard No. 210 was redundant because it is already tested under Standard No. 209, Seat Belt Assemblies. Ford, GM, and Mitsubishi stated that the agency had not demonstrated a safety need to test attachment hardware under Standard No. 210. AORC, Mitsubishi, Ford, and VW believe that Standard No. 210 compliance tests should be conducted by replacing the original attachment hardware with fixtures that duplicate their geometry, if the tests cannot be completed due to failures of the attachment hardware before the required loads are reached. Mitsubishi objected because the loading of the attachment hardware during the Standard No. 210 test was different from the loading during an actual crash or the loading during the Standard No. 209 test. Finally, AORC objected to the inclusion of attachment hardware because this would require cooperation between the seat belt manufacturer and the vehicle manufacturer.

On April 30, 1990, the agency published a final rule which, among other things, extended the applicability of Standard No. 210 to the attachment hardware of a safety belt system ($5 FR 17970). The agency received three petitions for reconsideration opposing this aspect of the final rule. Elsewhere in today's edition of the Federal Register the agency has published a response to those petitions for reconsideration.

As explained in that response, the agency agreed with the petitioners that the static performance requirements of Standard No. 210 were unnecessarily redundant for the attachment hardware of automatic safety belt systems and for the attachment hardware of dynamically tested manual safety belt systems which are the only occupant restraint at a seating position. To reflect this position, that response to the petitions for reconsideration excludes the attachment hardware for these safety belt systems from the requirements of S4.1.1 and S4.1.2 of Standard No. 210. It should be noted that, as further explained in that notice, the agency does not consider a manual belt installed at a seating position that is also equipped with an air bag to be dynamically tested.

The agency disagrees with those commenters that asserted that the requirement to test attachment hardware for manual belts that are not dynamically tested under Standard No. 210 is redundant. The agency also disagrees that there is no safety need to test attachment hardware under Standard No. 210. Attachment hardware plays an integral part in the transfer of safety belt loads to the vehicle structure. The strength conditions in Standard No. 210 are intended to subject the vehicle anchorage to force levels that are sufficiently high that one can be reasonably certain that the safety belt will remain attached to the vehicle structure even when exposed to severe crash conditions. If the attachment hardware were not subjected to those same force levels, then the Standard No. 210 strength test, the test would be less useful. A belted occupant will not be well protected in a crash if the attachment hardware breaks, but the rest of the anchorage withstands the crash loading. To minimize the chances of the attachment hardware breaking during a crash, this rule adopts a requirement that attachment hardware for non-dynamically tested manual belts be subject to the strength test in Standard No. 210.

In addition, the agency continues to believe that original attachment hardware should be used during Standard No. 210 compliance tests for the anchorages for all safety belt systems, including those excluded from the requirements of S4.1.1 and S4.1.2. In order to ensure that the load application to the anchorage is as realistic as possible. The agency has considered conducting the compliance tests using replacement fixtures which duplicate the geometry. However, the agency is concerned that developing a fixture which would accurately simulate every attachment would be very difficult. The agency cannot justify devoting the time necessary to solve this difficult problem. because such a fixture would still be less representative than the particular attachment hardware in the vehicle being tested.

The agency also was not persuaded by those commenters who stated that the loading for the Standard No. 210 test was different than the loading experience in either an actual crash or the Standard No. 208 test. The agency has already explained at length that Standard No. 210's strength test is not intended to simulate an actual crash condition, but is instead intended to be severe enough to ensure that the anchorage is unlikely to fail in an actual crash, even a very severe crash. For a detailed explanation of this, see 55 FR 17970, at 17972-17973; April 30, 1990. Thus, NHTSA does not consider it a telling point to assert that loading for the Standard No. 210 strength test is more severe than loading in a typical crash.

The agency is also not persuaded by the assertions that Standard No. 210's loading is different from that in Standard No. 206. This is true and it reflects the different purposes of these two standards. Standard No. 209 is intended to measure the performance of seat belt assemblies as separate pieces of equipment. Standard No. 209 assesses the performance of the attachment hardware only as a part of the seat belt assembly.

Standard No. 210, however, is a broader assessment of vehicle performance. It focuses not on any individual item of equipment or individual component. Instead, the strength test of Standard No. 210 is intended to assess the strength of the attachment of the seat belt assembly to the vehicle, in order to ensure that the belt will remain attached to the vehicle even when exposed to severe crash conditions. NHTSA believes it is appropriate to measure the performance of the attachment hardware at the particular seating position in the particular vehicle in which it is installed for the purposes of Standard No. 210, as well as the generic performance of the attachment hardware pursuant to Standard No. 209.

Finally, the agency is aware that the inclusion of attachment hardware in Standard No. 210 may require greater coordination between the vehicle manufacturer and the safety belt system manufacturer. This was partially the intent of this requirement. From a regulatory standpoint, the burden of certifying compliance with Standard No. 210 is entirely on the vehicle manufacturer, not the safety belt manufacturer. However, the agency believes that, since the safety belt system is to become an integral part of the vehicle, there will be interaction between the safety belt system manufacturer and the vehicle manufacturer to ensure that the restraint will perform as intended.

For the above reasons, the agency has retained attachment hardware within the definition of "seat belt anchorage." The agency notes that the definition proposed in the NPRM included the phrase "seat belt assembly loads." Since "seat belt assembly" is defined differently in Standard No. 206 than it was intended here, the agency has substituted the term "seat belt loads" in the final rule to avoid any possibility of confusion.

Alternate Definitions

Two commenters, a private citizen and GM, stated that the proposed definition was more ambiguous than the existing one. Phrases that were considered ambiguous include;
The agency disagrees with the commenters that these phrases make the definition more ambiguous. The new definition gives examples of some of the components whose failure would result in non-compliance with Standard No. 210, without limiting the scope of the definition to those enumerated components. This new definition will not mean that the failure of any component, other than the safety belt itself, during Standard No. 210 compliance testing will be considered an apparent non-compliance with the standard.

Americans With Disabilities Act

One commenter, a private citizen, stated that the proposed rulemaking may conflict with the requirement to provide accessible vehicles under the Americans with Disabilities Act of 1990 (Pub. L. 101-338, 42 U.S.C. 12101, et seq.). The commenter stated that the requirements should not apply to vehicles equipped with custom or special seating for the disabled. The agency has not excluded such seating from the requirements of this rule. The commenter did not submit any information suggesting that it was not feasible for such seating to comply with the requirements of this rule. Without information that compliance is not feasible, the agency believes that customized seating for the disabled should provide the same level of occupant protection as is provided by standard seating.

Another commenter, a state government, supported the inclusion of the seat structure and pedestal in the anchorage definition. This state has required safety belts for specialized seating installed for the disabled to be anchored directly to the vehicle, rather than to the seat, based upon experience with the lack of strength of these seats. Under the new definition of "seat belt anchorage," this state would no longer have to retain this requirement since, if a safety belt were anchored to the seat, the seat and its pedestal would be considered part of the anchorage and therefore, subject to the strength requirements of Standard No. 210.

Location Requirements

Four commenters (Ford, Mitsubishi, VW, and Volvo Cars of North America [Volvo]) pointed out that the term "seat belt anchorage" is used in two contexts in Standard No. 210. First, it is used in S4.2 to identify the scope of the standard for performance testing for the strength requirements. Second, it is used in S4.3 to determine the reference point for determining compliance with the location requirements. These commenters stated that the new definition will result in confusion with regard to determining the location of the anchorage.

The agency admits that this rulemaking has focused exclusively on clarifying the definition as it applies to the strength requirements of S4.2. The agency had not fully considered the effect of the proposed definition on the anchorage location requirements of S4.3. The agency has reviewed S4.3 to determine if the inclusion of attachment hardware in the definition of "seat belt anchorage" will confuse the means of measuring the location of the anchorage. Except as noted below, the agency believes that the anchorage locations are specified by means that are not distorted by the new definition. For example, S4.3.1.4 uses the phrase "the vertical centerlines of the bolt holes", a location which is constant under both the current definition and the definition in this final rule.

VW stated that, in S4.3.1.1 (a) and (b), the words "hardware attaching it to the" should be deleted. The agency agrees with VW that these words are superfluous under the new definition. VW also stated that references to the anchorage being attached to the seat in S4.3.1.3 are inconsistent with the new definition. Since the seat would be considered part of the anchorage in this situation, the agency also agrees that this section should be revised. The agency finds for good cause that notice and opportunity to comment on these amendments is not necessary. The changes are merely semantic and do not affect the requirements of these sections.

Buckles

Three commenters (Chrysler, Ford, and VW) noted that, in discussing safety belt buckles in the preamble, the agency stated that the definition of "seat belt anchorage" was not intended to include buckles surrounded by webbing. These commenters stated that this discussion did not include less obvious safety belt designs permitted by Standard No. 209, such as metal straps.

The agency's intent in the discussion of the NPRM preamble was to clarify that the definition of seat belt anchorage included only the attachment points of the seat belt, and not the webbing, straps or similar device, or the buckles which comprise the seat belt itself. This discussion was intended to clarify that the phrase "other than the safety belt webbing or strap" was not intended to imply that the buckle was part of the anchorage. Since the webbing and straps are also involved in transferring loads to the vehicle structure, the use of the phrase was intended to emphasize that they were not included in the anchorage.

Cross-Reference in 207

Ford stated that any enforcement questions about the scope of Standard No. 210 for seat-mounted anchorages could be resolved by cross-referencing the requirement in S4.2(c) of Standard No. 207 with the requirement for simultaneous testing in Standard No. 210. The agency disagrees. The suggested cross-reference would not resolve questions that have arisen for seats which are not subject to the requirements of Standard No. 207, for example, seats in small school buses. The suggested cross-reference would also not solve the problem of the number of incomplete tests which result when attachment hardware breaks during the Standard No. 210 tests. Hence, the suggested cross-reference is not adopted in this rule.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has examined the impact of this final rule and determined that it is not major within the meaning of Executive Order 12291 or significant within the meaning of the Department of Transportation's regulatory policies and procedures. The agency has also determined that the economic and other impacts of this final rule are so minimal that a full regulatory evaluation is not required. An examination of the agency's compliance records indicates that only about 3.6 percent of all vehicles tested experienced a compliance test termination that would now be considered a failure under the new rule. In addition, the types of equipment that failed, brackets, support plates, D-rings and retractors, would be inexpensive to upgrade. Therefore, the redesign costs associated with this rule are expected to be insignificant.

One commenter, Navistar, stated that there would be a "*** very extensive expenditure of manpower and cost to re-certify." The need to re-certify would occur in cases where manufacturers continue to produce similar models over a long period of time and rely on an initial test for subsequent years' production. Based on NHTSA costs for Standard No. 210 enforcement testing, costs would be about $1,700 plus the cost of the incomplete vehicle platform that would be tested, for each model tested.
Alternately, manufacturers could use engineering analyses as a basis for certifications. NHTSA does not have information on the number of models that would have to be recertified; however, the cost to any individual manufacturer would not be significant. In addition, because certification is already required for new models, this would be a one-time incremental cost, not an annual cost.

**Regulatory Flexibility Act**

NHTSA has also considered the impacts of this final rule under the Regulatory Flexibility Act. I hereby certify that it will not have a significant economic impact on a substantial number of small entities. As stated above, there will be no change in compliance costs associated with this rulemaking.

**National Environmental Policy Act**

NHTSA has also analyzed this final rule for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

**Executive Order 12612 (Federalism)**

Finally, NHTSA has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 12612, and the agency has determined that this rule does not have significant federalism implications to warrant the preparation of a Federalism Assessment.

**List of Subjects in 49 CFR Part 571**

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, 49 CFR 571.210 is amended as follows:

**PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS**

1. The authority citation for Part 571 continues to read as follows:


   §571.210 (Amended)

2. §53 of Standard No. 210 is revised to read as follows:

   §53. Definition. Seat belt anchorage means any component, other than the webbing or straps, involved in transferring seat belt loads to the vehicle structure, including, but not limited to, the attachment hardware, seat frames, seat pedestals, the vehicle structure itself, and any part of the vehicle whose failure causes separation of the belt from the vehicle structure.

3. §4.3 of Standard No. 210 as published April 30, 1990 (55 FR 17970), effective September 1, 1992, is amended by revising §4.3.1 and §4.3.1.3 to read as follows:

   **§4.3 Location.**

   **§4.3.1.1** In an installation in which the seat belt does not bear upon the seat frame:

   (a) If the seat is a nonadjustable seat, then a line from the seating reference point to the nearest contact point of the belt with the anchorage shall extend forward from the anchorage at an angle with the horizontal of not less than 30 degrees and not more than 75 degrees.
   
   (b) If the seat is an adjustable seat, then a line from a point 2.50 inches forward of and 0.375 inches above the seating reference point to the nearest contact point of the belt with the anchorage shall extend forward from the anchorage at an angle with the horizontal of not less than 30 degrees and not more than 75 degrees.

   **§4.3.1.3** In an installation in which the seat belt attaches to the seat structure, the line from the seating reference point to the nearest contact point of the belt with the hardware attaching it to the seat structure shall extend forward from that contact point at an angle with the horizontal of not less than 30 degrees and not more than 75 degrees.

   Issued on November 27, 1997.

   Jerry Ralph Curry, Administrator.

   [FR Dec. 91-28987 Filed 12-4-91, 8:45 am]

   BILLING CODE 4910-59-M

---

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 625**

[Docket No. 911194-1294]

**Summer Flounder Fishery**

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

**ACTION:** Emergency interim rule.

**SUMMARY:** The Secretary of Commerce (Secretary) amends the regulations implementing the Fishery Management Plan for the Summer Flounder Fishery (FMP). This emergency interim rule contains three major provisions designed to enhance conservation of the summer flounder resource and to protect threatened and endangered sea turtles. First, this rule requires owners and operators of vessels issued a Federal permit and possessing or landing more than 100 pounds (45.36 kg) per trip of summer flounder to comply with a 1¼ inch (1.27-cm) minimum mesh size restriction for diamond mesh and a 6-inch (15.24-cm) requirement for square mesh. Vessels using fly nets are exempted from the minimum mesh-size requirement and vessels fishing seaward of a designated line off southern New England will be issued an exemption upon application. Second, this rule requires any vessel that is issued a permit to fish for summer flounder in the Exclusive Economic Zone (EEZ) to carry an observer if requested to do so by NMFS. Third, this rule, in order to protect threatened and endangered sea turtles, imposes a 75-minute tow time limit (measured from the time trawl doors enter the water until they are removed) on trailers participating in the summer flounder fishery in the EEZ off North Carolina and provides for the imposition of more restrictive conservation measures including closure of the fishery if unacceptable levels of turtle mortality occur.

**DATES:** This emergency interim rule is effective from December 2, 1991 through March 5, 1992.

**ADDRESSES:**Copies of documents supporting this action may be obtained from: Richard B. Roe, Regional Director, National Marine Fisheries Service, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930-3799.

**FOR FURTHER INFORMATION CONTACT:** Richard G. Seamans, Jr., Senior Resource Policy Analyst, 508-281-9244, or Phil Williams, NMFS National Sea Turtle Coordinator, 301-427-2322.

**SUMMARY INFORMATION:**

**Background**

The summer flounder fishery is managed under the FMP, which was developed jointly by the Atlantic States Marine Fisheries Commission (ASMFC) and the Mid-Atlantic Fishery Management Council (Council) in consultation with the New England and South Atlantic Fishery Management Councils. Implementing regulations are found at 50 CFR part 625, and are authorized under authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The management unit for the FMP is summer flounder (Paralichthys dentatus) in U.S. waters of the Atlantic Ocean from North Carolina northward. The objectives of the FMP are, through the minimum regulation necessary, to: (1) Reduce fishing mortality on immature summer flounder; (2) increase the yield...
from the fishery; and (3) promote compatible management regulations between the territorial sea and the EEZ.

Summer flounder range from coastal waters of Nova Scotia to Florida and are primarily abundant in the Mid-Atlantic Bight. They exhibit strong seasonal inshore-offshore migrations and concentrate in the EEZ during the fall and winter spawning period. The larvae and post-larvae drift and migrate inshore to coastal and estuarine environments from October through May where they remain for the first 18 to 20 months of the life cycle before returning to ocean waters. Generally, summer flounder spawn at age two. The offshore trawl fleet exploits summer flounder primarily during the winter months. Ninety percent of the landings from January through March are harvested from the EEZ.

The summer flounder resource is currently managed under the regulations at 50 CFR parts 217 and 227 which contain permitting requirements and impose a 13-inch (33.02 cm) minimum size limit. These measures have not been sufficient to achieve the objectives of the FMP or to conserve the resource. Stock assessment information indicates that the summer flounder resource is overexploited. The most recent virtual population analysis results show a fishing mortality rate for fully recruited ages of approximately 1.50, while the rate that would maximize the yield from the resource ($F_{\text{max}}$) is 0.23. The age composition of summer flounder, which can survive to age 20, has become substantially truncated to the extent that age-three individuals are now the oldest age observed. In addition, stock abundance has been reduced to less than 20 percent of the level of the late 1970s. Trends in the fishery also reflect the poor condition of the stock (e.g., commercial landings for 1988 were the lowest in the past 15 years and recreational landings declined to 20 percent of the average for the decade).

Attempts to manage the summer flounder resource are hampered by interjurisdictional issues posed by the inshore-offshore movement of the stock. Although a significant proportion (71 percent) of the landings are harvested from the EEZ, the effectiveness of unilateral action by the Council is limited. Several states have implemented conservation measures for their respective jurisdictions; however, coordinated management in conjunction with the ASMFC and the Council is required for effective long-term management. The Council developed a cooperative interstate management program and embodied it as Amendment 2 to the FMP. The Council held hearings on Amendment 2 to the FMP on September 10, October 1, and October 2, 1991 in Morehead City, North Carolina; Manteo, North Carolina; and Norfolk, Virginia to give affected fishermen the opportunity for oral comment. The Council adopted Amendment 2 at its October 1991 meeting and is currently making final revisions to the amendment prior to submitting it and proposed implementing regulations to the Secretary.

The Council is concerned that fishing until the amendment is submitted, approved, and implemented will undermine the conservation portion of the management program. Accordingly, the Council requested the Secretary to issue an emergency rule.

### Minimum Mesh Size Restrictions

The Council is particularly concerned over the use by the winter trawl fishery of small mesh nets, which retain sublegal-sized flounder that must be discarded. To the Council, this waste of the resource is untenable. Accordingly, the Council proposed, as an emergency interim measure, a minimum mesh size of 5 1/2 inches (13.97 cm) for diamond mesh and a 6-inch (15.24 cm) for square mesh to allow more sublegal-sized flounder to escape and survive. The Council's emergency request contained several exemptions from the minimum mesh requirement. Specifically, the Council proposed exemptions for vessels that: (1) Possess less than 100 pounds (45.36 kg) of summer flounder; (2) Fish exclusively with off-bottom fly nets or squid nets; or (3) Fish east of a designated line off the Rhode Island coast where small summer flounder are not abundant.

### Observer Program

The importance of valid and reliable data concerning the summer flounder fishery and the interactions of that fishery with sea turtles has been recognized as important for the management of the fishery and for turtle conservation. The need for such data was explicitly recognized at the time the FMP was implemented: "Section 625.5 has been reserved for recordkeeping and reporting requirements. A proposed rule will soon be issued at § 625.5 to implement this condition." (53 FR 39478; Oct. 7, 1988). The need for data also is stressed in various biological opinions concerning this fishery [See NMFS Biological Opinion for the Summer Flounder FMP 7 (Aug. 2, 1988)], and NMFS Biological Opinion Concerning the Issuance of Exemptions for Commercial Fishing Operations Under Section 114 of the Marine Mammal Protection Act 9 (July 5, 1989).

### Sea Turtle Conservation

In addition to responsibilities under the Magnuson Act, the Secretary has various responsibilities under the Endangered Species Act of 1973, 16 U.S.C. §§ 1531 et seq. (ESA). The purposes of the ESA include providing for the conservation of threatened and endangered species. Specific provisions require Federal agencies to assure that their actions are not likely to jeopardize the continued existence of threatened and endangered species, and the taking of these species, including incidental takings, are usually prohibited.

In particular, the Secretary is responsible for administering and enforcing the ESA with respect to sea turtles in the marine environment. All sea turtles that occur in U.S. waters are listed as either threatened or endangered under the ESA. Specific regulations to protect sea turtles have been implemented for vessels engaged in shrimp fishing activities and are found at 50 CFR part 22, subpart E, and 50 CFR part 227, subpart D. According to the National Academy of Sciences, incidental capture in shrimp trawls is by far the leading cause of human-induced mortality to sea turtles in the water. But collectively, activities in the shrimp and summer flounder fisheries constitute the second largest source. (NAS, 1990)

Incidental capture by trawlers in the summer flounder and shrimp fisheries has been documented for the loggerhead (Caretta caretta), Kemp's ridley (Lepidochelys kempii), green (Chelonia mydas), leatherback (Dermochelys coriacea), and hawksbill (Eretmochelys imbricata) turtles in Federal and state waters of the mid and south Atlantic region (Henwood and Stunz, 1987; NAS, 1990; Crouse, 1985; Street, 1987). Under regulations issued by NMFS (50 CFR parts 217 and 227, shrimp trawlers in Federal or state waters from North Carolina to Texas must employ restricted tow times or the use of turtle excluder devices (TED) to reduce the mortality of sea turtles incidentally taken.

The occurrence of sea turtles along the Atlantic coast and particularly in the waters off North Carolina when the summer flounder fishery is operating has been documented by the NMFS Sea Turtle Stranding Network and other researchers (Epperly, et al., 1989; Kleinith, et al., 1987; CeTAP, 1982; NAS, 1990; Ross, et al., 1987; Ross, 1991). Mortality of sea turtles attributed to the summer flounder fishery has been
documented since 1982. The responsibility of the fishery for turtle mortality was based on strong circumstantial evidence that when turtles and trawling activities co-occur in the fall and winter, the number of stranded turtles increases. In November and December 1982, 144 sea turtles stranded on North Carolina beaches, including five Kemp’s ridleys (Crouse, 1983). Street (1987) analyzed sea turtle stranding data from 1980-1986 from North Carolina ocean beaches and concluded that the summer flounder fishery was responsible for 85 percent of the 456 sea turtle strandings that occurred during the October through April period when this fishery is pursued.

A consultation under section 7 of the ESA was conducted by NMFS regarding the implementation of the summer flounder FMP and a biological opinion was issued on August 2, 1988 (NMFS, 1988). That biological opinion concluded that threatened and endangered sea turtles were taken in the summer flounder trawl fishery off North Carolina and southern Virginia in some years, but the continued existence of turtle populations was not jeopardized by the fishing activities. The biological opinion specified that all captures of all species of sea turtles in the fishery be documented.

Between November 2 and December 7, 1990, 54 sea turtles, including at least eight endangered Kemp’s ridleys, stranded on North Carolina beaches. The North Carolina Division of Marine Fisheries closed State waters to summer flounder bottom trawling from Cape Hatteras Light to Ocracoke Inlet on December 7, 1990. Twenty-one additional sea turtles stranded before the end of December. The total mortality included 50 loggerheads, nine Kemp’s ridleys, six green turtles and four unidentified sea turtles. During the closure period, in conjunction with the NMFS Pascagoula Laboratory, an experimental TED was developed for use by summer flounder bottom trawlers. Experimental tows conducted during that time indicated that about 0.14 sea turtles were taken per hour for each net towed off Ocracoke Inlet in December 1990. On December 26, 1990, waters were opened to trawlers using the experimental TED until early January 1991. At that time sea turtles were no longer encountered in North Carolina waters, and fishing without TEDs was allowed.

Consultation under section 7 of the ESA was reinitiated by NMFS and the Council because of the new information collected during the 1990 stranding event. The biological opinion resulting from this consultation concluded that continued unrestricted operation of the summer flounder fishery in waters off North Carolina would jeopardize the continued existence of the endangered Kemp’s ridley sea turtle, and would negatively affect other species of sea turtles (NMFS, 1991). Reasonable and prudent alternatives to allow fishing activities in this area to continue without jeopardizing sea turtles include: (1) imposing tow-time limits on all trawlers; (2) establishing an observer program to measure turtle take and mortality in the fishery; (3) monitoring of turtle presence and fishing activity to prevent turtle deaths and to monitor compliance with required conservation measures; (4) requiring the use of TEDs; and (5) closing areas to bottom trawling in waters off southern Virginia and North Carolina when NMFS determines that unacceptably high numbers of turtles are being killed, or are likely to be killed.

**Description of this Emergency Action**

**Summer Flounder Requirements**

This emergency interim rule requires owners and operators of vessels issued a Federal permit and possessing or landing 100 pounds (45.36 kg) or more per trip of summer flounder to comply with a 5 1/2 inch (13.97 cm) minimum mesh-size restriction for diamond mesh, and a 6 inch (15.24 cm) requirement for square mesh; vessels using fly nets are exempted from the minimum mesh-size requirement and vessels fishing seaward of a designated line off southern New England upon application will be exempted.

The minimum mesh-size requirement is expected to provide several short-term conservation benefits. A determination of the potential conservation benefits of the 5 1/2 inch (13.97 cm) mesh requirement can be inferred from the effects of this same requirement if it had been imposed in previous years (actual discard mortality data are not available). An analysis was conducted that calculated the catch and fishing mortality reductions at age that would have occurred for the years 1985 through 1988 if a 5 1/2 inch (13.97 cm) mesh requirement had been in effect during the first quarter of those years.

The results show that the annual catch of age-one summer flounder would have been reduced by 2 to 17 percent during the 1985-1988 period. The annual catch of age-two flounder would have been reduced by 12 to 16 percent for the same period. Thus, fishing mortality would be slightly reduced for both age groups and yield per recruit would be enhanced slightly by these mesh-size requirements.

The 100-pound (45.36-kg) incidental catch exemption for vessels fishing with small-mesh nets is routine in most fisheries.

Fly nets can be specifically described and are easily recognizable. Fly nets are constructed of large mesh in the wings and body of the net with decreasing mesh sizes through the codend. The nets are fished off the bottom and rarely catch summer flounder. Further, the nets collapse if towed at less than the required 3.5 knots. Consequently, fly nets cannot be used as a bottom trawl net for summer flounder.

The Council’s request for a “squid net” exemption has not been included in this emergency rule. Unlike fly nets, squid nets apparently cannot be specifically described. When NMFS requested a description of a squid net, the Council submitted five different descriptions. Without an adequate description, this exemption could not be enforced effectively.

The summer flounder population in the exempted area off southern New England has a significantly lower percentage of small summer flounder than the fishery farther to the south. Thus, there is no compelling need to protect small flounder in this area through the use of a minimum-mesh-size requirement.

To enhance enforcement of the exempted area off Rhode Island, this emergency rule requires all vessels fishing in the area to obtain an exemption permit and restricts such permitted vessels to the exemption area. Owners or operators of vessels seeking an exemption from the minimum mesh-size requirement must apply to the Regional Director. Only those owners or operators issued a permit specified under 50 CFR 625.4(a) may apply. Applicants need only supply their name, address, and permit number, sign the application, and mark “Exemption Permit Request” on the top to be considered for an exemption. The Regional Director may specify the terms of the exemption permit, including the periods during which it may be surrendered, by publication of a notice in the Federal Register. The Council has indicated that it could enforce this exemption.

Emergency action is necessary to achieve the conservation benefits noted above and to promote further development of a comprehensive management plan by reducing discard mortality during the interim period. In addition, addressing the issue of waste in the fishery is a necessary and
appropriate step in the conservation and management program.

Observer Program

This emergency interim rule also establishes an observer program to evaluate more fully the interactions between the summer flounder fishery and sea turtles. NMFS may require observers on all or a certain portion of the vessels engaged in fishing for summer flounder off North Carolina to gather data on incidental capture of sea turtles and to monitor compliance with required conservation measures.

Sea Turtle Conservation Measures

This emergency interim rule imposes conservation measures in the EEZ off North Carolina to protect threatened and endangered sea turtles. Specifically, the rule imposes a 75-minute tow time limit (measured from the time trawl doors enter the water until they are removed from the water) on trollers participating in the summer flounder fishery in the EEZ off North Carolina and provides for the imposition of more restrictive conservation measures including closure of the fishery if unacceptable levels of turtle mortality occur. A 75-minute tow time limit is imposed based on recommendations of the National Academy of Sciences (NAS, 1991) and NMFS research on trawl-induced sea turtle mortality (Henwood and Stuntz, 1987). The NAS recommended a maximum forced submergence of 60 minutes for sea turtles in cold water months. A 75-minute limitation results from a trawl deployment time of 15 minutes during which trawl doors are shut (and therefore the trawl cannot capture a sea turtle) and a fishing and trawl retrieval time of 60 minutes during which a turtle may be submerged.

NMFS is imposing tow-time restrictions instead of requiring the use of TEDs because no TED has been certified by NMFS to exclude sea turtles that would retain summer flounder by size classes acceptable to the fishery. In addition, NMFS believes that the small number of vessels (approximately 50) involved and the concentrated area in which they operate off of North Carolina make enforcement of tow-time limits more feasible than with the shrimp trawl fishery, which is comprised of over 16,000 vessels operating throughout the south Atlantic and Gulf of Mexico.

NMFS, in cooperation with the State of North Carolina, is investigating alternative TED designs for the summer flounder fishery and may allow the use of experimental TEDs in Federal waters with adequate turtle protection.

measures. NMFS encourages industry development and testing of TEDs for this fishery, and the Director, Southeast Region, NMFS, may authorize public or private experimentation to develop new TEDs. A person interested in experimentation, or in testing a TED for purposes of NMFS approval should contact the Science and Research Director, Southeast Fisheries Center, NMFS.

This rule also requires that sea turtles taken incidental to summer flounder fishing be handled and resuscitated in accordance with requirements specified in 50 CFR 227.72 (e)(1)(i) and (ii).

Vessels engaged in summer flounder fishing operations and utilizing trawl gear within the EEZ bounded on the north by a line along 37°05' N. latitude, bounded on the south by a line along 33°35' N. latitude, and bounded on the east by a line 7 nautical miles from the shoreward boundary of the EEZ must comply with the sea turtle conservation measures.

These measures are necessary to ensure that operation of the summer flounder fishery is not likely to jeopardize the continued existence of any endangered species, particularly the Kemp's ridley sea turtle.

These sea turtle conservation measures will remain in effect for 90 days from the date of publication of this rule, during the period when significant interactions between the summer flounder fishery and sea turtles off North Carolina may occur.

NMFS is considering proposing, under the ESA, permanent sea turtle conservation measures for the summer flounder fishery in state and Federal waters. Because of notice and opportunity-for-public-comment requirements, such measures could not be imposed until late winter. To wait until then to impose sea turtle conservation measures in the summer flounder fishery would have been inconsistent with reducing the significant risk to the well-being of threatened and endangered sea turtles from anticipated summer flounder trawling activities in Federal waters off North Carolina. Accordingly, the Secretary's Magnuson Act emergency rule authority is used here to impose sea turtle conservation measures for the summer flounder fishery in Federal waters. The State of North Carolina imposed emergency turtle conservation measures for the summer flounder fishery in state waters beginning October 28, 1991, and continuing until April 30, 1991.

The rule provides a framework for NMFS to modify the emergency sea turtle conservation measures in Federal waters over their 90-day life through notice in the Federal Register if necessary to ensure that the continued existence of endangered or threatened sea turtles is not jeopardized. Under this procedure, NMFS, in cooperation with the State of North Carolina, will impose any necessary additional or more stringent measures if a monitoring program to assess turtle mortality, or provide information on the incidental sea turtle take level for the summer flounder fishery is approaching the incidental take level established by the biological opinion for the FMP (NMFS, 1991). That level is five documented Kemp's ridley, green, leatherback, or hawksbill turtle mortalities, or 15 loggerhead turtle mortalities.

NMFS has established a monitoring and assessment program, in cooperation with the State of North Carolina, to measure the incidental take of sea turtles in the summer flounder fishery, monitor compliance with required conservation measures by trollers, and predict interactions between the fishery and sea turtles to prevent turtle mortalities. The monitoring and assessment program utilizes and evaluates a variety of information from aerial and vessel surveys, on-board observers, individually tagged turtles, environmental monitoring of sea surface temperatures, reports from the sea turtle stranding network, and other relevant and reliable information, to determine or predict turtle distribution, abundance, movement patterns and timing to provide information to NMFS to prevent turtle mortality by the summer flounder fishery. In Federal waters, NMFS-approved on-board observers will gather scientific data and measure the incidental take of turtles by trollers in the summer flounder fishery, report turtle distribution and abundance, and monitor compliance with required conservation measures.

If five deaths of any sea turtles by vessels participating in the summer flounder fishery are documented, or if significant numbers of turtles are observed stranded on North Carolina beaches, or turtle mortalities are likely to occur based on observed or predicted turtle abundance and fishing activity, NMFS, after consultation with the Director of the State of North Carolina Division of Marine Fisheries, may impose additional or more stringent conservation measures to prevent turtle mortality. The new conservation measures may include more restrictive tow times, increasing the geographical area within the EEZ where compliance is required, the use of experimental
 TEDs with restricted low times, and any conditions necessary to ensure compliance with the conservation measures. Such conditions may include synchronized tow times, spot checks by enforcement officers, selected spot observer coverage, or 100 percent observer coverage. The magnitude of the threat to sea turtles, the number of vessels affected, and past industry compliance will affect what conditions are imposed to ensure compliance. NMFS may authorize summer flounder fishing, as a part of experimental projects to measure turtle capture rates, monitor turtle abundance, to test alternative gear or equipment, or for other research purposes. Research must be approved by NMFS, and it must not jeopardize the continued existence of any species listed under the ESA. NMFS may impose such conditions as it determines necessary to ensure adequate turtle protection during experimental projects, including the use of restricted tow times, on-board observers and area restrictions. The magnitude of the threat to sea turtles, the number of vessels affected, and past industry compliance with conservation measures will affect what conditions are imposed to ensure adequate turtle protection.

Upon the documentation of ten deaths of turtles by summer flounder fishing vessels, or if significant numbers of turtles are observed stranded on North Carolina ocean beaches, or turtle mortalities are likely to occur based on observed or predicted turtle abundance and fishing activity, NMFS, after consultation with the Director of the State of North Carolina Division of Marine Fisheries before requiring the use of TEDs and partial or full area closures. NMFS may require the use of TEDs if necessary to prevent the summer flounder fishery from jeopardizing the continued existence of any species listed under the ESA, NMFS will specify the type or types of TEDs that are required. This conservation measure may apply to certain areas or during certain times of the year. NMFS will consult with the Director of the State of North Carolina Division of Marine Fisheries before requiring the use of TEDs.

NMFS will close portions or all of the Federal water summer flounder fishery if it can no longer ensure that the fishery is unlikely to jeopardize the continued existence of any species listed under the ESA. A closure may prohibit all fishing operations, may prohibit the use of certain gear, may require that gear be stowed, or may impose similar types of restrictions on fishing activities. In making closure decisions, NMFS will utilize data on actual turtle mortalities and projections of turtle mortality by NMFS' monitoring and assessment program. NMFS will consult with the Director of the State of North Carolina Division of Marine Fisheries before instituting a closure.

NMFS may re-open the summer flounder fishery if projections of NMFS' sea turtle monitoring program indicate that continued operation of the summer flounder fishery is not likely to jeopardize the continued existence of any species listed under the ESA as a result of changed conditions or if additional sea turtle conservation measures required by NMFS are implemented. NMFS will consult with the Director of the State of North Carolina Division of Marine Fisheries before instituting a re-opening.

Conservation measures imposed by the framework procedure will be announced by notice in the Federal Register. In addition, any closure notice will be announced on channel 18 of the marine VHF radio, and NMFS will attempt to provide as much advance notice as possible, consistent with the requirements of the ESA.

NMFS is considering publishing under the ESA a proposed rule that would impose permanent sea turtle conservation measures on the Federal and state waters summer flounder fishery on a permanent basis. If the proposed rule is published, public comment will be invited.

References


Classification

The Secretary has determined that this rule is necessary to respond to an emergency situation and is consistent with the Magnuson Act and other applicable law.

This emergency rule is exempt from the normal review procedures of Executive Order 12201 as provided in section 8(a)(1) of that order. The rule is being reported to the Director of the Office of Management and Budget (OMB), with an explanation of why it is not practicable to follow the regular procedures of that order.

This rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior public comment. Section 625.4(m) of this rule involves a collection of information requirement subject to the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under Control Number 0648-0202.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12012.

NMFS prepared an environmental assessment (EA) for this action and concluded that there will be no significant impact on the human environment. A copy of the EA is available (see ADDRESSES).

NMFS conducted a consultation under section 7 of the ESA and prepared a biological opinion concerning the
National Marine Fisheries Service.

Acting Assistant Administrator for Fisheries, continues to read as follows:

50 CFR part 625 is amended as follows:

Turtles, Vessel permits and fees.

ridley sea turtle. especially the highly endangered Kemp’s

threaten to jeopardize the continued

emergency measures would allow the

In addition, failure to implement

Council and ASMFC plans to protect it.

provisions of sections 553 (b) and (d) of

of this rule on an emergency basis also

reasons justifying promulgation

This determination has been submitted

state agencies of Maine, New Hampshire, Massachusetts, Rhode Island,

Connecticut, New York, New Jersey, Delaware, Maryland, Virginia,

Pennsylvania, and North Carolina under section 307 of the Coastal Zone

Management Act.

The Secretary finds for good cause,

that the reasons justifying promulgation

of this rule on an emergency basis also

make it impracticable and contrary to

the public interest to provide notice and

opportunity for comment, or to delay for

30 days the effective date of these

emergency regulations under the

provisions of sections 553 (b) and (d) of

the Administrative Procedure Act.

Failure to implement emergency

measures would allow discard mortality

in a severely stressed fishery to

continue, jeopardizing the viability of

the summer flounder resource and

and Council and ASMFC plans to protect it.

In addition, failure to implement

emergency measures would allow the

continuance of fishing operations that

threaten to jeopardize the continued

existence of endangered sea turtles,

especially the highly endangered Kemp’s

ridley sea turtle.

List of Subjects in 50 CFR Part 625

Endangered species, Fish, Fisheries,
Turtles, Vessel permits and fees.


Michael F. Tillman,
Acting Assistant Administrator for Fisheries,
National Marine Fisheries Service.

For reasons set forth in the preamble,

50 CFR part 625 is amended as follows:

PART 625—SUMMER FLounder FISHERY

1. The authority citation for part 625 continues to read as follows:

Authority: 16 U.S.C. 1901 et seq.

2. A new paragraph (m) is added to

§ 625.4 to read as follows:

§ 625.4 Vessel permits and fees.

(m) Exemption permits. Owners or

operators of vessels seeking an

exemption from the minimum mesh-size

requirement under the provisions of

§ 625.24(a) must apply to the Regional

Director. Only those owners or

operators issued a permit specified

under paragraph (a) of this section may

apply. Applicants need only supply their

name, address, and permit number, sign

the application, and mark “Exemption

Permit Request” on the top to be

considered for an exemption. A permit

issued under this paragraph does not

satisfy the requirements for a permit

specified under paragraph (a) of this

section or vice versa but the provisions

of paragraphs (d) through (l) of this

section apply to an exemption permit.

The Regional Director may specify any

terms of the exemption permit, including

the periods during which it may be

surrendered, by publication of a notice

in the Federal Register.

3. The heading of § 625.5 is revised,

and the text is added to read as follows:

§ 625.5 Observer program.

(a) Request to take observer. The

Regional Director may request a fishing

vessel issued a permit under § 625.4 to

take on board an observer to

accompany the vessel on all fishing trips

conducted during the period specified in

the request. If requested by the Regional

Director to take an observer, a vessel

may not engage in any fishing

operations for summer flounder unless

an observer is on board or unless the

observer requirement is waived.

(b) Responsibility for observer

placement. If requested by the Regional

Director to take an observer, it is the

responsibility of the vessel owner to

arrange for and facilitate observer

placement. Upon 48-hours notice, the

Regional Director will provide

information concerning observer

availability and placement.

(c) Waiver. The Regional Director

may waive the observer requirement

based on a finding that the facilities for

housing the observer or for carrying out

observer functions are so inadequate or

unsafe that the health or safety of the

observer or the safe operation of the

vessel would be jeopardized.

(d) Observer functions. If requested

by the Regional Director to take an

observer, the vessel owner, vessel

operator, and crew must cooperate with

the observer in the performance of the

observer’s duties, including:

(1) Notifying the observer in a timely

fashion of when commercial fishing

operations are to begin and end;

(2) Allowing for the embarking and
debarking of the observer, as specified

by the Regional Director, ensuring that

transfers of observers at sea are

accomplished in a safe manner, via

small boat or raft, during daylight hours

as weather and sea conditions allow,

and with the agreement of the observer

involved;

(3) Providing adequate

accommodations and food;

(4) Allowing the observer access to all

areas of the vessel necessary to conduct

observer duties;

(5) Allowing the observer access to

communications and navigation

equipment and personnel as necessary

to perform observer duties;

(6) Providing true vessel locations, by

latitude and longitude or loran

coordinates, as requested by the

observer;

(7) Notifying the observer of any sea

turtles, marine mammals, summer

flounder, or other specimens taken by

the vessel, as requested by the observer;

(8) Providing the observer with sea

turtles, marine mammals, summer

flounder, or other specimens taken by

the vessel, as requested by the observer;

and

(9) Providing storage for biological

specimens, including cold storage if

available, as requested by the observer.

These specimens must be retained on

board the vessel, as instructed by the

observer or until retrieved by authorized

personnel of the National Marine

Fisheries Service.

4. Section 625.7 is amended by

suspending existing paragraphs [a] [1],

[a] [2], [b] [4], and [b] [5], and adding

new paragraphs [a] [3] through [a] [6]

and [b] [6] through [b] [9] to read as

follows:

§ 625.7 Prohibitions.

(a) * * *

(3) Land or possess any summer

flounder, or parts thereof, which fail to

meet the minimum fish size specified in

§ 625.23;

(4) Fail to affix and maintain markings

as required by § 625.8;

(5) Possess, land or catch 100 or more

pounds (45.36 kg) of summer flounder

unless the vessel meets the minimum

mesh requirement specified in § 625.24;

or unless otherwise exempted;

(6) Use or possess on board nets or

netting in violation of the minimum

mesh size requirement or other gear

requirements specified in § 625.24;

(7) Fish for summer flounder south or

west, as appropriate, of the line
specified in § 625.24(c) if an exemption permit is in effect for that vessel under § 625.4(m); or
(8) Use or possess on board other nets or netting in violation of the minimum mesh size requirement specified in § 625.24, if fishing with or possessing on board a fly net as described in or netting in violation of the minimum mesh-size requirement specified in paragraph (b) of this section are on board:
     (i) Exempted gear. Owners and operators of vessels fishing with a two-seam otter trawl fly net towed at a speed of 3.5 knots or greater and with the following configuration, provided that no other nets or netting with mesh smaller than the minimum mesh-size requirement specified in paragraph (b) of this section are on board:

     (A) The net has large mesh in the wings that measure 8 inches (20.32 cm) to 94 inches (162.56 cm):

     (B) The first body section (belly) of the net has 35 or more meshes that are at least 8 inches (20.32 cm); and

     (C) The mesh decreases in size throughout the body of the net to 2 inches (5.08 cm) towards the terminus of the net.

     (b) The minimum mesh-size requirement is 5 1/2 inch (13.97 cm) diamond mesh or 6 inch (15.24 cm) square mesh for at least 75 continuous meshes forward of the terminus of the net. Owners and operators subject to the minimum mesh-size requirement may not have nets or pieces of netting on board the vessel that do not meet the minimum mesh-size requirement.

5. The text of reserved § 625.24 is added to read as follows:

§ 625.24 Gear Restrictions.
(a) Owners and operators of vessels fishing in the summer flounder fishery and is utilizing trawl gear must restrict tows to 75 minutes. This requirement applies to vessels that is engaged in summer flounder fishing operations and is utilizing trawl gear must restrict tows to 75 minutes. This requirement applies to vessels within the EEZ bounded on the north by a line along 33° 05' N. latitude, bounded on the south by a line along 33° 35' N. latitude, and bounded on the east by a line 7 nautical miles from the shoreward boundary of the EEZ. Tow times are measured from the time trawl doors enter the water until they are removed from the water.

(b) A vessel that is engaged in summer flounder fishing operations and is utilizing trawl gear must restrict tows to 75 minutes. This requirement applies to vessels

(c) The Regional Director may implement revisions to the tow-time requirement, after consultation with the Director of the State of North Carolina Division of Marine Fisheries, by publishing a notice in the Federal Register. The Regional Director may impose additional conditions in order to ensure compliance with the restricted tow-time requirement, such as conditions for synchronized tow times or additional observer coverage. The
Regional Director may impose more restrictive tow-time requirements if he determines such action is necessary to adequately protect sea turtles. The Regional Director may eliminate or provide less restrictive tow-time requirements if existing requirements are not needed to protect sea turtles adequately and if the action would benefit the fishery. Revisions to tow-time restrictions may include alterations to the duration of the tow-time requirement, changes to the geographic area where or the time when the requirement is applicable, changes to the type of vessels to which the requirement applies, or changes to the boundaries where compliance with the measures is required.

(d) Closure of the fishery. The Regional Director may close the summer flounder fishery in Federal waters, or any part thereof, after consultation with the Director of the State of North Carolina Division of Marine Fisheries, by publishing a notice in the Federal Register. The Regional Director shall take such action if he determines a closure is necessary to avoid jeopardizing the continued existence of any species listed under the Endangered Species Act (ESA). The determination of the impact on sea turtles must be based on turtle mortalities and projections of turtle mortality by the NMFS monitoring and assessment program. A closure will be applicable to those areas specified in the notice and for the period specified in the notice. The Regional Director will attempt to provide as much advance notice as possible consistent with the requirements of the ESA and will have the closure announced on channel 16 of the marine VHF radio. A closure may prohibit all fishing operations, may prohibit the use of certain gear, may require that gear be stowed, or may impose similar types of restrictions on fishing activities. The prohibitions and restrictions will be specified in the notice.

(e) Re-opening of the fishery. (1) The Regional Director may re-open the summer flounder fishery in Federal waters, or any part thereof, after consultation with the Director of the State of North Carolina Division of Marine Fisheries, by publishing a notice in the Federal Register. The Regional Director may re-open the summer flounder fishery in Federal waters, or any part thereof, if additional sea turtle conservation measures are implemented and if projections of NMFS's sea turtle monitoring program indicate that such measures will ensure that continued operation of the summer flounder fishery is not likely to jeopardize the continued existence of any species listed under the ESA. (2) The Regional Director may re-open the summer flounder fishery in Federal waters, or any part thereof, if the sea turtle monitoring program indicates changed conditions and if projections of the sea turtle monitoring program indicates that NMFS can ensure that continued operation of the summer flounder fishery is not likely to jeopardize the continued existence of any species listed under the ESA.

(f) Additional sea turtle conservation measures. (1) The Regional Director may impose additional sea turtle conservation measures in Federal waters, after consultation with the Director of the State of North Carolina Division of Marine Fisheries, by publishing a notice in the Federal Register. The Regional Director shall take such action if he determines a closure is necessary to avoid jeopardizing the continued existence of any species listed under the ESA or if such action would allow re-opening of the summer flounder fishery in Federal waters. The determination of the impact on sea turtles must be based on turtle mortalities and projections of turtle mortality by the NMFS's monitoring and assessment program.

(2) Additional conservation measures may require the use of a turtle excluder device (TED). The type or types of TEDs that are required will be specified in the notice. The requirement to use TEDs may apply to certain areas or during certain times of the year as specified in the notice.

(3) Additional conservation measures may require observers on all or a certain portion of the vessels engaged in fishing for summer flounder to gather data on incidental capture of sea turtles and to monitor compliance with required conservation measures. This requirement may apply to certain types of vessels, certain areas, or during certain times of the year.

(g) Experimental projects. Notwithstanding paragraphs (a) to (f) of this section, the Regional Director may authorize summer flounder fishing, as a part of experimental projects to measure turtle capture rates, to monitor turtle abundance, to test alternative gear or equipment, or for other research purposes. Research must be approved by the Regional Director, and it must not jeopardize the continued existence of any species listed under the ESA. The Regional Director will impose such conditions as he determines necessary to ensure adequate turtle protection during experimental projects. Individual authorizations may be issued in writing. Authorizations applying to multiple vessels will be published in a notice in the Federal Register.
Proposed Rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule-making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE
Animal and Plant Health Inspection Service
9 CFR Part 91
[Docket No. 91-122]

Ports Designated for Exportation of Animals, Kansas City, MO

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We propose to amend the "Inspection and Handling of Livestock for Exportation" regulations by adding Kansas City, Missouri, to the list of ports designated as ports of embarkation. Also, we propose to add the KCI Multipurpose Export Facility as the export inspection facility for that port. The effect of this action would be to add a port through which animals may be exported. We believe that this facility meets the requirements of the regulations for inclusion in the list of export inspection facilities.

DATES: Consideration will be given only to comments received on or before January 9, 1992.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 91-122. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Michael David, Senior Staff Veterinarian, Import-Export Animals Staff, VS, APHIS, USDA, room 761, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 426-8563.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 91, "Inspection and Handling of Livestock for Exportation" (referred to below as the regulations), prescribe conditions for exporting animals from the United States. We propose to amend §91.14 by adding Kansas City, Missouri, to the list of ports designated as ports of embarkation and by adding the KCI Multipurpose Export Facility as the export inspection facility for that port. With certain exceptions, all animals exported are required to be exported through ports designated as ports of embarkation.

To receive approval as a port of embarkation, a port must have export inspection facilities available for inspecting, holding, feeding, and watering animals prior to exportation in order to ensure that the animals meet certain requirements specified in the regulations. The regulations provide that approval of each export inspection facility shall be based on compliance with specified standards in §91.14(c) concerning materials, size, inspection implements, cleaning and disinfection, feed and water, access, testing and treatment, location, disposal of animal wastes, lighting, and office and rest room facilities.

We believe that the KCI Multipurpose Export Facility located at P.O. Box 630, Jefferson City, MO 65102, (514) 751-4338, meets the requirements of §91.14(c). Therefore, we propose to add Kansas City, Missouri, to the list of ports designated as ports of embarkation.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this proposed rule, if adopted, would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed rule, if adopted, would impact exporters who choose to use the Kansas City export facility. About 5 to 10 exporters from Iowa, Kansas, Nebraska, and Oklahoma have expressed an interest in using the Kansas City facility for shipping livestock to Southeast Asia and the Pacific Rim for slaughter and breeding. The nearest approved export facilities to such exporters are located in Chicago, Illinois, and Houston, Texas. The Missouri Swine Export Federation, with a 35-exporter membership, also desires to use the facility as a collection point. Additionally, exporters from Canada have expressed an interest in using the facility forresting livestock before shipping to Mexico. None of these exporters are considered to be small businesses. This proposed rule would benefit these exporters by providing them the opportunity to ensure timely export of livestock with a possible savings in shipping costs.

All livestock in the Kansas City, Missouri, area is moved by truck. We believe that these small- to medium-sized carriers will not be adversely affected by this proposal, because they will be used for transporting animals to the KCI facility. We are unaware of any other small entities that would be affected by this proposed rule.

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

Paperwork Reduction Act

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

Executive Order 12372

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

List of Subjects in 9 CFR Part 91

Animal Diseases, Animal welfare, Exports, Humane animal handling.
Livestock and livestock products. Transportation.  

Accordingly, we propose to amend 9 CFR part 91 as follows:

PART 91—INSPECTION AND HANDLING OF LIVESTOCK FOR EXPORTATION  

1. The authority citation for part 91 would continue to read as follows: 

2. Section 91.14 would be amended by redesignating paragraphs (a)(5) through (a)(15) as paragraphs (a)(9) through (a)(16) and by adding a new paragraph (a)(6) to read as follows:

§ 91.14 Ports of embarkation and export inspection facilities.  
(a) * * *  
(b) Missouri.  
(i) Kansas City—airport only.  
(A) KCI Multipurpose Export Facility, Department of Agriculture, State of Missouri, P.O. Box 630, Jefferson City, MO 65102, (314) 751-4338.  

Done in Washington, DC, this 20th day of November, 1991. 

Robert Molland,  
Administrator, Animal and Plant Health Inspection Service.  

[F.R. Doc. 91-29183 Filed 12-4-91; 8:45 am]  
BILLING CODE 3410-34-F

9 CFR Part 92  
[Docket No. 91-162]  

Importation of Ostriches and Other Ratites  
AGENCY: Animal and Plant Health Inspection Service, USDA.  

ACTION: Proposed rule.

SUMMARY: We are proposing to make additional quarantine space available for ostriches and other ratites imported into the United States. Our proposal would allow shipments of up to 100 ostriches and other ratites to be imported through the port of Miami, Florida, for quarantine at the Miami Animal Import Center (MAIC) in Miami, Florida. This action appears warranted in light of the heavier than expected demand for quarantine space for ratites since August 12, 1991, when a final rule became effective allowing ratites to be imported into the United States for the first time in 2 years. Opening the MAIC for ratites would reduce the waiting time for quarantine space for these birds. Additionally, it could reduce the costs and shipping time involved in importing rhes from South America.

DATES: Consideration will be given only to comments received on or before December 20, 1991.

ADDRESSES: To help ensure that your comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 91–162.

FOR FURTHER INFORMATION CONTACT: Dr. Keith Hand, Senior Staff Veterinarian, Import-Export Animals Staff, VS, APHIS, USDA, room 768, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8590.

SUPPLEMENTARY INFORMATION: Background  
In a final rule published in the Federal Register on July 12, 1991 (56 FR 31856–31868, Docket No. 90–210), we amended the regulations in 9 CFR part 92 to allow flightless birds known as ratites (cassowaries, emus, kiwis, ostriches, and rheas), and hatching eggs of ratites, to be imported into the United States. The rule became effective on August 12, 1991. Except with respect to certain ostrich chicks, the importation of ratites had been prohibited since August 15, 1989, to prevent the introduction and dissemination of ectoparasites that could spread heartwater and East Coast fever, exotic and highly morbids diseases of livestock.

The final rule allowed the importation of ratites to resume under conditions intended to prevent the introduction of communicable diseases that could be transmitted to livestock and poultry by ectoparasites and other agents. The final rule requires, among other things, that ratites imported into the United States be quarantined upon arrival in the United States at certain quarantine facilities operated by the Animal and Plant Health Inspection Service (APHIS). Ostriches must be quarantined at the New York Animal Import Center (NYAIC) in Newburgh, NY. Ratites other than ostriches must be quarantined either at the NYAIC or at the APHIS quarantine facility in Honolulu, Hi.

In the first two weeks after the final rule became effective, importers requested considerably more quarantine space for ostriches than was available at the NYAIC. To better accommodate importers, we are proposing to allow ostriches and other ratites to be imported through the port of Miami, Florida, for quarantine at the Miami Animal Import Center (MAIC) in Miami, Florida. The MAIC is currently used primarily for horses, but each of its biosecure stalls could be used to accommodate about 25 ostrich chicks. The stalls could also be used to handle smaller numbers of larger ratites that are not subject to the height and weight restrictions imposed on ostriches.

We propose to limit the size of shipments quarantined at the MAIC to 100 ratites. We have selected 100 as the maximum shipment size that would be quarantined at the MAIC in an effort to accommodate multiple shipments. Opening the MAIC for shipments of this size would facilitate the importation of small lots. This action also would ensure better use of space at the NYAIC, where one large building that cannot be subdivided is used for ratites, whether the shipment is 10 birds or 250. Of the 29 applications for permits to import ratites that APHIS had received at the NYAIC by October 1, all but the first size applications and two others were for shipments of 100 or fewer ratites. The majority of requests were for 50 ostrich chicks.

Allowing ratites to be quarantined at the MAIC also could reduce the costs and shipping time involved in importing rhes from South America.

We will ensure that personnel assigned to handle ratites at the MAIC receive appropriate instruction and guidance in handling and treating the ratites.

Quarantine space for ratites would be offered to importers in the order that permit applications are received by APHIS, beginning with those applications received on August 12, 1991. There would be one single waiting list for quarantine space at the MAIC and the NYAIC. Importers who prefer one of these two facilities over the other, either because they want to ship more than 100 ratites or because of some other reason, could remain on the waiting list until quarantine space becomes available at the quarantine facility of their choice. (A separate waiting list would continue to be maintained for quarantine space at the Hawaii Animal Import Center (HAIC). For reasons explained in previous Federal Register documents (the final rule cited above and the proposed rule upon which it was based, 55 FR 21879–21883, Docket No. 89–210, published May 30, 1990), the HAIC would continue to be limited to ratites other than ostriches.)
Pesticide Approval

The regulations at § 92.106(b) state that APHIS will use an Environmental Protection Agency (EPA) registered dust formulation on ratites during quarantine at APHIS facilities in the United States. The EPA, at our request, gave approval for APHIS to use 5 percent carbaryl, through December 24, 1993, as the treatment for ectoparasites on ratites quarantined at the APHIS facilities in Newburgh, NY, and Honolulu, HI. (The EPA approval states that any EPA-registered dust formulation containing 5 percent carbaryl as the only active ingredient may be used by APHIS in accordance with all applicable directions, restrictions, and precautions on the label.) We have requested approval from the EPA to use this same treatment at the MAIC.

Comment Period

The Administrator of the Animal and Plant Health Inspection Service has determined that this rulemaking proceeding should be expedited by allowing a 15-day comment period on this proposal. The comment period would allow the agency to promulgate and implement a final rule on an expedited basis. Prompt implementation of a final rule would facilitate the importation of ratites by providing additional quarantine space. The opening of additional quarantine space for ostriches and other ratites at the MAIC would significantly reduce the waiting time for quarantine space for these birds and make better use of space at the N YaIAC. Prompt action on this rulemaking also would provide a closer port of entry for rheas from South America.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Since August 12, 1991, when a final rule became effective allowing ratites to be imported into the United States of the first time in 2 years, importers have requested more quarantine space for ratites than is available at the NYAIC in Newburgh, New York, which is currently the only quarantine facility handling ostriches. It was anticipated that approximately 2500 chicks could be imported through the NYAIC each year; we have already received requests for space for slightly more than 3000. A higher than normal volume of other animals coming through the facility at this time has prevented us from making additional space available at the NYAIC.

Making the MAIC available for shipments of 100 ratites or fewer would allow us to accommodate multiple shipments, thereby reducing the waiting time for quarantine space for ostriches and other ratites. This action would facilitate the importation of small lots of ratites, as well as ensure better use of space at the N YaIAC, where one large building that cannot be subdivided is used for ratites, whether the shipment is 10 birds or 250.

Of the 29 applications for permits to import ratites that APHIS had received at the NYAIC by October 1, all but the first six applications and two others were for shipments of 100 or fewer ratites. The majority of requests were for 50 ostrich chicks. We believe that these applications represent most, if not all, of the persons currently interested in importing ratites.

Allowing ratites to be quarantined at the MAIC also could reduce the costs and shipping time involved in importing rheas from South America.

We do not expect that making additional quarantine space available for ratites would lead to an increase in the number of ratites imported into the United States. The availability for international trade of ostrich chicks that meet the requirements of our regulations for importation into the United States is limited, and would not be increased as a result of this proposed rule. Additionally, the regulations that became effective on August 12 allow the importation of ratite hatching eggs, and, as more chicks are hatched domestically, the demand for imported ostrich chicks will likely decline. The current press of applications to import ratites appears to be an initial reaction to the removal of import prohibitions, and we anticipate that applications, or the number of birds requested per application, may decline over the next 6 months.

We had previously anticipated that there would be domestic price decreases for ratites resulting from the removal of import prohibitions. The addition of the MAIC as a quarantine facility for ratites is not expected to result in any further impact on the domestic ratite industry.

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

Paperwork Reduction Act

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

List of Subjects in 9 CFR Part 92

Animal disease, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

Accordingly, 9 CFR part 92 would be amended as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for part 92 would continue to read as follows:


2. In §92.103, a new paragraph (a)(4) would be added to read as follows:

§ 92.103 Import permits for birds; * and reservation fees for space at quarantine facilities maintained by APHIS.

(a) * * *

(4) Permit applications for ratites. (i) If quarantine space for ratites is desired at either the New York Animal Import Center or the Miami Animal Import Center, permit applications must be submitted to the New York Animal Import Center, USDA, APHIS, Veterinary Services, 200 Drury Lane, Rock Tavern, NY, 12575, or to the port veterinarian in charge of the New York Animal Import Center.

(ii) If quarantine space for ratites is desired at the Hawaii Animal Import Center, permit applications must be submitted to the Hawaii Animal Import Center.

* For other permit requirements for birds, the regulations issued by the U.S. Department of the Interior (parts 14 and 17; title 50, Code of Federal Regulations) should be consulted.
DEPARTMENT OF COMMERCE
International Trade Administration
19 CFR Part 353
(Docket No. 911195-1295)

Antidumping Duties
AGENCY: International Trade Administration (Import Administration), Department of Commerce.
ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Department of Commerce (the Department) is considering initiating a rulemaking proceeding with respect to the methodology that the Department uses in ordering the collection of estimated antidumping duties and the assessment of antidumping duties. The overall objectives of this rulemaking proceeding would be: (1) to change existing administrative practice to simplify and streamline the collection of estimated antidumping duties and the assessment of antidumping duties; and (2) to codify existing administrative practice, to the extent that such codification is consistent with the first objective.

DATES: The Department will accept written comments until February 3, 1992.


SUPPLEMENTARY INFORMATION:
Background Information
The Department is considering initiating a rulemaking procedure with respect to the collection and assessment of antidumping duties. The overall objectives of this rulemaking proceeding would be: (1) To change existing administrative practice in order to simplify and streamline the Department's collection of estimated antidumping duties and the assessment of antidumping duties; and (2) to codify existing administrative practice, to the extent such codification is consistent with the first objective. The Department is also considering codifying a recent change in practice whereby the Department establishes an "all other" rate in lieu of a "new shipper" rate to be used for the collection of estimated antidumping duties from companies that have not received individual rates in a prior investigation or administrative review.

The Department believes that rulemaking in these areas is appropriate because the current regulations do not address these actions, notwithstanding the significant impact that the prompt, accurate collection of estimated antidumping duties and assessments has upon the effective enforcement of the antidumping duty laws. Accordingly, the Department is considering rulemaking in the following areas: (1) The collection of estimated antidumping duties, especially with respect to the collection of cash deposits on shipments from non-reviewed companies; (2) the assessment of antidumping duties pertaining to purchase price (PP) transactions; and (3) the assessment of antidumping duties pertaining to exporter's sales price transactions (ESP). Each of these areas is discussed in detail below.

Collection of Cash Deposits on Shipments From Non-Reviewed Companies
Recently, the Department changed its practice with respect to the setting of cash deposit rates during an administrative review for firms which never have been investigated or reviewed and which are not related to any firms with individual rates. Previously, during each administrative review, the Department had assigned a "new shipper" cash deposit rate for any unreviewed firms which did not begin to export to the United States until after the last day of the review period. Due to the difficulties that Customs experienced in determining when a given exporter's first shipment occurred and, in turn, in determining which "new shipper" rate should apply, the Department decided to discontinue its practice of issuing "new shipper" rates in administrative reviews. In lieu of a "new shipper" rate, the Department now issues an updated "all other" rate based on the highest rate for any firm in the administrative review (whose shipments to the United States were reviewed), other than those firms receiving a rate based entirely on best information available.

The Department notes that it has not changed its practice with respect to calculating the "all other" rate in a fair value investigation. Thus, the Department generally continues to base its "all other" rate during a fair value investigation upon the weighted-average rate of all firms investigated having...
The Department believes that an average rate is appropriate in a fair value investigation because: (1) The Department is only required to investigate 60 percent of the exports during the period of investigation; (2) the Department only calculates an estimated dumping duty during an investigation; and (3) firms have not had an opportunity to change their pricing behavior during the fair value investigation.

Assessment of Antidumping Duties

Before discussing the Department’s efforts in the assessment area, it is critical to review the statutory scheme that governs assessment. While the statute is silent regarding the methodology that the Department should use in issuing assessment instructions, clearly requires the Department to order assessment in a prompt, accurate manner. Thus, any proposals addressing the assessment of antidumping duties should take these goals into account.

Statutory Scheme

The literal language of the statute might appear to suggest that the Department should review “entries” of merchandise, not “sales” of merchandise, during the review period as the Department does under our current system. Alternatively, the statute might be viewed as suggesting that the Department should try to tie individual entries of the subject merchandise to their corresponding sales in issuing assessment instructions to Customs. As explained further below, however, the Department does not believe that Congress could have intended that the Department adopt such an interpretation of the statute when such a goal is unachievable in most cases where such an interpretation would hinder the achievement of other statutory goals governing review and assessments.

Transactions Subject to Review—Entries vs. Sales?

Before the Department can develop a simplified approach to assessment, the Department needs to address a more fundamental question of whether the Department should be reviewing “entries” or “sales” during an administrative review. The answer is not straightforward, as demonstrated below.

When section 751(a)(2) was added to the Tariff Act of 1930 in 1979, Congress provided that the Department shall determine:

19 U.S.C. 1675(a)(2) (1979) [emphasis supplied].

Notwithstanding the reference to review and assessment of “entries” pursuant to section 751, Congress also provided that the Department should analyze “sales” transactions pursuant to sections 772 and 773 of the statute in the course of conducting its administrative reviews. See 19 U.S.C. 1677a (United States Price); 1677b (Foreign Market Value). Thus, the statute provides for the review of both “entries” and “sales,” without recognizing that the two terms are not synonymous or providing a mechanism for linking entries and sales.

Absent statutory guidance, the Department has had to develop a mechanism to make the necessary linkage between entries and sales in issuing its assessment instructions.

Furthermore, while the Department has been quite successful in obtaining the relevant entry and sales data needed to link sales to entries in a PP situation (where sales predate entries), very few businesses maintain or have reason to maintain the type of entry and inventory information that the Department would need to review and assess duties on ESP transactions purely on an entry basis or to make an exact linkage between entries and ESP sales.

Where an importer normally sells from inventory merchandise which is fungible or at least does not vary in characteristics from entry to entry, it is difficult, if not impossible, to identify the exact invoice number and date of sale to an unrelated party corresponding to a particular prior entry. Given the unique circumstances surrounding ESP sales, the multitude of data that companies need to maintain in the ordinary course of business, the Department does not believe that it should penalize companies for not retaining information that correlates entries to later resales. Nor does the Department believe that it should require the enormous amount of recordkeeping that often would be necessary to link individual sales to particular entries.

Moreover, the ESP assessment situation became even more complicated when Congress passed the Trade & Tariff Act of 1984, providing for reviews upon request and “automatic assessment” in the absence of a request. Prior to 1984, antidumping reviews typically covered all sales made during the period of review. Thus, while linkage between entries and sales was still extremely difficult, the Department consistently reviewed sales from period to period without concern for the fact that entries may have occurred in one period with the resulting sales not occurring until the next review period. Since 1984, however, when no review is requested under section 751, the Department instructs Customs to assess antidumping duties at the cash deposit rate for all merchandise entered during the review period. Thus, where parties do not request reviews every year, the Department will be alternating between reviewing sales in one year (section 751 review) and entries (automatic assessment) in another year and the potential for confusion will exist.1

Accuracy

While the statute does not provide any guidance regarding the linkage between entries and sales for assessment purposes, it clearly directs the Department to calculate, and Customs to assess duties based on, actual, not estimated, antidumping duties during a section 751 administrative review. See 19 U.S.C. 1673e; 1675 (1990). Thus, in contrast to an antidumping investigation, the statute requires the Department to conduct a much more encompassing, detailed analysis of the transactions subject to review, except when the Department resorts to sampling and averaging under 19 U.S.C. 1677f-1 (1990). Thus, in choosing potential solutions for assessment, the Department must ensure that whatever procedures it adopts are consistent with the primary statutory goal of assessing duties on an actual, not an estimated, basis. Indeed, by referring to “entry,” the drafters of section 751 in the 1979 Act likely intended that in a review, unlike an

---

1 For example, when a review period involving automatic assessment is followed by a section 751 review, some overlapping may occur. Because no review is requested in period 1 under the automatic assessment provision, all of the entries during period 1 would be liquidated at the cash deposit rate in effect at the time of entry. Meanwhile, in its section 751 review in period 2, the Department would review all sales occurring in period 2; even though some of the sales actually may correspond to period 1 entries, entries that were already assessed duties in period 1. As long as Customs does not attempt to collect the dumping duties due on the sales corresponding to the already-assessed entries, the overlap between review periods 1 and 2 would not pose a problem. The Department notes, however, that it is difficult, and in some cases impossible, for the Department to collect sufficient information to be certain that it has avoided the problem.
investigation, the Department would examine every transaction; they did not mean necessarily that the Department would have to tie "entries" to "sales" in ordering assessment.

Timeliness

The statute and our regulations provide that reviews and assessments should be accomplished in a timely manner. 19 U.S.C. 1673e, for example, directs the Department to issue assessment instructions no later than 12 months after the end of the annual accounting period of the manufacturer or exporter within which the merchandise is sold in the United States. Likewise, our current regulations require timely results by directing us to issue our final results within 365 days after the anniversary month governing the administrative review. See 19 CFR 353.22(c)(7) (1990). Whatever option the Department chooses here should further these statutory and regulatory objectives. Indeed, a major problem with a strict adherence to a review of entries is that it tends to retard the assessment phase of an AD proceeding where ESP sales are involved.

With the above statutory guidance and goals in mind, the Department offers the following proposals for evaluation and comment. These proposals are only intended to initiate the comment and discussion process. The Department encourages those individuals commenting to suggest amendments to the current proposals or entirely different ones.

Assessment of Antidumping Duties Involving Purchase Price Transactions

With the advent of automatic assessment, the Department began considering whether it should be reviewing entries (or shipments, if entry data are absent), in lieu of sales, during a review period involving PP transactions.8 Unless the Department reviews entries, the Department could be alternating between assessing duties on entries in a period when automatic assessment applies and on sales when it conducts a section 751 review. Thus, the potential for overlapping reviews will exist, absent a change in the review process.

With this in mind, the Department also is attempting to simplify and streamline the assessment of antidumping duties pertaining to PP transactions. In such situations, the Department has begun relying on a per-unit assessment approach (dividing the calculated amount of dumping duties due by the number of units sold) in lieu of the entry-by-entry masterlist approach used in the past. In deriving a per-unit rate, however, the Department must be able to isolate the collection data on an importer-specific basis to ensure that Customs is collecting the total amount of dumping duties due from each importer. The Department is considering issuing rulemaking in this area because this methodology, if adopted in all antidumping cases, would provide significant savings in time and cost to Customs, without sacrificing the accuracy insured under the old approach. If this per-unit methodology is adopted, Customs Import Specialists would no longer have to peruse hundreds or thousands of entries on the Department’s masterlist to find the specific margin associated with the relevant entry.

Assessment of Antidumping Duties Involving Exporter’s Sales Price Transactions

Notwithstanding the advent of automatic assessment, because ESP sales occur after entries, the Department believes that it still needs to conduct its section 751 reviews based on sales, not entries, in an ESP situation. Often, there is a significant lag between entry dates and sales dates and the Department cannot postpone an administrative review until all sales associated with entries have occurred. Thus, while the Department cannot adjust the review periods to account for this concern, the Department can take the lag into account in developing a simplified approach to assessment.

With respect to ESP assessment, the Department has experienced significant difficulties in issuing liquidation instructions to Customs in cases involving large volumes of ESP entries, because it is extremely difficult, if not impossible, to link the entry data provided to Customs with the sales data provided to the Department during an administrative review. Several factors contribute to this difficulty: (1) The lag between entry date and sale date in ESP transactions; (2) the fungibility of the product; (3) the volume of transactions reviewed; and (4) the parties’ own inability to link entries to sales or to provide the Department with the documentation to do so. Given these difficulties, the Department is exploring various alternative methods of issuing ESP assessment instructions, while attempting to harmonize the goals set forth in the current statute, as described above. Such alternatives include:

Option 1: When entry data are available, the Department can derive a per-unit margin by dividing the calculated dumping duties due (based on sales) by the number of units entered and then apply the per-unit margin against all units entered during the review period. Or, the Department can derive a percentage margin by dividing the calculated dumping duties due (based on sales) by the entered value of the merchandise entered during the review period and then apply the percentage margin against the entered Customs values of the subject merchandise entered during the review period.

The proposed methodology simplifies and streamlines assessment and liquidation dramatically, yet still enables Customs to collect the exact amount of dumping duties due on ESP sales that occurred during the review period. As with other approaches, however, the lag between entry and sale dates in an ESP situation makes the assessment process particularly problematic, especially when a section 751 review (based on sales) is either preceded by or followed by a period involving automatic assessment (based on entries).

First, depending on the lag between entry and sale dates, a per-unit approach based on entries could result in some overlapping between review periods where entries are automatically liquidated at the cash deposit rate in one year and the sales associated with those liquidated entries are included in a subsequent administrative review. Moreover, this approach could result in an importer paying dumping duties both on the entries (automatic assessment based on entries in period 1) and on ESP sales corresponding to the already-liquidated entries, when such sales fall within the subsequent section 751 review period (because calculated dumping duties are based on sales in period 2).

Conversely, when a section 751 review (based on sales) is followed by a review period involving automatic assessment (based on entries), customs may not be able to collect the dumping duties due on the sales occurring in period 2 that correspond to entries in period 1, unless the Department somehow “automatically” assesses duties based on unreviewed sales from the prior period as well. Moreover, in the event that a company stops shipping to the United States, or simply has no entries in a particular period, there may not be any entries available for Customs to use as a vehicle to collect the duties due on sales during that period.
Option 2: The Department could derive a per-unit dumping margin by dividing the calculated dumping duties on ESP transactions occurred during the period by the number of units sold and then apply the per-unit margin against all units entered during the review period. There are several advantages to this approach. All of the information (e.g., calculated dumping duties, number of units sold) that the Department needs to implement this approach is readily available in the questionnaire response. Thus, the Department will not have to ascertain the number of units entered, as it does under option 2, listed above. Moreover, Customs can easily liquidate all of the entries during the review period and it does not appear that the Department will encounter the same problems with overlapping reviews, as noted in option 2.

As with other options, the lag between entry and sale dates creates a special disadvantage in trying to adopt a workable solution for the assessment of ESP transactions. The major drawback to this approach is that due to the lag between entry and sale dates and the fact that not all entered units are sold during the period, the Department would use the per-unit dumping margin associated with sales during the period as a “proxy” for the duties due on entries during the period. Thus, the dumping duties collected under this approach may not reflect the actual margin attributable to the entries during the period. Moreover, this approach may be particularly troublesome when there is a large disparity between the number of units entered and the number of units sold within a particular period.

The Department offers the above proposals as a means to initiate a meaningful dialogue with the public, while fully recognizing that there are difficulties with the proposed approaches. It is hoped through the comment process and the Department will be able to find a solution to this problem and an approach that will ensure prompt, accurate assessment of antidumping duties.

Rulemaking Procedures
If the Department determines that any amendment proposed in or in response to the advance notice of proposed rulemaking is appropriate, a notice of proposed rulemaking asking for public comments on a specific proposed amendment or amendments shall be published in the Federal Register.

Request for Comments
The Department has not reached any conclusions concerning any of the matters raised herein. The Department wishes to receive public comments on all respects of the collection of antidumping duties, including additional suggestions not noted above. The Department believes that such comments would enhance its understanding of the issues and problems that need to be addressed. Moreover, the Department anticipates that public comments may help to provide potential solutions for the prompt, efficient collection of cash deposits and the assessment of antidumping duties. Therefore, interested persons are invited to address any issue of law, policy, or procedure, and to suggest appropriate amendments to the Antidumping Regulations.

List of Subjects in 19 CFR Part 353
Business and industry, Foreign trade, Imports, Trade practices.

Eric I. Garfinkel,
Assistant Secretary for Import Administration.
[FR Doc. 91-29188 Filed 12-4-91; 8:45 am]
BILLING CODE 3510-OS-M

DEPARTMENT OF THE INTERIOR
Office of Surface Mining Reclamation and Enforcement
30 CFR Part 944
Utah Permanent Regulatory Program
AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.
ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing the receipt of a proposed amendment to the Utah permanent regulatory program (hereinafter, the “Utah program”) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of changes to provisions of the Utah rules pertaining to the definition of “valid existing rights,” areas designated as unsuitable for mining by act of Congress, guidelines for the violations review criteria, permit application requirements, revegetation success standards, air quality, coal mine waste, thick overburden, sedimentation ponds, cross sections and maps, termination of jurisdiction, and the Vegetation Information Guidelines. The amendment is intended to revise the Utah program to be consistent with the corresponding Federal regulations.

This notice sets forth the times and locations that the Utah program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4 p.m., m.s.t. January 6, 1992. If requested, a public hearing on the proposed amendment will be held on December 30, 1991. Requests to present oral testimony at the hearing must be received by 4 p.m., m.s.t. on December 20, 1991.

ADDRESSES: Written comments should be mailed or hand delivered to Robert H. Hagen at the address listed below.

Copies of the Utah program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM’s Albuquerque Field Office.

Robert H. Hage, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue SW., suite 310, Albuquerque, NM 87102 Telephone: (505) 766-7489.
Utah Division of Oil, Gas and Mining, 355 West North Temple, 3 Triad Center, suite 500, Salt Lake City, UT 84110-1203, Telephone: (801) 538-5340.

FOR FURTHER INFORMATION CONTACT: Robert H. Hagen, telephone: (505) 766-1496.

SUPPLEMENTARY INFORMATION:
I. Background on the Utah Program
On January 21, 1981, the Secretary of the Interior conditionally approved the Utah program. General background information on the Utah program, including the Secretary’s findings, the disposition of comments, and the conditions of approval of the Utah program can be found in the January 21, 1991, Federal Register (46 FR 58969).

Subsequent actions concerning Utah’s program and program amendments can be found at 30 CFR 944.15, 944.18, and 944.30.

II. Proposed Amendment
By letter dated November 20, 1991 (administrative record No. UT-691), Utah submitted a proposed amendment to its program pursuant to SMCRA. Utah submitted the proposed amendment
with the intent of satisfying the required program amendments at 30 CFR 944.18 (a) through (m). The provisions of the Utah Coal Mining Rules that Utah proposes to amend are: R014-100-200, definition of "valid existing rights"; R014-103-220, areas designated unsuitable for mining by act of Congress; R014-300-100, guidelines for the violations review criteria; R014-301-111.400, permit application requirements; R014-301-356.231, reclamation success standards; R014-301-423, air quality; R014-301-528.320, coal mine waste, R014-301-553.800, thick overburden; R014-301-742.224, sedimentation ponds; R014-301-512.140 and R014-301-731.750, cross sections and maps; R014-100-400, termination of jurisdiction; and the Vegetation Information Guidelines.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Utah program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Albuquerque Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by 4 p.m., m.s.t. on December 20, 1991. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under "FOR FURTHER INFORMATION CONTACT." All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "ADDRESSES." A written summary of each meeting will be made a part of the administrative record.

List of Subjects in 30 CFR Part 944

Intergovernmental relations, Surface mining, Underground mining. 


Raymond L. Lowrie, 
Assistant Director, Western Support Center.

FOR FURTHER INFORMATION CONTACT:

CDR D.P. Rudolph, (904) 247-7318.

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CCGD7 91-117]

Marine Parade; Jacksonville Gator Bowl Light Parade

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rule making.

SUMMARY: The Coast Guard is considering a proposal to adopt special location regulations for the Jacksonville Gator Bowl Light Parade. The event will be held annually on the last Saturday in December on the St. Johns River, Jacksonville, Florida. The regulations are needed to provide for the safety of life on navigable waters during the event.

DATES: Comments must be received on or before January 6, 1992.

ADDRESSES: Comments should be mailed to Commander, U.S. Coast Guard Group, 4200 Ocean Street, Mayport, FL 32267-6385. The comments and other material referenced in this notice will be available for inspection and copying at this same address. Normal office hours are between 7 a.m. and 3 p.m., Monday through Friday, except holidays.

Comments may also be hand-delivered to the address.

FOR FURTHER INFORMATION CONTACT: CDR D.P. Rudolph, (904) 247-7318.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice [CCGD7 91-117] and specific section of the proposal to which their comments apply, and give reasons for each comment.

The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this regulation are QMI Culver, Marine Enforcement Petty Officer, Coast Guard Group Mayport and LT Jacqueline M. Losego, Project Attorney, Seventh Coast Guard District Legal Office.

Discussion of Proposed Regulations

One-hundred (100) motor or sailing vessels of various sizes will participate in the annual event. The participating vessels will be in single file, parade style, transiting the St. Johns River. The parade will begin at St. Johns River Commodore Point Buoy 82 and proceed inbound on the north side of the channel to the Acosta Bridge. The vessels will then turn around and proceed back to the St. Johns River Commodore Point Buoy 82 on the south side of the channel. Approximately three hundred (300) to five hundred (500) spectator craft are expected to be present at the event. Due to the size and nature of the event, the Coast Guard is establishing permanent regulations in the Code of Federal Regulations (CFR) to better serve the boating public. The event will be held annually on the last Saturday of December from 7:00 p.m. e.s.t. to 10 p.m. e.s.t. unless otherwise specified in the Seventh Coast Guard District Local Notice to Mariners. This regulation is issued pursuant to 33 U.S.C. 1253, 49 CFR 1.46 and 33 CFR 100.35.

Economic Assessment and Certification

This proposed rulemaking is considered to be non-major under Executive Order 12291 on Federal
Regulation and nonsignificant under Department of Transportation Regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. We conclude this, because the restricted area encompasses only a three mile stretch of waters on the St. Johns River, from Commodore Point Buoy 82 (LLNR 7205), position 30-18-18 N., 081-38-12 W. to the Acosta Bridge, Jacksonville, Florida, entry into which is prohibited for four hours. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Federalism

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

Environmental Assessment

The Coast Guard has considered the environmental impact of this proposal consistent with Section 2.B.2.B of Commandant Instruction M16475.1B and Commandant Instruction 16751.3A, and this proposal has been determined to be categorically excluded.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation [water].

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 100 of title 33, Code of Federal Regulations as follows:

PART 100—AMENDED

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

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

2. Section 100.07 is added to read as follows:

§ 100.17 Annual Jacksonville Gator Bowl Light Parade.

(a) Regulated Area: A regulated area is established for the waters of the St. Johns River lying between St. Johns River Trout River Cut Lighted Buoy 66 (LLNR 7105), position 30-23-07 N., 081-37-41 W and the Fuller Warren Bridge, Jacksonville, Florida.

(b) Special Local Regulations: A No Wake Zone is established on the St. Johns River between St. Johns River Trout River Lighted Buoy 66 (LLNR 7105) and the Fuller Warren Bridge from 5 p.m. e.s.t. to 11 p.m. e.s.t. Entry into the waters of the St. Johns River from Commodore Point Buoy 82 (LLNR 7205), position 30-18-18 N., 081-38-12 W and the Acosta Bridge, Jacksonville, Florida is prohibited from 6:30 p.m. e.s.t. to 10:30 p.m. e.s.t., unless authorized by the Patrol Commander.

(c) Effective Date: These regulations will be effective annually on the last Saturday of December from 5 p.m. e.s.t. to 11 p.m. e.s.t., unless otherwise specified in the Seventh Coast Guard District Local Notice to Mariners.


R. E. Kramek,
Rear Admiral, U.S. Coast Guard Commandant, Seventh Coast Guard District.

[FR Doc. 91-29186 Filed 12-4-91; 8:45 am]
BILLING CODE 4910-14-M

33 CFR Part 117

[CGD 91-84]

Drewbridge Operation Regulations; Atlantic Intracoastal Waterway, FL.

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of Palm Beach County, the Coast Guard is considering a change to the regulations governing the Donald Ross Road Bridge, mile 1008.3 at Jupiter by permitting the number of openings to be limited during certain periods. This proposal is being made because of reports of vehicular traffic congestion. This action should accommodate the needs of vehicular traffic and should still provide for the reasonable needs of navigation.

DATES: Comments must be received on or before January 21, 1992.

ADDRESSES: Comments may be mailed to Commander (oan) Seventh Coast Guard District, 909 SE 1st Ave., Miami, FL 33131-3050, Commander, Seventh Coast Guard District maintains the public docket for this rulemaking. Comments will become part of the docket and will be available for inspection and copying at Brickell Plaza Federal Building, room 484, 909 SE 1st Avenue, Miami, FL. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Mr. Walt Paskowsky, project manager at (305) 536-4103.

SUPPLEMENTARY INFORMATION: The Coast Guard encourages interested persons to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 91-84) and the specific section of this proposal to which each comment applies, and give reasons for concurrence with or any recommended change in the proposal. Persons wanting acknowledgment of receipt of their comments should enclose a stamped, self addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change the proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to Commander (oan) Seventh Coast Guard District at the address under "ADDRESSES". If it is determined that the opportunity for oral presentations will aid the rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the Federal Register.

Drafting Information

The principal persons involved in drafting this notice are Walt Paskowsky, Project Manager, and Lt. Jacqueline Losoco, Project Counsel.

Background and Purpose

The bridge presently opens on signal. The proposed rule would provide for seasonal openings on the hour, quarter hour, half hour and three quarter hour during weekday morning and evening commuter traffic periods from 1 October to 31 May. This would eliminate back-to-back openings and allow sufficient time for dispersal of increased seasonal vehicular traffic before the next opening. The holding areas near the bridge are considered adequate to accommodate the expected accumulation of vessels during the closure periods. Public vessels of the United States, tugs with tows, and vessels in a situation where a delay would endanger life or property would, upon proper signal, continue to be passed through the draw at any time.

Regulatory Evaluation

This proposal is not major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040: February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary. We conclude this, because the proposed rule exempts tugs with tows.
§ 117.261 Atlantic Intracoastal Waterway from St. Mary's River to Key Largo.

[r] The draw of the Donald Ross Road Bridge, mile 1009.3 shall open on signal, except that from 1 October to 31 May, Monday through Friday, except federal holidays, from 7 a.m. to 9 a.m. and 4 p.m. to 6 p.m., the draw need open only on the hour, quarter-hour, half-hour, and three quarter-hour.

Dated: November 20, 1991

K.M. Ballantyne,

Captain, U.S. Coast Guard Acting Commander, Seventh Coast Guard District.

[F]R Doc. 91-29144 Filed 12-4-91; 8:45 am

BILLING CODE 4910-14-M

DEPARTMENT OF AGRICULTURE
Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR
Fish and Wildlife Service

50 CFR Part 100

RIN 1018-AB43

Proposed Extension of Temporary Subsistence Management Regulations for Federal Public Lands in Alaska


ACTION: Proposed extension of temporary regulations.

SUMMARY: This proposed action would extend the expiration date of December 31, 1991, for the "Temporary Subsistence Management Regulations for Public Lands in Alaska" (55 FR 27114), as amended by the "1991-1992 Seasons and Bag Limits for Subsistence Management Regulations for Public Lands in Alaska" (56 FR 28130) through June 30, 1992.

DATES: Comments will be accepted until December 20, 1991. Temporary subsistence management regulations for Federal public lands in Alaska codified at 36 CFR part 242 and 50 CFR part 100, as amended by the "1991-1992 Seasons and Bag Limits for Subsistence Management Regulations for Public Lands in Alaska" (56 FR 29310), are proposed to be extended through June 30, 1992.

FOR FURTHER INFORMATION CONTACT: Richard S. Pospahala, Office of Subsistence Management, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 766-3447. For questions specific to National Forest lands, contact Norman Houne, Assistant Director, Subsistence, USDA-Forest Service, Alaska Region, P.O. Box 21628, Juneau, Alaska 99802; telephone (907) 586-8990.

ADDRESS: Written comments may be sent to the Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503.

SUPPLEMENTARY INFORMATION:

Background

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111-3126) requires the Secretary of the Interior and the Secretary of Agriculture to implement a joint program to grant a preference in favor of subsistence uses of fish and wildlife resources on Federal public lands unless the State of Alaska enacts and implements laws of general applicability consistent with ANILCA's requirements for the definition, preference and participation as specified in sections 603, 805, and 804. The State implemented such a program which the Department of the Interior previously found to be consistent with ANILCA. In December 1988, however, the Alaska Supreme Court ruled in McDowell v. State of Alaska that the rural preference in the State subsistence statute, which is required by ANILCA, violated the Alaska Constitution. The Court stayed the effect of the decision until July 1, 1989.

As a result of that decision, the Department of the Interior and the Department of Agriculture were required to assume responsibility for the implementation of title VIII of ANILCA on Federal public lands on July 1, 1990. On June 29, 1990 the "Temporary Subsistence Management Regulations for Public Lands in Alaska" were promulgated (55 FR 27114). Those regulations are codified at 36 CFR part 242 and 50 CFR part 100.

Subpart D of the temporary regulations, which addresses subsistence seasons and bag limits, methods and means restrictions, and related issues, routinely requires annual review and modification. Consequently, proposals for changes to this portion of the regulations were invited from the public. The Federal Subsistence Board, established by the temporary regulations, held meetings on the proposals, and took action in regard to the proposals which were reflected in a proposed rulemaking to amend Subpart D published on April 16, 1991 (56 FR 15402). Following an additional public

The preamble to the comprehensive temporary regulations of 1990 stated that the regulations would become effective on July 1, 1990 and remain in effect until December 31, 1991 (55 FR 27114). The preamble explained that: "The development of permanent regulations, which is expected to start in 1990, will involve extensive public interaction and comment throughout the regulations development process, and will be completed by December 31, 1991." Id. The preamble to the amendment to subpart D of the regulations, published in June of 1991, stated: "The seasons and bag limits herein reflect a complete regulatory year although they will presently expire on December 1, 1991" (56 FR 29310).

In order to ensure that the public’s attention and comments in regard to the Federal Subsistence Management program are focused on all issues related to the program, considerable time has been spent in developing a comprehensive analysis of alternative approaches to Federal management of subsistence on Federal public lands. A draft environmental impact statement (DEIS) on “Subsistence Management for Federal Public Lands in Alaska” was developed and released for public review and comment in early October 1991. This DEIS includes a draft of the proposed rewrite of Federal subsistence management regulations for public lands. Public meetings to receive comments on the DEIS are taking place in October and November of 1991. Comments regarding the DEIS, and consequently, the form and content of the Federal Subsistence Management Program will then be analyzed. The result will be a final environmental impact statement and development of final regulations to replace the current temporary regulations.

To allow for adequate public review and comment on the form that the Federal program should take, the development of the final subsistence management regulations has been delayed. Consequently, it is proposed to extend the applicability of subparts A, B, and C of the temporary regulations as promulgated in 1990, and subpart D as amended in 1991, through June of 1992.

Conformance With Statutory and Regulatory Authorities

National Environmental Policy Act Compliance

A DEIS, “Subsistence Management for Federal Public Lands in Alaska,” was released on October 7, 1991. A final EIS and Record of Decision will be issued prior to implementation of the final “Subsistence Management Regulations for Federal Public Lands in Alaska, Subparts A, B and C.”

ANILCA Section 810 Compliance

The intent of all Federal Subsistence Regulations is to best accommodate customary and traditional subsistence uses subject to the limitation of protecting healthy, or natural and healthy fish and wildlife populations. The 810 analysis will be completed as part of the final EIS process.

Paperwork Reduction Act

These rules contain information collection requirements subject to Office of Management and Budget (OMB) approval under 44 U.S.C. 3501 et seq. They apply to subsistence users of Federal public lands in Alaska. The information collection requirements described above are approved by the OMB under 44 U.S.C. 3501 and have been assigned clearance number 1018-0975.

Economic Effects

Executive Order 12291, “Federal Regulation,” of February 19, 1981, requires the preparation of regulatory impact analysis for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions; or significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions.

The Departments of the Interior and Agriculture have determined that this rulemaking is not a “major rule” within the meaning of Executive Order 12291, and certify that it will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

This rulemaking will impose no significant costs on small entities; the exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant positive economic effect on a number of small entities. The number of small entities affected is unknown, but the fact that the positive effects will be seasonal in nature and will, in most cases, merely continue pre-existing uses of public lands indicates that they will not be significant.

These regulations do not meet the threshold criteria of “Federalism Effects” as set forth in Executive Order 12612. Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on Federal public lands. The scope of this program is limited by definition to certain Federal lands. Likewise, these regulations have no significant takings implication relating to any property rights as outlined by Executive Order 12889.

Drafting Information

This regulation was drafted by Peggy Fox under the guidance of Richard S. Pospahala, both of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National Forests, Public lands, Reporting and recordkeeping, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, Public lands, Reporting and recordkeeping requirements, Wildlife.

For the reasons set out in the preamble, chapter I, subchapter H of title 50 and chapter II of title 36 of Code of Federal Regulations are proposed to be amended in an identical fashion in 36 CFR part 242 and 50 CFR part 100 as follows:

36 CFR PART 242—[AMENDED]

50 CFR PART 100—[AMENDED]

1. The authority citation for 50 CFR part 100 and 36 CFR part 242 continues to read as follows:


2. The expiration date for 50 CFR part 100 and 36 CFR part 242 is delayed until June 30, 1992.
SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91-342, adopted November 14, 1991, and released November 28, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible ex parte contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73
Television broadcasting.

AGENCY: Federal Communications Commission.
ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by K-Twelve, Ltd., licensee of Station KXII(TV), Channel 12, Ardmore, Oklahoma, requesting the reallocation of Channel 12 from Ardmore to Sherman, Texas, and the modification of its license accordingly, pursuant to Commission Rule 1.420(i). The petitioner is requested to provide additional public interest benefits in support of its proposal. Proposed coordinates for Channel 12 in Sherman are the same as Station KXII(TV)'s current coordinates, North Latitude 34-01-58 and West Longitude 96-49-00.

DATES: Comments must be filed on or before January 21, 1992, and reply comments on or before February 5, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the Commission, Washington, DC 20554. In accordance with § 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 265C2 at Sulphur or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before January 21, 1992, and reply comments on or before February 5, 1992.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91-343, adopted November 13, 1992, and released November 29, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible ex parte contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73
Radio broadcasting.

AGENCY: Federal Communications Commission.
ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Central Oklahoma Radio Corporation seeking the substitution of Channel 265C2 for Channel 265C3 at Sulphur, Oklahoma, and the modification of Station KFXT(FM)'s license to specify operation on the higher class channel. Channel 265C2 can be allotted to Sulphur in compliance with the Commission's minimum distance separation requirements at the station's presently licensed transmitter site, at coordinates 34-32-57 and 99-58-34. In accordance with § 1.420(g) of the Commission's
DEPARTMENT OF THE INTERIOR

50 CFR Part 17

RIN 1018-AB

Endangered and Threatened Wildlife and Plants; Thirty-day Extension on the Proposed Rule to List the Mitchell's Satyr (Neonympha mitchelli mitchelli) as Endangered

AGENCY: Fish and Wildlife Service, Interior.

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

SUMMARY: The U.S. Fish and Wildlife Service (Service) reopens for 30 days the period during which it will accept comments on a proposed rule (56 FR 46273-46277; September 11, 1991) to list the Mitchell’s satyr (Neonympha mitchelli mitchelli) as endangered pursuant to the Endangered Species Act of 1973 (Act), as amended. The Service believes a number of parties interested in this proposed listing may not have received notice of the proposal in sufficient time to submit comments during the original comment period. The extension will provide sufficient time for comment preparation and submission. The period for requesting public hearings will also be reopened for the same 30-day period.

DATES: This reopening will result in both the comment period and the public hearing request period ending on January 6, 1992.

ADDRESS: The complete file for this proposal is available for inspection, by appointment, during normal business hours, at the Twin Cities Regional Office, Division of Endangered Species, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111.

FOR FURTHER INFORMATION CONTACT: Craig Johnson, Chief, Division of Endangered Species, at the above address (telephone 612/725-3275 or FTS 725-3276).

SUPPLEMENTARY INFORMATION:

Background

N. m. mitchelli is the nominate subspecies of one of two North American species of Neonympha, and is known to survive at only fifteen locations in Indiana and Michigan. It was afforded the immediate and temporary protection of the Act on June 25, 1991, when the Service listed this subspecies as endangered pursuant to the Endangered Species Act of 1973 (Act), as amended. The Service believes a number of parties interested in this proposed listing may not have received notice of the proposal in sufficient time to submit comments during the original comment period. The extension will provide sufficient time for comment preparation and submission. The period for requesting public hearings will also be reopened for the same 30-day period.

LIST OF SUBJECTS IN 50 CFR PART 17

Endangered and threatened species, Imports, Exports, Reporting and recordkeeping requirements, and Transportation.


Marvin E. Moriarty,

Acting Regional Director, Fish and Wildlife Service, Twin Cities, Minnesota.

[FR Doc. 91-29122 Filed 12-4-91; 8:45 am]

BILLING CODE 4310-55-M
NOTICES

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

Forms Under Review by Office of Management and Budget


The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

1. Agency proposing the information collection;
2. Title of the information collection;
3. Form number(s), if applicable;
4. How often the information is requested;
5. Who will be required or asked to report;
6. An estimate of the number of responses;
7. An estimate of the total number of hours needed to provide the information;
8. Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404-W Admin, Bldg., Washington, DC 20250-2090, (202) 720-2118.

Revision

- Agricultural Stabilization and Conservation Service, 7 CFR part 1430, Milk Marketing Assessments and Diary Refund, Payments Program, CCC-140, CCC-140 Contingency, CCC-141, CCC-141 Continguation, CCC-310, Monthly. Annually. Individuals or households; Farms: Businesses or other for-profit; 209,000 responses; 92,323 hours. Raellen Erickson (202) 720-3561.

Extension

- Federal Crop Insurance Corporation, Crop Insurance Acreage Report and Unit Division Option Form, FCI-19 and FCI-533, Annually. Individuals or households; Farms: 190,000 responses; 77,500 hours. Bonnie L. Hart (202) 245-5040.
- Federal Crop Insurance Corporation, Field Inspection and Claim For Indemnity, FCI-63, 74, and 74 (TPC), On occasion. Individuals or households; Farms: 40,000 responses; 10,000 hours. Bonnie L. Hart (202) 254-8393.
- Forest Service, Volunteer Application for Natural Resources Agencies, OF-301, One-time only. Individuals or households; 56,100 responses; 18,525 hours. Donald T. Hansen (703) 235-8655.
- Food Safety and Inspection Service, Regulations Governing Meat Inspection, part 309.16, Livestock, suspected of having biological residues. FSIS-6601-6, Recordkeeping: On occasion. Individuals or households; Farms: Businesses or other for-profit; Federal agencies or employees; Small Businesses or organizations; 906,000 responses; 69,416 hours. Roy Purdine (202) 720-5372.

New Collection

- Rural Electrification Administration, Policy on Audits of REA Borrowers, Annually. Businesses or other for-profit; Non-profit institutions; Small businesses, or organizations; 3,872 responses; 20,276 hours. Paul D. Marsden (202) 720-9551.

Reinstatement

- Farmers Home Administration, 7 CFR 1951-L, Servicing Cases Where Unauthorized Loan or Other, Financial Assistance Was Received—Farmer Programs, On occasion. Farms: Businesses or other for-profit; Small businesses or organizations: 3,070 responses; 3,070 hours. Jack Holston (202) 720-9736.
- Farmers Home Administration, 7 CFR 1806-A, Real Property Insurance, FMHA 426-2. On occasion. Individuals or households; Farms: Businesses or other for-profit; 1,980 responses; 224 hours. Jack Holston (202) 720-9736.
Larry K. Roberson, Deputy Departmental Clearance Officer.
[FR Doc. 91-29109 Filed 12-4-91; 8:45 am]
BILLING CODE 3410-01-M

Commodity Credit Corporation

Market Promotion Program, Fiscal Year 1992

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: This notice announces an extension of the application period for participation in the Market Promotion Period (MPP) for Fiscal Year 1992 until 5 p.m. eastern standard time, seven (7) calendar days after date of publication in Federal Register.


SUPPLEMENTARY INFORMATION: The MPP is implemented by the Commodity Credit Corporation (CCC) in accordance with the regulations set forth in 7 CFR part 1485, published on August 16, 1991. On August 21, 1991, CCC published a notice in the Federal Register (56 FR 41304) informing prospective applicants for participation in the MPP that all applications had to be received by CCC by 5 p.m. eastern standard time, October 21, 1991.

A thorough review of the applications received by CCC thus far has revealed that a number of applicants failed to submit all requested information in accordance with 7 CFR part 1485, subsection B. This may have been due to differences in the application requirements for the Fiscal Year 1992 MPP and the previous year's programs. CCC has determined that the program's goals and purposes can be best served by enabling program managers to consider a broader range of commodities and applicants. Therefore, CCC is extending the period to apply for participation in the MPP until 5 p.m. eastern standard time, seven (7) calendar days after date of publication in Federal Register.

Federal Register
Vol. 56, No. 234
Thursday, December 5, 1991
Forest Service

**Buck-Little Boulder Timber Sale, Bitterroot National Forest, Ravalli Co., MT**

**AGENCY:** Forest Service, USDA.

**ACTION:** Revised Notice of Intent to prepare an Environmental Impact Statement (original notice of intent was published February 5, 1990; FR Vol 55, No. 24 p. 3755-3756).

**SUMMARY:** The Forest Service proposes to harvest timber, build roads and improve management in an area of the Bitterroot National Forest approximately 36 air miles southwest of Hamilton, Montana. Part of the area being considered for harvest is within the Allan Mountain Roadless Area (01946).

Due to unanticipated changes in work priorities delaying the analysis, the DEIS for the Buck-Little Boulder Timber Sale is expected to be filed with the Environmental Protection Agency (EPA) and available for public review by February, 1992 instead of the July 1990 date published in the original Notice of Intent. Accordingly the FEIS is re-scheduled for completion by July 1992.

The Responsible Official is Nora B. Rasue, West Fork District Ranger. The other information provided in 55 FR 3755-3756 is still accurate. Additional comments on the project can be made at any time during the planning period and during the formal comment period between DEIS and FEIS.

**FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT:** Nora Rasue, District Ranger, West Fork Ranger District, Bitterroot National Forest, 6735 West Fork Road, Darby, Montana, 59829, telephone (406) 821-3269.


Nora Rasue,
West Fork District Ranger, Bitterroot National Forest.

**Soil Conservation Service**

**Follansbee Park Critical Area Treatment and Land Drainage RC&D Measure Plan, WV**

**AGENCY:** U.S. Department of Agriculture, Soil Conservation Service.

**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 Follansbee Park Critical Area Treatment and Land Drainage RC&D Measure Plan.

**FOR FURTHER INFORMATION CONTACT:** Rollin N. Swank, State Conservationist, Soil Conservation Service, 75 High Street, room 301, Morgantown, West Virginia 26505, Telephone (304) 291-4151.

**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, Mr. Rollin Swank, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

**Notice of a Finding of No Significant Impact**

The purpose of this measure is critical area treatment and land drainage for erosion control. The measure is designed to stabilize by regrading, shaping, and revegetating approximately 1 acre of land that has an average erosion rate of 15 tons per acre per year.

Conservation practices include a diversion, land smoothing seeding, mulching, and subsurface drainage to intensify use of a public park.

The Notice of a Finding of No Significant Impact 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 Rollin N. Swank, State Conservationist.

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. 10.501—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.


Rollin N. Swank,
State Conservationist.

**DEPARTMENT OF COMMERCE**

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C chapter 35).

**Agency:** Bureau of the Census.

**Title:** Motor Freight Transportation and Warehousing Survey.

**Form Number(s):** B-514, B-515, B-524, B-525.

**Agency Approval Number:** 0607-0510.

**Type of Request:** Revision.

**Burden:** 4,800 hours.

**Number of Respondents:** 3,000.

**Avg Hours Per Response:** 1.1/2 hours.

**Needs and Uses:** The Census Bureau conducts this annually to obtain financial information on for-hire trucking and warehousing services. We collect data in the following categories: number of locations, revenues, commodity types dealt in, size of shipments, expenses, and fleet characteristics. Federal government agencies use the data for computations of the national accounts. The private sector uses the data for market analysis.

**Affected Public:** Businesses or other for-profit. Small businesses or other organizations.

**Frequency:** Annual.

**Respondent's Obligation:** Mandatory.

**OMB Desk Officer:** Maria Gonzalez, 305-7313.

**Type of Request:** Revision.

**Burden:** 4,800 hours.

**Number of Respondents:** 3,000.

**Avg Hours Per Response:** 1.1/2 hours.

**Needs and Uses:** The Census Bureau conducts this annually to obtain financial information on for-hire trucking and warehousing services. We collect data in the following categories: number of locations, revenues, commodity types dealt in, size of shipments, expenses, and fleet characteristics. Federal government agencies use the data for computations of the national accounts. The private sector uses the data for market analysis.

**Affected Public:** Businesses or other for-profit. Small businesses or other organizations.

**Frequency:** Annual.

**Respondent's Obligation:** Mandatory.

**OMB Desk Officer:** Maria Gonzalez, 305-7313.

**Type of Request:** Revision.

**Burden:** 4,800 hours.

**Number of Respondents:** 3,000.

**Avg Hours Per Response:** 1.1/2 hours.

**Needs and Uses:** The Census Bureau conducts this annually to obtain financial information on for-hire trucking and warehousing services. We collect data in the following categories: number of locations, revenues, commodity types dealt in, size of shipments, expenses, and fleet characteristics. Federal government agencies use the data for computations of the national accounts. The private sector uses the data for market analysis.

**Affected Public:** Businesses or other for-profit. Small businesses or other organizations.

**Frequency:** Annual.

**Respondent's Obligation:** Mandatory.

**OMB Desk Officer:** Maria Gonzalez, 305-7313.

**Type of Request:** Revision.

**Burden:** 4,800 hours.

**Number of Respondents:** 3,000.

**Avg Hours Per Response:** 1.1/2 hours.

**Needs and Uses:** The Census Bureau conducts this annually to obtain financial information on for-hire trucking and warehousing services. We collect data in the following categories: number of locations, revenues, commodity types dealt in, size of shipments, expenses, and fleet characteristics. Federal government agencies use the data for computations of the national accounts. The private sector uses the data for market analysis.

**Affected Public:** Businesses or other for-profit. Small businesses or other organizations.

**Frequency:** Annual.

**Respondent's Obligation:** Mandatory.

**OMB Desk Officer:** Maria Gonzalez, 305-7313.
Economics and Statistics Administration

[Docket No. 911191-1291]

Proposed Open and Nonexclusive List of Distributors of CD-ROM Readers


ACTION: Notice of proposed list of vendors.

SUMMARY: The Economics and Statistics Administration of the Department of Commerce produces and distributes many CD-ROM titles through its component organizations. These products have received wide acceptance by microcomputer users equipped with CD-ROM readers. However, Commerce staff have noted some lack of knowledge about CD-ROM and have received many requests for assistance in selecting and using CD-ROM drives. This apparent difficulty has limited the dissemination of Commerce CD-ROM based information products.

The Department of Commerce proposes to provide a beneficial service to potential users/buyers of its CD-ROM products by providing information on CD-ROM hardware availability in an objective, impartial manner. This will be accomplished through the establishment of a nonexclusive list of vendors of CD-ROM readers which will be made available to anyone who asks for it. The Department wants this list to include all vendors; no recommendation or endorsement by the Department is implied.

The Department conducts seminars and conferences at which its CD-ROM products are displayed and demonstrated; it also accepts orders for its CD-ROMs by telephone or mail. The Department will supply potential users who ask for assistance in obtaining CD-ROM readers with the names, addresses, and telephone numbers of all vendors that have supplied such information to the Department. It will then be up to the potential users to contact and make arrangements with suppliers.

Some of the Department's CD-ROM titles are available in quantity at bulk rates. Vendors that wish to distribute these or other Commerce Department products bundled with CD-ROM drives provided by the vendors are encouraged to do so, but all vendors, whether they distribute Department products or not, will be included on the list upon request.

DATES: Vendors may provide name and address information at any time.

ADDRESSES: Vendors wishing to participate should send information to: John E. Cremeans, Director, Office of Business Analysis, Room H4878, U.S. Department of Commerce, Washington, DC 20230.


SUPPLEMENTARY INFORMATION: It is expected that listed vendors will be able to provide CD-ROM drives compatible with IBM personal computers, necessary MS-DOS CD-ROM extensions to read ISO 9660 compliant CD-ROMs, any interface circuit boards and cables (if required by the drive), and telephone or onsite support for installation and operation of the drive. No restrictions will be placed on the manufacture or configuration of the CD-ROM drives. Nor will there be restrictions on the prices vendors may charge.

The vendor list will be nonexclusive and the Department encourages as many vendors as possible to participate. The Department will supply vendor data to persons requesting aid in obtaining CD-ROM drives but will not validate, recommend, nor endorse vendors.

Vendors may obtain a complete list of CD-ROM titles available from the Department, their prices, and a brief description from: Ken Rogers, Office of Business Analysis, room H4875, U.S. Department of Commerce, Washington, DC 20230, telephone [202] 377-3777.

As planned, this is an ongoing project. Vendor information may be submitted to the above address at any time. This solicitation may appear in the Commerce Business Daily periodically to encourage additional participation by CD-ROM vendors. Vendors should provide name, address, and telephone number for each location. A master list will be compiled of all participating vendors to be provided to all persons requesting assistance.


Mark W. Plant,
Deputy Under Secretary for Economic Affairs, U.S. Department of Commerce.
CV responses from the four firms, issued deficiency questionnaires with respect to the CV of the four firms, and received responses to those deficiency questionnaires.

Scope of Review
Imports covered by this review are shipments of roller chain, other than bicycle, ("roller chain") from Japan. The term "roller chain, other than bicycle" includes chain, with or without attachments, whether or not plated or coated, and whether or not manufactured to American or British standards, which is used for power transmission and/or conveyance. Such chain consists of a series of alternately-assembled roller links and pin links in which the pins articulate inside the bushings and the rollers are free to turn on the bushings. Pins and bushings are press fit in their respective link plates. Chain may be single strand, having one row of roller links, or multiple strand, having more than one row of roller links. The center plates are located between the strands of roller links. Such chain may be either single or double pitch and may be used as power transmission or conveyor chain.

The review also covers leaf chain, which consists of a series of link plates alternately assembled with pins in such a way that the joint is free to articulate between adjoining pitches. The review further covers chain model numbers 25 and 35.

Roller chain is currently classifiable under Harmonized Tariff Schedules (HTS) subheadings 7315.11.00 through 7316.90.00. Although the HTS subheadings are providing for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Such or Similar Comparisons
For the purposes of this review, we have determined that roller chain, other than bicycle, and leaf chain comprise a single category of such or similar merchandise. We made adjustments for differences in the physical characteristics of the merchandise (difmer), where appropriate, in accordance with section 773(a)(4)(c) of the Act.

Use of Best Information Available
As provided for in section 778(c) of the Act, the Department has determined that use of best information available (BIA) is appropriate for all sales of roller chain from Izumi and Pulton, to calculate the margin on Hitachi sales requiring a difmer, and for R.K. Excel U.S. sales with a reported gross unit price of zero. Our decision to use BIA for Izumi and Pulton is based on the magnitude of the omissions and deficiencies in their responses. Izumi failed to provide the Department with information necessary to calculate CV. Pulton failed to provide the information necessary to select comparison products or calculate a CV.

Hitachi reported that it purchased some roller chain from related parties in the home market. The Department requested that for purposes of the difmer calculation, Hitachi provide the cost of manufacture (COM) of these products. Hitachi responded that it was unable to obtain the cost information because of its limited relationship with the supplier. Instead, it supplied the weighted-average acquisition price to be used as the basis for the difmer calculation. The acquisition price from a related supplier does not provide a reliable basis upon which to calculate the cost attributable to the physical differences in the merchandise.

In deciding what to use as BIA, 19 CFR 353.37(b) provides that the Department may take into account whether a party fails to provide requested information. Thus, the Department determines on a case-by-case basis what BIA to use. For purposes of these preliminary results, we have applied BIA depending, in part, on whether a company refused to participate or attempted to cooperate in the review.

When a company is considered by the Department to be cooperative because it substantially responds to the Department's requests, we generally assign to that company the higher of: (a) The highest rate calculated for a responding firm with shipments during the period, or (b) the highest rate for that company for any previous review or the original investigation. See Final Results of Antidumping Duty Administrative Reviews: Portable Electric Typewriters: Portable Electric Typewriters from Japan (FR 56:394, November 4, 1991). Following this hierarchy, for Izumi and Pulton we assigned the highest rate from any previous review or the original investigation.

However, Hitachi's response required only a partial use of BIA, as a substantial portion of their response was fully acceptable. For sales where the U.S. product was procured from a related supplier and Hitachi failed to provide cost of production information to generate dinners, as BIA for those sales, we have used the weighted-average margin found on all other Hitachi sales.

United States Price
Hitachi
We based U.S. price (USP) on purchase price, in accordance with section 772(b) of the Act, where sales were made directly to unrelated parties prior to importation into the United States because exporter's sales price (ESP) methodology was not indicated by other circumstances. Where sales to the first unrelated purchaser took place after importation into the United States, we based USP on ESP, in accordance with section 772(c) of the Act.

We calculated purchase price based on packed, duty paid, delivered prices to unrelated purchasers in the United States. We made deductions, where appropriate, for foreign inland freight, foreign brokerage, ocean freight, marine insurance, U.S. duty, U.S. inland freight, discounts, and U.S. brokerage.

We calculated ESP based on packed, duty paid prices to unrelated purchasers in the United States. We made deductions, where appropriate, for foreign inland freight, foreign brokerage, U.S. inland freight, U.S. brokerage, ocean freight, marine insurance, and U.S. duty. In accordance with section 772(e)(2) of the Act, we made further deductions, where appropriate, for credit expenses. We also made deductions for commissions and U.S. indirect selling expenses in the home market and United States, including warranty expenses and warehousing expenses.

For purchase price and ESP sales being compared to home market sales, because a consumption tax was paid on home market sales but not on U.S. sales, we added to the U.S. selling price the amount of the consumption tax that would have been collected if Japan had taxed the export sales.

Kaga
In accordance with section 772(b) of the Act, we based USP on purchase price because, while all of Kaga's sales were made to an unrelated trading company, Kaga knew at the time of sale that the merchandise was intended for sale to an unrelated purchaser in the United States. Moreover, ESP methodology was not indicated by other circumstances.

We calculated purchase price based on the packed, Yokohama port price to the unrelated trading company in Japan. We deducted foreign inland freight.

Because a consumption tax was paid on home market sales but not on U.S. sales, we added to the U.S. selling price the amount of the consumption tax that would have been collected if Japan had taxed the export sales.

Federal Register / Vol. 56, No. 234 / Thursday, December 5, 1991 / Notices 63709
would have been collected if Japan had taxed the export sales.

**RK Excel Ltd.**

We based USP on purchase price because all sales to the first unrelated purchaser occurred prior to importation into the United States in accordance with section 772(b) of the Act and because ESP methodology was not indicated by other circumstances.

We calculated purchase price on packed, net or ex-godown prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight and foreign inland insurance. Because U.S. sales were reported exclusive of commissions paid to the U.S. sales agent, we added to the U.S. selling price the amount of the commissions respondent had deducted improperly.

Because a consumption tax was paid on home market sales but not on U.S. sales, we added to the U.S. selling price the amount of the consumption tax that would have been collected if Japan had taxed the export sales.

**Foreign Market Value**

In order to determine whether there were sufficient sales of roller chain in the home market to serve as a viable basis for calculating foreign market value (FMV), we compared the volume of home market sales in the such or similar category to the volume of third country sales in the such or similar category. In accordance with section 773(a)(1)(B) of the Act. All companies had viable home markets.

**Hitachi**

In accordance with section 773(a)(1)(A) of the Act, we calculated FMV based on packed, f.o.b. prices to related and unrelated customers in the home market. We used sales to related customers only when we determined that the sales were at prices reflective of arm's length transactions.

For comparisons to purchase price sales, we made adjustments, where appropriate, for credit expenses, in accordance with 19 CFR 353.56. Because commissions were paid only in the U.S. market, we added U.S. commissions and deducted home market indirect selling expenses up to the amount of the U.S. commissions. We also made a circumstance-of-sale adjustment for the difference between the consumption taxes on home market sales and U.S. sales.

For comparisons to ESP sales, we deducted credit expenses and home market indirect selling expenses capped by the amount of indirect selling expenses and commissions incurred in the U.S. market, in accordance with 19 CFR 353.56(b)(2). We made a circumstance-of-sale adjustment for the difference between the consumption taxes on home market sales and U.S. sales.

If comparisons to similar merchandise in the home market could not be found in any month of the POR, we based FMV on CV, in accordance with section 779(e) of the Act. CV includes the cost of materials and fabrication of the merchandise exported to the United States, plus general expenses and profit incurred on sales of the same class or kind of merchandise in the home market, and packing. We used Hitachi's CV data except that financial expenses were revised to reflect consolidated interest expense. We excluded the interest attributable to accounts receivable in order to avoid double counting imputed credit expense.

We used actual general expenses as these amounts were greater than the statutory minimum of ten percent. For profit, we applied eight percent of the combined cost of materials, fabrication, and general expenses, pursuant to section 775(e)(1)(B)(ii) of the Act, because the actual amount was less than the statutory minimum of eight percent.

Where FMV was based on CV, for comparisons to purchase price sales, we made circumstance of sale adjustments for differences in credit, in accordance with 19 CFR 353.56(a)(2). Because commissions were paid only in the U.S. market, we added U.S. commissions and deducted home market indirect selling expenses up to the amount of the U.S. commissions.

**Koga**

In accordance with section 773(a)(1)(A) of the Act, we calculated foreign market value based on packed, delivered prices to unrelated wholesalers and original equipment manufacturers in the home market. We made deductions, where appropriate, for inland freight.

We made circumstance-of-sale adjustments for differences in credit terms, in accordance with 19 CFR 353.56. We deducted home market packing costs and added U.S. packing costs. We made a circumstance-of-sale adjustment for the difference between the consumption taxes on home market sales and U.S. sales.

For sales that could not be matched contemporaneously, we calculated a weighted-average foreign market value for each product based on all reported sales during the review period.

**RK Excel, Ltd.**

We calculated FMV based on packed, delivered prices to unrelated customers in the home market.

For comparisons to purchase price sales, we made deductions for inland freight and foreign inland insurance. We made circumstance-of-sale adjustments, where appropriate, for differences in merchandise, credit, advertising, and technical service expenses in accordance with 19 CFR 353.56. We deducted home market packing costs and added U.S. packing costs. Because commissions were paid only in the U.S. market, we added U.S. commissions and deducted home market indirect selling up to the amount of the U.S. commissions. We made a circumstance-of-sale adjustment for the difference between the consumption taxes collected on home market sales and U.S. sales.

If comparisons to similar merchandise in the home market could not be found in any month of the POR, we based FMV on CV, in accordance with section 773(e) of the Act. CV includes the cost of materials and fabrication of the merchandise exported to the United States, general expenses and profit incurred on sales of the class or kind in the home market, and packing. We relied on RK Excel's data except in the following instances where the costs were not appropriately quantified or valued:

1. We calculated G&A expenses as a percentage of cost of sales as reported on its financial statement and included a portion of the parent company's G&A expenses. We also included miscellaneous income related to production activities.
2. We calculated interest expense as a percentage of cost of sales as reported on the consolidated financial statements. We did not offset interest expense by short-term interest income because the respondent did not separate interest income from dividend income. We excluded the interest attributable to accounts receivable in order to avoid double counting the imputed credit expenses.

We used actual general expenses as these amounts were greater than the statutory minimum of ten percent. For profit, we applied eight percent of the combined cost of materials, fabrication, and general expenses, pursuant to section 773(e)(1)(B)(ii) of the Act, because the actual amount was less than the statutory minimum of eight percent.
Preliminary Results of the Review

As a result of our analysis, we preliminarily determine the margins to be:

<table>
<thead>
<tr>
<th>Manufacturer/Exporter</th>
<th>Margin percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hitachitek Techno, Ltd.</td>
<td>4.12</td>
</tr>
<tr>
<td>Irumi Chain Co., Ltd.</td>
<td>3.54</td>
</tr>
<tr>
<td>Kaga Industrie Co., Ltd.</td>
<td>0.00</td>
</tr>
<tr>
<td>Pullon Chain Co., Inc.</td>
<td>0.00</td>
</tr>
<tr>
<td>RF Excel Co., Ltd.</td>
<td>0.34</td>
</tr>
</tbody>
</table>

The Department will issue appraisement instructions concerning these companies directly to the Customs Service upon completion of this administrative review.

Furthermore, the following deposit requirements will be effective upon publication of our final results of this administrative review for all shipments of the subject merchandise from Japan entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed companies will be that established in the final results of this review; (2) for merchandise exported by manufacturers or exporters not covered in this review, but covered in any previous review, the cash deposit will continue to be the rate published in the most recent previous review; (3) if the exporter is not a firm covered in this review or an earlier review, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of the most recently completed review of the manufacturer; and (4) the cash deposit rate for all other exporters/producers shall be 4.12%. This is the highest non-BIA rate for any firm included in this review.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Public Comment

In accordance with 19 CFR 353.38, case briefs or any other written comments must be submitted in at least ten copies of the proprietary version and five copies of the public version, including the public summary required under 19 CFR 353.32, to the Assistant Secretary for Import Administration no later than January 2, 1992, and rebuttal briefs no later than January 9, 1992. In accordance with 19 CFR 353.33(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in the case or rebuttal briefs. Tentatively, such a hearing will be held on January 13, 1992, at 10 a.m. at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Persons interested in attending the hearing should contact the Department as the scheduled date approaches to ensure that circumstances have not required a change in plans.

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration within ten days of the publication of this notice. Requests should contain: (1) The party’s name, address and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.33(b), an interested party may make an oral presentation only on arguments included in its briefs.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1671b(a)(1)) and 19 CFR 353.22(c)(5).


Francis J. Seiler,
Acting Assistant Secretary for Import Administration.

[FR Doc. 91-29199 Filed 12-4-91; 8:45 am]
BILLING CODE 3510-DS-M

(A-461-801)

Initiation of Antidumping Duty Investigation: Uranium from the Union of Soviet Socialist Republics

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: December 5, 1991.

FOR FURTHER INFORMATION CONTACT: Roy A. Malmrose or Stephanie L. Hager, Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-5414 or (202) 377-5055, respectively.

Initiation

The Petition


In compliance with the filing requirements of the Department's regulations (19 CFR 353.12), petitioners allege that imports of uranium from the Union of Soviet Socialist Republics ("Soviet Union") are being, or are likely to be sold in the United States at less than fair value within the meaning of section 771 of the Tariff Act of 1930, as amended ("the Act"), and that these imports are materially injuring or threaten material injury to, the U.S. industry.

Petitioners have stated that they have standing to file the petition because they are interested parties, as defined under section 771(9) (C) and (D) of the Act, and because they have filed on behalf of the U.S. industry producing the product that is subject to this investigation. Any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, who wishes to register support for, or opposition to, this petition, should file written notification with the Assistant Secretary for Import Administration.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in 19 CFR 353.14.

United States Price and Foreign Market Value

Petitioners have calculated United States price ("USP") using an estimated weighted average f.o.b. import price based on U.S. Bureau of Census statistics on imports of natural and
enriched uranium from the Soviet Union during the period January 1990 through August 1991.

Petitioners argue that the Soviet Union is a nonmarket economy ("NME") country within the meaning of section 773(c) of the Act. Accordingly, petitioners calculated foreign market value ("FMV") on the basis of constructed value ("CV"), using the factors of production methodology specified in section 776(c)(c) of the Act. Petitioners calculated two separate CVs for mined and enriched uranium.

We have examined the petition on uranium from the Soviet Union and found that the petition meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of uranium from the Soviet Union are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by April 18, 1991.

Pursuant to section 771(a) of the Act and based on prior investigations, the Soviet Union is a NME. Parties will have the opportunity to comment on this issue and whether FMV should be based on prices or costs in the NME in the course of this investigation. The Department further reserves, based on the extent of central control in the NME, that a single antidumping margin is appropriate for all exporters. Only if NME exporters can demonstrate an absence of central government control with respect to the pricing of exports, both in law and in fact, will they be entitled to separate, company-specific margins.

We adjusted the factors of production related to capital costs and depreciation. We used capital costs for Canadian mining operations rather than the Portuguese values submitted by petitioners. Petitioners had derived the Portuguese capital costs by applying the Canadian capital-to-operating-cost ratio to Portuguese operating costs. Because capital costs are largely fixed costs, there is no reason to assume they would vary with the changes between the Portuguese and Canadian operating costs. For depreciation, we used the average site depreciation for enrichment based on the fiscal year 1990 financial statements of Urenco adjusted to 1991 figures, rather than the depreciation for two different plants in the United Kingdom developed for the petition. We disallowed the petitioners' adjustment related to the quantity of energy used in the Soviet Union because sufficient support was not provided.

Based on the petitioners' comparison of USP and FMV, adjusted to reflect the Department's methodology, the dumping margins for uranium from the Soviet Union range from 41.53 to 136.64 percent.

Initiation of Investigation

Under section 733(c) of the Act, the Department must determine, within twenty days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether the petition contains information reasonably available to the petitioners regarding the allegations.

We have examined the petition on uranium from the Soviet Union and found that the petition meets the requirements of section 735(b) of the Act. Therefore, in accordance with section 735 of the Act, we are initiating an antidumping duty investigation to determine whether imports of uranium from the Soviet Union are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by April 18, 1991.

Pursuant to section 771(a) of the Act and based on prior investigations, the Soviet Union is a NME. Parties will have the opportunity to comment on this issue and whether FMV should be based on prices or costs in the NME in the course of this investigation. The Department further reserves, based on the extent of central control in the NME, that a single antidumping margin is appropriate for all exporters. Only if NME exporters can demonstrate an absence of central government control with respect to the pricing of exports, both in law and in fact, will they be entitled to separate, company-specific margins.

In accordance with section 773(c), the FMV in NME cases is based on NME factors of production (valued in a market economy country). Absent evidence that the Soviet government has selected which mines or plants produce for the United States market, for purposes of this investigation we intend to base FMV only on those factories in the Soviet Union which produce uranium for export to the United States.

Scope of Investigation

The product covered by this investigation is uranium from the Soviet Union. This includes natural uranium in the form of uranium ores and concentrates; natural uranium metal and natural uranium compounds; alloys, dispersions (including cerments), ceramic products, and mixtures containing natural uranium or natural uranium compounds; uranium enriched in U235 and its compounds; alloys, dispersions (including cerments), ceramic products, and mixtures containing uranium enriched in U235 or compounds of uranium enriched in U235. Imports of these products are currently classifiable under the following Harmonized Tariff Schedule ("HTS") subheadings: 2812.10.00.90, 2844.10.10.00. 2844.10.20.10, 2844.10.20.25, 2844.10.20.50, 2844.10.50.00, 2844.20.00.10, 2844.20.00.50, 2844.20.00.60, 2844.20.00.70, 2844.20.00.30, and 2844.20.00.50.

Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Preliminary Determination by International Trade Commission

The International Trade Commission ("ITC") will determine by December 23, 1991, whether there is a reasonable indication that imports of uranium from the Soviet Union are materially injuring or threaten material injury to a U.S. industry. If its determination is negative, the investigation will be terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act (19 U.S.C. 1673a).


Francis J. Sailer,
Acting Assistant Secretary for Import Administration.

[FR Doc. 91-29200 Filed 12-4-91; 8:45 am]
BILLING CODE 3510-D5-M

[C-507-601]

Roasted In-Shell Pistachios from Iran; Determination Not To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of determination not to revoke countervailing duty order.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the countervailing duty order on roasted in-shell pistachios from Iran.

EFFECTIVE DATE: December 5, 1991.

FOR FURTHER INFORMATION CONTACT: Christopher Beach or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-2786.

SUPPLEMENTARY INFORMATION: On October 7, 1991, the Department of Commerce ("the Department") published in the Federal Register (56 FR 50565) its intent to revoke the countervailing duty order on roasted in-shell pistachios from Iran (51 FR 35679; October 7, 1986). In accordance with 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is
Joseph A. Sperini,
Deputy Assistant Secretary for Compliance.

BILLING CODE 3510-D6-M

C-559-001

Certain Refrigeration Compressors From the Republic of Singapore; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On August 28, 1991, the Department of Commerce published the preliminary results of its administrative review of the agreement suspending the countervailing duty investigation on certain refrigeration compressors from the Republic of Singapore. The review covers the period April 1, 1989 through March 31, 1990.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received comments from respondents. Our analysis of these comments follows.

Comment 1: Respondents argue that the Department has miscalculated the net subsidy and consequently, the appropriate export charge. Respondents state that it was inappropriate for the Department to add back to MARIS' profit figure export charges imposed pursuant to the suspension agreement to offset the subsidy and subsequently deducted by the company for income tax purposes. They argue that the Department's methodology is flawed because it is contrary to the terms of the suspension agreement, as it results in an export charge that exceeds the net benefit (tax savings) to MARIS under applicable Singapore law. The suspension agreement is based on the net benefit which equals the tax savings, and the net benefit is calculated by taking the value of the exempt portion of export profits, after allowing for the secondary consequences of an alleged bounty or grant to MARIS, and an inflation of the amount of the export charge it must pay.

Department's Position: Our calculation of the benefit and the export charge rate in the preliminary results of this review was correct. This methodology has been in place since the administrative review of the January–December 1988 period, and remains unchanged. Under the terms of the suspension agreement, the net bounty or grant determined to exist with respect to the subject merchandise is to be completely offset with an export charge. The benefit in this case is MARIS' total tax savings on export profits under part VI of the Economic Expansion Incentives Act (EEIA). MARIS, by deducting the export charge payments, is able to reduce the amount of its taxable profit, which results in a reduction of its total tax liability, and a consequent understatement of the amount of the benefit it receives under this program. A complete offset of the benefit is not achieved when the deduction of export charge payments is used to reduce the amount of taxable profit on which the export charge rate is based. By adding back the amount of the deducted export charge payments to profit, the Department is able to base the export charge rate on the actual tax savings. The Department's methodology offsets completely the countervailable benefit, and as such is completely within the terms of the agreement.

Additionally, respondents' allegation that the Department's methodology results in an unfair double standard for treatment of business expenses deductions by importers and exporters has no basis. Deductions of business expenses by importers and exporters are allowed the same business expense deduction under U.S. tax law.

Respondents also argue that use of this methodology creates a double standard for income tax deductions which is unfair to exporters, stating that U.S. importers are allowed the same business deduction under U.S. tax law.

In addition, they state that the Department's treatment of the deductions is contrary to the Department's practice of ignoring secondary consequences of an alleged subsidy. Respondents claim that the result is an artificial inflation of the net bounty or grant to MARIS, and an inflation of the amount of the export charge it must pay.
under U.S. tax law have no bearing on the question of whether the Department's methodology is in compliance with the terms of the suspension agreement and the countervailing duty law.

Furthermore, the methodology used by the Department is not contrary to Department practice of ignoring secondary effects of countervailing benefits. The benefit calculated represents solely the reduction in MARIS' total tax liability under the EEIA program, as is correct. MARIS' deduction of export charge payments as a business expense is not in any way a secondary tax consequence of the benefit. The deduction was made by MARIS prior to the calculation of the reduction in its tax liability. As a result, the deduction effectively enables MARIS to reduce the amount of profit and undertake the amount of the benefit.

The Department has adjusted for this by adding the amount of the deducted export charge payments back to taxable income to fully capture the amount of the benefit. The export charge rate calculated in the preliminary results is based on this figure, and is correct since it fully offsets the benefit.

Comment 2: Respondents comment that the Department's refusal to conduct an administrative review of the sixth review period was in violation of the suspension agreement, an abuse of discretion, and not in accordance with law. They ask that the Department reconsider its decision not to include shipments of the subject merchandise for the period April 1, 1988 through March 31, 1989 in the current administrative review. In their submission, respondents state that they did not request a review during the November 1989 30-day "Opportunity to Request Review" period because they had not yet received the income tax computation for this period, and that it was not received until more than one year later.

Department's position: Section 355.22 of the Department's countervailing duty regulations states that requests for administrative review of a suspension agreement be submitted in writing during the anniversary month of the publication of the suspension of investigation. In November 1989, the Department publicly announced this opportunity by publishing in the Federal Register a "Notice of Opportunity to Request Administrative Review" (54 FR 47101, November 9, 1989).

In a November 30, 1989 letter, respondents notified the Department that they were not requesting a review. Since no requests were received from other interested parties, an administrative review was not initiated. At the next opportunity to request an administrative review, in November of the following year, respondents and petitioner requested a review of the following review period. Respondents made no mention of the previous review period of any tax-related problems connected with the foregone review. Indeed, respondents made the request for review even though they did not, at that time, possess the finalized tax computation for the period.

In February 1991, and in March 1991, more than a year after the opportunity to request review for the period in question had passed, respondents requested that the Department review the April 1, 1988 through March 31, 1989 period, stating that MARIS had not received a review earlier because it had not at that time received its income tax computation from the Government of Singapore. These requests were denied as being untimely.

The Department, in these final results, will not overturn its decision on this matter. The decision not to initiate an administrative review is governed by the countervailing duty regulations, which specify clearly the time at which requests for review must be made. 19 C.F.R. 355.22(a). Respondents not only were aware of the thirty day window for submitting review requests, they notified the Department in writing that they were not requesting a review. Therefore, in accordance with the Department's regulations, the Department will not conduct an administrative review based on an untimely request to do so.

Final Results of Review
After considering the comments received, we determined that the signatories to the suspension agreement have complied with the terms of the suspension agreement, including the payment of the provisional export charge for the review period. From April 1, 1988 through March 31, 1990, a provisional export charge rate of 4.95 percent was in effect.

We determine the total bounty or grant to be 4.05 percent of the f.o.b. value of the merchandise for the April 1, 1988 through March 31, 1989 review period. Therefore, we find that the Government of Singapore has offset completely the net bounty or grant determined by the Department to exist with respect to the subject merchandise by the collection of an export charge applicable to exports of the subject product.

Following the methodology outlined in section II.A.4 of the agreement, the Department determines that, for the period April 1, 1989 through March 31, 1990, a negative adjustment may be made to the provisional export charge rate in effect. This rate established in the notice of the final results of the third administrative review of the suspension agreement (53 FR 25647, July 8, 1988), is 4.95 percent. For this period the Government of Singapore may refund the difference to the companies.

The Department intends to notify the Government of Singapore that the provisional export charge rate on all exports of the subject merchandise to the United States with Outward Declarations filed on or after the date of publication of the final results of this administrative review shall be 4.05 percent of the f.o.b. value of the merchandise.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1677a(a)(1)) and section 355.22 of the Department's regulations (19 CFR 355.22 (1990)).

Francis J. Sailer,
Acting Assistant Secretary for Import Administration.

Short-Supply Determination: Certain Hexagonal Steel Tubes and Trilobe Steel Tubes

AGENCY: Import Administration/International Trade Administration, Commerce.

ACTION: Notice of short-supply determination on certain hexagonal steel tubes and trilobe steel tubes.

SHORT-SUPPLY REVIEW NUMBER: 59.

SUMMARY: The Secretary of Commerce ("Secretary") hereby grants a short-supply allowance for 50 metric tons of certain hexagonal steel tubes and trilobe steel tubes through March 31, 1992, under article 7 of the Arrangement Between the European Community and the Government of the United States of America Concerning Trade in Certain Steel Pipes and Tubes ("the U.S.-EC Arrangement").


FOR FURTHER INFORMATION CONTACT: Marissa A. Rauch or Laurie Luckring, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, room 7868, 14th Street and Constitution Avenue NW., Washington, DC 20230 (202) 377-0165 or (202) 377-3793.

SUPPLEMENTARY INFORMATION: On November 13, 1991, the Secretary
received an adequate petition from AL-KO Kober Corporation ("AL-KO Kober"), requesting a short-supply allowance for 50 metric tons of this product through March 31, 1992, under section 7 of the U.S.-EC Arrangement. AL-KO Kober requested short supply because this product is not available in the United States and because its foreign supplier has insufficient quota available. The Secretary conducted this short-supply review pursuant to section 4(b)(4)(A) of the Steel Trade Liberalization Program Implementation Act.

Specifications

The requested material consists of two sizes of custom-shaped asymmetrical hexagonal tubes and two sizes of trilobe tubes. The two shapes of tubing are complimentary and used together to form a unified axle. The exact sizes, grades and quantity requested of each tube is as follows:

<table>
<thead>
<tr>
<th>Size</th>
<th>Quantity steel grade</th>
<th>(Metric tons)</th>
</tr>
</thead>
<tbody>
<tr>
<td>62x&lt;3</td>
<td>SAE 1012 or 1020</td>
<td>10</td>
</tr>
<tr>
<td>80x&lt;3</td>
<td>SAE 1012 or 1020</td>
<td>27</td>
</tr>
<tr>
<td>41x&lt;4</td>
<td>SAE 1513 or ROPS Steel</td>
<td>1</td>
</tr>
<tr>
<td>56x4.7</td>
<td>QStE 460TM</td>
<td>12</td>
</tr>
</tbody>
</table>

The hexagonal tubes are welded, but have smoothed outer seams. The cross-section of the 80x3 mm hexagonal tube consists of three 90 degree angles between which are three 144 degree angles in alternating order. The 144 degree angles tend to be sharper than the other angles, which are more rounded. The cross-section of the 62x3 mm hexagonal tube consists of three 96 degree angles between which are three 144 degree angles in alternating order. The 144 degree angles tend to be sharper than the other angles, which are more rounded.

The trilobe tubes are welded, but have smoothed outer seams. The cross-section of the trilobe tubes is essentially rounded equilateral equiangular lobes. Each of the three lobes is a bell-shaped, rounded curve, the sides of which form a 60 degree angle. Between the bell-shaped lobes are shallow U-shaped curves, and the sides of each form a 120 degree angle.

Action

On November 13, 1991, the Secretary established an official record on this short-supply request (Case Number 59) in the Central Records Unit, room B-299, Import Administration, U.S. Department of Commerce at the above address. Section 4(b)(4)(B)(i) of the Act and § 357.102(b)(1)(ii) of Commerce’s Short-Supply Procedures require the Secretary to apply a rebuttable presumption that a product is in short supply and to make a determination with respect to a short-supply petition not later than the 15th day after the petition is filed if the Secretary finds that one of the following conditions exists: (1) the raw steelmaking capacity utilization in the United States equals or exceeds 90 percent; (2) the importation of additional quantities of the requested steel product was authorized by the Secretary during each of the two immediately preceding years; or (3) the requested steel product is not produced in the United States. Therefore, the Secretary has applied a rebuttable presumption that this product is presently in short supply in accordance with section 4(b)(4)(B)(ii) of the Act and § 357.102(b)(2)(ii) of Commerce’s Short-Supply Procedures.

Unless domestic steel produces provided proof that they could and would produce the requested quantity of this product within the desired period of time, provided it represented a normal order-to-delivery period, the Secretary would issue a short-supply allowance not later than November 27, 1991. On November 19, 1991, the Secretary published a notice in the Federal Register announcing a review of this request and providing domestic steel producers an opportunity to rebut the presumption of short supply. All comments were required to be received no later than November 20, 1991. No comments were received.

Conclusion

Since the Secretary received no comments to the Federal Register notice by potential suppliers to rebut the Secretary’s presumption of short supply for the requested product, the Secretary hereby grants, pursuant to section 4(b)(4)(A) of the Act and § 357.102 of Commerce’s Short-Supply Procedures, a short-supply allowance for 50 metric tons of the requested steel tubes through March 31, 1992 under the U.S.-EC Arrangement.


Alan M. Dunn, Assistant Secretary for Import Administration.

[FR Doc. 91–28102 Filed 12–4–91; 8:45 am]

BILLING CODE 3510–DS–M

National Institute of Standards and Technology
Announcing a Meeting of Fastener Quality Act Advisory Committee

AGENCY: National Institute of Standards and Technology, DoE.

ACTION: Notice of advisory committee meeting open to the public.

SUMMARY: The National Institute of Standards and Technology (NIST) will hold a meeting of the Fastener Advisory Committee on January 16 and 17, 1991.

The meeting will be for the purpose of providing advice to the Department of Commerce, pursuant to statute, on the implementation of the Fastener Quality Act of 1989 (Pub. L. 101–592).

DATES: The meeting will be held on January 16, 1991 from 9 a.m. to 5 p.m., and on January 17, 1991 from 8:30 a.m. to 3 p.m., or earlier if so adjourned.

ADDRESSES: The meeting will be held at the J.W. Marriott Hotel, 1331 Pennsylvania Avenue, NW., Washington, DC.

AGENDA: NIST and the Advisory Committee will discuss recommended changes to draft implementing regulations. The Committee will receive information from its Cost Effectiveness Working Group on the results of its work in identifying fasteners that are either covered under the Fastener Quality Act or that should be exempted by the Secretary of Commerce under section 4 authority.

PUBLIC PARTICIPATION: The meeting is open to the public. Attendance shall be on a first-come, first serve basis in so far as seating is concerned, up to the reasonable and safe capacity of the meeting room. The public may file written statements with the Advisory Committee at any time before or after the meeting. An effort shall be made to set aside a portion of the meeting for public participation. To the extent that the meeting time and agenda permits, interested persons will be allowed to present oral statements or to participate in the discussions.

For further information contact:

Mr. David E. Edgerly, Deputy Director, Technology Service, National Institute of Standards and Technology, Building 221, room A263, Gaithersburg, MD 20899, Telephone (301) 975–4500.


John W. Lyons, Director.
Deep Seabed Hard Mineral Resources

A cting Deputy Administrator for Management.

Trask Lane, Danvers, MA; telephone: 508-774-6800. The Council will begin the meeting at 10 a.m. on December 11. The meeting will resume with a report by the Scallop Committee Chairman on the management measures and alternatives proposed for Amendment #5 to the Atlantic Sea Scallop Fishery Management Plan. The Council intends to finalize a document at this meeting for review at public hearings.

On December 12 the meeting will begin with a report by the Groundfish Committee Chairman.

For more information contact Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906; telephone: (617) 231-0422.


Richard Schaefer, Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service. [FR Doc. 91-29121 Filed 12-4-91; 8:45 am]

BILLING CODE 3510-22-M

Committee for the Implementation of Textile Agreements

Announcing 1992 Agreement Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Hong Kong


AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.


SUPPLEMENTARY INFORMATION:


The Governments of the United States and Hong Kong agreed to extend their Bilateral Textile Agreement of August 4, 1988, as amended, through December 31, 1995. A complete list of the limits for the period beginning on January 1, 1992 and extending through December 31, 1992 is published below.

A copy of the current bilateral agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647-3889.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 55 FR 50756, December 2, 1990).

New England Fishery Management Council; Public Meeting


The New England Fishery Management Council (Council) will hold a public meeting on December 11-12, 1991, at the Kings Grant Inn, Rt. 128 at Trask Lane, Danvers, MA; telephone: 508-774-6800. The Council will begin the meeting at 10 a.m. on December 11. The meeting will be reconvened on December 12 at 9 a.m. The meeting will begin on December 11 with briefings by the Council Chairman, the Council Executive Director, the National Marine Fisheries Service Regional Director, and the Northeast Fisheries Science Center and Mid-Atlantic Council liaisons.

Representatives from the U.S. Department of State, U.S. Coast Guard, U.S. Fish and Wildlife Service and the Atlantic States Marine Fisheries Commission will also brief the Council.

Briefings will be followed by the Large Pelagics Committee report, at approximately 11 a.m. The Committee Chair will then review the recent International Commission for the Conservation of Atlantic Tuna meetings held in Madrid, Spain. This will be followed by an update on harbor porpoise/fishery interactions in the Gulf of Maine and Canadian waters.

After the lunch break, the meeting will resume with a report by the Scallop Committee Chairman on the management measures and alternatives proposed for Amendment #5 to the Atlantic Sea Scallop Fishery Management Plan. The Council intends to finalize a document at this meeting for review at public hearings.

On December 12 the meeting will begin with a report by the Groundfish Committee Chairman.

For more information contact Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906; telephone: (617) 231-0422.


Richard Schaefer, Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service. [FR Doc. 91-29121 Filed 12-4-91; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals


ACTION: Issuance of public display permit No. 755.

SUMMARY: On Thursday, September 26, 1991, notice was published in the Federal Register (56 FR 48779) that an application (P399A) had been filed by the Boudewijnpark-Dolphinarium Brugge, A. De Baeckestraat 12, 8200 Brugge, St-Michiels, Belgium. A public display permit was proposed for Amendment #5 to the Atlantic Sea Scallop Fishery Management Plan. The Council intends to finalize a document at this meeting for review at public hearings.

On December 12 the meeting will begin with a report by the Groundfish Committee Chairman.

For more information contact Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906; telephone: (617) 231-0422.


Richard Schaefer, Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service. [FR Doc. 91-29121 Filed 12-4-91; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcing 1992 Agreement Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Hong Kong


AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.


SUPPLEMENTARY INFORMATION:


The Governments of the United States and Hong Kong agreed to extend their Bilateral Textile Agreement of August 4, 1988, as amended, through December 31, 1995. A complete list of the limits for the period beginning on January 1, 1992 and extending through December 31, 1992 is published below.

A copy of the current bilateral agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647-3889.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 55 FR 50756, December 2, 1990).
The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Auggie D. Tantillo,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91-29136 Filed 12-4-91; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

**Title, Applicable Form, and Applicable OMB Control Number:** Defense FAR Supplement, Part 223.75, Drug-Free Work Force, and the clause at 553(a)(1). This category addresses the implementation of the Drug-Free Work Force Program.

**Affected Public:** Contractors or other for-profit, non profit institutions and Small Businesses or Organizations.

**Frequency:** On Occasion.

**Responsible Office:** To obtain or retain a benefit.

---

<table>
<thead>
<tr>
<th>Category</th>
<th>Twelve-month limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>633/634/635</td>
<td>1,145,483 dozen of which not more than 428,435 dozen shall be in Category 633/634 and not more than 879,022 dozen shall be in Category 633/634 (outerwear, knitted or woven).</td>
</tr>
<tr>
<td>636</td>
<td>245,579 dozen.</td>
</tr>
<tr>
<td>636/639</td>
<td>4,441,666 dozen.</td>
</tr>
<tr>
<td>640</td>
<td>786,252 dozen.</td>
</tr>
<tr>
<td>641</td>
<td>767,504 dozen.</td>
</tr>
<tr>
<td>642</td>
<td>195,234 dozen.</td>
</tr>
<tr>
<td>644/645</td>
<td>35,566 numbers.</td>
</tr>
<tr>
<td>645/646</td>
<td>1,277,058 dozen.</td>
</tr>
<tr>
<td>647</td>
<td>436,201 dozen.</td>
</tr>
<tr>
<td>648</td>
<td>966,688 dozen.</td>
</tr>
<tr>
<td>649</td>
<td>671,575 dozen.</td>
</tr>
<tr>
<td>650</td>
<td>138,879 dozen.</td>
</tr>
<tr>
<td>651</td>
<td>265,956 dozen.</td>
</tr>
<tr>
<td>652</td>
<td>4,062,962 dozen.</td>
</tr>
<tr>
<td>658/659(2) (coveralls, overalls and jumpsuits)</td>
<td>558,029 dozen.</td>
</tr>
<tr>
<td>659(2) (swimsuits)</td>
<td>221,772 kilograms.</td>
</tr>
<tr>
<td>831-842, 843/844 (excluding made-to-measure suits), and 847, 859</td>
<td>as a group.</td>
</tr>
<tr>
<td>845</td>
<td>1,099,677 dozen.</td>
</tr>
<tr>
<td>845(2) 10 (sweaters assembled in Hong Kong from knit-to-shape component parts)</td>
<td>2,632,210 dozen.</td>
</tr>
<tr>
<td>845(2) 11 (sweaters assembled in Hong Kong from knit-to-shape component parts)</td>
<td>177,828 dozen.</td>
</tr>
<tr>
<td>845(2) 12 (sweaters assembled in Hong Kong from knit-to-shape component parts)</td>
<td>428,499 dozen.</td>
</tr>
</tbody>
</table>

---

<table>
<thead>
<tr>
<th>Category</th>
<th>Twelve-month limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>639</td>
<td>281,583 kilograms.</td>
</tr>
<tr>
<td>640</td>
<td>32,671,658 square meters equivalent.</td>
</tr>
<tr>
<td>641</td>
<td>312,015 square meters.</td>
</tr>
<tr>
<td>642</td>
<td>193,356 kilograms.</td>
</tr>
<tr>
<td>644/645</td>
<td>5,151,127 square meters.</td>
</tr>
<tr>
<td>646</td>
<td>7,814,203 square meters.</td>
</tr>
<tr>
<td>647</td>
<td>193,356 kilograms.</td>
</tr>
<tr>
<td>649</td>
<td>1,052,283 kilograms.</td>
</tr>
<tr>
<td>650</td>
<td>311,277 dozen.</td>
</tr>
<tr>
<td>651</td>
<td>944,776 dozen.</td>
</tr>
<tr>
<td>652</td>
<td>1,987,773 dozen.</td>
</tr>
<tr>
<td>653</td>
<td>758,254,840 square meters equivalent.</td>
</tr>
<tr>
<td>656</td>
<td>5,557,045 dozen.</td>
</tr>
<tr>
<td>658</td>
<td>658,029 dozen.</td>
</tr>
<tr>
<td>659</td>
<td>221,772 kilograms.</td>
</tr>
<tr>
<td>661</td>
<td>as a group.</td>
</tr>
<tr>
<td>Group II</td>
<td>218(1)—yarn dyed fabric shall be in Category 659(1) and not more than 2,980,551 dozen shall be in Category 659(1).</td>
</tr>
<tr>
<td>237, 239, 330-359, 400-403, 630-635, and 636/634/1, 635/634/1, 636/634/1 as a group.</td>
<td></td>
</tr>
<tr>
<td>237</td>
<td>944,776 dozen.</td>
</tr>
<tr>
<td>238/334</td>
<td>5,557,045 dozen.</td>
</tr>
<tr>
<td>331</td>
<td>177,828 dozen.</td>
</tr>
<tr>
<td>332</td>
<td>428,499 dozen.</td>
</tr>
<tr>
<td>333/334</td>
<td>2,632,210 dozen.</td>
</tr>
<tr>
<td>335</td>
<td>428,499 dozen.</td>
</tr>
<tr>
<td>336</td>
<td>177,828 dozen.</td>
</tr>
<tr>
<td>337</td>
<td>2,632,210 dozen.</td>
</tr>
<tr>
<td>338/339</td>
<td>1,987,773 dozen.</td>
</tr>
<tr>
<td>340</td>
<td>2,533,596 dozen.</td>
</tr>
<tr>
<td>341</td>
<td>2,564,581 dozen.</td>
</tr>
<tr>
<td>342</td>
<td>474,848 dozen.</td>
</tr>
<tr>
<td>343</td>
<td>2,645,761 dozen.</td>
</tr>
<tr>
<td>345</td>
<td>1,052,283 kilograms.</td>
</tr>
<tr>
<td>345/348</td>
<td>2,645,761 dozen.</td>
</tr>
<tr>
<td>349</td>
<td>548,064 kilograms.</td>
</tr>
<tr>
<td>360</td>
<td>1,987,773 dozen.</td>
</tr>
<tr>
<td>361</td>
<td>1,987,773 dozen.</td>
</tr>
<tr>
<td>362</td>
<td>1,987,773 dozen.</td>
</tr>
<tr>
<td>363</td>
<td>1,987,773 dozen.</td>
</tr>
<tr>
<td>364</td>
<td>1,987,773 dozen.</td>
</tr>
<tr>
<td>365</td>
<td>1,987,773 dozen.</td>
</tr>
<tr>
<td>366</td>
<td>1,987,773 dozen.</td>
</tr>
<tr>
<td>367</td>
<td>1,987,773 dozen.</td>
</tr>
<tr>
<td>368</td>
<td>1,987,773 dozen.</td>
</tr>
<tr>
<td>369</td>
<td>1,987,773 dozen.</td>
</tr>
<tr>
<td>370</td>
<td>1,987,773 dozen.</td>
</tr>
<tr>
<td>371</td>
<td>1,987,773 dozen.</td>
</tr>
<tr>
<td>372</td>
<td>1,987,773 dozen.</td>
</tr>
<tr>
<td>373</td>
<td>1,987,773 dozen.</td>
</tr>
<tr>
<td>374</td>
<td>1,987,773 dozen.</td>
</tr>
<tr>
<td>375</td>
<td>1,987,773 dozen.</td>
</tr>
<tr>
<td>376</td>
<td>1,987,773 dozen.</td>
</tr>
<tr>
<td>377</td>
<td>1,987,773 dozen.</td>
</tr>
<tr>
<td>378</td>
<td>1,987,773 dozen.</td>
</tr>
<tr>
<td>379</td>
<td>1,987,773 dozen.</td>
</tr>
<tr>
<td>380</td>
<td>1,987,773 dozen.</td>
</tr>
<tr>
<td>381</td>
<td>1,987,773 dozen.</td>
</tr>
<tr>
<td>382</td>
<td>1,987,773 dozen.</td>
</tr>
<tr>
<td>383</td>
<td>1,987,773 dozen.</td>
</tr>
<tr>
<td>384</td>
<td>1,987,773 dozen.</td>
</tr>
<tr>
<td>385</td>
<td>1,987,773 dozen.</td>
</tr>
<tr>
<td>386</td>
<td>1,987,773 dozen.</td>
</tr>
<tr>
<td>387</td>
<td>1,987,773 dozen.</td>
</tr>
<tr>
<td>388</td>
<td>1,987,773 dozen.</td>
</tr>
<tr>
<td>389</td>
<td>1,987,773 dozen.</td>
</tr>
<tr>
<td>390</td>
<td>1,987,773 dozen.</td>
</tr>
<tr>
<td>391</td>
<td>1,987,773 dozen.</td>
</tr>
<tr>
<td>392</td>
<td>1,987,773 dozen.</td>
</tr>
<tr>
<td>393</td>
<td>1,987,773 dozen.</td>
</tr>
<tr>
<td>394/394/394/394/394</td>
<td>1,987,773 dozen.</td>
</tr>
<tr>
<td>444</td>
<td>1,987,773 dozen.</td>
</tr>
<tr>
<td>445/446</td>
<td>1,987,773 dozen.</td>
</tr>
<tr>
<td>447/448</td>
<td>1,987,773 dozen.</td>
</tr>
<tr>
<td>631</td>
<td>1,987,773 dozen.</td>
</tr>
</tbody>
</table>
Office of the Secretary of Defense

DOD Advisory Group on Electron Devices; Advisory Committee Meeting


DATES: The meeting will be held at 0900, Monday, 16 December 1991.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, suite 307, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Becky Terry, AGED Secretariat, 2011 Crystal Drive, suite 307, Arlington, VA 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Ad Hoc Group on Lithography will be limited to review of research and development programs which the military proposes to initiate with industry, universities or in their laboratories. The microelectronics area includes such programs on semiconductor materials, integrated circuits, charge coupled devices and memories. The review will include classified program details throughout.

In accordance with section 10(d) of Public Law 92-463, as amended, (5 U.S.C. App. II 10(d) [1988]), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) [1988], and that accordingly, this meeting will be closed to the public.


L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 3810-01-M

Department of the Air Force

Record of Decision for the Deactivation of the Minuteman II Missile Wing at Ellsworth AFB, South Dakota

On November 18, 1991 the Air Force issued the Record of Decision for the Deactivation of the Minuteman II Missile Wing at Ellsworth Air Force Base (AFB), SD.

This Record of Decision documents the Air Force’s decision to deactivate the Minuteman II Missile Wing at Ellsworth AFB based on review and consideration of the environmental impacts identified in the Final Environmental Impact Statement for the Deactivation of the Minuteman II Missile Wing at Ellsworth AFB, dated October 1991.

The Record of Decision discusses how the Ellsworth AFB Minuteman II missile system will be deactivated, and commitments the Air Force to completing specific mitigation actions designed to minimize any adverse environmental impacts associated with deactivation activities.

Questions regarding this Record of Decision should be directed to: HQ Air Force Federal Register Liaison Officer. [FR Doc. 91-29316 Filed 12-4-91; 8:45 am]

BILLING CODE 3810-01-M

Privacy Act of 1974; Amend Systems of Records

AGENCY: Department of the Air Force. DoD.

ACTION: Amend Systems of Records.

SUMMARY: The Department of the Air Force proposes to amend eight and delete five systems of records in its inventory of records systems notices subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a).

DATES: The deletions will be effective December 5, 1991. The amendments will be effective January 6, 1992, unless comments are received which result in a contrary determination.
Reason:

System is no longer needed. There are no plans to reinstate this system in the future.

SUPPLEMENTARY INFORMATION:
The Department of the Air Force record system notices subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a), have been published in the Federal Register as follows:

50 FR 22332—May 29, 1985 (DoD Compilation, changes follow).
50 FR 24672—Jun. 12, 1985
50 FR 25737—Jun. 21, 1985
50 FR 46477—Nov. 8, 1985
50 FR 50337—Dec. 10, 1985
51 FR 4531—Feb. 5, 1986
51 FR 7917—Mar. 5, 1986
51 FR 16735—May. 6, 1986
51 FR 18927—May 23, 1986
51 FR 41382—Nov. 14, 1986
52 FR 11845—Apr. 13, 1987
52 FR 24354—Jun. 26, 1987
53 FR 45800—Nov. 14, 1988
53 FR 50072—Dec. 13, 1988
53 FR 51301—Dec. 21, 1988
54 FR 10034—Mar. 9, 1989
54 FR 43450—Oct. 25, 1989
54 FR 47550—Nov. 15, 1989
55 FR 21770—May 29, 1990
55 FR 27798—Jul. 6, 1990
55 FR 28431—Jul. 11, 1990
55 FR 34310—Aug. 22, 1990
55 FR 38120—Sep. 17, 1990
56 FR 1900—Jan. 18, 1991
56 FR 5604—Feb. 13, 1991
56 FR 12731—Mar. 27, 1991
56 FR 23054—May 20, 1991
56 FR 23070—May 24, 1991

The amendments are not within the purview of subsection (r) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a(r)), which requires the submission of altered systems reports. The specific changes to the system of records being amended are set forth below, followed by the record systems notices, as amended, in their entirety.


L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletions

F011 ATC A

System name:

Reason:
System is no longer needed. There are no plans to reinstate this system in the future.

F011 ATC E

System name:
Four-Year Reserve Officer Training Corps (AFROTC) Scholarship Program Files, (50 FR 22342, May 29, 1985).

Reason:
System is a duplicate and not needed.

FO45 ATC B

System name:

Reason:
System is no longer needed. There are no plans to reinstate this system in the future.

FO45 ATC D

System name:

Reason:
System is no longer needed. There are no plans to reinstate this system in the future.

FO50 ATC H

System name:
Student Record of Training, (51 FR 44332, December 9, 1986).

Reason:
System is no longer needed. There are no plans to reinstate this system in the future.

Amendments

FO35 AF MP A

System name:

Changes:
*
*
*
*

Categories of records in the system:
Delete first paragraph and replace with "Effectiveness/Performance Reporting Reports, Education/Training Reports; Colonels and Lieutenant Colonels Promotion Recommendation Reports; Enlisted Performance Reports for Airman Basic (E-1) through Chief Master Sergeant (E-9)."

Retention and disposal:
Under HAF Records, change last sentence to read "Promotion Recommendation Reports are * * * * ."
PURPOSE(S):
Used to document effectiveness/duty performance history; promotion selection; school selection; assignment selection; reduction-in-force; control roster; reenlistment; separation; research and statistical analyses, and other appropriate personnel actions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:
The “Blanket Routine Uses” published at the beginning of the Air Force’s compilation of record systems notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:
Maintained in visible file binders/cabinets.

RETRIEVABILITY:
Retrieved by name or Social Security Number.

SAFEGUARDS:
Records are accessed by custodian of the record system and by person(s) who are properly screened and cleared for need-to-know. Records are stored in locked cabinets or rooms.

RETENTION AND DISPOSAL:
Copies of effectiveness reports are retained until separation or retirement. At separation or retirement, data subject is presented with field and command record folder and file in the board recorder’s office until destruction. Remove reports voided by action of the Air Force Board for Correction of Military Records from selection folder and submit to Board's Secretariat with duplicate and triplicate copies for custody and disposition. Promotion Recommendation Reports are temporary documents maintained only at HQ Air Force level and are destroyed after their purpose has been served.

Active Duty Enlisted: Grades E-3 through E-6: On separation or retirement or to Air Reserve Personnel Center, Grades E-7 through E-9: On separation or retirement, original copies, those retained in Senior NCO selection folders and those in field record closing before January 1, 1967, are forwarded to the National Personnel Records Center, St. Louis, MO unless data subject holds a reserve obligation, in which case they are forwarded to Air Reserve Personnel Center. Grades E-7 through E-9: On separation or retirement, original copies, those retained in Senior NCO selection folders and those in field record closing before January 1, 1967 or later (field record) are returned to the member at separation or retirement.

Non-Active Duty Reserve Enlisted: Air Force Reserve Forces Noncommissioned Officers Performance Report; upon separation, retirement or assignment to a non-participating status, they are forwarded to Air Reserve Personnel Center if data subject holds a reserve obligation. Duplicate copies closing January 1, 1967 or later (field record) are returned to the member at separation or retirement.

Non-Active Duty Reserve:

SYSTEM MANAGER(S) AND ADDRESS:

NOTIFICATION PROCEDURES:
Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Deputy Chief of Staff/Personnel, Headquarters United States Air Force, Washington, DC 20330–5060; or to the Chief of Air Force Reserve, Headquarters United States Air Force, Washington, DC 20330–1000; or to the Director, Air National Guard, Washington, DC 20310–2500; or directly to agency officials at the respective system location. Official mailing addresses are published as an appendix to the Air Force’s compilation of record systems notices.

RECORD ACCESS PROCEDURES:
The Department of the Air Force rules for accessing records, and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35, Air Force Privacy Act Program; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:
The basis of the ratings is observed on-the-job performance or by the education/training progression of the individual. Further, effectiveness reports may have as an additional source of information Letters of Evaluation.

EXEMPTIONS CLAIMED FOR THE SYSTEM:
Portions of this system may be exempt under the provisions of 5 U.S.C. 552a(k)(7), as applicable, but only to the extent that disclosure would reveal the identity of a confidential source.

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 552a(b) (1), (2), and (3), (c) and (e) and published in 32 CFR part 806b. For additional information contact the system manager.

SYSTEM NAME:

Changes:

STORAGE:
Delete entry and replace with “Maintained in computers and on computer output products.”
RETRIEVABILITY:
Delete entry and replace with “Retrieved by Social Security Number.”

RETENTION AND DISPOSAL:
Delete entry and replace with “Records are retained until superseded, obsolete, no longer needed for reference, or upon inactivation. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by overwriting or degaussing.”

SYSTEM MANAGER(S) AND ADDRESS:
Delete entry and replace with “Deputy Chief of Staff/Plans and Programs (XPPG), USAF Academy, CO 80840-5651.”

F053 AFA A
SYSTEM NAME:
Educational Research Data Base.

SYSTEM LOCATION:
United States Air Force Academy (USAF Academy), CO 80840-5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:
Current and former USAF Academy cadets.

CATEGORIES OF RECORDS IN THE SYSTEM:
High school, college and USAF career information, including military performance, academic performance, certain medical, disciplinary and personal facts, and test data from interest/personality profiles.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:
10 U.S.C. 9331, Establishment; Superintendent; faculty; and Executive Order 9397.

PURPOSE(S):
Used by USAF Academy faculty and staff in conducting studies and analysis relating to retention, graduate professional performance, and career patterns.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:
Information may be furnished to congressional nominating source for the purpose of enhancing the nomination selection process.
The “Blanket Routine Uses” published at the beginning of the Air Force’s compilation of record systems notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:
 STORAGE:
Maintained in computers and on computer output products.

RETRIEVABILITY:
Retrieved by Social Security Number.

SAFEGUARDS:
Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:
Records are retained until superseded, obsolete, no longer needed for reference, or upon inactivation. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by overwriting or degaussing.

SYSTEM MANAGER(S) AND ADDRESS:
Deputy Chief of Staff/Plans and Programs (XPPG), USAF Academy, CO 80840-5651.

NOTIFICATION PROCEDURES:
Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the Deputy Chief of Staff/Plans and Programs (XPPG), USAF Academy, CO 80840-5651.

RECORD ACCESS PROCEDURES:
Individuals seeking to access records about themselves contained in this system should address written requests to the Deputy Chief of Staff/Plans and Programs (XPPG), USAF Academy, CO 80840-5651.

CONTESTING RECORD PROCEDURES:
The Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12-35, Air Force Privacy Act Program; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:
Information obtained from educational institutions, medical institutions, automated system interfaces, Association of Graduates, and source documents (such as reports).

EXEMPTIONS CLAIMED FOR THE SYSTEM:
None.

F053 AFA B
SYSTEM NAME:

Changes:

Retrievability:
Delete the word “Filed” and insert “Retrieved”.

Retention and disposal:
Add to end of entry “Beginning with academic year 85–86, the student folder will be retained at the Academy 30 years then destroyed. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting.”

SYSTEM NAME:
Preparatory School Records.

SYSTEM LOCATION:
United States Air Force Academy (USAF Academy), CO 80840-5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:
Preparatory School Students.

CATEGORIES OF RECORDS IN THE SYSTEM:
This system contains Social Security Number, admissions data including college board test scores and uniform size, academic performance, counseling, disenrollment, and physical fitness information.

AUTHORITY FOR MAINTAINING THE SYSTEM:
10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by, and Executive Order 9397.

PURPOSE(S):
Data is used to measure student performance, progress and potential, for counseling purposes and for possible disciplinary or disenrollment action. Information contained on the record card consisting of grade, performance, and personal information pertaining to...
the student is used to provide transcripts when requested, and used by Preparatory School administrative personnel for management purposes such as emergency data, i.e., blood type, etc. Physical fitness test scores are furnished to the Registrar’s Office for use in verification when considering student for nomination to the USAF Academy. Disenrollment data is used for compiling attrition statistics and for research in predicting students’ success at USAF Academy as a result of their Preparatory School experience.

ROUTE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:
The “Blanket Routine Uses” published at the beginning of the Air Force’s compilation of record systems notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:
STORAGE:
Maintained in paper form, in computers and on computer output products.

RETRIEVABILITY:
Retrieved by name, year of enrollment and Social Security Number.

SAFEGUARDS:
Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:
Forms and other records for administration of the Preparatory School such as Student Enrollment Questionnaires, Military Training Worksheets, Instructor’s Comments, Instructor Grade Sheets, Physical Fitness Program, Report of Offense, Medical Status Reports, Flight Evaluations, Sign In/Out Registers are destroyed at the end of the academic year or when purpose has been served, whichever is sooner. Correspondence and forms in the student folder documenting academic history and related activities are destroyed 1 year after graduation or when student would have graduated. The student Records Card is retained at the USAF Academy for 30 years and then destroyed. Disenrollment data is retained until no longer needed for reference. Beginning with academic year 85–86, the student folder will be retained at the Academy 30 years then destroyed. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting.

SYSTEM MANAGER(S) AND ADDRESS(ES):
Commander, Preparatory School, USAF Academy, CO 80840–5000.

NOTIFICATION PROCEDURE:
Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the Commander, Preparatory School, USAF Academy, CO 80840–5000.

RECORD ACCESS PROCEDURES:
Individuals seeking access to records about themselves contained in this system should address written requests to the Commander, Preparatory School, USAF Academy, CO 80840–5000.

CONTESTING RECORD PROCEDURES:
The Department of the Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 32–35, Air Force Privacy Act Program; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:
Information from the academic and military departments within Preparatory School, based on performance of students, Preparatory School Commander, from tests administered to students; from student.

EXEMPTIONS CLAIMED FOR THE SYSTEM:
None.

F053 AFA C
System name:
Admissions and Registrar Records, [50 FR 22463, May 29, 1985].

Changes:
System name:
Change system name to “Admissions Records.”

Categories of records in the system:
Delete entry and replace with "Data used in the candidate selection process for the USAF Academy: High School records: admissions test scores; physical aptitude examination scores; high school or other curricular activities: medical qualification status; personal data records; letters of recommendation; address; phone number; Social Security Number; race; height; weight; citizenship; statement of reasons for attending Academy; nomination; preparatory school or college record, if applicable; service academies precandidate Questionnaires; computerized report by congressional districts; Pertinent information on assigned Liaison Officers, reports of individual Liaison Officer activity; and general correspondence, USAF Academy Preparatory School computer listings; selection data on new classes; medical qualification at entry; cadet high school rank and class size; fourth class squadron assignments; special rosters with all scores (acceptees, declinations, minorities, recruited athletes, and preparatory school students); rosters from biographical data sheets (Protestant, Catholic, Jewish, and other religions); military parents; USAF Academy Preparatory School graduates; other preparatory school graduates; Civil Air Patrol; former ROTC members; Boy Scouts; Girl Scouts; Camp Fire Girls; cadets whose father are general officers; former Boys State, Girls State, Boys Nation delegates, cadets with private pilot licenses; admissions computer listings (all candidates, qualified candidates, selected, athletes, minorities, ex-cadets, state status reports and related data). Candidate Evaluation Records; Liaison Officer Evaluations; letters of evaluation from high school or colleges, and drug abuse certificates." Authority for maintenance of the system:
Delete entry and replace with “10 U.S.C. 9331. Establishment; superintendent; faculty, and Executive Order 9337.”

Purpose(s):
Delete entry and replace with “Used by Admissions Office, selection panels, Academy Board, Athletic Department and Preparatory School personnel for selection of cadets to attend the Preparatory School and the USAF Academy; to evaluate candidates for recommendation for civilian preparatory school scholarships, and to form the nucleus of the cadet record for candidates selected to attend the Academy. Used by Admissions Office to prepare evaluations of candidate’s potential for submission to members of Congress and to schedule for medical examinations. Used to monitor training of Liaison Officers. To advise persons interested in the Academy of the name, address, and telephone number of their nearest Liaison Officer. Used to evaluate selection procedures of USAF Academy.
Retention and disposal:

Delete entry and replace with
"Records on candidates who are appointed are forwarded to the Registrar to be included in the Master Cadet Personnel Records. Records on candidates who are not appointed are destroyed after one year. Liaison Officers' records are destroyed upon separation or reassignment. Preparatory school records are destroyed when no longer needed. Records are destroyed by tearing into pieces, shredding, pulping, lacerating or burning. Computer records are destroyed by overwriting or degaussing."

System manager(s) and address(es):

Delete entry and replace with
"Director of Admissions, Research and Technical Support Division (RRE), USAF Academy, CO 80840-6651."

Exemptions claimed for the system:

Delete entry and replace with
"Portions of this system may be exempt under the provisions of 5 U.S.C. 552a(k)(7), as applicable, but only to the extent that disclosure would reveal a confidential source.

An exemption rule for this record system has been promulgated in accordance with 5 U.S.C. 553(b) (1), (2), and (3) and (e) and published in 32 CFR part 806. For additional information, contact the system manager."

F053 AFA C

SYSTEM NAME:
Admissions Records.

SYSTEM LOCATION:
United States Air Force Academy (USAFA Academy), CO 80840-5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:
Air Force Academy applicants, nominees, appointees, cadets, and Air Force Reserve officers not on active duty.

CATEGORIES OF RECORDS IN THE SYSTEM:
Data used in the candidate selection process for the USAF Academy: High school records; admissions test scores; physical aptitude examination scores; high school extra curricular activities; medical qualification status; personal data records; letters of recommendation; address; phone number; Social Security Number; race; height; weight; citizenship; statement of reasons for attending Academy; nomination; preparatory school or college record, if applicable; service academies precandidate questionnaire; computerized report by congressional districts; pertinent information on assigned Liaison Officers, reports of individual Liaison Officer activity; and general correspondence. USAF Academy Preparatory School computer listings; selection data on new classes; medical qualification at entry; cadet high school rank and class size; fourth class squadron assignments; special rosters with all scores (acceptees, declinations, minorities, recruited athletes, and preparatory school); rosters from biographical data sheets (Protestant, Catholic, Jewish, and other religions); military parents; USAF Academy Preparatory School graduates; other preparatory school graduates; Civil Air Patrol; former ROTC members; Boy Scouts; Girl Scouts; Camp Fire Girls; cadets whose fathers are general officers; former Boys State, Girls State, Boys Nation delegates, cadets with private pilot licenses; admissions computer listings (all candidates, qualified candidates, selectees, athletes, minorities, ex-cadets, state status reports and related data). Candidate Evaluation Records; Liaison Officer Evaluations; letters of evaluation from high school or colleges, and drug abuse certificates.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:
10 U.S.C. 9331, Establishment; Superintendent; faculty, and Executive Order 9397.

PURPOSE(S):
Used by Admissions Office, selection panels, Academy Board, Athletic Department and Preparatory School personnel for selection of cadets to attend the Preparatory School and the USAF Academy; to evaluate candidates for recommendation for civilian preparatory school scholarships, and to form the nucleus of the cadet record for candidates selected to attend the Academy. Used by Admissions Office to prepare evaluations of candidate's potential for submission to members of Congress and to schedule for medical examinations. Used to monitor training of Liaison Officers. Used to advise persons interested in the Academy of the name, address, and telephone number of their nearest Liaison Officer. To advise persons interested in the

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Information may be disclosed to members of Congress in connection with nominations and appointments. Names, addresses and telephone numbers of Liaison Officers may be disclosed to individuals interested in the Academy.

Biographical information on incoming cadets may be used for press releases.

The "Blanket Routine Uses" published at the beginning of the Air Force's compilation of record systems notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ASSESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:
Maintained in file folders, notebooks/binders, in computers, on computer output products, and on microform.

RETRIEVABILITY:
Retrieved by name and/or Social Security Number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

Records on candidates who are appointed are forwarded to the Registrar to be included in the Master Cadet Personnel Records.

Records on candidates who are not appointed are destroyed after one year. Liaison Officers' records are destroyed upon separation or reassignment. Preparatory school records are destroyed when no longer needed. Records are destroyed by tearing into pieces, shredding, pulping, lacerating or burning. Computer records are destroyed by overwriting or degaussing.
SYSTEM MANAGER(S) AND ADDRESS(ES):
Director of Admissions, Research and Technical Support Division (RRE), USAF Academy, CO 80840–5651.

NOTIFICATION PROCEDURE:
Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the Director of Admissions, Research and Technical Support Division (RRE), USAF Academy, CO 80840–5651.

RECORD ACCESS PROCEDURES:
Individuals seeking access to records about themselves contained in this system should address written requests to the Director of Admissions, Research and Technical Support Division (RRE), USAF Academy, CO 80840–5651.

CONTESTING RECORD PROCEDURES:
The Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35, Air Force Privacy Act Program; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:
Educational institutions; automated system interfaces; the individual; College Entrance Examination Board; American College Testing scores; Air Force Medical examinations records; letters of recommendation, and personnel records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:
Portions of this system may be exempt under the provisions of 5 U.S.C. 552(k)(7), as applicable, but only to the extent that disclosure would reveal a confidential source.

An exemption rule for this record system has been promulgated in accordance with 5 U.S.C. 552(b)(1), (2) and (3) and (e) and published in 32 CFR part 806b. For additional information, contact the system manager.

F110 JA C
System name:
Judge Advocate Personnel Records, [50 FR 22482, May 29, 1985].

Changes:

System location:
Delete entry and replace with “At the Office of The Judge Advocate General, Headquarters United States Air Force, Washington, DC 20330–5000. A limited amount of records in this system are maintained in the Office of the Staff Judge Advocate of each major command. Official mailing addresses are published as an appendix to the Air Force’s compilation of record systems notices."

Purpose(s):
In first sentence, following the word “Executive” delete “*” and Career Management “*” and replace with “Professional Development Division,” and following the word “personnel” add “and major command staff judge advocates “*”.

Storage:
Delete entry and replace with “Maintained in file folders, card files, in computers and on computer output products.”

Retrievability:
Delete the word “Filed” and insert “Retrieved.”

Safeguards:
Delete entry and replace with “Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software.”

Retention and disposal:
Delete entry and replace with “Judge Advocate Officer Personnel records and Funded Legal Education and Excess Leave Program records are retained in office files for three years after the individual terminates military service, or until no longer needed for reference, then destroyed. Computer records are destroyed when the individual terminates military service. Other records: Retained in office files until superseded, obsolete, no longer needed for reference, or on inactivation. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting.”

System manager(s) and address(es):
Add “—5000” to zip code.

Notification procedure:
Delete entry and replace with “Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the Judge Advocate General, Headquarters United States Air Force, Washington, DC 20330–5000, or to officials at major command of assignment.

Full name and SSN must be furnished. Visits may be made to HQ USAF/JAX, Pentagon, Washington, DC 20330–5000. Valid identification card, driver’s license or equivalent must be presented.”

Record access procedures:
Delete entry and replace with “Individuals seeking access to records about themselves contained in this system should address written requests to the Judge Advocate General, Headquarters United States Air Force, Washington, DC 20330–5000, or to officials at major command of assignment.”

Contesting record procedures:
Delete entry and replace with “The Department of the Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35, Air Force Privacy Act Program; 32 CFR part 806b; or may be obtained from the system manager.”

CATEGORIES OF RECORDS IN THE SYSTEM:
Educational background; certificate of achievement; objective statement; active duty and reserve status; military service; personal and professional background; financial aid; student loans; departmental records; military service records; Federal, state, and local records; military service records; and major command staff judge advocates.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:
All Air Force active duty judge advocates; Air Force Reserve mobilization augmenters attached to Headquarters USAF, Office of the Judge Advocate General; Air Force civilian attorneys employed in classification series GS–905 and GS–1222; active duty Air Force applicants for Funded Legal Education Program and Excess Leave Program, and civilian/military applicants for direct appointment program and other accession programs.

CATEGORIES OF RECORDS IN THE SYSTEM:
Educational background; certificate of admission to the bar; career management questionaire; career objective statement; active duty and
reassignment orders; correspondence relating to the individual; Military Personnel Center computer data; classification/on-the-job training actions; Judge Advocate General Reserve Personnel Questionnaire; Headquarters USAF active duty and attachment orders; training reports; authorizations for inactive duty training; civilian personal qualifications statement; notification of personnel actions; statement of good standing before the bar; transcript of law school record; statement of availability for Air Force civilian attorney vacancies; actions by Ad Hoc Selection Committee and Air Force Civilian Attorney Qualifying Committee; Judge Advocate interview; letter of acceptance from an American Bar Association accredited law school; application and agreement acceptance by the Qualifying Committee; Judge Advocate record; statement of availability for Air Force Reserve Personnel Questionnaire; Personnel Center computer data; reassignment orders; correspondence.

ADVOCATE GENERAL in monitoring and evaluating reservists training assignments and in preparing performance evaluations; civilian records are used by the Executive Secretary and members of Ad Hoc and Air Force Civilian Attorney Qualifying Committees in evaluating and selecting civilian attorneys for appointment to Air Force position vacancies and promotions; Funded Legal Education and Excess Leave Program records are used by the Judge Advocate General, Deputy Judge Advocate General, Career Management personnel, and selection board members in monitoring, evaluating and selecting the best qualified applicants for the programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

- The “Blanket Routine Uses” published at the beginning of the Air Force’s compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

- Maintained in file folders, card files, in computers and on computer output products.

RETRIEVABILITY:

- Retrieved by name.

SAFEGUARDS:

- Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know.
- Records are stored in locked rooms and cabinets.
- Those in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

- Judge Advocate Officer Personnel records and Funded Legal Education and Excess Leave Program records are maintained in office files for three years after the individual terminates military service, or until no longer needed for reference, then destroyed. Computer records are destroyed when the individual terminates military service. Other records: Retained in office files until superseded, obsolete, no longer needed for reference, or on inactivation. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting.

SYSTEM MANAGER(S) AND ADDRESS(ES):


NOTIFICATION PROCEDURE:

- Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the Judge Advocate General, Headquarters United States Air Force, Washington, DC 20330-5000. Full name and SSN should be furnished.

RECORD ACCESS PROCEDURES:

- Individuals seeking access to records about themselves contained in this system should address written requests to the Judge Advocate General, Headquarters United States Air Force, Washington, DC 20330-5000. Visits may be made to HQ USAF/ JAX, Pentagon, Washington, DC 20330-5000. Valid identification card, driver’s license or equivalent must be presented.

CONTESTING RECORD PROCEDURES:

- The Department of the Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 13-35; Air Force Privacy Act Program; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

- Information obtained from previous employers, educational institutions, automated system interfaces, state or local governments, source documents, and from Air Reserve Personnel Center.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

- None.

F125 ATC A

System name:

Behavior Automated Research System (BARS), (50 FR 25740, June 21, 1985).

Changes:

System name:

Change system name to "Management Information and Research System (MIRS)"

System location:

Add "'5000" to zip code.

Authority for maintenance of the system:

Change "8012" to "8013."

Routine uses of records maintained in the system, including categories of users and the purpose of such uses:

- Delete entry and replace with "The "Blanket Routine Uses" published at the beginning of the Air Force’s compilation of record systems notices apply to this system."

Storage:

- Delete entry and replace with "Maintained in computers and on computer output products."

Retrievability:

- Delete the word "Filed" and insert "Retrieved."

Safeguards:

- Delete entry and replace with "Records are accessed by person(s)"
responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software."

**Retention and disposal:**
Add last sentence to end of entry
"Records are destroyed by tearing into pieces, macerating, pulping, shredding, or burning. Computer records are destroyed by erasing, deleting or overwriting."

**System manager(s) and address(es):**
Add "-5000" to end of zip code.

**Notification procedure:**
Delete entry and replace with
"Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the Commander, 3320th Correction and Rehabilitation Squadron, Lowry Air Force Base, CO 80230-5000."

**Record access procedures:**
Delete entry and replace with
"Individuals seeking access to records about themselves contained in this system should address written requests to the Commander, 3320th Correction and Rehabilitation Squadron, Lowry Air Force Base, CO 80230-5000."

**Contesting record procedures:**
Delete entry and replace with
"The Department of the Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12-35, Air Force Privacy Act Program; 32 CFR part 806b; or may be obtained from the system manager."

**Exemptions claimed for the system:**
Delete entry and replace with
"Portions of this system may be exempt under the provisions of 5 U.S.C. 552a(h)(2), as applicable, but only during the period the individual is confined or in rehabilitation at an Air Force or Federal correctional facility.
An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 552a(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 806b."

**F125 ATC A**
**SYSTEM NAME:**
Management Information and Research System (MIRS).

**SYSTEM LOCATION:**
3320th Correction and Rehabilitation Squadron, Lowry Air Force Base, CO 80230-5000.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**
Air Force prisoners who serve sentences to confinement or rehabilitation at the 3320th Correction Rehabilitation Squadron, including any detachments and/or operating locations.

**CATEGORIES OF RECORDS IN THE SYSTEM:**
Significant dates, intelligence quotient and achievement scores, psychological tests scores, military history, discipline involvement, military justice data, personal identifier data, personal history, confinement history, rehabilitation history, performance rating, type of discharge, long or short term return to duty performance data.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**
10 U.S.C. 8013, Secretary of the Air Force; Powers and duties; delegation by; and Air Force Regulation 125-18, Operation of Air Force Correction and Detention Facilities, and Executive Order 12907.

**PURPOSE(S):**
Uses for statistical analysis to support management decision making to evaluate the effectiveness of and improve program elements, and to provide data for research studies and management reports.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:**
The "Blanket Routine Uses" published at the beginning of the Air Force's compilation of record systems notices apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**
Maintained in computers and on computer output products.

**STORAGE:**
Maintained in computers and on computer output products.

**RETRIEVABILITY:**
Retrieved by Social Security Number and/or 3320th Correction and Rehabilitation Squadron Arrival Number.

**SAFEGUARDS:**
Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software.

**RETENTION AND DISPOSAL:**
Current data base is maintained while individual is in correction or rehabilitation program or appellate leave.
Historical data base is retained for 20 years. Records are destroyed by tearing into pieces, macerating, pulping, shredding, or burning. Computer records are destroyed by erasing, deleting or overwriting.

**SYSTEM MANAGER(S) AND ADDRESS(ES):**
Commander, 3320th Correction and Rehabilitation Squadron, Lowry Air Force Base, CO 80230-5000.

**NOTIFICATION PROCEDURE:**
Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the Commander, 3320th Correction and Rehabilitation Squadron, Lowry Air Force Base, CO 80230-5000.

**RECORD ACCESS PROCEDURES:**
Individuals seeking access to records about themselves contained in this system should address written requests to the Commander, 3320th Correction and Rehabilitation Squadron, Lowry Air Force Base, CO 80230-5000.

**CONTESTING RECORD PROCEDURES:**
The Department of the Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12-35, Air Force Privacy Act Program; 32 CFR part 806b; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**
FBI and military records, supervisors, commanders, lawyers, doctors, chaplains, other USAF officials, American Red Cross.

**EXCEPTIONS CLAIMED FOR THE SYSTEM:**
Portions of this system of records may be exempt under the provisions of 5 U.S.C. 552a(h)(2), as applicable, but only during the period the individual is confined or in rehabilitation at an Air Force or Federal correctional facility.
An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 552a(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 806b.
F160 AFA A
System name:
Cadet Hospital/Clinic Records. (50 FR 22906, May 29, 1985).

Changes
*
*
*
*

Purpose(s):

Delete entry and replace with "Information collected to notify concerned individuals of status of hospitalized cadets. Used to provide Superintendent, Hospital Commander and staff, Commandant and staff a daily report of number and status of cadets hospitalized; concerned personnel can note trends in hospitalization in terms of numbers of cadets hospitalized, length of stay, and nature of medical problems being treated. Report of visits to cadet clinic is used by the Cadet Wing Airmanship Division to monitor cadet activity for ground safety programs; Athletics uses it to monitor those excused from physical education and to evaluate injury rates, and the Individual uses it to justify time away from classes."

Safeguards:

Delete entry and replace with "Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Clinic copy is under the direct control of Noncommissioned Officer in Charge of Administrative Services. Distribution is made only to authorized representatives of Cadet Wing Airmanship Division and Athletics.

Retention and disposal:

Delete entry and replace with "Records are retained in office files for one year after annual cutoff then destroyed. Report of Clinic Visit are retained in office files for three months or until purpose has been served, whichever is sooner, then destroyed. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning."

Notification procedure:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the USAF Academy Hospital/SGR, USAF Academy, CO 80840-5300, ATTN: Medical Release of Information Clerk, and should include full name and date of hospital admission."

F160 AFA A
SYSTEM NAME:
Cadet Hospital/Clinic Records.

SYSTEM LOCATION:
United States Air Force Academy (USAF Academy), CO 80840-5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:
USAF Academy Cadets.

CATEGORIES OF RECORDS IN THE SYSTEM:
Daily roster of cadets hospitalized and report of cadet visits to the cadet clinic.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:
10 U.S.C. 9331, Establishment; Superintendent; faculty.

PURPOSE(S):
Information collected to notify concerned individuals of status of hospitalized cadets. Used to provide Superintendent, Hospital Commander and staff, Commandant and staff a daily report of number and status of cadets hospitalized; concerned personnel can note trends in hospitalization in terms of numbers of cadets hospitalized, length of stay, and nature of medical problems being treated. Report of visits to cadet clinic is used by the Cadet Wing Airmanship Division to monitor cadet activity for ground safety programs; Athletics uses it to monitor those excused from physical education and to evaluate injury rates, and the Individual uses it to justify time away from classes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:
The "Blanket Routine Uses" published at the beginning of the Air Force's compilation of system of record notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:
STORAGE:
Maintained in file folders.

RETRIEVABILITY:
Retrieved by name.

SAFEGUARDS:
Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Clinic copy is under the direct control of Noncommissioned Officer in Charge of Administrative Services. Distribution is made only to authorized representatives of Cadet Wing Airmanship Division and Athletics.

RETENTION AND DISPOSAL:
Records are retained in office files for one year after annual cutoff then destroyed. Report of Clinic Visit are retained in office files for three months or until purpose has been served, whichever is sooner, then destroyed. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning.

SYSTEM MANAGER(S) AND ADDRESS:
Commander, USAF Academy Hospital, USAF Academy, CO 80840–5000.

NOTIFICATION PROCEDURES:
Individuals seeking to determine whether this system of records contains information on them should address written inquiries to the USAF Academy Hospital/SGR, USAF Academy, Colorado Springs, CO 80840–5300, ATTN: Medical Release of Information Clerk, and should include full name and date of hospital admission.

RECORD ACCESS PROCEDURES:
Individuals seeking access to records about themselves contained in this system should address written requests to the Commander, USAF Academy Hospital, USAF Academy, CO 80840–5000.

CONTESTING RECORD PROCEDURES:
The Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35, Air Force Privacy Act Program; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:
Information obtained from medical institutions, the individual, physicians and/or medical technicians.

EXEMPTION CLAIMED FOR THE SYSTEM:
None.
Authority for maintenance of the system

Delete entry and replace with "The "Blanket Routine Uses" published at the beginning of the Air Force's compilation of record systems notices apply to this system."*

Storage:

Delete entry and replace with "Maintained in visible file binders/cabinets, in computers and on computer output products."* 

Retrievability:

Delete entry and replace with "Retrieved by name or Social Security Number."* 

Safeguards:

Delete entry and replace with "Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software." 

Retention and disposal:

Delete entry and replace with "Retained in office files for one year after annual cut-off, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning. Destroyed 1 year after completion by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting."*
A Department Officer, Army Science Board. Department of the Navy announces its regulations (40 CFR parts 1500-1508), the National Environmental Policy Act person may attend, appear before, or file will be open to the public. Any interested professional development plans. This meeting Statement for the City of San Diego BILLING CODE 3710-06-M Programmatic Environmental Impact Statement (PEIS) for the City of San Diego Miramar landfill general development plan at Naval Air Station (NAS) Miramar, San Diego, California. The City of San Diego currently operates a Class III sanitary landfill on NAS Miramar under a grant of easement from the U.S. Navy. The proposed general development plan for the Miramar landfill would provide for the continuance of landfill operations while providing new facilities and improvements to facilitate processing and disposal of solid waste in accordance with changes in State laws regarding landfill operating procedures, recycling, and diversion of materials from landfills. The proposed action also would modify the easement to authorize implementation of the proposed general development plan on NAS Miramar.

Components of the general development plan include a materials recovery facility, public transfer facility, household hazardous waste transfer station, aggregate processing plant, environmental complex, greens and wood waste recycling area, maintenance facility, field operations facility, construction materials recycling area, fee booth expansion, wildlife corridor maintenance, vernal pool preserves, employee break area, public recycling area, paper pulp processing plant, vehicle overpass, fill/overburden areas, sludge processing facility, flaring facility, cogeneration facility, and associated utility and road infrastructure.

Alternatives being considered include alternative sites and use configurations within NAS Miramar, alternative sites not on NAS Miramar, source reduction/alternative technologies, and no action. The PEIS will address the following known areas of concern: air emissions, water quality, endangered species, traffic congestion, hazardous material handling and disposal, and solid waste disposal.

The Navy will initiate a scoping process for the purpose of determining the scope of issues to be addressed and for identifying the significant issues related to this action. The Navy will hold a public scoping meeting on December 18, 1991, beginning 7:30 p.m. in the Clairemont High School Auditorium, 4150 Ute Drive, San Diego, California. This meeting will be advertised in San Diego area newspapers.

A formal presentation will precede request for public comment. Navy representatives will be available at this meeting to receive comments from the public regarding issues of concern to the public. It is important that federal, state, and local agencies and interested individuals take this opportunity to identify environmental concerns that should be addressed during the preparation of the PEIS. In the interest of available time, each speaker will be asked to limit their oral comments to 5 minutes.

Agencies and the public are also invited and encouraged to provide written comment in addition to, or in lieu of, oral comments at the public meetings. To be most helpful, scoping comments should clearly describe specific issues or topics which the commenter believes the PEIS should address. Written statements and or questions regarding the scoping process should be mailed no later than January 2, 1992, to Commanding Officer, Southwest Division, Naval Facilities Engineering Command, Building 127, 1220 Pacific Highway, San Diego, CA 92132-5190 (Attn: Mr. Sunderland, code 232), telephone (619) 532-3624.


Wayne Baucino, LT, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 91-29223 Filed 12-4-91; 8:45 am] BILLING CODE 3810-AE-M

DELAWARE RIVER BASIN COMMISSION

Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, December 11, 1991. The hearing will be part of the Commission’s regular business meeting which is open to the public and scheduled to begin at 1:30 p.m. in Bethlehem City Hall, 10 East Church Street, Bethlehem, Pennsylvania.

An informal conference among the Commissioners and staff will be open for public observation at 9:30 a.m. at the same location and will include status reports on the upper Delaware ice jam project, compliance of golf course irrigators, Scenic Rivers protection proposal and amendment of Compact section 15.1(b) to fund the F.E. Walter Reservoir project.

The subjects of the hearing will be as follows:

Revised Proposed Amendment to Comprehensive Plan and Water Code of the Delaware River Basin in Relation to Retail Water Pricing To Encourage Conservation

As part of its long-range program to reduce water use throughout the Basin, the Commission held a hearing on

- \[\text{TX 78150-6001 or to agency officials at location of assignment.}
- \[\text{CONTESTING RECORD PROCEDURES:}
The Department of the Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12-35, Air Force Privacy Act Program; 32 CFR part 806b; or may be obtained from the system manager.
- \[\text{RECORD SOURCE CATEGORIES:}
Supervisors’ evaluations.
- \[\text{EXEMPTIONS CLAIMED FOR THE SYSTEM:}
None.
- \[\text{Department of the Army}
Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-483), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).


Time: 0800-1600.

Place: Monterey and Ft. Hunter-Liggett, CA.

Agenda: The Army Science Board’s Issue Group on Operations Research will meet to discuss employment of scientists and engineers in the Army’s test and evaluation organization and the utilization of professional development plans. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information (706) 695-0781.

Sally A. Warner,
Administrative Officer, Army Science Board.

[FR Doc. 91-28639 Filed 12-4-91; 8:45 am] BILLING CODE 3810-01-01

Department of the Navy

Notice of Intent to Prepare a Programmatic Environmental Impact Statement for the City of San Diego Miramar Landfill General Development Plan at Naval Air Station Miramar, San Diego, CA

Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969 as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500-1508), the Department of the Navy announces its intent to prepare a Programmatic
August 14, 1991 on a proposal to adopt policy and regulations dealing with retail water pricing to encourage conservation. Following the September 9 close of the hearing record, the Commission and its Water Conservation Advisory Committee reviewed all comments and testimony received. The Commission is now revising its proposal to coordinate the proposed policy with the preparation of water conservation plans by individual purveyors. Notice was given in the October 31, 1991 issue of the Federal Register that the Commission would hold a public hearing on December 11, 1991 to receive comments on this revised proposal.

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact

1. Stuart L. Reed, Jr. D-81-44 RENEWAL—2. An application for the renewal of a ground water withdrawal project to supply up to 20 million gallons (mg)/30 days of water to the applicant's agricultural irrigation system from Well No. 1. Commission approval on July 30, 1986 was limited to five years. The applicant requests that the total withdrawal from all wells remain limited to 20 mg/30 days. The project is located in Washington Township, Mercer County, New Jersey.

2. Crystal Water Supply Company, Inc. D-88-22 CP RENEWAL. An application for the renewal of a ground water withdrawal project to supply up to 11.23 mg/30 days of water to the applicant's distribution system from Wells A and B. Commission approval on June 25, 1986 was limited to five years. The applicant requests that the total withdrawal from all wells remain limited to 11.23 mg/30 days. The project is located in the Town of Thompson, Sullivan County, New York.

3. Village of Deposit D-86-29 CP RENEWAL. An application for the renewal of a ground water withdrawal project to supply up to 30 mg/30 days of water to the applicant's distribution system from Well Nos. 3 and 4. Commission approval on May 28, 1986 was limited to five years. The applicant requests that the total withdrawal from all wells remain limited to 30 mg/30 days. The project is located in the Village of Deposit, Broome and Delaware Counties, New York.

4. Larchmont Farms, Inc. D-86-37 RENEWAL. An application for the renewal of a ground water withdrawal project to supply up to 89 mg/30 days of water to the applicant's agricultural irrigation system from Well Nos. 1, 2, and 3. Commission approval on July 30, 1986 was limited to five years. The applicant requests that the total withdrawal from all wells remain limited to 100 mg/30 days. The project is located in Upper Pittsgrove and Upper Deerfield Townships, Salem and Cumberland Counties, New Jersey.

5. Citizens Utilities Home Water Company D-86-59 CP RENEWAL. An application for the renewal of a ground water withdrawal project to supply up to 6.46 mg/30 days of water to the applicant's distribution system from Well No. EP-1. Commission approval on October 28, 1986 was limited to five years. The applicant requests that the total withdrawal from all wells remain limited to 6.46 mg/30 days. The project is located in East Pikeland Township, Chester County, in the Southeastern Pennsylvania Ground Water Protected Area.

6. Chester County Water Resources Authority D-87-35 CP (1). Construction of a compacted earth dam (Hibernia Dam PA-430F) on Birch Run in Hibernia Park, approximately 1,000 feet upstream of the Birch Run confluence with West Branch Brandywine Creek, in West Caln Township, Chester County, Pennsylvania. The proposed multipurpose structure will have 1,226 acre-feet of storage capacity, a crest length of approximately 690 feet, a 200-foot wide emergency spillway, and will have a height of approximately 65 feet. The project is proposed to provide flood control for the West Branch Brandywine Creek, additional water supply for the City of Conestoga, and recreation. The dam is a component of the Brandywine Creek Watershed Plan, which was included in the Commission's Comprehensive Plan by Docket D-87-35 CP on June 24, 1987.

7. Borough of Schuylkill Haven D-89-86 CP (Revised). An application to replace the withdrawal of water from Well No. 6 in the applicant's water supply system which has become an unreliable source of supply. The applicant requests that the withdrawal from replacement Well No. 7 be limited to 4.4 mg/30 days, and that the total withdrawal from all wells remain limited to 6.6 mg/30 days. The project is located in North Manheim Township, Schuylkill County, Pennsylvania.

8. Pedricktown Cogeneration LTD Partnership D-90-75. An electric power generation project to construct a 117 megawatt (MW) gas-fired combined cycle cogeneration facility adjacent to the BF Goodrich (BFG) Pedricktown Plant. The proposed power plant will supply BFG electrical and steam energy, and supply electricity to the Atlantic Electric system. Water will be supplied by proposed Well No. FW-1 and by use of the BFG wastewater treatment plant effluent. Projected maximum ground water withdrawal is approximately 0.288 million gallons per day (mgd). Discharge of boiler blowdown and cooling water will be to the BFG wastewater treatment plant. The project plant site is located just east of Route 130 and off Porcupine Road in Oldmans Township, Salem County, New Jersey.

9. Northampton Bucks County Municipal Authority D-91-3 CP. An application for approval of a ground water withdrawal project to supply up to 12.96 mg/30 days of water to the applicant's distribution system from new Well No. 12, and to reduce the existing withdrawal limit from all wells of 56.37 mg/30 days to 40.00 mg/30 days. The project is located in Northampton Township, Bucks County, in the Southeastern Pennsylvania Ground Water Protected Area.

10. The BF Goodrich Company D-91-5. A project to modify and expand the applicant's industrial wastewater treatment plant (IWTP) by adding primary, secondary, and solids handling facilities, in order to increase the treatment capacity from 0.8 mgd to 2.1 mgd. Further, BF Goodrich (BFG) proposes to install a pipeline to change the discharge outfall, currently to an Army Corps of Engineers' drainage canal, to the Delaware River. BFG operates its IWTP to treat wastewaters generated by its polyvinyl chloride production plant. The modifications and expansion are proposed in conjunction with the Pedricktown Cogeneration Ltd. Partnership project (Docket D-90-75), a 117 megawatt cogeneration (COGEN) facility to be located nearby, to which the project IWTP may provide wastewater for use as a non-potable water supply. The COGEN will provide steam energy and electricity to BFG, and BFG will treat the COGEN's wastewaters. The project is located just east of Route 130 and off Porcupine Road in Oldmans Township, Salem County, New Jersey. The new outfall will discharge approximately 1,500 feet offshore in a part of the Delaware River that is in New Castle County, Delaware.

11. Washington Township Water & Sewer Authority D-91-38 CP. An application to withdraw up to 0.25 mgd of surface water (to be reduced after five years to 0.138 mgd) from the Washington Township Reservoir located on Trout Creek in Heidelberg Township, Lehigh County. The project withdrawal will serve the applicant's water distribution system in portions of...
Washington Township and a small section of Slatington Borough, all in Lehigh County, Pennsylvania.

12. **Town of Felton, D–91–48 CP.** An application for approval of a ground water withdrawal project to supply up to 5.5 mg/30 days of water to the applicant’s distribution system from existing Well No. 3 and to limit the withdrawal from all wells to 5.5 mg/30 days. The project is located in the Town of Felton, Kent County, Delaware.

13. **Panther Creek Partners, D–91–52 CP.** An electrical, aerial, crossing project that entails construction of a 99 kilowatt transmission line across the Schuylkill River from Tilden Township to the Borough of Hamburg, all within Berks County, Pennsylvania. The point of crossing lies within the Schuylkill Scenic River area designated Recreational and included in the Commission’s Comprehensive Plan.

14. **Borough of Fleetwood D–91–60 CP.** An application for approval of a ground water withdrawal project to supply up to 2.59 mg/30 days of water to the applicant’s distribution system from new Well No. 12 and to retain the existing withdrawal limit from all wells and springs of 13.5 mg/30 days. The project is located in Ruxton Manor Township, Berks County, Pennsylvania.

15. **Cressona Borough Authority D–91– 62 CP.** A project to upgrade and expand the applicant’s existing 0.40 mgd primary sewage treatment plant to provide 0.72 mgd of secondary treatment to continue to serve the Borough of Cressona and portions of Schuylkill Haven Borough and North Manheim Township. The proposed treatment plant will replace the existing plant once the new plant is operable. The treated effluent will continue to discharge to the West Branch Schuylkill River via the existing outfall structure. The plant is located on Syllyman Street in the Borough of Cressona, Schuylkill County, Pennsylvania.

Documents relating to these items may be examined at the Commission’s offices. Preliminary dockets are available in single copies upon request. Please contact George C. Elias concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

**Dated:** November 26, 1991.

Susan M. Welsman,
Secretary.

[FR Doc. 91–29160 Filed 12–4–91; 8:45 am]

---

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

[Docket Nos. ER92–198–000, et al.]

**Consumers Power Company, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings**


Take notice that the following filings have been made with the Commission:

1. **Consumers Power Company**

   [Docket No. ER92–198–000]

   Take notice that on November 20, 1991, Consumers Power Company (Consumers) tendered for filing its Service Schedule Governing Open Access Interconnection Service (Open Access Schedule), Pursuant to the Open Access Schedule, Consumers would agree to purchase capacity and/or energy from electric utilities to be resold to a party with whom Consumers has an interconnection or operating agreement (Agreement) pursuant to the appropriate service schedule contained in the Agreement. Consumers states that the effect would be to allow customers under the Open Access Schedule to transmit capacity or energy across Customer’s transmission system for sale to any of the parties to Consumers’ Agreements.

   A copy of the filing was served upon the Michigan Public Service Commission.

   **Comment date:** December 13, 1991, in accordance with Standard Paragraph E at the end of this notice.

2. **Public Service Company of Oklahoma**

   [Docket No. ER92–199–000]

   Take notice that on November 15, 1991, Public Service Company of Oklahoma (PSO) tendered for filing a Notice of Cancellation of FERC Rate Schedule No. 198. PSO requests an effective date of June 1, 1989.

   PSO states that copies of this filing have been served upon KAMO Electric Cooperative, Inc. and the Oklahoma Corporation Commission.

   **Comment date:** December 11, 1991, in accordance with Standard Paragraph E at the end of this notice.

3. **Sierra Pacific Power Company**

   [Docket No. FABE–25–000]

   Take notice that on November 22, 1991, Sierra Pacific Power Company tendered for filing its refund report in the above-referenced docket in compliance with the Commission’s letter issued October 2, 1990.

   **Comment date:** December 11, 1991, in accordance with Standard Paragraph E at the end of this notice.

4. **Commonwealth Edison Company**

   [Docket No. ER91–606–000]

   By letter dated August 27, 1991, Commonwealth Edison Company (CE) tendered for filing a new Interconnection Agreement, dated August 1, 1991, between CE and Indiana Michigan Power Company (I&M). I&M is an operating subsidiary of American Electric Power Company, Inc. (AEP) and is a part of the AEP integrated utility system. Take notice that on November 21, 1991, CD submitted for filing an Interconnection Agreement, dated August 1, 1991 as revised on November 8, 1991, which includes certain revenue constraint provisions for hourly and daily transactions conducted by CE or I&M.

   Edison has requested that the revised Interconnection Agreement be permitted to become effective as of August 30, 1991, and accordingly has requested that the Commission waive its notice requirements.

   Copies of this filing were served upon AEP, I&M the Illinois Commerce Commission, the Indiana Utility Regulatory Commission, and the Michigan Public Service Commission.

   **Comment date:** December 11, 1991, in accordance with Standard Paragraph E at the end of this notice.

5. **The Empire District Electric Company**

   [Docket No. ER91–615–000]

   Take notice that the Empire District Electric Company on November 1, 1991, tendered for filing amended information in regard to Docket ER91–616–000. The Company originally tendered for filing proposed changes in its FERC Electric Rate Schedules W–1, W–2 and Fuel Adjustment Rider Schedule FA. The proposed changes would increase revenues from jurisdictional sales and service by $1,157,771 based on the twelve-month period ending December 31, 1990.

   The purpose of filing the amended information was in response to a Commission deficiency letter dated October 23, 1991. The information in the amended filing responds to all questions raised in the Commission’s letter regarding Docket No. ER91–616–000. Copies of the amended information were served upon the public utility’s jurisdictional customers, the Missouri Public Service Commission and the Kansas Corporation Commission.

   **Comment date:** December 11, 1991, in accordance with Standard Paragraph E at the end of this notice.
6. Commonwealth Electric Company

[Docket No. ER92-197-000]

Take notice that on November 21, 1991, Commonwealth Electric Company (Commonwealth) filed pursuant to section 205 of the Federal Power Act and the implementing provisions of § 35.11 of the Commission's Regulations, a proposed change in rate under its currently effective Rate Schedule FERC No. 6.

Commonwealth states that said change in rate under Commonwealth's Rate Schedule FERC No. 6 has been computed according to the provisions of section 6(b) of its Rate Schedule FERC No. 6. Such change is proposed to become effective January 1, 1991, thereby superseding the 23 KV Wheeling Rate in effect during calendar 1990.

Commonwealth has requested that the Commission's notice requirements be waived pursuant to § 35.11 of the Commission's Regulations in order to allow the tendered rate change to become effective as of January 1, 1991.

Copies of this filing have been served upon Boston Edison Company and the Massachusetts Department of Public Utilities.

Comment date: December 11, 1991, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before December 17, 1991, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition 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).

Any person desiring to be heard or to make any protest with reference to said application should on or before December 17, 1991, file with the Federal Energy Regulatory Commission, a petition 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). All such motions or protests should be filed on or before December 17, 1991, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition 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).

Any person desiring to be heard or to make any protest with reference to said application should on or before December 17, 1991, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition 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). All such motions or protests should be filed on or before December 17, 1991, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition 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).

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,
Secretary.

[Docket No. CS91-8-001, et al.]

David G. DiTirro, et al., Applications for Small Producer Certificates


Take notice that each of the Applicants listed herein has filed an application pursuant to section 7(c) of the Natural Gas Act and § 157.40 of the Commission's regulations thereunder for a small producer certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 17, 1991, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition 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).

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,
Secretary.

[Docket Nos. CP92-199-000, et al.]

Tennessee Gas Pipeline Co., et al.; Natural Gas Certificate Filings


Take notice that the following filings have been made with the Commission:

1. Tennessee Gas Pipeline Co.

[Docket No. CP92-199-000]

Take notice that on November 20, 1991, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations for authorization to establish new delivery points for certain firm sales customers under Tennessee's blanket certificate issued in Docket No. CP92-413-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tennessee proposes to establish new delivery points for designated firm sales customers at injection points to certain storage fields used under other services on the Tennessee system in order to allow these customers to utilize their sales service in conjunction with existing storage services. Tennessee currently provides firm sales service to these customers under Tennessee's CD Rate Schedules. The attached appendix lists, as indicated by Tennessee, the affected customers; the new delivery points with the maximum daily quantity for each delivery point; and the maximum daily contract quantity that each customer has elected for sales service under the stipulation and agreement filed by Tennessee in Docket Nos. RP86-228 et al. on June 25, 1991. Tennessee indicates that the addition of the new delivery points would not require construction of any facilities and would not increase or decrease the total daily or annual quantities it is authorized to deliver to these customers. Tennessee states that Tennessee's currently effective tariff does not prohibit the establishment of the new delivery points and that it has sufficient capacity to accomplish the deliveries at the proposed new delivery points without detriment or disadvantage to any of Tennessee's other customers.

Comment date: January 13, 1992, in accordance with Standard Paragraph G at the end of this notice.

1 By letter dated November 14, 1991, San Juan Resources, Inc., requests that it be included as a holder in the small producer certificate issued to David G. DiTirro et al., in Docket No. CS91-8-000, limited to its interest in the Lee #1 and Campbell #1 wells.

1 This notice does not provide for consolidation for hearing of the several matters covered herein.
Appendix

[Docket No. CP92-199-000]

<table>
<thead>
<tr>
<th>Customer</th>
<th>Delivery point</th>
<th>Maximum daily quantity</th>
<th>Contract quantity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama-Tennessee</td>
<td>Bear Creek</td>
<td>6,346</td>
<td>64,776</td>
</tr>
<tr>
<td>Natural Gas Company.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Berkshire</td>
<td>Ellisburg</td>
<td>6,599</td>
<td>12,845</td>
</tr>
<tr>
<td>Gas</td>
<td>Consolidated</td>
<td>1,306</td>
<td>9,335</td>
</tr>
<tr>
<td>Company.</td>
<td>Pnn-York</td>
<td>3,729</td>
<td></td>
</tr>
<tr>
<td>Boston Gas</td>
<td>Ellisburg</td>
<td>36,043</td>
<td>47,312</td>
</tr>
<tr>
<td>Company.</td>
<td>Consolidated</td>
<td>909</td>
<td>900</td>
</tr>
<tr>
<td></td>
<td>Honeoye</td>
<td>6,000</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Pnn-York</td>
<td>5,944</td>
<td></td>
</tr>
<tr>
<td>Colonial Gas</td>
<td>Ellisburg</td>
<td>7,026</td>
<td>25,196</td>
</tr>
<tr>
<td>Company.</td>
<td>Pnn-York</td>
<td>15,673</td>
<td></td>
</tr>
<tr>
<td>Common-wealth</td>
<td>Ellisburg</td>
<td>7,762</td>
<td>25,387</td>
</tr>
<tr>
<td>Gas</td>
<td>Consolidated</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Company.</td>
<td></td>
<td>8,449</td>
<td></td>
</tr>
<tr>
<td>East</td>
<td>Bear Creek</td>
<td>70,453</td>
<td>173,832</td>
</tr>
<tr>
<td>Tennes-se</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Natural Gas Company.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>EnergyNorth</td>
<td>Ellisburg</td>
<td>9,725</td>
<td>16,848</td>
</tr>
<tr>
<td>Natural Gas</td>
<td>Consolidated</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Company.</td>
<td>Honeoye</td>
<td>3,400</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Pnn-York</td>
<td>2,000</td>
<td></td>
</tr>
<tr>
<td>Essex</td>
<td>Ellisburg</td>
<td>5,172</td>
<td>10,726</td>
</tr>
<tr>
<td>County</td>
<td>Consolidated</td>
<td>3,165</td>
<td></td>
</tr>
<tr>
<td>Gas</td>
<td>Pnn-York</td>
<td>2,333</td>
<td></td>
</tr>
<tr>
<td>Company.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fillisburg</td>
<td>Ellisburg</td>
<td>2,012</td>
<td>4,234</td>
</tr>
<tr>
<td>Gas</td>
<td>Consolidated</td>
<td></td>
<td></td>
</tr>
<tr>
<td>and Electric Light</td>
<td>Pnn-York</td>
<td>468</td>
<td></td>
</tr>
<tr>
<td>Company.</td>
<td></td>
<td>1,500</td>
<td></td>
</tr>
</tbody>
</table>


[Docket No. CP92-143-000]

Take notice that on November 6, 1991, K N Energy, Inc. (K N) P.O. Box 281304, Lakewood, Colorado 80228-9304, filed in Docket No. CP92-143-000 a request pursuant to § 157.205 and 157.2112 of the Commission’s Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate sales taps for the delivery of gas to end users, under the authorization issued to CIG in Docket Nos. CP83-140-000, CP83-140-001, and CP83-140-002 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.

K N explains that pursuant to its blanket certificate, authorization, as amended, proposes to construct and operate the sales taps identified in the attached appendix. K N contends that the natural gas delivered through these taps would ultimately be consumed by end users served directly from K N’s general system supply. It is alleged that the proposed sales taps are not prohibited by any of K N’s existing tariffs and the addition of the new sales taps would have no significant impact on K N’s peak day and annual deliveries. The gas delivered and sold by K N to the various end users would be priced in accordance with the currently filed rate schedules authorized by the applicable state and local regulatory bodies having jurisdiction over the sales.

Comment date: January 13, 1992, in accordance with Standard Paragraph G at the end of this notice.

APPENDIX

[Docket No. CP92-143-000, K N Energy, Inc.]

<table>
<thead>
<tr>
<th>Customer</th>
<th>Location</th>
<th>Approx. quantity to be sold (MCF)</th>
<th>End use of gas</th>
<th>Est. cost of facilities $</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Resident/Occupant 91-62, Katzberg Farms, Inc.</td>
<td>NW/4 Sec. 23-T8N-R12W, Adams Co., Nebraska.</td>
<td>24 800 Irrigation</td>
<td>650</td>
<td></td>
</tr>
<tr>
<td>2. Resident/Occupant 91-63, Charles Peterson.</td>
<td>NW/4 Sec. 26-T12N-R4W, York Co., Nebraska.</td>
<td>24 800 Irrigation</td>
<td>650</td>
<td></td>
</tr>
<tr>
<td>3. Resident/Occupant 91-64, Dan Bloom.</td>
<td>SW/4 Sec. 19-T20N-R5W, Boone Co., Nebraska.</td>
<td>24 800 Irrigation</td>
<td>650</td>
<td></td>
</tr>
<tr>
<td>4. Resident/Occupant 91-65, William Sandusky.</td>
<td>NW/4 Sec. 19-T11N-R2E, Seward Co., Nebraska.</td>
<td>4 120 Commercial</td>
<td>60 1,260 Grain Dryer</td>
<td>650</td>
</tr>
<tr>
<td>5. Resident/Occupant 91-66, Raymond Buller.</td>
<td>NW/4 Sec. 15-T11N-R1E, Seward Co., Nebraska.</td>
<td>30 850 Irrigation</td>
<td>650</td>
<td></td>
</tr>
<tr>
<td>8. Resident/Occupant 91-69, Gery Colow.</td>
<td>NE/4 Sec. 9-T30N-R3W, Knox Co., Nebraska.</td>
<td>2 120 Domestic</td>
<td>650</td>
<td></td>
</tr>
<tr>
<td>9. Resident/Occupant 91-70, Donald Conner.</td>
<td>SW/4 Sec. 32-T11N-R7W, Hamilton Co., Nebraska.</td>
<td>72 1,400 Grain Dryer</td>
<td>650</td>
<td></td>
</tr>
<tr>
<td>10. Resident/Occupant 91-71, Merle Sundsmeier.</td>
<td>NW/4 Sec. 18-T10N-R7W, Hamilton Co., Nebraska.</td>
<td>31 950 Grain Dryer</td>
<td>650</td>
<td></td>
</tr>
<tr>
<td>11. Resident/Occupant 91-72, Michael McCray.</td>
<td>SE/4 Sec. 6-T16N-R6W, Nance Co., Nebraska.</td>
<td>2 120 Domestic</td>
<td>650</td>
<td></td>
</tr>
<tr>
<td>12. Resident/Occupant 91-73, Kevyn Williams.</td>
<td>SE/4 Sec. 14-T10N-R7W, Hamilton Co., Nebraska.</td>
<td>19 800</td>
<td>650</td>
<td></td>
</tr>
</tbody>
</table>
3. Algonquin LNG, Inc. and Algonquin Gas Transmission Company (Algonquin)

Transmission Company (Algonquin) requests such waivers of the Commission’s Regulations as are necessary to allow Algonquin to provide, under its open access transportation Rate Schedules AFT-1 and AIT-1, the related services formerly provided under Algonquin’s Rate Schedule T-LG. Algonquin and ALNG are herein referred to jointly as "Applicants". Applicants’ proposal is more fully set forth in the application which is on file with the Commission and open to public inspection.

ALNG states that it owns a 600,000 barrel capacity LNG storage tank and related receipt and redelivery facilities in Providence, Rhode Island. At this facility, ALNG receives LNG by truck for storage and redelivery during the winter heating season. Redelivery of stored LNG to customers may be made either in liquid form by truck or in gaseous phase by pipeline. For redeliveries in the gaseous phase, ALNG gasifies the LNG and delivers it to Providence Gas Company (Providence Gas). Providence Gas delivers the gas to

Customer | Location | Approx. quantity to be sold (MCF) | End use of gas | Est. cost of facilities
--- | --- | --- | --- | ---
14. Resident/Occupant 91-75, State Reformatory for Women. | SW/4 Sec. 2-T10N-R3W, York Co., Nebraska. | 16 | 2,000 Commercial | 850 |
15. Resident/Occupant 91-76, Marvin Gilslor. | SE/4 Sec. 31-T10N-R16W, Buffalo Co., Nebraska. | 24 | 800 Irrigation | 850 |
16. Resident/Occupant 91-77, Irene Jacobson. | NE/4 Sec. 22-T12N-R1W, York Co., Nebraska. | 24 | 800 Irrigation | 850 |
17. Resident/Occupant 91-78, William Ziemke. | NE/4 Sec. 34-T11N-R1S, York Co., Nebraska. | 24 | 800 Irrigation | 850 |
18. Resident/Occupant 91-79, Harold Schlchte. | SW/4 Sec. 19-T8N-R14W, Kearney Co., Nebraska. | 29 | 950 Irrigation | 850 |
19. Resident/Occupant 91-80, David Larsen. | SW/4 Sec. 35-T12N-R26W, Lincoln Co., Nebraska. | 150 | 22,000 Commercial | 850 |
20. Resident/Occupant 91-81, Union Pacific Railroad. | SE/4 Sec. 14-T7N-R6W, Clay Co., Nebraska. | 24 | 800 Irrigation | 850 |
21. Resident/Occupant 91-82, Neal G. Carpenter. | SW/4 Sec. 3-T5N-R15W, Kearney Co., Nebraska. | 24 | 800 Irrigation | 850 |
22. Resident/Occupant 91-83, Thomsen Family Corp. | NW/4 Sec. 2-T5N-R14W, Kearney Co., Nebraska. | 24 | 800 Irrigation | 850 |
23. Resident/Occupant 91-84, Elmer Smith. | NE/4 Sec. 32-T10N-R4W, Polk Co., Nebraska. | 2 | 120 Domestic | 850 |
24. Resident/Occupant 91-85, Dan Wolfe. | NE/4 Sec. 35-T6N-R14W, Kearney Co., Nebraska. | 24 | 800 Irrigation | 850 |
25. Resident/Occupant 91-86, Thomsen Children. | SE/4 Sec. 15-T29N-R12W, Holt Co., Nebraska. | 2 | 120 Domestic | 850 |
26. Resident/Occupant 91-87, Steve Soukup. | NE/4 Sec. 5-T10N-R7W, Hamilton Co., Nebraska. | 24 | 800 Irrigation | 850 |
27. Resident/Occupant 91-88, John Springer. | SE/4 Sec. 14-T8N-R3W, Fillmore Co., Nebraska. | 30 | 950 Irrigation | 850 |
28. Resident/Occupant 91-89, Krohn Farms, Inc. | SE/4 Sec. 5-T10N-R7W, Hamilton Co., Nebraska. | 24 | 800 Irrigation | 850 |
29. Resident/Occupant 91-90, Ralph Soffley. | NW/4 Sec. 13-T20S-R33W, Scott Co., Kansas. | 160 | 30,000 Commercial | 850 |
30. Resident/Occupant 91-91, Ezra Kremer. | SE/4 Sec. 16-T11N-R25W, Dawson Co., Nebraska. | 9 | 1,000 Commercial | 850 |
31. Resident/Occupant 91-92, Ron Smith. | NE/4 Sec. 24-T26N-R49W, Box Butte Co., Nebraska. | 12 | 2,000 Commercial | 850 |
32. Resident/Occupant 91-93, Cist Feed Yards. | SW/4 Sec. 20-T11N-R1E, Seward Co., Nebraska. | 30 | 950 Irrigation | 850 |
33. Resident/Occupant 91-94, Runza Drive Inn. | Sec. 6-T27N-R3W, Pierce Co., Nebraska. | 500 | 60,000 Commercial | 5,000 |
34. Resident/Occupant 91-95, Deaver Grain. | Sec. 6-T32N-R41W, Sheridan Co., Nebraska. | 600 | 50,000 Commercial | 5,000 |
35. Resident/Occupant 91-96, John Luebke. | Total | | | $39,750 |
37. Resident/Occupant 91-98, Gordon By-Products. | | | | |

1 Customers reimburse to KN a portion of these costs through imposition of a connection charge which varies by state as follows: Kansas—$250, Nebraska—$400, Colorado—$400 and Wyoming—$400.
the customer by displacement to Algonquin.

After initially authorizing service by ALNG and Algonquin on a year-to-year and three-year basis, the Commission on June 14, 1982, issued limited-term certificates of public convenience and necessity, with pre-granted abandonment, authorizing Applicants to provide LNG storage and redelivery service for a ten-year term ending May 31, 1992, for Bay State Gas Company, Boston Gas Company, Bristol and Warren Gas Company, et al., Cape Cod Gas Company, Connecticut Gas Company, City of Norwich, Valley Gas Company, and Providence Gas. Algonquin LNG, Inc., Docket No. CP82-310-000, 19 FERC ¶ 61,265 (June 14, 1982). The Commission also issued a limited jurisdiction, limited term certificate of public convenience, with pre-granted abandonment, to Providence Gas authorizing the transportation by displacement of regasified LNG, for the same period. Service by ALNG under this authorization is provided under Rate Schedule T-LG and by Algonquin under Rate Schedule T-LG.

ALNG proposes to renew the service authorized in Docket No. CP82-310-000 for the period of June 1, 1992, through May 31, 1994, for the following customers:

<table>
<thead>
<tr>
<th>Customer</th>
<th>Barrels</th>
</tr>
</thead>
<tbody>
<tr>
<td>Boston Gas Company</td>
<td>127,000</td>
</tr>
<tr>
<td>Bristol and Warren Gas Company</td>
<td>2,348</td>
</tr>
<tr>
<td>Colonial Gas Company</td>
<td>12,000</td>
</tr>
<tr>
<td>Yankee Gas Services</td>
<td>52,000</td>
</tr>
<tr>
<td>City of Norwich, Connecticut</td>
<td>4,500</td>
</tr>
<tr>
<td>Providence Gas Company</td>
<td>1,452</td>
</tr>
<tr>
<td>Valley Gas Company</td>
<td>15,000</td>
</tr>
<tr>
<td>Subtotal</td>
<td>214,800</td>
</tr>
<tr>
<td>Providence Gas Company</td>
<td>348,000</td>
</tr>
<tr>
<td>The Narragansett Electric Company</td>
<td>10,000</td>
</tr>
<tr>
<td>Intercontinental Generation Corporation</td>
<td>23,000</td>
</tr>
<tr>
<td>Total</td>
<td>596,000</td>
</tr>
</tbody>
</table>

One customer elected not to renew its contract, leaving 33,700 barrels of storage capacity unsubscribed and available (after allowance for tank heel). ALNG held an open season from October 17, 1991 through October 31, 1991, for nominations for this capacity. The Narragansett Electric Company submitted a request for 10,000 barrels of capacity within the open window period. Intercontinental Generation Corporation submitted a request for 33,700 barrels shortly after the close of the open window period, and accordingly was reduced to the remaining 23,700 barrels of uncommitted capacity. Copies of the requests for service for these parties are included in the application.

ALNG requests a two-year certificate of public convenience and necessity with pre-granted abandonment, authorizing it to store and redeliver LNG pursuant to Rate Schedule ST-LG under the rates currently in effect under that rate schedule. Algonquin proposes to continue service of the type formerly rendered under its Rate Schedule T-LG under its open access rate schedules after May 31, 1992, and requests such waivers of the Commission's Regulations as may be necessary to enable it to provide this service.

Applicants also request, on behalf of Providence Gas, a limited jurisdiction, two-year certificate of public convenience and necessity, with pregranted abandonment, authorizing Providence Gas to transport by displacement regasified LNG. Service by Providence Gas is proposed to continue under the same terms and conditions, including rate methodology, as the exiting authorization.

Comment date: December 18, 1991, in accordance with Standard Paragraph F at the end of this notice.

4. Northwest Pipeline Corp.

[Docket No. CP92-186-000]

Take notice that on November 15, 1991, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158–0900, filed in Docket No. CP92-186-000 an application pursuant to section 7(b) of the Natural Gas Act (NCA) for permission and approval to abandon a transportation service for Colorado Interstate Gas Company (CIG), all as more fully set forth in the request which is open to public inspection.

Northwest states that the transportation service was authorized by the Commission in Docket No. CP79-294 and was carried out pursuant to the terms of Northwest's Rate Schedule X–64. It is asserted that Northwest was authorized to transport up to 4,000 Mcf per day of gas for CIG on an interruptible basis. It is stated that Northwest was gathering the gas in the Fogarty Creek area of Sublette County, Wyoming, and transporting gas for CIG, with CIG selling 25 percent of the volumes to Northwest. It is explained that Northwest and CIG have mutually agreed to "terminate the Gas Gathering and Transportation Agreement" dated February 28, 1979, because CIG no longer owns gas in the Fogarty Creek area and has no further need of the service. It is explained that no facilities would be abandoned in conjunction with the proposed abandonment of service.

Comment date: December 18, 1991, in accordance with Standard Paragraph F 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 §157.225 of the Regulations under the Natural Gas Act (18 CFR 157.225) 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.

[F R Doc. 91-29816 Filed 12-4-91; 8:45 am]
BILLING CODE 8717-01-M

[Docket No. F 92-6-000]

**Pipeline Rates; Hearing, Accounting; Green Canyon Pipe Line Co.; Order Establishing Hearing Procedures**


On October 3, 1991, the Chief Accountant issued a contested audit report under delegated authority noting Green Canyon Pipe Line Company's (Green Canyon) disagreement with items contained in the staff's audit report of Green Canyon's books and records. The report noted Green Canyon's disagreement with the staff regarding the Correcting Entry on Schedule No. 2 and Compliance Exception No. 1 on Schedule No. 3. Green Canyon was requested to advise whether it would agree to the disposition of the issues under the shortened procedures provided for by part 158 of the Commission's Regulations, 18 CFR 158.1 et seq.

On November 13, 1991, Green Canyon responded that it did not consent to the shortened procedures. Section 158.7 of the Commission's Regulations provides that in case consent to the shortened procedures is not given, the proceeding will be assigned for hearing. Accordingly, the Secretary, under authority delegated by the Commission, will set these matters for hearing.

Any interested person seeking to participate in this docket shall file a protest or a motion to intervene pursuant to Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 365.211 and 365.214) no later than 15 days after the date of publication of this order in the Federal Register.

It is ordered:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act, the provisions of the Natural Gas Act, particularly sections 4, 5 and 8 thereof, and pursuant to the Commission's Rules of Practice and Procedure (18 CFR chapter I), a public hearing shall be held concerning the appropriateness of Green Canyon's practices as discussed above.

(B) A Presiding Administrative Law Judge, to be designated by the Chief Administrative Law Judge, shall convene a prehearing conference in this proceeding, to be held within 45 days of the date of this order, in a hearing room of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426. The Presiding Judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(C) This order shall be promptly published in the Federal Register.

Lois D. Cashell,
Secretary.

[F R Doc. 91-29819 Filed 12-4-91; 8:45 am]
BILLING CODE 8717-01-M

---

**FEDERAL MARITIME COMMISSION**

**Security for the Protection of the Public Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casuality)**

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; issuance of Certificate (Casuality):

- Majesty Cruise Line, Inc., Ulysses Cruises, Inc. and Compania Naviera 1312, SA, 901 South America Way, Miami, FL 33132
- Vessel: Royal Majesty


Joseph C. Polkimg,
Secretary.

[F R Doc. 91-29820 Filed 12-4-91; 8:45 am]
BILLING CODE 8710-01-M

---

**FEDERAL RESERVE SYSTEM**

**Barnett Banks, Inc.; et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies**

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 31, 1991.

A. Federal Reserve Bank of Atlanta
Robert E. Heck, Vice President

---

**Ocean Freight Forwarder License; Revocation**

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR 510.

License Number: 676R.
Name: John J. Moylan & Co., Inc.
Address: P.O. Box 970, So. Pasadena, CA 91030.


Bryant L. VanBrakle,
Director, Bureau of Tariffs, Certification and Licensing.

[F R Doc. 91-29820 Filed 12-4-91; 8:45 am]
BILLING CODE 8710-01-M
DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[DOCKET 91F-0431]

Ciba-Geigy Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the filing of a petition by Ciba-Geigy Corp. for the safe use of 2,2'-(1-methylene)bis[4,1-phenyleneoxy]-[1-butoxy-1-methyl]-2,1-ethanediyl]oxymethylene]bisoxirane as a component of resinous and polymeric coatings intended for use in contact with dry bulk foods.

FOR FURTHER INFORMATION CONTACT: Gillian Robert-Baldo, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-4660.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 1301 et seq.) and § 175.300 of the Act (21 CFR 175.300), the petition proposes to amend the food additive regulations to provide for the safe use of 2,2'-(1-methylene)bis[4,1-phenyleneoxy]-[1-butoxy-1-methyl]-2,1-ethanediyl]oxymethylene]bisoxirane as a component of resinous and polymeric coatings intended for use in contact with dry bulk foods. The petition proposes to amend the food additive regulations to provide for the safe use of 2,2'-(1-methylene)bis[4,1-phenyleneoxy]-[1-butoxy-1-methyl]-2,1-ethanediyl]oxymethylene]bisoxirane as a component of resinous and polymeric coatings intended for use in contact with dry bulk foods.

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).


Fred R. Shank,
Director, Center for Food Safety and Applied Nutrition.
without cherries” that deviates from the U.S. standard of identity for canned fruit cocktail (21 CFR 145.135). The extension and amendment will allow the permit holder to continue experimental market testing of the product while the agency takes action on the permit holder’s petition to amend the standards of identity for “canned fruit cocktail” and “artificially sweetened canned fruit cocktail” (21 CFR 145.135 and 145.136) to provide for the optional use of cherries in these foods.

DATES: The new expiration date of the permit will be either the effective date of a final rule to amend the standards of identity to provide for the optional use of cherries in fruit cocktail products, which may result from the petition, or 30 days after termination of such rulemaking.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0106.

SUPPLEMENTARY INFORMATION: FDA issued a temporary permit under the provisions of §130.17 (21 CFR 130.17) to Sierra Quality Canners, 426 North Seventh St., Sacramento, CA 95814, to market a product designated as “fruit cocktail without cherries” that deviates from the U.S. standard of identity for canned fruit cocktail (§145.135 [21 CFR 145.135]).

The agency issued the permit to facilitate market testing of a food that deviates from the requirements of the standards of identity promulgated under section 401 of the Federal Food Drug, and Cosmetic Act (21 U.S.C. 341). FDA published a notice of issuance of the temporary permit to Sierra Quality Canners in the Federal Register of August 8, 1990 (55 FR 32314). The permit covered limited interstate marketing tests of a product that deviates from the U.S. standard of identity for “canned fruit cocktail” in that the product does not contain any cherries. The standard of identity for canned fruit cocktail requires either light, sweet cherries or cherries artificially colored red (typically with FD&C Red No. 3) to be present in the amount of 2 to 6 percent by weight in the finished food. The product meets all requirements of the standard with the exception of this deviation.

The purpose of this deviation was to permit a market study of the consumer acceptability of an alternative to standardized canned fruit cocktail, that does not contain any cherries. FDA has terminated the provisionally listed uses of FD&C Red No. 3 (55 FR 3516, February 1, 1990). FDA also announced its intent to publish a notice of proposed rulemaking to revoke the permanently listed uses of the color. These uses include the coloring of cherries that are used in canned fruit cocktail.

The agency has received eight comments on the temporary permit from commercial fruit growers and packers. All respondents opposed granting a temporary permit for market testing. “fruit cocktail without cherries” on the grounds that the test product would confuse consumers and fragment the canned fruit industry.

The intent of granting a temporary marketing permit is to allow market testing for the purpose of obtaining data in support of a petition to amend a standard of identity. The agency advises that no change will be made in the standard except through established rulemaking procedures (21 U.S.C. 371(a)). All applicants for temporary marketing permits must submit adequate justification for deviation from identity standards. In addition, the label on the test food must provide a means by which consumer can distinguish between the food being tested and the standardized food.

The agency believes that the request from Sierra Quality Canners is reasonable and justified because of concerns regarding the use of FD&C Red No. 3 in food. Continued experimental market testing of the product will also allow the agency to determine the impact of providing increased flexibility for packers and consumers of canned fruit cocktail. The test product resembles the standardized food with the exception of the single noted deviation. The name of the food, “fruit cocktail without cherries,” is prominently displayed on the label to notify the consumer that the product deviates from the standardized food.

Sierra Quality Canners has requested that the temporary permit be extended to allow for additional time for market testing of their product throughout the continental United States. The permit holder has also requested that their existing temporary permit be amended to provide for market testing on an annual basis of 1,818,000 kg (4,000,000 pounds) of the test product. The company has demonstrated that this amount of product is the smallest reasonably required for a bona fide market test. Moreover, under the provisions of §130.17(f), FDA is extending the expiration date of the permit such that the permit expires either on the effective date of a final rule to amend the standards of identity to provide for fruit cocktail without cherries, which may result from the petition, or 30 days after termination of such rulemaking. All other conditions and terms of this permit remain the same.


Fred R. Shank.

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91-29103 Filed 12-4-91; 8:45 am]

BILLING CODE 4160-01-M
Drug Export; Amantadine Hydrochloride Capsules

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Pharmacaps, Inc., has filed an application requesting approval for the export of the drug Amantadine Hydrochloride Capsules to Canada.

The Food and Drug Administration has received an application requesting approval for the export of the drug Amantadine Hydrochloride Capsules to Canada. This application was received and filed in the Center for Drug Evaluation and Research on November 8, 1991, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by December 16, 1991, and to provide an additional copy of the submission directly to the contact person identified below, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 [21 U.S.C. 382]) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).


Daniel L. Michels,
Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 91-2902 Filed 12-4-91; 8:45 am]

BILLING CODE 4160-01-M

Drug Export; Carbicarb Injection (Sodium Bicarbonate and Sodium Carbonate Anhydrous Injection)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that International Medication Systems, Ltd., has filed an application requesting approval for the export of the human drug Carbicarb Injection to Canada.

The agency encourages any person who submits relevant information on the application to do so by December 16, 1991, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 [21 U.S.C. 382]) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).


Daniel L. Michels,
Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 91-2901 Filed 12-4-91; 8:45 am]

BILLING CODE 4160-01-M
[Docket No. 91N-0481]

Chelsea Laboratories, Inc.; Withdrawal of Approval of 20 Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: FDA is withdrawing approval of 20 abbreviated new drug applications (ANDA's) held by Chelsea Laboratories, Inc., 896 Orlando Ave., West Hempstead, NY 11552 (Chelsea). Chelsea has requested in writing that the approval of the applications be withdrawn.


FOR FURTHER INFORMATION CONTACT: Richard S. Lev, Center for Drug Evaluation and Research (HFD)-366, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-258-0011.

SUPPLEMENTARY INFORMATION: In a letter dated November 4, 1991, Chelsea requested that FDA withdraw approval of the applications listed below. The applicant has also, by its request, waived its opportunity for a hearing.

<table>
<thead>
<tr>
<th>ANDA No.</th>
<th>Drug</th>
</tr>
</thead>
<tbody>
<tr>
<td>ANDA 70-285</td>
<td>Tolazamide Tablets, 100 milligrams (mg);</td>
</tr>
<tr>
<td>ANDA 70-286</td>
<td>Tolazamide Tablets, 250 mg;</td>
</tr>
<tr>
<td>ANDA 70-287</td>
<td>Tolazamide Tablets, 500 mg;</td>
</tr>
<tr>
<td>ANDA 70-568</td>
<td>Trazodone Hydrochloride Tablets, 50 mg;</td>
</tr>
<tr>
<td>ANDA 70-569</td>
<td>Trazodone Hydrochloride Tablets, 100 mg;</td>
</tr>
<tr>
<td>ANDA 70-605</td>
<td>Ibufrofen Tablets, 200 mg;</td>
</tr>
<tr>
<td>ANDA 71-336</td>
<td>Propranolol Napsylate and Acetaminophen, 50 mg/325 mg;</td>
</tr>
<tr>
<td>ANDA 71-337</td>
<td>Propranolol Napsylate and Acetaminophen, 100 mg/650 mg;</td>
</tr>
</tbody>
</table>

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)), and under authority delegated to the Director of the Center for Drug Evaluation and Research (21 CFR 5.82), approval of the ANDA's listed above, and all amendments and supplements thereto, is withdrawn effective December 5, 1991.


Carl C. Peck,
Director, Center for Drug Evaluation and Research.

[FR Doc. 91-28105 Filed 12-4-91; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91N-0352]

Chelsea Laboratories, Inc.; Withdrawal of Approval of 12 Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: FDA is withdrawing approval of 12 abbreviated new drug applications (ANDA's) held by Chelsea Laboratories, Inc., 896 Orlando Ave., West Hempstead, NY 11552 (Chelsea). This action is being taken because the applications contain untrue statements of material fact, the drugs covered by these applications lack substantial evidence of effectiveness, and the drugs have not been shown to be safe. Chelsea has waived its opportunity for a hearing on these products.

EFFECTIVE DATE: December 5, 1991.

FOR FURTHER INFORMATION CONTACT: Richard S. Lev, Center for Drug Evaluation and Research (HFD)-366, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-258-0011.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of September 9, 1991 (56 FR 45991), FDA offered an opportunity for a hearing on a proposal to issue an order under section 505(e)(2), (e)(3), and (e)(5) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(e)(2), (e)(3), and (e)(5)) withdrawing approval of the following 12 ANDA's held by Chelsea:

<table>
<thead>
<tr>
<th>ANDA No.</th>
<th>Drug</th>
</tr>
</thead>
<tbody>
<tr>
<td>ANDA 71-384</td>
<td>Perphenazine and Amitriptyline Hydrochloride Tablets, 2 mg/10 mg;</td>
</tr>
<tr>
<td>ANDA 71-385</td>
<td>Perphenazine and Amitriptyline Hydrochloride Tablets, 2 mg/25 mg;</td>
</tr>
<tr>
<td>ANDA 71-386</td>
<td>Perphenazine and Amitriptyline Hydrochloride Tablets, 4 mg/10 mg; and</td>
</tr>
<tr>
<td>ANDA 71-387</td>
<td>Perphenazine and Amitriptyline Hydrochloride Tablets, 4 mg/25 mg.</td>
</tr>
</tbody>
</table>

The basis for the proposal stemmed from the discovery of discrepancies, false statements, and omissions regarding the methods used in, and the facilities and controls used for, the manufacture and processing of batches of drug product used to support approval of the ANDA's. Identification of these discrepancies, false statements, and omissions raised substantial questions about the reliability of the data, including the bioequivalence data, submitted in support of the applications. Chelsea did not request a hearing. Failure to file a notice of participation and request for a hearing constitutes a waiver of the opportunity for a hearing. (See 21 CFR 514.304(e)(2)).

Therefore, the Director of the Center for Drug Evaluation and Research, under section 505(e) of the act, and under authority delegated to him (21 CFR 5.82), finds that the applications listed above contain untrue statements of material fact (21 U.S.C. 355(e)(5)); that new evidence of clinical experience, not contained in the applications or not available to him until after the applications were approved, shows that the drugs have not been shown to be safe for use under the conditions of use upon the basis of which the applications were approved (21 U.S.C. 355(e)(2)); and that on the basis of new information before him with respect to the drugs, evaluated together with the evidence available to him when the applications were approved, there is a lack of substantial evidence that the drugs will have the effects they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in their labeling (21 U.S.C. 355(e)(3)).

Pursuant to the foregoing findings, approval of the ANDA's listed above and all amendments and supplements thereto, is withdrawn effective December 5, 1991. Distribution of these products in interstate commerce without an approved application is illegal and subject to regulatory action.

Section 505(j)(4)(C) of the act requires that FDA immediately remove from its systems all references to these products and that the manufacturer, distributor, and holder of the applications withdraw the applications from interstate commerce immediately.
DEPARTMENT OF THE INTERIOR
Bureau of Land Management

[AK-964-4230-15; F-14935-B]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14[a] of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613[a], will be issued to NANA Regional Corporation, Inc., Successor in Interest to Isingnakmeut Incorporated, for approximately 2,340 acres. The lands involved are in the vicinity of Shungnak, Alaska, within T. 19 N., R. 6 E., Kotel River Meridian, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the "Tundra Times." Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7599, (907) 271-5960.

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until January 6, 1992, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained.

The purpose of this temporary closure is to protect all Public Land resources on or adjacent to the Barstow to Las Vegas motorcycle race course in Clark County, Nevada.

SUMMARY: Notice is hereby given, under the authority of 43 CFR subpart 8364, that certain Public Lands in Nevada that were used previously as courses and starting, pitting, spectating, and finishing areas for the Barstow to Las Vegas (B-V) Motorcycle Race will be closed from November 27 through December 8, 1991, to all vehicle use. This closure begins on Public Lands at Stateline, Nevada in the Whiskey Pete’s Casino vicinity. From this location the closure will cover Roach Dry Lake, Beer Bottle Pass, Sheep Mountain and Jean Dry Lake areas.

Order: Effective at 0001 hours (12:01 AM, PST) Wednesday, November 27, 1991 through December 8, 1991, all Public Lands used for course routes, starting, pitting, spectating, and finishing areas for the Barstow to Las Vegas motorcycle race will be closed to vehicles. The legal land descriptions for the course route and finish areas affected by this closure are as follows: All sections within T. 27 S., R. 59 E.; T. 26 S., R. 59 E.; T. 25 S., R. 59 E.; T. 26 S., R. 60 E.; T. 25 S., R. 60 E. A map is on file depicting this closure at the Las Vegas District Office located at 4705 Vegas Drive, P.O. Box 28696, Las Vegas, Nevada 89126, (702) 647-5000.

No person may use, drive, move, transport, let stand, park, or have charge or control over any type of motorized vehicle within the closure area. Exemptions to this order are granted to employees of valid right-of-way holders in the course of normal duties associated with maintenance of the right-of-way or any authorized special recreation permit holder. No other exemptions to this order are by written authorization of the Las Vegas District Manager.

Background

The purpose of this temporary closure is to protect all Public Land resources on or adjacent to the Barstow to Las Vegas race courses and associated areas from the impacts of unauthorized vehicle use. Resources most critical to these areas are the desert tortoise and its habitat. The desert tortoise is listed as a threatened species under the Federal Endangered Species Act and is afforded increased protection under the terms of the Act. This closure notice has been prepared in conjunction with a closure notice prepared in the California Desert District where the race has been denied based on anticipated impacts to the desert tortoise.

Effective Dates: This closure will be in effect from 0001 hours (12:01 AM, PST) Wednesday, November 27, 1991 through December 8, 1991.


Carl C. Peck,
District Manager, Las Vegas, Nevada.

Intent To Prepare a West Mojave Coordinated Management Plan and EIS

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: The Bureau of Land Management (BLM), in coordination with the California Department of Fish and Game and U.S. Fish and Wildlife Service, will prepare a Joint Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the West Mojave Coordinated Management Plan. The plan will constitute an amendment to the California Desert Conservation Area Plan of 1980, and will set the standard for managing the habitat of target species including the desert tortoise and Mohave ground squirrel. Zones within which the target species will be managed for long-term viability will be identified in the plan. The planning process will also evaluate other sensitive plant and animal species for possible inclusion in these zones.

The plan is intended to serve as the Habitat Conservation Plan (HCP) for the desert tortoise in support of 10(a)(1)(B) permits that may be issued to nonfederal entities. An HCP is a mandatory component of any section 10(a)(1)(B) permit issued by the U.S. Fish and Wildlife Service.

The 8.5 million acre planning area, including both private and public land, will extend from Oleana on the north to the San Bernardino Mountains on the south, and from the Antelope Valley on the west to Twenty-nine Palms on the east. The planning area includes the known range of the two target species in the western Mojave region.

The plan will be prepared and implemented in a multi-agency context.
Agencies having land management responsibility and/or regulatory jurisdiction affecting the target species will be invited to participate in the planning effort. By addressing the issues of species protection in relation to resource development on a habitat-wide basis, the range of options for protection and development are increased.

Both the U.S. Fish and Wildlife Service and the California Department of Fish and Game will share with BLM a leadership role in the preparation and implementation of the plan. The desert tortoise is on both the State and Federal lists of threatened species. The Mohave ground squirrel is listed as threatened

Public Participation

Public scoping is initiated with publication of this notice and will continue until January 30, 1992. Public scoping workshops will be held to identify issues and concerns involving protection of target species and to encourage and facilitate public participation in the planning process.

The workshops are scheduled as follows:

January 6, 1992, 7 p.m. at the Kerr Mc Gee Center, 100 W. California St., Ridgecrest, CA.
January 7, 1992, 7 p.m. at the Holiday Inn, 1511 E. Main St., Barstow, CA.
January 8, 1992, 7 p.m. at Twentynine Palms City Hall, 6136 Adobe Rd., Twenty nine Palms, CA.
January 9, 1992, 7 p.m. at the Kern County Library, 701 Truxton Ave., Bakersfield, CA.
January 13, 1992, 7 p.m. at the Green Tree Inn, 14173 Green Tree Blvd., Victorville, CA.
January 14, 1992, 7 p.m. at the City Emergency Services Building, 44833 Fern Ave., Lancaster, CA.
January 15, 1992, 7 p.m. at the District Office of the Bureau of Land Management, 6221 Box Springs Blvd., Riverside, CA.

FOR FURTHER INFORMATION: For more information, or to obtain a copy of the "Preparation Guide for the West Mojave Coordinated Management Plan", contact Wes Chambers at (619) 256-2729.


Jean Rivers,
Council, Acting District Manager.

FOR FURTHER INFORMATION CONTACT: Dan Wood, BLM, Prineville District, 185 E. Fourth Street, Prineville, Oregon 97754. (Telephone (503) 447-8762).

SUMMARY:

Pursuant to the Omnibus Oregon Wild and Scenic Rivers Act of 1988 (Section 102(2)(C) of the National Environmental Policy Act of 1970), the Bureau of Land Management, Prineville District Office, Central Oregon Resource Area, in cooperation with Oregon State Parks, will be preparing an EIS on the impacts of a proposed management plan for the John Day River.

DATES: The public comment period for scoping is ongoing and will continue until January 15, 1992.

Vernal District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Vernal District Grazing Advisory Board meeting.

SUMMARY: Notice is hereby given in accordance with Public Law 94-579, section 403, as outlined in CFR §178.4-2, that there will be a meeting of the Vernal District Grazing Advisory Board on Friday, January 10, 1992, commencing at 8 a.m. The meeting will be held at the Vernal BLM District Office conference room, 170 South 500 East, Vernal, Utah. The agenda items will include:

- Review minutes of previous meeting.
- Vernal District Grazing Advisory Board Policy concerning use of budgeted and contributed funds for construction and maintenance of range improvements.
- Review of Vernal District Riparian Management Strategy Plan.
- Predator and Pest Control.
- Items from the public.

The meeting is open to the public. Interested parties wishing to participate or present a statement should notify the District Manager at the Vernal District BLM Office, 170 South 500 East, Vernal, Utah, or telephone (801) 789-1362 no later than January 9, 1992.

David E. Little,
District Manager.


James L. Hancock,
District Manager.

FOR FURTHER INFORMATION CONTACT: Dan Wood, BLM, Prineville District, 185 E. Fourth Street, Prineville, Oregon 97754. (Telephone (503) 447-8762).

SUMMARY:

The plan will result in resource management decisions for all lands and related waters administered by the Bureau of Land Management within the entire John Day River and its forks located in Sherman, Gilliam, Wheeler, Wasco, Jefferson, and Grant Counties. Major management issues include resource protection, visitor management and safety, river access, recreation use levels, motorized use, and facility development.

The draft plan and EIS will be available for public review in April and May 1992. The final plan is scheduled to be completed by September of 1992.

Copies of the Draft John Day River Management Plan/EIS will be sent to the BLM mailing list. Copies will also be available at BLM, Prineville District Office, 185 E. Fourth Street, Prineville, OR 97754.

The public will be invited to submit written comments on the preferred and other alternatives as well as the analysis of impacts contained in the document.

Comments should be mailed to the District Manager, Bureau of Land Management, P.O. Box 550, Prineville, OR 97754, ATTN: John Day River Management Plan.


James L. Hancock,
District Manager.

FOR FURTHER INFORMATION CONTACT: Dan Wood, BLM, Prineville District, 185 E. Fourth Street, Prineville, Oregon 97754. (Telephone (503) 447-8762).

SUMMARY:

The public will be invited to submit written comments on the preferred and other alternatives as well as the analysis of impacts contained in the document.

Comments should be mailed to the District Manager, Bureau of Land Management, P.O. Box 550, Prineville, OR 97754, ATTN: John Day River Management Plan.


James L. Hancock,
District Manager.

FOR FURTHER INFORMATION CONTACT: Dan Wood, BLM, Prineville District, 185 E. Fourth Street, Prineville, Oregon 97754. (Telephone (503) 447-8762).

SUMMARY:

The plan will result in resource management decisions for all lands and related waters administered by the Bureau of Land Management within the entire John Day River and its forks located in Sherman, Gilliam, Wheeler, Wasco, Jefferson, and Grant Counties. Major management issues include resource protection, visitor management and safety, river access, recreation use levels, motorized use, and facility development.

The draft plan and EIS will be available for public review in April and May 1992. The final plan is scheduled to be completed by September of 1992.

Copies of the Draft John Day River Management Plan/EIS will be sent to the BLM mailing list. Copies will also be available at BLM, Prineville District Office, 185 E. Fourth Street, Prineville, OR 97754.

The public will be invited to submit written comments on the preferred and other alternatives as well as the analysis of impacts contained in the document.

Comments should be mailed to the District Manager, Bureau of Land Management, P.O. Box 550, Prineville, OR 97754, ATTN: John Day River Management Plan.


James L. Hancock,
District Manager.

FOR FURTHER INFORMATION CONTACT: Dan Wood, BLM, Prineville District, 185 E. Fourth Street, Prineville, Oregon 97754. (Telephone (503) 447-8762).

SUMMARY:

The plan will result in resource management decisions for all lands and related waters administered by the Bureau of Land Management within the entire John Day River and its forks located in Sherman, Gilliam, Wheeler, Wasco, Jefferson, and Grant Counties. Major management issues include resource protection, visitor management and safety, river access, recreation use levels, motorized use, and facility development.

The draft plan and EIS will be available for public review in April and May 1992. The final plan is scheduled to be completed by September of 1992.

Copies of the Draft John Day River Management Plan/EIS will be sent to the BLM mailing list. Copies will also be available at BLM, Prineville District Office, 185 E. Fourth Street, Prineville, OR 97754.

The public will be invited to submit written comments on the preferred and other alternatives as well as the analysis of impacts contained in the document.

Comments should be mailed to the District Manager, Bureau of Land Management, P.O. Box 550, Prineville, OR 97754, ATTN: John Day River Management Plan.


James L. Hancock,
District Manager.
Recreation and Public Purposes Act, as amended (43 U.S.C. 899 et seq.).

Boise Meridian, Idaho
Containing 10 acres more or less.

This action is a motion by the Bureau to make public lands available to the Idaho Department of Law Enforcement for use as a shooting range for peace officers. Lease or conveyance of the lands for recreational or public purpose use would be in the public interest. This use is in conformance with land use planning. Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Idaho Falls District, 940 Lincoln Rd., Idaho Falls, Idaho.

Lease or conveyance of the lands will be subject to the following terms, conditions, and reservations:

1. Provision of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. All valid existing rights documented on the official public land records at the time of lease/patent issuance.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals.

4. Any other reservations that the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

Upon publication of this notice in the Federal Register, the lands will be segregated from all forms of appropriation under the public lands laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice, interested persons may submit comments regarding the proposed lease/conveyance or classification of the lands to the District Manager, Idaho Falls District, 940 Lincoln Rd., Idaho Falls, Idaho 83401. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

Lloyd H. Ferguson,
District Manager.

[FR Doc. 91-29158 Filed 12-4-91; 8:45 am]
BILLING CODE 4310-BB-M

[CO-942-92-4730-12]

Colorado: Filing of Plats of Survey

The plats of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10 a.m., November 21, 1991.

This survey was executed to meet certain administrative needs of this Bureau.
The plat representing the dependent resurvey of a portion of the subdivisinal lines and the subdivision of section 4, T. 2 S., R. 81 W., Sixth Principal Meridian, Colorado, Group No. 878, was accepted October 2, 1991.
The plat (in two sheets) representing the dependent resurvey of portions of the Eleventh Auxiliary Guide Meridian West (west boundary) and subdivisional lines, the metes-and-bounds survey of the Rifle Gap Reservoir Boundary, and the subdivision of certain sections, T. 5 S., R. 92 W., Sixth Principal Meridian, Colorado, Group No. 950, was accepted June 28, 1991.
The plat representing the dependent resurvey of portions of the north boundary and subdivisional lines, the metes-and-bounds survey of the Rifle Gap Reservoir Boundary, and the subdivision of sections 1 and 12, T. 5 S., R. 93 W., Sixth Principal Meridian, Colorado, Group No. 950, was accepted June 28, 1991.
The plat representing the dependent resurvey of portions of the south and west boundaries and subdivisional lines, the metes-and-bounds survey of the Vega Reservoir Boundary, and the subdivision of sections 31, 32, and 33, T. 9 S., R. 93 W., Sixth Principal Meridian, Colorado, Group No. 950, was accepted June 28, 1991.
The plat (in two sheets) representing the dependent resurvey of portions of the west boundary and subdivisional lines, the metes-and-bounds survey of the Vega Reservoir Boundary, and the subdivision of sections 4, 5, and 6, T. 10 S., R. 93 W., Sixth Principal Meridian, Colorado, Group No. 950, was accepted June 28, 1991.
The plat (in two sheets) representing the dependent resurvey of a portion of the Third Standard Parallel South (south boundary), T. 15 S., R. 91 W., Sixth Principal Meridian, portions of the east boundary and subdivisional lines, the metes-and-bounds survey of the Crawford Reservoir Boundary, and the subdivision of sections 12, 13, and 24, T. 51 N., R. 7 W., New Mexico Principal Meridian, Colorado, Group No. 950, was accepted June 28, 1991.

These surveys were executed to meet certain administrative needs of the Bureau of Reclamation.
All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado, 80215.

Jack A. Eaves,
Chief, Cadastral Surveyor for Colorado.

[FR Doc. 91-29174 Filed 12-4-91; 8:45 am]
BILLING CODE 4310-JB-M

[ID-942-02-4730-12]

Idaho: Filing of Plats of Survey

The plats of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., November 26, 1991.
The plat representing the dependent resurvey of portions of the 10th Standard Parallel North (north boundary) and subdivisional lines, and the subdivision of section 8, and the metes-and-bounds survey of the south boundary of lot 13 in section 6, T. 48 N., R. 1 E., Boise Meridian, Idaho, Group No. 821, was accepted, November 25, 1991.
The plat representing that dependent resurvey of portions of the Boise Meridian (east boundary), 10th Standard Parallel North (north boundary), subdivisional lines, and the adjusted 1862 meanders of the left bank of the Coeur d’Alene River, the subdivision of section 1, and the metes-and-bounds survey of the south boundary of lot 9 in section 1, T. 48 N., R. 1 W., Boise Meridian, Idaho, Group No. 821, was accepted, November 25, 1991.

These surveys were executed to meet certain administrative needs of the Bureau of Land Management.
All inquiries concerning the survey of the above described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho 83706.

Duane E. Olsen,
Chief Cadastral Surveyor for Idaho.

[FR Doc. 91-29174 Filed 12-4-91; 8:45 am]
BILLING CODE 4310-GG-M

[OR-942-00-4730-12: GP2-061]

Filing of Plats of Survey: Oregon/ Washington

AGENCY: Bureau of Land Management.

Interior.
**SUMMARY:** The Bureau of Land Management proposes that a 4832.37 acre withdrawal for Powsersite Classification No. 190, continue for an additional 20 years. The land is still needed for waterpower purposes. These lands will remain closed to surface entry, but have been and would remain open to mineral leasing and mining.

**EFFECTIVE DATE:** Comments should be received within 60 days of the date of publication of this notice.

**FOR FURTHER INFORMATION CONTACT:** Larry Lovvay, Idaho State Office, BLM, 3980 American Terrace, Boise, Idaho 83706, (208) 384-3105.

The Bureau of Land Management proposes that the existing land withdrawal made by Secretarial Order dated November 5, 1927, for Powsersite Reserve No. 190, be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976; 90 Stat. 2751; 43 U.S.C. 7714, insofar as it affects the following described land:

**Boise Meridian**

- **T. 1 N., R. 43 E., sec. 2, lot 8; sec. 3, lots 2 to 15 inclusive, 17, and 19 to 25 inclusive; sec. 4, lots 2 to 5 inclusive, 7 and 8 and SW¼NE¼; sec. 5, lot 1; sec. 10, lots 8 to 11 inclusive; sec. 12, lots 10 to 14 inclusive and 18.**

- **T. 1 S., R. 45 E., sec. 8, lots 4, 5, 7 and 8 and NW¼NE¼, NE¼ NW¼, E¼SW¼SW¼ and E¼SE¼; sec. 9, lot 4; sec. 17, lots 2, 3 and 6, E¼NW¼, and NE¼SE¼.**

- **T. 1 S., R. 44 E., sec. 1, lots 1, 2 and 5 and SW¼NE¼.**

- **T. 1 N., R. 44 E., sec. 18, E¼SW¼SW¼; sec. 19, lot 5, SW¼NE¼, NE¼NW¼ and NE¼SE¼; sec. 20, lots 5 to 9 inclusive, SW¼SW¼ and NE¼SE¼; sec. 21, lot 4; sec. 27, lots 2 and 3; sec. 29, lot 5, SE¼NW¼, NW¼SE¼ and SE¼SE¼; sec. 34, lots 2 to 4 inclusive, NW¼NE¼ and NE¼SE¼; sec. 35, NW¼SW¼.**

- **T. 2 N., R. 43 E., sec. 5, lot 4 and SW¼SW¼; sec. 6, lots 1 to 3 inclusive, B to 13 inclusive and E¼SW¼; sec. 7, lots 1 to 3 inclusive, 6 to 83 inclusive, 12 and 13 and E¼SW¼; sec. 17, lots 1 to 5 inclusive, NW¼SE¼, E¼NW¼ and SE¼SE¼; sec. 18, lots 6 to inclusive, NW¼SE¼, E¼NW¼, NE¼SW¼ and SE¼SE¼; sec. 19, lot 6, NW¼SE¼ and NE¼SE¼; sec. 20, lots 6 to 10 inclusive, SW¼NE¼ and NE¼NW¼; sec. 29, lots 1 to 6 inclusive; sec. 30, SW¼SE¼; sec. 32, lots 1 to 4 inclusive, 6 and 7 and NE¼SE¼; sec. 33, lots 1 to 5 inclusive, SW¼SW¼ and NW¼SE¼.**

The withdrawal is essential for protection of the waterpower values in the proposed Lynn Cranndall Reservoir. The existing withdrawal closes the described land to surface entry but not to mineral leasing and mining. No change in the segregative effect or use of land is proposed by this section.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Idaho State Director at the above address.

The authorized officer of the Bureau of Land Management will undertake such investigations as necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior the President, and Congress, who while determine whether or not the withdrawal will be continued; and if so, for how long. The final determination of the withdrawal will be published in the Federal Register. The existing withdrawal will continue until such final determination is made.

William E. Ireland,
Chief, Realty Operations Section.
[FR Doc. 91-29199 Filed 12-4-91; 8:45 am]

**BILLING CODE 4310-00-M**

**[NM-940-4214-10; NNM 25765]**

**Notice, Cancellation; Proposed Withdrawal and Opportunity for Public Meeting; NM**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice will cancel the notice on the above subject that appeared in the Federal Register publication specified below.

**EFFECTIVE DATES:** December 5, 1991.

**FOR FURTHER INFORMATION CONTACT:** Clarence F. Houglund, BLM, New Mexico State Office, P.O. Box 27115.
Supplementary Information: The Notice of Proposed Withdrawal, which was published in the Federal Register, 56 FR No. 202, 52265, October 18, 1991, is hereby cancelled.

Larry L. Wondard,
State Director.
[FR Doc. 91–29169 Filed 12–4–91; 8:45 am]

BILLING CODE 4310–FB–M

[OR–943–4214–10; GP2–049; OR–45401]

Partial Termination of Proposed Withdrawal and Reservation of Lands; OR

AGENCY: Bureau of Land Management.

ACTION: Notice.

SUMMARY: The Bureau of Land Management has cancelled its application in part to withdraw certain lands for protection of the New River Area of Critical Environmental Concern. This action will terminate a portion of the proposed withdrawal. The lands involved are not in Federal ownership.

EFFECTIVE DATE: January 6, 1992.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503–280–7171.

Supplementary Information: The notice of the Bureau of Land Management application OR–45401 for withdrawal was published as FR Doc. 90–7175 of the issue of March 29, 1990, and amended by notice published as FR Doc. 91–15323 of the issue of June 27, 1991. The purpose of the proposed withdrawal is to protect the New River Area of Critical Environmental Concern. The applicant agency has determined that a portion of the proposed withdrawal is no longer needed and has cancelled the application insofar as it affects the following described lands which are not in Federal ownership:

Willamette Meridian

T. 30 S., R. 15 W.,
Sec. 2, W½SE¼NW¼, SW¼SE¼NW¼, E½ of lot 3, and those portions of the W½ of lot 3, E½SE¼SW¼NW¼ and NW¼SE¼NW¼ as more particularly identified and described in the official records of the Bureau of Land Management, Oregon State Office.

Sec. 11, NW¼SW¼NW¼, SW¼NW¼, NW¼SW¼, N¼SE¼NW¼, and those portions of the S½SE¼SW¼ and W½SE¼NW¼ as more particularly identified and described in the official records of the Bureau of Land Management, Oregon State Office.

Sec. 15, lots 1, 2, 3, and 4, and NW¼NE¼.

Sec. 21, lot 2.

Sec. 22, lots 1 and 2, and NW¼SW¼; Sec. 28, lots 2 and 3, and SW¼NE¼.

Sec. 32, lot 3.

Sec. 33, lot 2.

The areas described aggregate approximately 882.98 acres in Coos and Curry Counties, Oregon.

Willamette Meridian

Non-Federal Lands

T. 30 S., R. 15 W.,
Sec. 2, N½SW¼NW¼, SW¼NW¼, W½SE¼SW¼NW¼, and those portions of lot 4, E½SE¼SW¼NW¼, and those portions of the SW¼NW¼ and the SW¼ of lot 3 as more particularly identified and described in the official records of the Bureau of Land Management, Oregon State Office.

Sec. 3, lots 1 and 2.

Sec. 10, lot 6.

Sec. 11, NW¼SW¼.

Sec. 21, lot 1.

Sec. 28, lot 4.

T. 31 S., R. 15 W.,
Sec. 4, that portion of the SW¼SW¼ as more particularly identified and described in the official records of the Bureau of Land Management, Oregon State Office.

Pursuant to the regulation 43 CFR 22102–11, at 6:30 a.m., on January 6, 1992, the proposed withdrawal will be terminated in part. The lands described above are not in Federal ownership and will not be opened to operation of the public land laws generally, including the mining laws.

The lands remaining in withdrawal application OR–45401 are described and amended to read as follows:

Willamette Meridian

Public Domain Lands

T. 30 S., R. 15 W.,
Sec. 2, W½SW¼, and that portion of the NW¼ of lot 3 and that portion in lot 4 as more particularly identified and described in the official records of the Bureau of Land Management, Oregon State Office.

Sec. 3, lots 3 and 4.

Sec. 10, lots 1, 2, 3, and 4, E½NE¼, and SW¼NE¼;

Sec. 11, N½NW¼NW¼, SW¼NW¼ NW¼, SW¼NW¼, N¼SE¼NW¼, NW¼, and those portions of the S½SE¼SW¼ and W½SE¼NW¼ as more particularly identified and described in the official records of the Bureau of Land Management, Oregon State Office.

Sec. 15, lots 1, 2, 3, and 4, and NW¼NE¼.

Sec. 21, lot 2.

Sec. 22, lots 1 and 2, and NW¼SW¼; Sec. 28, lots 2 and 3, and SW¼NE¼.

Sec. 32, lot 3.

Sec. 33, lot 2.

The areas described aggregate approximately 882.98 acres in Coos and Curry Counties, Oregon.
INTERSTATE COMMERCE COMMISSION

(Docket No. AB-263 (Sub-3))

Staten Island Railway Corporation;
Abandonment Findings

The Commission has found that the public convenience and necessity permit Staten Island Railway Corporation (SI) to abandon its entire line of railroad (a) between MP 3.8, at John Street east of Arlington Yard, Richmond County, NY, and MP 12.09, at or near Cranford Junction, Union County, NJ, a distance of 8.29 miles; and (b) between MP 0.00, at or near Port Ivory, Richmond County, NY, and MP 0.94, at the end of the line near Howland Hook, Richmond County, NY, a distance of 0.94 miles, for a total distance of 9.23 miles.

A certificate will be issued authorizing abandonment unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offered assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this notice. The following notation must be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 76 CFR 1152.27.


By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald

Sidney L. Strickland, Jr.
Secretary.

[FR Doc. 91–29110 Filed 12–4–91; 8:45 am]
BILING CODE 7036-01-M

DEPARTMENT OF JUSTICE

Lodging an Amendment to Final Judgment by Consent Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on November 25, 1991, a proposed amendment to the consent decree in United States v. Air Products and Chemicals, Inc., Civil Action No. J1–88–365, was lodged with the United States District Court for the District of Maryland. The suit was brought, pursuant to CERCLA sections 106 and 107, 42 U.S.C. 9606 and 9607, to require cleanup of a release or threatened release of hazardous substances at the Maryland Sand Gravel and Stone Superfund Site, and to recover response costs incurred by the Environmental Protection Agency (EPA). The original consent decree implemented EPA’s first operable unit Record of Decision, issued in September 1985, which addressed drum excavation and removal and shallow groundwater contamination. The proposed amendment to the consent decree implements EPA’s September 1990 second operable unit Record of Decision, which addresses deep groundwater contamination.

The Department of Justice will receive comments relating to the proposed amendment to the consent decree for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Acting Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to United States v. Air Products and Chemicals, Inc., DOJ Ref. No. 90–11–225. The proposed amendment to the consent decree may be examined at the office of the United States Attorney, District of Maryland, 8th Floor, U.S. Courthouse, 101 Lombard Street, Baltimore, Maryland 21201. A copy of the proposed amendment to the consent decree may also be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Ave., NW, Box 1097, Washington, DC 20004. A copy of the proposed amendment to the consent decree may be obtained in person or by mail from the Document Center. In requesting a copy please enclose a check in the amount of $19.75 (25 cents per page reproduction costs) payable to “Consent Decree Library”.

John C. Cruden, Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 91–29110 Filed 12–4–91; 8:45 am]
BILING CODE 4410-01-M

OFFICE OF PERSONNEL MANAGEMENT

Request for Clearance of Form OPM 1356

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a request for clearance of an information collection. Form OPM 1356, Former Spouse’s Application for Survivor Annuity Under the Civil Service Retirement System, is designed for use by former spouses of Federal employees and annuitants who are applying for a monthly Civil Service Retirement System benefit. This application collects information about whether the applicant is covered by the Federal Employees Health Benefits Program and about any court order which awards the applicant retirement benefits.

Approximately 5,000 OPM forms 1356 will be completed per year. The form requires 30 minutes to fill out. The annual burden is 2,500 hours.

For copies of this proposal, contact C. Ronald Trueworthy, on (703) 906–8550.
DATES: Comments on this proposal should be received on or before January 5, 1992.

ADDRESSES: Send or deliver comments to—
C. Ronald Trueworthy, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E Street, NW., CHP 500, Washington, DC 20415.
and
Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., room 3002, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mary Beth Smith-Toomey (202) 606-0623.

The entire meeting will be closed to the public, and

American Federal Register / Vol. 56, No. 234 / Thursday, December 5, 1991 / Notices

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Meeting of the President's Council of Advisors on Science and Technology

The President's Council of Advisors on Science and Technology will meet on December 12-13, 1991. The meeting will begin at 9 a.m. in the Conference Room, Office of Environmental Quality, 722 Jackson Place NW., Washington, DC. The meeting will conclude at approximately 12 noon on Friday.

The purpose of the Council is to advise the President on matters involving science and technology.

Proposed Agenda

1. The Council will use the entire meeting for drafting issue papers and deliberation based upon the facts and information gathered by the panel working groups.

   The entire meeting on December 12-13 will be closed to the public.

   Because the entire meeting will be used for deliberation and drafting of issue papers and because these discussions will necessarily involve information that is formally classified for reasons of national security the meeting will be closed to the public, pursuant to 5 U.S.C. 552b(C)(6).


Damar W. Hawkins, Executive Assistant, Office of Science and Technology Policy.

[FR Doc. 91-29073 Filed 12-4-91; 8:45 am]

BILLING CODE 4325-01-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; International Securities Clearing Corporation; Order Approving Temporary Registration as a Clearing Agency


On May 12, 1991, the Securities and Exchange Commission ("Commission") granted the application of International Securities Clearing Corporation ("ISCC") for registration as a clearing agency, pursuant to sections 17A and 17A(b) of the Securities Exchange Act of 1934 ("Act"), and Rule 17Ab2-1(c) thereunder, for a period of 18 months. At that time, the Commission granted ISCC an exemption from compliance with section 17A(b)(3)(C) of the Act.

On November 9, 1990, the Commission extended ISCC's temporary registration as a clearing agency and temporary exemption from section 17A(b)(3)(C) of the Act until November 30, 1991. On October 16, 1991, ISCC requested that the Commission extend ISCC's registration for a period of one year or such longer period as the Commission deems appropriate. Notice of the request for an extension of temporary registration was published in the Federal Register on November 4, 1991.

No comments have been received.

As discussed in detail in the order first granting ISCC's registration as a clearing agency, one of the primary reasons for ISCC's registration was to enable it to provide for the safe and efficient clearance and settlement of international securities transactions by providing links to centralized, efficient processing systems in the United States and at foreign financial institutions. Although ISCC has succeeded in this mission in the past 12 months, business conditions generally in the international securities markets have not been favorable, and ISCC's capacity and linkage agreements with foreign financial institutions therefore have not yet been adequately challenged.

In addition, ISCC does not yet have a significant enough participant base to permit its active participants to participate in the nomination and election of ISCC directors without giving these participants an undue influence in the voting and nomination process. ISCC has functioned effectively as a registered clearing agency for the past 30 months, and since 1986 functioned in this capacity under the terms of several no-action letters issued by the Commission's Division of Market Regulation. Accordingly, in light of the past performance of ISCC, as well as the need for ISCC to provide continuity of services to its participants and members, the Commission believes that "good cause" exists, pursuant to section 19(b) of the Act, for extending ISCC's registration for an additional 24 months before the expiration of the comment period on such extension. Any comments received concerning ISCC's request for an extension of temporary registration will be considered in conjunction with the Commission's consideration of whether to grant ISCC permanent registration as a clearing agency under section 17A of the Act.

It is therefore ordered, that ISCC's registration as a clearing agency be, and hereby is, approved until November 30, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland, Deputy Secretary.

[FR Doc. 91-29112 Filed 12-4-91; 8:45 am]

BILLING CODE 8010-01-M

RELEASE NO. 34-30010; FILE NO. SR-NYSE-91-33]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc., Relating to the Listing of Long-Term Equity Options


Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78o(b)(1), notice is hereby given that on September 17, 1991, the New York Stock Exchange, Inc. ("NYSE")
The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements. 

(A) Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

The proposed rule change will authorize the NYSE to list long-term equity options. Currently, equity options generally begin trading on the NYSE approximately eight months prior to their expiration. The proposed rule change will allow the Exchange to list option series that expire up to 39 months from the time they are listed. The proposed long-term equity options will expire in January of the appropriate expiration year. The NYSE will list series for the long-term equity options with strike prices which are at-the-money, 20% in-the-money and 20% out-of-the-money. For example, for options overlying a stock trading at $100 at the time the long-terms strikes are to be added, the NYSE will list long-term equity options with strike prices of 100, 120 and 80. Initially, the Exchange plans to introduce series with January 1993 and January 1994 expiration. In addition, the NYSE proposes to retain flexibility in the listing of new strike prices for long-term equity options. The Exchange may add up to six additional expiration months for the long-term equity options. The Exchange will introduce new long-term equity options series only when there is a corresponding market move of 20%. The Exchange believes that this procedure should result in the listing of only a limited number of series for any expiration, thereby eliminating any confusion that might otherwise be caused by a myriad of strike prices and expirations.

The NYSE also proposes that the bid/ask differential and continuity rules set forth in Exchange Rules 758(b)(1)(C) and 750(e)(I) will not apply to long-term equity options until the time to expiration is less than nine months. The NYSE notes that there currently is no basis for establishing fair prices for long-term equity options that will expire 39 months from the time they begin grading. Accordingly, in view of the lack of historical pricing data for long term equity options, the NYSE believes that it is appropriate not to apply the bid/ask differential and continuity rules to the long-term options until the time remaining to expiration of these options is less than nine months. Nevertheless, the Exchange notes that its general rules obligating options specialists and Competitive Options Traders (“COTs”) to maintain fair and orderly markets (Exchange Rules 750(b) and 758(b)(1)(B)) will continue to apply. Accordingly, the NYSE believes that the waiver of the bid/ask differential and continuity rules will not impede the Exchange’s ability to make a finding of inadequate marketmaker performance should a specialist and/or a COT enter into transactions or make bids or offers (or fail to do so) in long-term equity options series that are inconsistent with the maintenance of fair and orderly markets.

The Exchange also notes that the long-term equity options series will open for trading either when there is buying or selling interest, or 40 minutes prior to the close, whichever occurs first. No quotations will be posted for the long-term equity options series until they are opened for trading. When these series have less than nine months to expiration, they will be treated like any other non-extended equity option for all trading procedures, including opening procedures.

The NYSE believes that the proposed rule change responds to the needs of portfolio managers and institutional customers by providing them with a means to protect their equity portfolios from long-term market risk. Institutional customers currently use options to hedge the risks associated with holding diversified equity portfolios. The proposed rule change will provide institutional investors with the additional alternative of hedging the risks of their stock portfolios over a longer period of time and with a known and limited cost.

In addition, the NYSE proposes to amend the text of Exchange Rule 703(b) to reflect the Commission’s permanent approval of the NYSE’s near-term expiration pilot program, which was first implemented on a pilot basis in June 1985 in conjunction with the other options exchanges for the purpose of providing a near-term options expiration cycle, featuring four expiration months, to improve liquidity in stock options contracts.

* The NYSE also represents that it will monitor closely the trading in long-term equity options to gain experience with regard to these options, with a view to reexamine the applicability of the strike price interval, bid/ask differential and continuity rules in a year.

Material .20(b) of Exchange Rule 703 sets forth a description of the near-term expiration program. The proposal amends Exchange Rule 703(b) to reflect the permanent approval of the pilot program.

(b) Basis

The NYSE believes that the proposed rule change is consistent with the requirements of the Act and, in particular, furthers the objectives of section 6(b)(5), which provides, in pertinent part, that an exchange have rules that are designed to promote just and equitable principles of trade, facilitate transactions in securities, and protect investors and the public interest.

(B) Self-Regulatory Organization’s Statement on Burden on Competition

The NYSE believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization’s Statement on the Proposed Rule Change Received From Members, Participants or Others

The NYSE has not solicited, and does not intend to solicit, comments on the proposed rule change. The NYSE has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NYSE has requested that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act because the proposal to list long-term equity options is based in substance on the existing rules of other options exchanges, and because the amendments to Exchange Rule 703(b) dealing with the NYSE’s near-term options expiration program merely reflect the Commission’s previous permanent approval of the Exchange’s near-term expiration pilot program.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5). First, the Commission believes that the proposal to list long-term equity options that expire up to 39 months from the date of issuance is designed to provide investors with additional means to hedge equity portfolios from long-term market risk, thereby facilitating transactions in options and contributing to the protection of investors and the maintenance of fair and orderly markets. Specifically, by allowing investors to lock in their hedges for up to 39 months, the NYSE’s proposal will permit investors to protect better their portfolios from adverse long-term market moves. Options that expire up to 39 months from the date of issuance will provide an additional product, at a known and limited cost, for investors who desire a long-term hedge. In addition, the proposal will provide institutions with an alternative to hedging portfolios with off-exchange customized options or warrants. Accordingly, the Commission believes that the proposal to list long-term equity options will better serve the long-term hedging needs of investors.

The Commission notes that bid/ask differential and continuity rules will not apply to such long-term option series until the time to expiration is less than nine months. This approach is consistent with the approach taken by the other options exchanges because of the lack of historical pricing data for long-term options. Bid/ask differential and continuity rules applicable to equity options currently are based on options that expire nine months from the time they begin trading. Therefore, there currently is no basis for establishing reasonable prices for long-term equity options that will expire more than nine months from the time they begin trading. The Commission notes that although specific bid/ask differential and price continuity rules will not apply to long-term equity options that have over nine months to expiration, the NYSE’s general rules obligating COTs and options specialists to maintain fair and orderly markets (Exchange Rules 750(b) and 754(b)(3)(B)) will continue to apply. The Commission believes that the requirements of these rules are broad enough, even in the absence of bid/ask differential and continuity requirements, to provide the Exchange with the authority to make a finding of inadequate specialist or COT performance should these specialists of COTs enter into transactions or make bids or offers (or fail to do so) in long-term options that are inconsistent with their obligations as market makers. Finally, the Commission notes that the bid/ask differential and continuity rules will apply to long-term equity options when the time remaining until expiration is less than nine months.

The Commission notes, in addition, that the Exchange’s strike price interval rules will not apply to the long-term equity options series until the time to expiration is less than nine months. This approach is consistent with the approach taken by the other options exchanges and is designed to avoid the confusion that would result from a proliferation of long-term equity options series. The Commission also believes that the NYSE’s proposal to introduce new long-term equity options series only when there is a corresponding market move of 20% should result in the listing of only a limited number of series for any expiration and should not produce a myriad of strike prices and expirations. Likewise, the Commission finds that the NYSE’s proposal to open the long-term series for trading either when there is buying or selling interest or 40 minutes prior to the close (whichever occurs first) is consistent with the approach taken by the other options exchanges and is consistent with the Act because long-term series are usually very inactively traded. In addition, the Commission notes that when the long-term equity options have less than nine months to expiration, they will be treated like other non-extended equity options with respect to all trading procedures.

The NYSE has stated that it will monitor the trading in long-term equity options closely to gain experience with regard to these options, and that it will reexamine the applicability of the Exchange’s strike price interval, bid/ask differential, and continuity rules to the long-term options in one year’s time.

Finally, the Commission believes that the NYSE’s proposal to amend Exchange Rule 703(b) to reflect the Commission’s permanent approval of the near-term option expiration pilot program is ___

---


---

* See Long-Term Equity Options Approval Orders, supra note 4.
consistent with the Act because it will delete unnecessary language and clarify the Exchange's rules, thereby helping to ensure the orderly functioning of the NYSE's markets and avoid investor confusion.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the Federal Register because the NYSE's proposal to list long-term equity options is identical to proposals submitted by the other options exchanges, which the Commission has already approved. These proposals were subject to the full notice and comment period and the Commission did not receive any comments. The Commission does not find any different regulatory issues arising out of the NYSE's proposal. Thus, the Commission believes it is appropriate to approve the NYSE's proposal to list long-term equity options on an accelerated basis in order to facilitate competition among the exchanges for product services, which, in turn, should benefit public investors. In addition, the Commission believes it is appropriate to approve the amendments to Exchange Rule 703(b) on an accelerated basis in order to clarify the Exchange's rules and to facilitate the orderly functioning of the NYSE's markets. The Commission believes, therefore, that granting accelerated approval of the proposed rule change is appropriate and consistent with section 6 of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 430 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 at the Commission's Public Reference Section, 430 FIFTH STREET, NW., WASHINGTON, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

All submissions should refer to the file number in the caption above and should be submitted by December 26, 1991. It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-NYSE-91-33), is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 91-29164 Filed 12-4-91; 8:45 am]
BILLING CODE 8010-01-M

[Rel. No. IC-18421; 811-5727]
DR Funds Inc.; Application


AGENCY: Securities and Exchange Commission (“SEC” or “Commission”).

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (“the 1940 Act”).

APPLICANT: DR Funds Inc.

RELEVANT 1940 ACT SECTIONS: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on September 3, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing.

Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 23, 1991, and should be accompanied by proof of service on applicant in the form of an affidavit or, for lawyers, a certificate of service.

Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 430 FIFTH STREET, NW., WASHINGTON, DC 20549. Applicant, 535 MADISON AVENUE, NEW YORK, NEW YORK 10022.

FOR FURTHER INFORMATION CONTACT: James M. Curtis, Staff Attorney, at (202) 504-2406, or Nancy M. Rappa, Branch Chief, at (202) 272-3030 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, a Maryland Corporation, is an open-end diversified management investment company. On May 15, 1989, applicant filed a notification of registration pursuant to section 8(a) of the 1940 Act and a registration statement pursuant to section 8(b) of the 1940 Act and under the Securities Act of 1933. The registration statement was declared effective on August 11, 1989, and applicant commenced its initial public offering on August 18, 1989.

2. On May 22, 1991, applicant's board of directors approved a Plan of Liquidation and Dissolution (the "Plan") that was thereafter approved by shareholders at a special meeting on July 18, 1991. As of August 2, 1991, applicant had total net assets of $132,885 comprising 13,067 shares outstanding at a net asset value of $10.17 per share. On August 2, 1991, pursuant to the Plan, applicant distributed to its shareholders $10.17 per share.

3. Applicant has no remaining securityholders and does not propose to engage in any business activity other than those necessary for the winding up of its affairs.

4. Liquidation expenses, including accounting, legal, and printing mailing expenses totalling approximately $55,980 were borne by applicant, and legal expenses totalling approximately $9,000 were borne by Dillon, Read & Co.

5. Applicant intends to file articles of dissolution with the State of Maryland as soon as practicable. As of the filing date of the application, applicant retained approximately $17,300 in cash to pay expenses in connection with applicant's liquidation and dissolution. This amount will not be invested in securities. Applicant has no other assets or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant has no remaining shareholders, and does not propose to engage in any business activities other than those necessary for the winding-up of its affairs.

1 See Long Term Equity Options Approval Orders, supra note 4.

Robert W. Baird & Co. Incorporated; Temporary Order and Notice of Application for Permanent Order


AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Temporary order and notice of application for permanent order of exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: Robert W. Baird & Co. Incorporated ("Baird").

RELEVANT ACT SECTION: Exemption from section 9(a) under section 9(c).

SUMMARY OF APPLICATION: Applicant has been granted a temporary conditional order and has requested a permanent conditional order exempting it from the provisions of section 9(a) to relieve it from any ineligibility resulting from applicant's employment of an individual who is subject to a securities-related injunction.

FILING DATE: The application was filed on August 7, 1991, and was amended October 23, 1991, and November 19, 1991.

HEARING OR NOTIFICATION OF HEARING: A permanent order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 23, 1991, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, Robert W. Baird & Co. Incorporated, 777 East Wisconsin Avenue, Milwaukee, WI 53202.

FOR FURTHER INFORMATION CONTACT: Elizabeth G. Osterman, Staff Attorney, at (202) 504-2914, or Barry D. Miller, Branch Chief, at (202) 224-3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Baird is a registered broker-dealer and registered investment adviser. Baird is a wholly owned subsidiary of The Regis Group Incorporated, which is a majority-owned subsidiary of The Northwestern Mutual Life Insurance Company.

2. Baird serves as the principal underwriter and sub-adviser for Baird Capital Development Fund, Inc., an open-end, diversified management investment company with approximately $27 million of total assets on September 30, 1991.


4. Baird has employed George J. Gaspar, an individual subject to a securities-related injunction, since 1975. Mr. Gaspar is currently employed by Baird as a vice president and research analyst, with expertise in the oil and gas industry. He also currently serves, and has served since 1981, as a member of Baird’s board of directors.

5. On April 15, 1985, the United States District Court for the Southern District of New York issued an order permanently enjoining Mr. Gaspar from certain securities-related violations. The civil action was filed by the SEC alleging violations of sections 10(b) and 14(e) of the Securities Exchange Act of 1934, and rule 10b-5 thereunder. The alleged misconduct involved the communication of certain material, non-public information relating to the acquisition of Clark Oil and Refining Corporation by a private investment organization.

6. As a result of the injunction described above, Mr. Gaspar is subject to the provisions of section 9(a)(2) of the Act. The existence of the injunction disables Baird, under section 9(a)(3) of the Act, from acting as an investment adviser or depositor of any registered investment company, or principal underwriter for any registered open-end investment company, registered unit investment trust, or registered face amount certificate company, unless an exemption is obtained pursuant to section 9(c).

7. Since the court order described in paragraph 5 above, Mr. Gaspar has not been convicted of any securities-related felony or misdemeanor, enjoined by any court, or sanctioned by the SEC, any self-regulatory organization, or any state securities Commission.

8. Baird’s general counsel and compliance department have reviewed Mr. Gaspar’s employment history and have determined that only one customer complaint has been filed against Mr. Gaspar since the injunction discussed in paragraph 5 above; Mr. Gaspar was named in an arbitration claim filed against Baird in March, 1989. Mr. Gaspar was dismissed on the plaintiff’s own motion prior to the settlement, and no action was taken against him.

9. Mr. Gaspar is not employed by any Baird affiliate other than Baird. Baird does not serve in any capacity related to providing investment advice to, or acting as depositor for, any registered investment company, or acting as principal underwriter for any registered open-end investment company, or registered unit investment trust, or registered face amount certificate company.

10. By letter dated October 16, 1991, Baird advised the SEC that Mr. Gaspar was placed on administrative leave, effective immediately, pending disposition of the relief requested. If temporary relief is granted, Baird will permit Mr. Gaspar to return to work pending the disposition of the request for permanent relief.

11. Although Baird knew of the existence of Mr. Gaspar’s injunction when it arose, Baird claims not to have become aware of Mr. Gaspar’s enforcement actions until section 9(a) until the publication of Investment Company Act Release No. 18055 (Mar. 20, 1991).

12. Baird has instructed each of Baird Blue Chip Fund, Inc. and Baird Capital Development Fund, Inc. to pay the investment advisory and sub-advisory fees due Baird into escrow accounts established with each fund and First Wisconsin Trust Company. Baird also has deposited into such escrow accounts the investment advisory and sub-advisory fees paid to it since July 1, 1990.

13. Baird has had procedures in place for many years to screen for and detect the existence of certain statutory violations. Since the publication of Investment Company Act Release No. 18055 (Mar. 20, 1991), these procedures have been enhanced and include, among other things, notification of Baird’s Compliance Department whenever a statutory disqualification is disclosed in an employment application for a
prospective employee. Baird also has filed an application (Investment Company File No. 812-7809) with respect to one other employee subject to the illegibility provisions of section 9(a), pursuant to which application a temporary, conditional order has been issued (Investment Company Act Release No. 16388).

14. Baird has filed a certificate of its general counsel with the Commission stating that: (a) He has reviewed the compliance procedures described in the application, (b) after due inquiry he reasonably believes that those procedures have been fully implemented, and (c) that those procedures are reasonable and appropriate to prevent persons subject to a statutory disqualification from becoming or remaining affiliated with Baird without proper resolution of the issues raised under section 9 of the Act.

Applicant’s Legal Analysis

1. Section 9(a) prohibits, among other things, “any person who * * * is permanently or temporarily enjoined by order, judgement, or decree of any court * * * from engaging in or continuing any conduct or practice in connection * * * with the purchase or sale of any security” from serving or acting in the capacity of “employee, officer, director, member of an advisory board, investment adviser, or depositor of any registered investment company or principal underwriter for any registered open-end company, registered unit investment trust, or registered face amount certificate company.” A company with an employee or other “affiliated person” ineligible to serve in any of these capacities under section 9(a)(2) is similarly disqualified pursuant to section 9(a)(3) from serving in any such capacity, unless it obtains an exemption under section 9(c).

2. Baird asserts that the strict application of the prohibitions of section 9(a) to Baird is unduly and disproportionately severe and that the conduct of Baird and Mr. Gaspar has been such as to make it not against the public interest or the protection of investors to grant the requested relief. The requested relief is appropriate because Mr. Gaspar does not serve in any capacity related to providing investment advice to or acting as depositor for, any registered investment company or acting as principal underwriter for any registered open-end company, registered unit investment trust, or registered face amount certificate company. Further, Mr. Gaspar has not been subject to any injunction or other criminal or disciplinary action since the entry of the permanent injunction, nor, to the best of Baird’s knowledge, have any complaints been filed against Mr. Gaspar with the SEC, any self-regulatory organization, or any state securities commission since that time. In addition, Baird is aware of only one customer complaint, as described in this notice, filed with respect to Mr. Gaspar.

Conditions to the Relief

1. As a condition to both the temporary and permanent relief, Mr. Gaspar will not serve in any capacity directly related to providing investment advice to, or acting as depositor for, any registered investment company or acting as principal underwriter for any registered open-end company, registered unit investment trust or registered face amount certificate company without making further application to the SEC.

2. As a condition to the temporary relief, Baird will continue to escrow all investment advisory fees and sub-advisory fees payable to it from Baird Blue Chip Fund, Inc. and Baird Capital Development Fund, Inc. as described in the application until the granting of a permanent order.

3. As a condition to the permanent relief, Baird will take the necessary steps to confirm that no other employee is subject to a statutory disqualification.

4. As a condition to the permanent relief, Baird’s general counsel has attested that he has reviewed Baird’s compliance procedures designed to screen for and detect statutory disqualifications, reasonably believes such compliance procedures have been fully implemented, and that such procedures are reasonable and appropriate to prevent persons subject to a statutory disqualification from becoming affiliated with Baird in the future.

5. As a condition to both the temporary and permanent relief, Baird’s legal department shall develop, and Baird shall adopt, written procedures designed to ensure that Mr. Gaspar does not and will not serve in any capacity directly related to providing investment advice to, or acting as depositor for, any registered investment company, or acting as principal underwriter for any registered open-end company, registered unit investment trust, or registered face amount certificate company. Such procedures shall include, but shall not be limited to, the following:

   i. Baird shall notify in writing all portfolio managers (“Portfolio Managers”), members of the Gaspar Group, and all senior personnel of Baird and any investment companies for which Baird acts as investment adviser or sub-adviser (the “Advised Companies”), immediately upon the granting of any order issued pursuant to the application, with respect to the responsibilities of and restrictions on the Gaspar Group. Baird shall notify in writing all new Portfolio Managers, members of the Gaspar Group, and senior personnel of Baird and the Advised Companies upon their employment by Baird or the Advised Companies with respect to the responsibilities of the restrictions on the Gaspar Group. Receipt of notification will be acknowledged in writing by each recipient and returned to Baird.

   ii. Baird will obtain, on an annual basis, written certification from each Portfolio Manager that such Portfolio Manager has not discussed investments and the oil and gas industry, in particular, or economic conditions in general, with any member of the Gaspar Group. Baird will also obtain, on an annual basis, written certification from each member of the Gaspar Group that such member has not discussed investments and the oil and gas industry in particular, or economic conditions in general, with any Portfolio Manager.

   iii. As a condition to both the temporary and permanent relief, Mr. Gaspar will not attend meetings of Baird’s board of directors were the operations of any investment company for which Baird acts as investment adviser or sub-adviser, including Baird Blue Chip Fund, Inc. and Baird Capital Development Fund, Inc., are on the agenda.

    7. As a condition to both the temporary and permanent relief, Mr. Gaspar shall be excluded from all meetings of Baird’s board of directors where the operations of any investment company for which Baird acts as investment adviser or sub-adviser, including Baird Blue Chip Fund, Inc. and Baird Capital Development Fund, Inc., are proposed to be discussed prior to any such discussion.

   8. As a condition to both the temporary and permanent relief, Baird’s general counsel or chief executive officer will certify on an annual basis that Baird and Mr. Gaspar have
For further information, contact: Bruce C. Rashkow, Assistant Legal Adviser for United Nations Affairs (202) 647-6771.
Edwin D. Williamson,
The Legal Adviser.
[FR Doc. 91-29175 Filed 12-4-91; 8:45 am]
BILLING CODE 4710-08-M

Office of the Secretary

[Public Notice 1530]

Determination Under Section 620(f) of the Foreign Assistance Act of 1961, As Amended

Pursuant to section 620(f)(2) of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2370(f)(2), and section 1–201(a)(12) of Executive Order No. 12185, I hereby determine that the removal of Romania from the application of section 620(f) of the Foreign Assistance Act is important to the national interest of the United States. I therefore direct that Romania be henceforth removed, for an indefinite period, from the application of section 620(f) of the Foreign Assistance Act, as amended.

This determination shall be reported to the Congress immediately and published in the Federal Register.

Lawrence S. Eagleburger,
Acting Secretary.
[FR Doc. 91-29176 Filed 12-4-91; 8:45 am]
BILLING CODE 4710-10-M

SUSQUEHANNA RIVER BASIN COMMISSION

Inclusion of Curwensville Storage Reallocation Project and Corps Lackawanna River Flood Protection Projects in the SRBC Comprehensive Plan

AGENCY: Susquehanna River Basin Commission (SRBC).

ACTION: Notice of public hearing on proposed inclusion of Curwensville Storage Reallocation Project and Corps Lackawanna River Flood Protection Projects in SRBC Comprehensive Plan.

DATES: The public hearings will be held consecutively on January 23, 1992 beginning at 10:30 a.m. All comments on the Lackawanna River Flood Protection Projects will be due on the day of the hearing. A post-hearing comment period of 30 days will be provided for the Curwensville Project.

ADDRESS: The hearings will be held in the third floor conference room of the Robert J. Bielo building at 1721 N. Front St., Harrisburg, PA. 17102-2391. Written comments should be submitted to Richard A. Cairo, Secretary to the Commission/Acting Executive Director, at that address.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, Secretary to the Commission/Acting Executive Director, at (717) 238-0423. On the Lackawanna Projects, the Corps of Engineers contact is Steven Stegner, Baltimore District, Pluming Division, (301) 962-4659.

SUPPLEMENTARY INFORMATION: The Susquehanna River Basin Commission will hold two public hearings to receive comments from citizens, government agencies and others on the addition of a proposed Curwensville Storage Reallocation Project and the proposed U.S. Army Corps of Engineers Lackawanna River Flood Control Project.

The Curwensville Storage Project has been the subject of a Corps Reallocation Feasibility Study. That study, which has been completed in draft form and is now being finalized, recognizes the feasibility of reallocating 5,360 acre feet of water in the existing conservation pool for storage and release during low flow events. The study is expected to be available to the public sometime in December 1991. The SRBC has agreed to act as the non-Federal sponsor of the study to explore the possibilities for storage and release of water by certain consumptive users in compliance with Commission Regulation 803.61 on consumptive use.

The hearing on the Curwensville Project is being held pursuant to sections 4.4 and 12.1(2) of the Susquehanna River Basin Compact, Public Law 91–575. Section 4.4 states that prior to entering upon the execution of any project for storage and release of water, the Commission shall review and consider all pertinent existing rights, plans and programs of the signatory parties, their political subdivisions, private parties and water users and hold a public hearing on each such proposed project. Section 12.1(2) states that no expenditure or commitment shall be made for or on account of the construction, acquisition or operation of any Federal project or facility affecting the water resources of the basin unless it shall have first been included by the Commission in the Comprehensive Plan.

The Corps Lackawanna River Flood Protection Projects would be located in Olyphant and Scranton, PA. Both of these areas experienced major flooding in 1942, 1955 and, most recently, in 1985 during Hurricane Gloria. These projects must be included in the SRBC.
Comprehensive Plan pursuant to section 12.1(2) as cited above.

The projects themselves will consist of the following components: 5,750 feet of earth levee in Scranton and 3,770 feet in Olyphant; 1,660 feet of floodwall in Scranton and 1,410 feet in Olyphant. In addition to these major features, four closure structures, 24 internal drainage structures, one bridge removal and associated relocation and modifications are proposed. The recommended plans offer 100-year flood protection and are expected to prevent about 84% of the potential average annual flood damages in the Park Place area of Scranton and 88% in Olyphant. The estimated costs at the time of construction for the proposed projects are $18,970,000 at Scranton and $13,890,000 at Olyphant. The Corps of Engineers has estimated the benefit-to-cost ratios at 1.2 for Scranton and 1.05 for Olyphant.

The Corps has published a Draft Integrated Feasibility Report and Environmental Impact Statement which is available for review at the Commission’s office. Further information may be obtained by contacting the Corps at the above referenced number.

The hearing will be informal in nature. Interested parties are invited to attend the hearing and to participate by making oral or written statements presenting their data, views, and comments. Those wishing to personally appear to present their views are urged to notify the Commander in advance that they desire to do so. However, any person who wishes to be heard will be given the opportunity to be heard whether or not they have given such notice.

The hearing will be held on Thursday, January 30, 1992, in the conference room of the Houston Pilots Office, 8150 South Loop East, Houston, Texas. The meeting is scheduled to begin at approximately 9 a.m. and end at approximately 1 p.m. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Presentation of the minutes of the Offshore and Inshore Waterways Subcommittees and discussion of recommendations.
3. Discussion of previous recommendations made by the Committee.
4. Presentation of any additional new items for consideration of the Committee.
5. Adjournment.

The purpose of this Advisory Committee is to provide recommendations and guidance to the Commander, Eighth Coast Guard District on navigation safety matters affecting the Houston/Galveston area.

The meeting is open to the public. Members of the public may present written or oral statements at the meeting.

Additional information may be obtained from Commander E.N. Funk, USCG, Executive Secretary, Houston/Galveston Navigation Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (oan), room 1209, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130–3396, telephone number (504) 589–4686.


J.M. Loy,
Rear Admiral, U.S. Coast Guard Commander
Eighth Coast Guard District.

[FR Doc. 91–29106 Filed 12–4–91; 8:45 am]
BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD8 90–24]

Houston/Galveston Navigation Safety Advisory Committee Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. I) notice is hereby given of a meeting of the Houston/Galveston Navigation Safety Advisory Committee. The meeting will be held on Thursday, January 30, 1992, at the conference room of the Houston Pilots Office, 8150 South Loop East, Houston, Texas. The meeting is scheduled to begin at approximately 9 a.m. and end at approximately 1 p.m. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Discussion of previous recommendations made by the full Advisory Committee and the Offshore Waterway Management Subcommittee.
3. Presentation of any additional new items for consideration by the Subcommittee.
4. Adjournment.

The meeting is open to the public. Members of the public may present written or oral statements at the meeting.

Additional information may be obtained from Commander E.N. Funk, USCG, Executive Secretary, Houston/Galveston Navigation Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (oan), room 1209, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130–3396, telephone number (504) 589–4686.

[CGD8 90–25]

Houston/Galveston Navigation Safety Advisory Committee; Inshore Waterway Management Subcommittee Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. I) notice is hereby given of a meeting of the Inshore Waterway Management Subcommittee of the Houston/Galveston Navigation Safety Advisory Committee. The meeting will be held on Thursday, January 9, 1992, at the Port of Houston Authority, Executive Office Building, 111 East Loop North, Houston, Texas. The meeting is scheduled to begin at 10:30 a.m. and end at 12 Noon. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Discussion of previous recommendations made by the full Advisory Committee and the Inshore Waterway Management Subcommittee.
3. Presentation of any additional new items for consideration of the Subcommittee.
4. Adjournment.

The meeting is open to the public. Members of the public may present written or oral statements at the meeting.

Additional information may be obtained from Commander E.N. Funk, USCG, Executive Secretary, Houston/Galveston Navigation Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (oan), room 1209, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130–3396, telephone number (504) 589–4686.
Rear Admiral, U.S. Coast Guard Commander, 49 CFR part 573. Blue Bird has also notification and remedy requirements of petitioned to be exempted from the filed an appropriate report pursuant to Valley, Georgia has determined that merits of the petition.

National Traffic and Motor Vehicle vehicle safety.

Hoses.” Section 7.3.7 requires that requirements of S7.3.7 of Federal Motor exercise of judgement concerning the inconsequential as it relates to motor vehicle safety.

Blue Bird Company (Blue Bird) of Fort Valley, Georgia has determined that some of its buses fail to comply with 49 CFR 571.106, “Brake Hoses,” and has filed an appropriate report pursuant to 49 CFR part 573. Blue Bird has also 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.) on the basis that the noncompliance is inconsequential as it relates to motor vehicle safety.

This notice of receipt of a petition is published under Section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgement concerning the merits of the petition.

Blue Bird determined, based on information provided by the Weatherhead Division of Dana Corporation, that certain air brake hoses installed in approximately 11,150 buses do not comply with the adhesion requirements of S7.3.7 of Federal Motor Vehicle Safety Standard No. 106, “Brake Hoses.” Section S7.3.7 requires that, unless, for hoses reinforced by wire, an air brake hose shall withstand a tensile force of eight pounds per inch of length before separation of adjacent layers.

Blue Bird supports its petition with the following:

1. Blue Bird Body Company is not aware of any accidents, complaints or warranty issues related to the use of these suspect hoses.
2. Its application of the suspect hoses is in non-vacuum applications and the arguments set forth by Weatherhead, Navistar, Mack and White GMC Volvo are applicable to its products.
3. It is Blue Bird’s belief that the installation of the suspect Weatherhead hoses on its buses is consistent with industry standards and installations covered in the petitions filed by the previously mentioned component and truck manufacturers. Therefore, Blue Bird Body Company should be granted the other petitioners.

Interested persons are invited to submit written data, views and arguments on the petition of Blue Bird, described above. Comments should refer to the Docket Number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that six copies be submitted. All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, the Notice will be published in the Federal Register pursuant to the authority indicated below.

Comment closing date: January 6, 1992.

Barry Felrice,
Associate Administrator for Rulemaking.
[FR Doc. 91-28204 Filed 12-4-91; 8:45 am]

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20AS), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–3021.

Comments and questions about the OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20563, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before January 6, 1992.


By direction of the Secretary.

Frank E. Lalley,
Associate Deputy Assistant Secretary for Information Resources Policies and Oversight.

Extension

1. Veterans Application for Assistance in Acquiring Special Housing Adaptations, VA Form 26-4555d.
2. The form is completed by certain disabled veterans in applying for benefits for acquiring adaptations/alterations to veterans’ homes.
3. Individuals or households.
4. 25 hours.
5. 20 minutes.
6. On occasion.
7. 75 respondents.

[FR Doc. 91-29123 Filed 12-4-91; 8:45 am]

Special Medical Advisory Group (SMAG); Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–683) of October 6, 1972, that the Department of Veterans Affairs Special Medical Advisory Group (SMAG) has been renewed for a two year period beginning November 21, 1991, through November 21, 1993.


By direction of the Secretary.

Diane H. Landis,
Committee Management Officer.
[FR Doc. 91–29129 Filed 12–4–91; 8:45 am]

Privacy Act of 1974; Report of Matching Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice of matching program.

SUMMARY: Notice is hereby given that the Department of Veterans Affairs (VA) intends to conduct a recurring computer matching program matching Internal Revenue Service (IRS) income
tax records with VA pension and parents' dependency and indemnity compensation records.

The goal of this match is to compare income reported by beneficiaries to VA with income tax records maintained by IRS. For the information of all concerned, a summary report of the VA matching program, describing the computer match follows. In accordance with 5 U.S.C. subsection 552a(o)(2), copies of the matching agreement are being sent to both Houses of Congress. This match is expected to commence on January 2, 1992, or 30 days after the agreement by the parties is submitted to Congress and the Office of Management and Budget whichever is later.

The match with IRS is estimated to start January 2, 1992, and will end June 30, 1992, for tax year 1990 information. This agreement may not be extended. A new matching agreement will be required for each year. The match will not continue past the date the legislative authority to obtain this information expires.

ADDRESSSES: Interested individuals may comment on the proposed matches by writing to the Director, Compensation and Pension Service (21), Department of Veterans Affairs, 610 Vermont Avenue, NW, Washington, DC 20420.

FOR FURTHER INFORMATION CONTACT: David Spivey (213B), (202) 233-3504.

SUPPLEMENTARY INFORMATION: Further information regarding the matching program is provided below. This information is required by title 5 U.S.C. subsection 552a(e)(12), the Privacy Act of 1974. A copy of this notice has been provided to both Houses of Congress and the Office of Management and Budget.

Edward J. Derwinski, Secretary.

Report of Matching Program: Department of Veterans Affairs Pension and Dependency and Indemnity Compensation Records with Income Tax Records maintained by the Internal Revenue Service.


b. Program Description:
(1) Purpose: (a) The Department of Veterans Affairs (VA) plans to match records of veterans, dependents of veterans, surviving spouses, dependents of surviving spouses who receive pension and parents and their spouses who receive Dependency and Indemnity Compensation (DIC) with income tax records maintained by the Internal Revenue Service (IRS).
(b) Current information about a VA beneficiary's receipt of income is obtained from reporting by the beneficiary. The proposed matching program will enable VA to ensure accurate reporting of income.

(2) Procedures: VA will prepare an extract file of beneficiaries receiving income dependent benefits. The VA extract file will be matched against IRS income tax records. If a VA record and an IRS record match on Social Security number and name, VA will refer the cases to field stations for development to assure the validity of the matched cases. To verify the reported income amount with the payer of the income, to contact the beneficiary identified by the match, to inform the individual of the income identified by the match and to make any required award adjustment. Before any adverse action is taken, the individual identified by the match will be given the opportunity to contest the findings. Where there are reasonable grounds to believe that there has been a violation of criminal laws, the matter will be investigated and referred for prosecutive consideration in accordance with existing VA policies.

(a) Records to be Matched: The VA records involved in the match are pension and parents' dependency and indemnity compensation records maintained in the "VA Compensation, Pension, Education and Rehabilitation Records—VA (58 21/22)" contained in the Privacy Act issuances, 1989 compilation, Volume II, Pages 918–922 as amended at Federal Register 56 FR 16354. The IRS records are from the Wage and Information Returns (IRP) Master File. Privacy Act System Treas/IRS 22.061.

(b) Period of Match: The initial data exchange is expected to begin about January 2, 1992. The match with IRS will end June 30, 1992, for tax year 1990 information. The match may not be extended. The new matching agreement will be required for each year. The match will not continue past the date the legislative authority to obtain this information expires.

[FR Doc. 91–29124 Filed 12-4-91; 8:45 am]
Administrative Officer.

certain insured banks.

following:

Federal Deposit Insurance Corporation

U.S.C. 552b), notice is hereby given that

Notice of Agency Meeting

Foreign Claims Settlement Commission,

Judith H. Lock,


1991, the Board of Directors of the

at 10:04 a.m. on Tuesday, December 3,

Washington, DC 20579. Telephone: (202)

intention to observe a meeting, may be

for information, or advance notices of

may be carried over to the agenda of the

specified, as follows:

Date, Time, and Subject Matter

Wed., Dec. 18, 1991 at 10:30 a.m.—

Consideration of Proposed Decisions on

claims against Iran.

Subject matter listed above, not

disposed of at the scheduled meeting, may be carried over to the agenda of the

following meeting.

All meetings are held at the Foreign

Claims Settlement Commission, 601 D

Street, NW., Washington, DC. Requests

for information, or advance notices of

intention to observe a meeting, may be
directed to: Administrative Officer,

Foreign Claims Settlement Commission,

601 D Street, NW., Room 10000,

Washington, DC 20579. Telephone: (202)

208–7727.

Dated at Washington, D.C. on December 2,


Judith H. Lock,

Administrative Officer.

[FR Doc. 91–2927 Filed 12–3–91; 2:04 pm]

BILLING CODE 4410–01–M

FEDERAL DEPOSIT INSURANCE
CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the

"Government in the Sunshine Act" (5

U.S.C. 552b), notice is hereby given that

at 10:04 a.m. on Tuesday, December 3,

1991, the Board of Directors of the

Federal Deposit Insurance Corporation

met in closed session to consider the

following:

Matters relating to the probable failure of
certain insured banks.

Recommendation concerning an

administrative enforcement proceeding.

Application of North County Bank,

Escondido, California, for consent to

purchase certain assets of and assume the

liability to pay deposits made in Ceteway

Western Bank, Beaumont, California, and for

consent to establish the three offices of

Gateway Western Bank as branches of the

resultant bank.

Matters relating to a certain financial

institutions.

Reports of the Office of the Inspector

General:

Audit Report re:

San Jose Consolidated Office, Cost

Center—404 (Memo dated October 25,

1991)

Audit Report re:

The Brooklyn Savings Bank, Danielson,

Connecticut (4385) (Memo dated

November 8, 1991)

Audit Report re:

Information System Audit, Midland

Consolidated Office (Memo dated

November 12, 1991)

Audit Report re:

Audit of Legal Expenses Paid to the Law

Firm of Andrews and Kurth (Memo dated

November 6, 1991)

Audit Report re:

Audit of Legal Expenses Paid to the Law

Firm of Hutcheson & Grundy (Memo
dated November 6, 1991)

Audit Report re:

Audit of Legal Expenses Paid to the Law

Firm of Leonard Marsh Hurt Terry &

Blinn (Memo dated November 8, 1991)

Audit Report re:

Audit of Legal Expenses Paid to the Law

Firm of Pettit & Martin (Memo dated

November 8, 1991)

Audit Report re:

Audit of Legal Expenses Paid to the Law

Firm of Cooley, Godward, Castro,

Huddleson & Tatum (Memo dated

November 8, 1991)

Audit Report re:

Audit of Legal Expenses Paid to the Law

Firm of Ross, Banks, May, Cron, & Cavin
(Memo dated November 6, 1991)

Audit Report re:

Audit of Legal Expenses Paid to the Law

Firm of Baker & Boit (Memo dated

November 8, 1991)

Audit Report re:

Audit of Legal Expenses Paid to the Law

Firm of Johnson, Bromberg & Leeds
(Memo dated November 6, 1991)

Audit Report re:

Audit of Reports on Waiver of Erroneous

Payments (Memo dated November 15,

1991)

Letter of Tennessee Valley Authority


Matter relating to the Corporation’s

resolution activities.

In calling the meeting, the Board

determined, on motion of Director C.C.

Hope, Jr. (Appointive), seconded by Vice

Chairman Andrew C. Hove, Jr.,

concurring in by Director T. Timothy

Ryan, Jr. (Office of Thrift Supervision)

and Chairman William Taylor, that

Corporation business required its

consideration of the matters on less than

seven days’ notice to the public; that no

earlier notice of the meeting was

practicable; that the public interest did

not require consideration of the matters

in a meeting open to public observation; and

that the matters could be

considered in a closed meeting by

authority of subsections (c)(2), (c)(6),

(c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the

"Government in the Sunshine Act" (5

U.S.C. 552b (c)(2), (c)(6), (c)(8),

(c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board

Room of the FDIC Building located at

550—17th Street, NW., Washington, DC.


Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 91–29300 Filed 12–3–91; 3:23 pm]

BILLING CODE 5714–01–M

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NUMBER: 91–28854.

PREVIOUSLY ANNOUNCED DATE AND TIME:

Thursday, December 5, 1991, 10: a.m.,

Meeting Open to the Public.

THE FOLLOWING ITEMS ARE ADDED TO

THE AGENDA:

Proposed Revision of Directive No. 45

Administrative Termination.

Fiscal Year ’93 Budget Request.

DATE AND TIME: Tuesday, December 10,

1991 10:00 a.m.

PLACE: 999 E Street, N.W., Washington,

D.C. (Ninth Floor).

STATUS: This Meeting Will Be Open to

the Public.

ITEM TO BE DISCUSSED: Oral

Presentation Request—Kemp for

President Committee.

DATE AND TIME: Tuesday, December 10,

1991, 2:00 p.m.

PLACE: 999 E Street, N.W., Washington,

D.C.

STATUS: This Meeting Will Be Closed to

the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C.

§ 437g.
Audits conducted pursuant to 2 U.S.C. §§ 437g, § 438(b), and Title 26, U.S.C. Matters concerning participation in civil actions or proceedings or arbitration. Internal personnel rules and procedures or matters affecting a particular employee.

**DATE AND TIME:** Thursday, December 12, 1991, 10:00 a.m.

**PLACE:** 999 E Street, N.W., Washington, D.C. (Ninth Floor).

**STATUS:** This Meeting Will Be Open to the Public.

**ITEMS TO BE DISCUSSED:**
- Correction and Approval of Minutes
- Title 26 Certification Matters
- Advisory Opinion 1991-35: Mr. Carl G. Borden of California Farm Bureau Federation
- Administrative Matters

**PERSON TO CONTACT FOR INFORMATION:**
Mr. Fred Eiland, Press Officer, Telephone: (202) 219-4155.
Delores Harris, Administrative Assistant.

[FR Doc. 91-29298 Filed 12-3-91; 3:00 pm]
BILLING CODE 6715-01-M
Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 25, 121 and 125
Landing Gear Aural Warning; Final Rule
DEPARTMENT OF TRANSPORTATION
Federal Aviation Administration

14 CFR Parts 25, 121 and 125
[Docket No. 25991, Amendment Nos. 25-75, 121-227, and 125-16]

RIN 2120-AC82

Landing Gear Aural Warning

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: These amendments to the Federal Aviation Regulations (FAR) update the airworthiness standards for landing gear aural warning systems in transport category airplanes to reflect current design practices. They require that if a landing is attempted when the landing gear is not locked down, the flightcrew must be given an aural warning in sufficient time to allow the landing gear to be locked down or a go-around to be made. These amendments state the intent of the current regulations in more objective terms to eliminate nuisance warnings and to simplify the certification process.

EFFECTIVE DATE: January 6, 1992.


SUPPLEMENTARY INFORMATION:

Background

This amendment is based on Notice of Proposed Rulemaking (NPRM) 89-20 (54 FR 34116, August 17, 1989). As discussed in the notice, parts 25, 121, and 125 of the FAR contain similarly worded requirements for a landing gear aural warning system. The function of this system is to provide the flightcrew with an aural alert if the landing gear is not extended and locked at the appropriate time. For example, § 25.729(e), as amended by Amendment 25-42 (48 FR 2302, January 16, 1978), states, in pertinent part, that:

(2) Landplanes must have an aural warning device that will function continuously when one or more throttles are closed, if the landing gear is not fully extended and locked.

(3) If there is a manual shutoff for the aural warning device prescribed in paragraph (e)(2) of this section, the warning system must be designed to be activated by operation of any throttle to or beyond the position for a normal landing approach.

(4) Landplanes must have an aural warning device that will function continuously, when the wing flaps are extended beyond the maximum approach position determined under § 25.675(o), if the gear is not fully extended and locked. There may not be a manual shutoff for this warning device. The device may use any part of the system designed to inhibit the warning system may result in type certification delays. Furthermore, as noted above, the means to inhibit the warning system may result in no warning to the flightcrew at the time a warning is needed.

The fundamental problem with the current standards is that they fail to state the safety intent, but instead state how the requirements should be met. Therefore, the regulations on landing gear aural warning are being revised to state the performance objectives without stating how the requirements should be implemented. This allows the manufacturers to use their ingenuity in designing systems that minimize nuisance warnings.

Because the warning systems on these airplanes do not comply with the existing certification and operational standards, findings of equivalent level of safety or exemptions are necessary. This process is time-consuming and may result in type certification delays. Furthermore, as noted above, the means to inhibit the warning system may result in no warning to the flightcrew at the time a warning is needed.

Several commenters responded to the request for comments contained in Notice 89-20. These included the public, foreign authorities, industry, and manufacturers.

One of the airplane manufacturers is concerned that the new rule might not allow a system in which the aural warning is silenced when the flightcrew selects the landing gear handle down rather than when the landing gear is actually down and locked. The commenter contends that the former configuration should be acceptable.

The FAA does not concur. The objective of the old rule, which required a continuous aural warning until the landing gear was fully extended and locked, was to provide warning of either flightcrew error or failure of the landing gear to extend and lock. That objective is unchanged. The system described by the commenter would not be acceptable under either the old rule or the amended rule.

Many commenters object to the proposed rule's not allowing a manual shutoff for the aural warning. Examples are given of situations during which deliberate silencing of the aural warning would be desirable. These commenters do not believe that nuisance alerts could be completely eliminated no matter how sophisticated the design might be.

In consideration of these comments, the FAA agrees that a manual shutoff...
should not be prohibited; however, the control device that shuts off the aural warning must be designed so that it cannot be inadvertently actuated by the flightcrew. It also should not be so convenient to the flightcrew that it is operated by habitual reflexive action (i.e., like an autopilot disconnect switch on the control wheel). It should be obvious to the flightcrew, or a means should be provided to inform the flightcrew when the manual control device has been positioned to silence the warning.

One commenter suggests that the following design requirements be instituted: (1) The warning system should incorporate a means to inhibit the warning based on high airspeed and/or altitude to eliminate nuisance warnings during descent. (2) The warning system should be designed to re-energize the aural warning after a time delay when it is manually silenced, and (3) The warning system should retain the "gear not down—landing flaps not selected" feature.

The FAA does not concur with the suggestion, because adding design requirements to the rules would dictate specific design. Requirement (1) above may be one means for preventing nuisance warnings, but not the only means. Requirement (2) is considered unnecessary because the majority of nuisance warnings will be eliminated by careful system design. Also, if the flightcrew deliberately silences the aural warning in an emergency situation, for example, recurring warnings could be disruptive. Requirement (3) would not be needed if the objective of the rule is met; namely, that an aural warning must be given if a landing is attempted when the landing gear is not locked down. It should be noted that this amendment is needed because the existing landing gear aural warning rules were too specific. Stating the requirements in an objective manner provides more latitude in tailoring the system to the specific airplane involved.

One commenter is concerned about the interpretation of the requirement that failures of systems which provide inhibit logic to the aural warning system, that would prevent the aural warning system from operating, must be improbable. The commenter believes "improbable" has a wide probability range and should be clearly defined.

The FAA does not agree that the term "improbable" is not clearly defined. Therefore, it does not establish a wide probability range, that range is defined precisely in AC 25.1309-1A. This requirement would be satisfied by meeting the upper boundary of the probability range given in the AC.

The European Joint Aviation Authorities (JAA) suggest that the FAA and JAA requirements for landing gear aural warning should be standardized. For a number of years the JAA D and F Study Group has also been working on a revision to the landing gear aural warning requirements contained in Joint Aviation Requirements (JAR) 25.729(e) (2), (3) and (4). The intent of the JAR revision is the same as that proposed in NPRM 89-20. However, the FAA revision includes a statement that emphasizes the need to eliminate false or inappropriate alerts in the design of the system. It also contains a reliability requirement for systems that provide inhibit logic to the aural warning system. These requirements are considered necessary to assure a design of high reliability.

The FAA concurs that U.S. and European requirements should be standardized wherever feasible. Therefore, the FAA is adopting the JAR revision of § 25.729(e) (2), (3), and (4). In addition, paragraphs (e) (3) and (6) are being added as follows:

(5) The system used to generate the aural warning must be designed to eliminate false or inappropriate alerts.

(6) Failures of systems used to inhibit the landing gear aural warning, that would prevent the warning system from operating, must be improbable.

These are all minor nonsubstantive changes that place no additional burden on any person. Except for the changes noted above, the amendments are adopted as proposed in Notice 89-20.

Regulatory Evaluation

This section summarizes the regulatory evaluation prepared by the FAA on The Landing Gear Aural Warning System. The summary discusses expected costs and benefits of these amendments.

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each regulatory change outweigh potential costs. The order also requires the preparation of a Regulatory Impact Analysis of all "major" rules except those responding to emergency situations or other narrowly defined exigencies. A "major" rule is one that is likely to result in an annual effect on the economy of $100 million or more, a major increase in consumer costs, or a significant adverse effect on competition.

The FAA has determined that this rule is not "major" as defined in the executive order; therefore, a full regulatory analysis, that includes the identification and evaluation of cost reducing alternatives to this rule, has not been prepared. Instead, the agency has prepared a more concise document that analyzes only this rule without identifying alternatives. In addition to a summary of the regulatory analysis, this section also contains a regulatory flexibility determination required by the 1980 Regulatory Flexibility Act (Pub.L. 96-354) and an international trade impact assessment.

This rule will amend the airworthiness standards for transport category airplanes (part 25). The existing standards are specific with respect to method of compliance and are more appropriate for reciprocating-powered airplanes than for modern turbojet-powered airplanes. The rule states the objectives of the requirements without stating how the requirements should be implemented, thereby allowing manufacturers to use their ingenuity in designing systems. The rule will not affect existing certificated aircraft.

None of the comments received in response to Notice 89-20 pertain to the economic evaluation.

This rule updates the airworthiness standards for landing gear aural warning systems in transport category airplanes to reflect current design practices. However, the rule will not affect existing certificated airplanes and hence, will not result in incremental compliance costs to operators or to manufacturers of airplanes.

Furthermore, the rule relieves the aircraft manufacturing industry of the burden of following regulations that have become outdated due to technological change, and eliminates a manufacturer's need to apply for exemptions in order to utilize technologies that are not in technical compliance with the FAR, but nevertheless meet the safety requirements of the FAA.

This rule will allow aircraft manufacturers to remain in regulatory compliance without asking the FAA for equivalent-level-of-safety findings. The rule will impose no compliance costs. However, there is a small cost savings to the FAA amounting to approximately $98,000, discounted over the next ten years. Hence, this rule is considered cost beneficial by the FAA.

This rule will not affect foreign or domestic operators or manufacturers.

Hence, the rule will have no impact on international trade. Since this rule has no cost impact, a substantial number of small entities including airplane manufacturers and operators under
parts 121 and 125 will not incur significant economic costs.

Federalism Implications

The regulations contained 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. Therefore, in accordance with Executive Order 12612, it is determined that this amendment does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

Because the regulations contained herein are expected to result only in negligible costs, the FAA has determined that this rule is not major as defined in Executive Order 12291. Because this is an issue that has not prompted a great deal of public concern, this rule is not considered to be significant as defined in Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). In addition, since there are no small entities affected by this rule, it is certified under the criteria of the Regulatory Flexibility Act that this rule, at promulgation, will not have a significant economic impact, positive or negative, on a substantial number of small entities.

List of Subjects

14 CFR Part 25
Aircraft, Aviation safety, Safety.

14 CFR Part 121
Aircraft, Airplanes, Airworthiness, Pilots.

14 CFR Part 125
Aviation safety, Safety, Air carriers, Aircraft pilots, Airplanes, Pilots.

The Amendment

Accordingly, parts 25, 121, and 125 of the Federal Aviation Regulations (FAR) (14 CFR parts 25, 121, and 125) are amended as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

1. The authority citation for part 25 continues to read as follows:

2. By amending § 25.729, by revising paragraphs (e)(2) through (e)(4) and by adding paragraphs (e)(5) and (e)(6) to read as follows:
§ 25.729 Retracting mechanism.
* * * * *
(e) * * * * *
(2) The flightcrew must be given an aural warning that functions continuously, or is periodically repeated, if a landing is attempted when the landing gear is not locked down.
(3) The warning must be given in sufficient time to allow the landing gear to be locked down or a go-around to be made.
(4) There must not be a manual shut-off means readily available to the flightcrew for the warning required by paragraph (e)(2) of this section such that it could be operated instinctively, inadvertently, or by habitual reflexive action.
(5) The system used to generate the aural warning must be designed to eliminate false or inappropriate alerts.
(6) Failures of systems used to inhibit the landing gear aural warning, that would prevent the warning system from operating, must be improbable.
* * * * *

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

3. The authority citation for part 121 continues to read as follows:

4. By amending § 121.289 by revising the introductory text of paragraph (a) to read as follows:
§ 121.289 Landing gear: Aural warning device.

(a) Except for airplanes that comply with the requirements of § 25.729 of this chapter on or after January 6, 1992, each large airplane must have a landing gear aural warning device that functions continuously under the following conditions:
* * * * *

PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE

5. The authority citation for part 125 continues to read as follows:

6. By amending § 125.187 by revising the introductory text of paragraph (a) to read as follows:
§ 125.187 Landing gear: Aural warning device.

(a) Except for airplanes that comply with the requirements of § 25.729 of this chapter on or after January 6, 1992, each airplane must have a landing gear aural warning device that functions continuously under the following conditions:
* * * * *

Issued in Washington, D.C., on November 26, 1991.

James B. Busey,
Administrator.

[FR Doc. 91-29033 Filed 12-4-91; 8:45 am]
BILLING CODE 4910-13-M
Part III

Department of Transportation

Research and Special Programs Administration

49 CFR Parts 190, 191, 192, and 195

Offshore Gas and Hazardous Liquid Pipelines; Inspection and Burial; Final Rule
DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administrator

49 CFR Parts 190, 191, 192, and 195

[Docket No. PS-120; Amdts. 190-4, 191-9, 192-67, and 195-47]

RIN 2137-AB 96

Inspection and Burial of Offshore Gas and Hazardous Liquid Pipelines

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: Natural gas and hazardous liquid pipelines buried in shallow offshore waters in the Gulf of Mexico have been involved in accidents with fishing and other vessels. Public Law 101-599 was enacted to determine the extent to which pipelines in shallow waters in the Gulf of Mexico may be a hazard to fishing vessels. This Final Rule implements the immediate provisions of Public Law 101-599 amending the Natural Gas Pipeline Safety Act of 1968 and the Hazardous Liquid Pipeline Safety Act of 1979.

Under this final rule, operators of natural gas and hazardous liquid pipelines are required to do the following: (1) Conduct an underwater inspection of pipelines in the Gulf of Mexico and its inlets located in water less than 15 feet deep, by November 16, 1992; (2) report to the Coast Guard those pipelines which have been discovered to be exposed or otherwise present a hazard to navigation and mark such pipelines with a buoy; and (3) bury, within 6 months, those pipelines identified under (2) above, or by any other person. This Final Rule also provides for reporting the results of the underwater inspection to the Department, as well as providing for criminal penalties for damaging, removing, defacing, or destroying a pipeline marker buoy.

EFFECTIVE DATE: The effective date of this final rule is January 6, 1992.

FOR FURTHER INFORMATION CONTACT: Cesar De Leon, (202) 366-1640, regarding the subject matter of this amendment or the Dockets Unit, (202) 366-4148, regarding copies of this amendment or other material in the docket.

SUPPLEMENTARY INFORMATION:

Background

The RSPA issued a Notice of Proposed Rulemaking (NPRM) on April 29, 1991, (56 FR 19627) proposing regulations to implement the immediate provisions of Public Law 101-599 (enacted November 16, 1990) to conduct underwater inspections of pipelines in shallow waters in the Gulf of Mexico and its inlets. This law was enacted to address the consequences of recent accidents involving fishing vessels that struck pipelines in shallow waters in the Gulf.

On July 24, 1987, a fishing vessel struck and ruptured an 8-inch diameter natural gas liquid pipeline while maneuvering in shallow waters in the Gulf of Mexico off the coast of Louisiana. The released gas ignited, resulting in the deaths of two crewmen. The pipeline was originally installed in 1968 and buried onshore, parallel to the shoreline. In the intervening years, the shoreline underwent substantial erosion, and at the time of the accident, the pipeline reportedly was exposed on the seabed in open water approximately 1 mile offshore.

On October 3, 1989, a 100-foot menhaden fishing vessel, the Northumberland, struck a Natural Gas Pipeline Co. 16-inch diameter offshore gas transmission pipeline about a 3/4 nautical mile offshore in the Gulf of Mexico near Sabine Pass, Texas. Natural gas under a pressure of 835 psig was released. An undetermined source onboard the vessel ignited the gas and engulfed the vessel in flames. Eleven of fourteen crew members died as a result of the accident.

In February 1990, at the request of RSPA, a joint task force was formed, made up of five Federal agencies and two state agencies to develop solutions to the risks posed by the co-existence of pipelines and vessel operations in the Gulf of Mexico. The agencies represented were: RSPA, the Minerals Management Service (MMS) of the Department of the Interior, the National Ocean Service of the National Oceanic and Atmospheric Administration, the U.S. Coast Guard, the U.S. Army Corps of Engineers, the Texas Railroad Commission, and the Louisiana Office of Conservation. A report prepared by the joint task force is available in the Joint Task Force Report on Underwater Inspections of Pipelines in Shallow Water, dated July 1991.

The joint task force recommended inclusion of a requirement to inspect offshore pipelines in shallow water to reduce the potential hazards of exposed offshore pipelines. The RSPA pipeline safety regulations currently require that all newly constructed gas and hazardous liquid offshore pipelines located in water less than 12 feet in depth must have a minimum of 36 inches of cover or 18 inches in consolidated rock (49 CFR 192.327 and 195.246). Newly constructed gas and hazardous liquid pipelines in offshore waters from 12 feet to 200 feet deep must be installed so that the top of the pipe is below the seabed unless the pipe is protected by other equivalent means (§§ 192.319 and 195.246).

The RSPA pipeline safety regulations currently require that all newly constructed gas and hazardous liquid offshore pipelines located in water less than 12 feet in depth must have a minimum of 36 inches of cover or 18 inches in consolidated rock (49 CFR 192.327 and 195.246). Newly constructed gas and hazardous liquid pipelines in offshore waters from 12 feet to 200 feet deep must be installed so that the top of the pipe is below the seabed unless the pipe is protected by other equivalent means (§§ 192.319 and 195.246). The MMS issues rights-of-way permits for pipelines on the Outer Continental Shelf (OCS) and requires that newly constructed pipelines be buried 36 inches (30 CFR 250.153). The Corps of Engineers issues permits for burial of offshore pipelines and normally requires that newly constructed pipelines be buried to a depth of 36 inches in water less than 200 feet deep. However, none of the three agencies currently require that pipeline operators conduct an underwater inspection of those pipelines.

Public Law 101-599

Public Law 101-599 amended the Natural Gas Pipeline Safety Act of 1968 (NGPSA) (49 U.S.C. 1671 et seq.) and the Hazardous Liquid Pipeline Safety Act of 1979 (HLPSA) (49 U.S.C. 2001 et seq.), which are administered by the RSPA. The law requires that not later than 18 months after enactment or 1 year after issuance of regulations, whichever occurs first, the operator of each offshore gas or hazardous liquid pipeline facility in the Gulf of Mexico and its inlets shall inspect such pipeline facility and report to the Department on any portion of a pipeline facility which is "exposed" or is a "hazard to navigation' (as those terms are defined in this final rule). Therefore, this initial inspection must be completed by May 16, 1992 or 1 year after issuance of regulations, whichever comes first. This requirement shall apply to pipeline facilities between the high water mark and the point where the subsurface is under 15 feet of water, as measured from mean low water. In accordance with Public Law 101-599, hazardous liquid gathering lines of 4 inch nominal diameter and smaller are excepted from this inspection. The Department may extend the time period for compliance with this inspection requirement for an additional period of up to 6 months for gas transmission pipeline facilities, or up to 1 year for hazardous liquid pipeline facilities. The law provides that any inspection of a...
pipeline facility which has occurred after October 3, 1989 (the date of the Northumberland accident) may satisfy the inspection requirements if it complies with the pertinent requirements in this final rule.

Public Law 101–599 requires the Department to establish standards by May 16, 1991, on what constitutes an “expedited pipeline facility,” and what constitutes a “hazard to navigation.” The law requires that pipeline operators report to the Department, through the appropriate Coast Guard offices, potential or existing navigational hazards involving pipeline facilities. As a result of the inspection, an operator of a pipeline facility who discovers any pipeline facility which is a hazard to navigation in water 15 feet deep or less as measured from mean low water, must mark the location with a Coast Guard approved marine buoy or marker and notify the Department. The law provides for criminal penalties for persons who willfully and knowingly damage, deface, remove, or destroy the marine buoy or marker. Public Law 101–599 also requires the Secretary of Transportation to issue regulations requiring each gas and hazardous liquid pipeline facility that has been inspected and found to be exposed or that constitutes a hazard to navigation, be buried within 6 months after the condition is reported to the Department.

Furthermore, Public Law 101–599 requires that not later than 30 months after enactment of the law, or May 18, 1993, the Secretary shall, on the basis of experience with the initial inspection program, establish a mandatory, systematic, and, where appropriate, periodic inspection program of offshore and underwater pipeline facilities in the Gulf of Mexico and its inlets. This requirement will be addressed in a future rulemaking.

In addition, Public Law 101–599 amends the Ports and Waterways Safety Act (33 U.S.C. 1221 et seq.), which is administered by the Coast Guard, to encourage fishermen and other vessel operators to report potential or existing navigational hazards involving pipeline facilities to the Department through the appropriate Coast Guard field office. Upon notification by the pipeline operator or by any other person of a hazard to navigation, the Department will notify the Coast Guard, the Office of Pipeline Safety, other affected Federal and state agencies, and vessel owners and operators in the vicinity of the pipeline facility.

Advisory Committees

This regulatory document was twice brought before the Technical Pipeline Safety Standards Committee (TPSSC) and the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC). These advisory committees were established by statute to consider the feasibility, reasonableness, and practicability of proposed pipeline safety regulations.

The TPSSC met in Washington, DC on February 20, 1991 and the THLPSSC met in Washington, DC on February 21, 1991. These advisory committees informally discussed a draft NPRM, which proposed revisions to the regulations in Parts 192 and 195 regarding offshore pipelines. That draft notice considered by the advisory committees addressed the requirements in Public Law 101–599 as well as additional matters that were not included in the law but which had been addressed by the multi-agency task force formed after the Northumberland accident.

As a result of the opinion of the advisory committees, the proposed rule was narrowed to address only the immediate requirements of Public Law 101–599 and those requirements were proposed in the NPRM. The longer-term mandates of Public Law 101–599, as well as other offshore and underwater pipeline proposals that may merit consideration, will be addressed in a future proposed rulemaking.

Because the law has mandatory deadlines for issuance of the regulations and for completion of the initial inspection, these regulations must be expedited. Therefore, after receiving comments on the NPRM, a summary of the comments together with the NPRM were mailed to each member of the advisory committees for a vote by mail. After receiving a summary of the comments, both advisory committees voted by mail that the NPRM rule was technically feasible, reasonable, and practicable with certain revisions suggested by some of the members. Four members of the TPSSC voted that the proposed regulations were feasible, reasonable, and practicable as published in the Federal Register. Eight members agreed, but suggested revisions. Six members of the THLPSSC voted that the proposed regulations were feasible, reasonable, and practicable, as published in the Federal Register. Five members agreed, but suggested revisions. Some of the members did not vote. All of the revisions proposed by committee members are encompassed in the comments and recommendations made by commenters to the NPRM, and the disposition of these comments is addressed below in “DISCUSSION OF COMMENTS.”

Discussion of Comments

RSPA received 27 comments in response to the Notice, including 13 from pipeline operators, 4 pipeline industry associations (American Gas Association, Gas Pipeline Technology Committee, American Petroleum Institute, and Interstate Natural Gas Association of America), the National Transportation Safety Board, the Department of the Interior, the National Fisheries Institute, the American Shrimp Processors Association, and comments from 3 individual members of the Technical Pipeline Safety Standards Committee and the Technical Hazardous Liquid Pipeline Standards Committee. Some of the comments from pipeline companies were also signed by members of the advisory committees. RSPA appreciates comments on the NPRM provided by the members of the advisory committees. RSPA also appreciates the prompt submittal of comments considering the short comment period. The excellent comments received indicate that there was sufficient time for the commenters to prepare well-founded responses.

Miscellaneous Comments

The National Fisheries Institute commented that the Preamble to the NPRM stated that neither the RSPA, MMS, or Corps of Engineers requires that pipeline operators conduct an underwater inspection or maintain burial of offshore pipelines. The Fisheries Institute commented that while underwater inspections may not be conducted, the permits issued by the Corps of Engineers require that the depth of burial of offshore pipelines be maintained. The U.S. District Court for the Western District of Louisiana, Monroe Division upheld that interpretation. RSPA and the Corps agree and has corrected this statement in the Preamble to this final rule.

A member of the THLPSSC raised the question of who would be responsible for inspecting abandoned pipelines. Also, the Louisiana Office of Conservation (LOC) stated that while they recognize that the accidents that occurred were caused by fishing vessels striking active pipelines, they remain concerned about the hazards to persons and property posed by pipeline facilities that have been abandoned in place and that are currently not subject to any inspection requirements. The LOC estimates that there are approximately 4,000 miles of abandoned pipelines in the offshore waters of Louisiana. The LOC commented that DOT has unquestioned authority to impose
conditions for abandonment of pipelines and should require, as a pre-requisite to allowing abandonment in place, that the owners of such pipelines undertake to maintain their burial, or alternatively, remove them from the seabed.

RSPA agrees that this is a matter of concern and will reconvene the Task Force on Offshore Pipelines to consider the problems of abandoned pipelines in offshore waters. In addition, identical legislative proposals sponsored by Congressmen Billy Tauzin and Senator John Breaux would amend the NGPSA and the HLPSA to require that abandoned offshore pipelines be given the same safety considerations as pipelines currently in use. RSPA, in cooperation with the Task Force, will examine the issues of abandoned offshore pipelines, incorporated as part of the subsequent offshore rulemaking noted previously. However, this final rule has been limited to the NPRM which incorporates the immediate requirements in Public Law 101-599.

Chevron commented that they interpreted the rulemaking to apply to lines constructed prior to the passage of the initial pipeline safety acts, NGPSA and HLPSA. Chevron observed that up to now, these lines have been referred to as “grandfathered” from meeting all construction requirements of parts 192 and 195 and if this were no longer true, the applicability sections of parts 192 and 195 should be modified to clarify whether these lines are being regulated and to what degree. Public Law 101-599 requires that all pipelines located in waters less than 15 feet deep in the Gulf of Mexico and its inlets, are included in subpart L of part 192 (Operations) and in subpart F of part 195 (Operations and Maintenance), which are applicable to all pipelines regardless of when they were constructed.

Tenneco Gas commented that they expect the Coast Guard will recognize that agency’s responsibility in this matter, and take steps to end the prevailing practice of fishing vessels running in waters that are too shallow for the draft of the vessel. Tenneco Gas further commented that the Coast Guard has the opportunity to bring about a great advance in offshore safety by formulating and enforcing minimum
proposed § 191.27 in the NPRM has been adopted as applicable only to natural gas pipelines, and a new § 195.57 has been inserted in subpart B of part 195 to be applicable to hazardous liquid pipelines.

Exxon commented that the location of an exposed pipeline and a pipeline that is a hazard to navigation as addressed in proposed § 191.17(a)(5) and § 191.27(a)(6), respectively, may not be able to be identified according to an MMS or state offshore area and block number tract. This is due to the fact that inlets in the Gulf may not be subject to such identification. RSPA agrees and has revised § 191.27(a)(5) and (a)(6) and § 195.57(a)(5) and (a)(6) to require that the operator report the location of each pipeline segment that is exposed or is a hazard to navigation. In addition, if available, the location must be cited according to MMS or state offshore area and block number tract. Where an MMS or state offshore area and block number tract are not available, the location must be reported by the name of the bay or inlet or by other suitable location reference.

The Interstate Natural Gas Association of America (INGAA) noted that the Preamble stated that the definition of a “hazard to navigation,” i.e., where a pipeline is buried less than 12 inches below the seabed, subsumes the definition of “exposed pipeline” where the pipeline is protruding above the seabed. INGAA believes that separate reports should not be required. RSPA has not incorporated these two reporting requirements into one reporting requirement because in addition to the mandates in Public Law 101-599, RSPA is interested in getting information if a pipeline is exposed or buried less than 12 inches. This information will be relevant to the subsequent rulemaking on a mandatory, systematic, and, if appropriate, periodic inspection program as required by Public Law 101-599. Therefore, both terms, “exposed pipeline” and “hazard to navigation” remain in the regulations in Parts 192 and 195.

Section 192.2. Exxon found fault with proposed § 191.1(b)(2)(iii). They noted that the Preamble stated that the proposed § 191.1(b)(2)(iii) is intended to clarify that gathering lines within the Gulf of Mexico and its inlets will be subject to the proposed inspection, marking, and reburial requirements in §§ 192.612 and 195.413. They interpret that the following language proposed in § 192.1(b)(2):

(b) This part does not apply to—
(1) Offshore gathering of gas outside of

(ii) Inlets of the Gulf of Mexico except as provided in § 192.612 could be construed to reverse the intent of this NPRM, making gathering lines within inlets of the Gulf of Mexico subject to part 192 except the provisions of § 192.612. RSPA does not interpret this regulation in the same manner as Exxon. Nonetheless, RSPA agrees that wording suggested by Exxon may be clearer and has revised this regulation in accordance with the suggestion.

Sections 192.3 and 195.2. Practically all of the industry commenters thought that the term “inlets” in the definition of “Gulf of Mexico and its inlets” in §§ 192.3 and 195.2 should be better defined. Many industry commenters thought that inlets could be interpreted to include rivers, tidal marshes, lakes, and canals. Public Law 101-599 was enacted to assure that pipelines in shallow offshore waters where commercial fishing vessels will navigate will not pose a hazard to those vessels. In that context, the Fisheries Institute, which also commented that inlets should be better defined, attached a list where menhaden and other commercial fishing activities take place. The Fisheries Institute commented that the list was not an exhaustive list but was submitted in hope that it would help in better defining “Gulf of Mexico and its inlets.” The list was:

1. Fresh Water Bayou/Intercoastal Waterway to Calcasieu River, Cameron, Louisiana.
2. Calcasieu Pass, Cameron, Louisiana.
3. Intercoastal Waterway to Morgan City, Louisiana.
5. Fresh Water Bayou, Intercoastal City, Louisiana.
9. East Pascagoula River, Moss Point, Mississippi.

RSPA is including this list in the Preamble in order to assist pipeline operators in identifying where menhaden and commercial fishing activities take place. Most industry commenters proposed that the definition be revised to be limited to inlets that are open to the sea. Many of these industry commenters also proposed that the exclusion of such inlets as rivers, tidal marshes, lakes, and canals be set forth in the regulation. RSPA agrees that the inlets must be better defined and has revised this definition in the final rule to refer to inlets open to the sea excluding rivers, tidal marshes, lakes, and canals.

It is important to repeat information set forth in the Preamble in the NPRM regarding the term “mean low water.” That term is used in this regulation to conform with the language used in Pub. L. 101-599. “Mean low water” can be considered to denote “mean lower low water” as used in the nautical chart datum of the National Ocean Service.

Some commenters argued that the definitions of exposed pipeline and hazard to navigation should be limited to water from 3 feet to 15 feet deep, asserting that vessels do not operate in water less than 3 feet deep or that vessels operating in such shallow waters would be incapable of damaging a pipeline. Some of these commenters also stated that it would be difficult to conduct underwater inspections in such shallow waters. Exxon proposed similar changes and suggested that a definition for “shallow waters” be incorporated in the definitions limiting such waters from 3 to 15 feet.

RSPA does not agree. There are locations in the offshore waters of Louisiana where the seabed deepens very slowly and 3 feet of depth may be a considerable distance out into open waters. Fishing vessels navigate in such shallow waters, especially when some of these offshore areas have silty and soft seabeds where the hulls of the commercial fishing vessels may intrude into the silty seabed and damage the pipeline. In addition, RSPA is not aware of great difficulties regarding underwater inspections in offshore waters less than 3 feet deep. More importantly, the law requires underwater inspections in waters less than 15 feet deep; so this comment was not incorporated.

Sections 192.612 and 195.413. The Gas Piping Technology Committee (GPTC) commented that many prudent operators of pipelines in the Gulf of Mexico have historically conducted periodic inspections of their offshore pipelines and those operators should be permitted to use an inspection conducted prior to October 3, 1989 as the inspection required in §§ 192.612 and 195.413, especially in an area of stable seabed conditions. RSPA does not agree. RSPA doubts that those inspections may have included determining the depth of burial of the pipelines. The language of the law is clear that only inspections conducted after October 3, 1989 can be used in compliance with the initial inspection; thus RSPA has not adopted this recommendation.

Exxon commented that the proposed rules exclude hazardous liquid gathering lines of 4-inch nominal diameter or smaller from the inspection and
suggested that a similar exclusion be provided for gas gathering lines. RSPA does not agree. While that exclusion for hazardous liquid gathering lines was provided in the law, such an exclusion was not provided for gas gathering lines. RSPA believes that all gathering lines should be handled similarly and is excluding hazardous liquid gathering lines of less than 4-inch nominal diameter only because of the exclusion in the law. RSPA does not see a reason to deviate from the law with regard to gas gathering lines of less than 4-inch nominal diameter.

Many industry commenters stated that it would be very difficult to complete the inspection by 19 months after enactment of the law. (May 16, 1992), or one year after the issuance of the regulations, whichever came first. Some industry commenters asked that the time for the initial inspection be extended to the end of the 1992 summer construction season. Transco suggested that this could be accomplished by using the provisions of the law that provide for an extension of time of 6 months, or November 16, 1992, for gas pipelines. [It should be noted that the law provides for an extension of time of one year, or May 16, 1993 for hazardous liquid pipelines]. Transco also suggested that operators who act in good faith to complete the necessary surveys in a prudent and cost effective manner, but have been unsuccessful in completing the inspection because of scheduling problems, should be afforded that consideration. This regulation, which will be effective on January 6, 1992, goes beyond the May 16, 1992 deadline. However, an extension beyond that date would be in keeping with the intent of the law where just cause exists. RSPA has participated in many forums regarding these regulations and concludes that the pipeline operators are acting in good faith, with due diligence and care, in conducting these inspections. Therefore, RSPA will utilize this provision in the law to extend the deadline for conducting this initial inspection for all pipeline operators and has made this requirement effective on November 16, 1992. Furthermore, because of the emerging development of underwater inspection technology during this period, such an extension is justified. This date for completion of the initial inspection is approximately at the end of the 1992 summer construction season in keeping with the suggestions made by industry commenters. RSPA does not see reason for extending this requirement further for hazardous liquid pipelines.

Sections 192.621(b) and 195.413(b).

Several industry commenters objected to the term “discovery” used in proposed §§ 192.621(b), (b)(1), (b)(2), and (b)(3) and 195.413(b), (b)(1), (b)(2), and (b)(3). Those commenters believe that the term “discovery” should be changed to “determines.” Those commenters stated that in areas where there is a congestion of pipelines, an exposed pipeline may be discovered but time should be allowed for the operator to determine if the pipeline belongs to the operator or if it is an abandoned pipeline.

It should be noted that the proposed rule was applicable to an operator that “… * * * discovers that a pipeline it operates is exposed * * *” (italicized for emphasis). Therefore, the operator must determine that an exposed pipeline it discovers is a pipeline that it operates. Therefore, RSPA does not believe that the term “discover” needs to be revised and has not adopted this recommendation.

Tenneco Gas commented that there is a deficiency in the existing gas pipeline safety regulations (§ 192.327[e]) that has been carried forward in this proposed rule. The proposed rule appears to require that offshore pipelines must be buried under actual material covering the top of the pipe, rather than being situated in a trench of a certain depth below the natural bottom of the seabed. Tenneco argued that long accepted offshore pipeline construction practice requires jetting-in a trench capable of accommodating the pipeline at least 3 feet beneath the natural bottom of the sea. In soft and silty bottoms, currents soon fill in this trench providing actual burial cover, but where a more consolidated bottom is encountered, the trench may be cut in and the pipe is never really covered although it is adequately protected from passing vessels by the steep walls of the trench. For the purpose of pipeline burial in an offshore environment, Tenneco suggested that the concept of burial should refer to the top of the pipe being beneath the normal surrounding seabed. The API made similar arguments regarding the use of the term “burial” in the definition of a hazard to navigation. RSPA agrees. The Pipeline in the regulation issued in 1976 regarding burial of offshore pipeline recognized these offshore construction practices but did not adequately craft the wording of the regulation accordingly. Revisions have been made to the burial requirements in §§ 192.612(b)(3) and 195.413(b)(3) and the definition of a hazard to navigation to clarify that the top of the pipeline must be a certain depth below the seabed rather than having to be buried. A revision has also been made to the definition of exposed pipeline to clarify that the top of the pipeline would have to be protruding above the seabed for the pipeline to be considered exposed.

In this regard, the NTSB recommended that “seabed” be defined. The NTSB recognized that the Gulf of Mexico seabed consists of soft soils or silt that make it difficult to define. However, RSPA believes that unless the term seabed is defined, pipeline operators will have no standard by which to implement requirements and OPS will have no measure by which to judge compliance. RSPA recognizes that many offshore areas in the Gulf of Mexico do not have an easily definable seabed, but still believes that establishing a qualitative measurement of the ocean bottom, such as silt density, would be impracticable because of shifting and varying silt density on the ocean bottom. Therefore, the NTSB recommendation was not adopted.

The Department of the Interior (DOI) recommended that a hazard to navigation be defined as a pipeline less than 36 inches below the seabed in water less than 15 feet deep. DOI commented that a vessel of less than 1800 gross tons operating without a nautical chart and navigating in a manner such that its hull touches the seabed could easily cut through a natural gas or oil pipeline fully buried in 36 inches of silt of unspecified density. DOI further recommended that a pipeline should be marked until such time as the pipeline is reburied to at least 36 inches below the seabed. The NTSB also argued that pipelines be considered a hazard to navigation if not buried 36 inches because testimony at that agency’s hearings indicate that commercial fishing vessels may intrude 2 or more feet into the seabed. RSPA recognizes the hazards to pipelines that are not adequately buried in soft silt. However, RSPA believes, based on what it knows today, that it is technologically impracticable to expect that the initial 36 inches of burial be continuously maintained in light of the shifting silt seabed. RSPA believes that requiring that the top of the pipeline be at least 12 inches below the seabed provides adequate protection while recognizing the unstable offshore environment in the Gulf of Mexico. The Fisheries Institute, representing the commercial fishing industry, also recognized the difficulties of maintaining the burial of offshore pipelines, and supported requiring that
pipelines remain buried only 12 inches. Commercial fishing representatives have indicated to RSPA that engineers that intrusion of fishing vessels into the seabed would rarely exceed 12 inches because a vessel cannot be extricated from the seabed in such a situation. Therefore, this comment was not adopted.

Many industry commenters objected to having to bury the pipeline within 6 months after discovery that a pipeline is exposed or a hazard to navigation. Those commenters argued that depending on when the discovery is made, weather conditions could make reburial within that time period a difficult, costly, and perhaps hazardous procedure. These commenters stated that the summer construction season is generally recognized as the safest time for underwater work of any kind in the Gulf. Panhandle Eastern raised an additional issue that shrimp spawn in the spring and take several weeks to mature. They also said that oysters spawn in the spring and take several years to mature but the first several weeks are critical for survival. Panhandle Eastern stated that scheduling reburial during this season may be highly detrimental to the reproduction of the shell fish.

RSPA agrees that some flexibility should be allowed for the reburial of the pipelines that are determined to be exposed or a hazard to navigation. Public Law 101–599 permits RSPA to extend the 6 months for reburial with respect to a pipeline facility for such period as is reasonable. RSPA believes that the reasons stated by some commenters—particularly regarding weather conditions during the winter which could result in increased time to reburial—to extend the 6 month period for reburial. Therefore, this proposed requirement has been amended in this final rule to allow for reburial not later than November 1 of the following year if the 6 month period is later than November 1 of the year that an operator discovers that a pipeline it operates is exposed or a hazard to navigation.

Submar, Inc. commented that the current regulations permit less cover than the 30 inches for normal excavation or 18 inches for rock excavation for offshore pipelines if it is impracticable to comply with the minimum cover requirement, and the proposed rule did not provide that flexibility. That commenter stated that protective mats could be placed over a pipeline requiring reburial that could adequately protect the pipeline. RSPA drafted the proposed rule in accordance with the law that requires reburial.

In addition, RSPA is not sufficiently familiar with the use of these protective mats. Further, the current regulations provide such an option only if it is impracticable to comply with the current cover requirements, making such an option rare. However, RSPA will consider this proposal in a subsequent rulemaking on a mandatory and systematic inspection program of offshore pipelines in the Gulf of Mexico and its inlets as required by Public Law 101–599.

Chevron commented that referencing 33 CFR part 64 as a means to mark pipelines does not provide adequate guidance for pipeline operators. Chevron wondered what minimum buoy placement interval operators should use as a guide to mark an exposed pipeline. If an interval less than one mile is specified, Chevron is concerned that an adequate supply of buoys may not exist. The GPTC commented that Coast Guard buoys are unduly restrictive and costly (about $900) to be used for a short period of time while the pipeline is scheduled for reburial. The GPTC argued that reflective type buoys that are lower in cost should be permitted, stating that some local Coast Guard Commanders have previously demanded the use of the higher priced, lighted buoys. RSPA does not agree that the buoys to be used to mark a pipeline should be reflective type buoys because they will only be used up to 6 months. Reflective buoys are very difficult to see at night. The Coast Guard Commanders, being familiar with the offshore waters in their districts, are in a better position to determine the type of buoy that should be used in that district. Therefore, RSPA believes that the local Coast Guard Commander should specify the type of buoy in accordance with 33 CFR part 64, and should not be restricted to low cost reflective buoys. RSPA has been advised by the Coast Guard that they require yellow lighted buoys having a yellow light flashing not more than 30 times per minute. In addition, RSPA concludes that the placement of a buoy should be at the ends of the pipeline segment and at intervals of not more than 500 yards. However, if the pipeline segment that requires marking is less than 200 yards, the segment need only be marked at the center of the segment. One mile intervals, as proposed by Chevron is too far of a distance to indicate that there is an underwater hazard. RSPA has consulted with the Coast Guard concerning these requirements. The Coast Guard advises that a list of supply sources for buoys can be obtained by contacting the Commander, Eighth Coast Guard District, Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA 70130–3396; telephone (504) 589–2944 or 589–6234.

Two industry commenters stated that reporting a pipeline to the Coast Guard within 24 hours after discovery did not provide sufficient time under certain circumstances. Since an operator must determine that an exposed pipeline is a pipeline that it operates, this should provide adequate time to notify the Coast Guard 24 hours after discovery that the pipeline is exposed or a hazard to navigation. Therefore, RSPA did not adopt this comment. This final rule has been revised to require pipeline operators to notify the National Response Center, telephone 1–800–424–8802 rather than the U.S. Coast Guard, as was proposed in the Notice. The National Response Center is operated by the Coast Guard and will provide the information to the appropriate Coast Guard district office. This final rule requires that the report to the National Response Center include the location of the pipeline segment. The Coast Guard has advised RSPA that the location should be identified by Loran-C coordinates, state plane coordinates, geographic coordinates consisting of latitude and longitude in degrees, minutes, and seconds, or by other equivalent methods.

Texaco and API argued that marking the pipeline in 7 days may not provide sufficient time. They recommended 30 days. RSPA does not agree. Thirty days is too long of a period to leave an unmarked a pipeline that is exposed or a hazard to navigation. Seven days should provide sufficient time for marking a pipeline. Therefore, RSPA did not adopt this comment.

Cost/Benefit Analysis

The City of Florence Gas System commented that they would like to see a cost/benefit analysis conducted before the regulation becomes effective. RSPA has prepared such an evaluation and it is available in the docket. This evaluation estimates the present value of the benefits to be $17.6 million and the present value of the costs to be $8.7 million.

Chevron believes that the RSPA estimate of $8,000 per mile for an initial inspection is very low. They believe that $12,000 per mile is more realistic and that the costs may rise if equipment is not available. Chevron further observed that the costs of reburying exposed pipelines were not included in the cost/
benefits analysis. They estimated that this rulemaking could cost $50 million or as much as $100 million if grandfathered pipelines are covered by this regulation. Conversely, the Fisheries Institute stated that the cost of $8,000 per mile for an initial inspection is too high, indicating that $7,000 is closer to the market value.

RSPA does not agree with Chevron that this rulemaking could cost $50 million, much less $100 million. RSPA conservatively estimates that approximately 1,000 miles of offshore pipelines will be subject to the inspection requirements. RSPA acknowledges that it is difficult to estimate the number of miles of pipeline that may be exposed or a hazard to navigation, and has used conservative cost figures as well as conservative benefit figures in developing the cost/benefit analysis. Realistic reburial costs have been factored into the analysis. The number of miles of pipelines that require reburial as a result of this initial inspection will be known and appropriately considered in any later rulemaking regarding periodic inspections. With respect to this rulemaking, these regulations were developed very narrowly in accordance with the law, and RSPA has determined that the expected benefits will exceed the expected costs.

Impact Assessment

The proposed rules are considered to be non-major under Executive Order 11991, and are not considered significant under DOT Regulatory Policies and Procedures (44 FR 11034: February 23, 1979).

The proposed rulemaking is required by law. The costs of conducting the underwater inspections are now averaging less than $8.00 per mile using recently developed technology. Some of the variables that affect the costs of conducting an underwater inspection are the amount of pipeline to be inspected, weather, mobilization costs, and location. Based on available data, there are less than 1,000 miles of offshore gas and hazardous liquid pipelines in the Gulf of Mexico and its inlets in water less than 15 feet deep, so that it should cost less than $8 million to conduct the initial inspection of these pipelines as mandated by Public Law 101-599. Costs are continuing to drop as better technology is developed and underwater inspections become more common. INGAA provided information regarding the underwater inspections that have been conducted as of June 23, 1990, and assuming that this data is representative of the findings in future underwater pipeline inspections, it appears that less than 1 percent of the offshore pipelines may be exposed above the seabed. However, information is not yet available to determine the percentage of the pipelines that may be a hazard to navigation (i.e., those pipelines buried less than 12 inches). Current pipeline technology can be used in reburying pipelines. The cost of reburying a pipeline also varies significantly depending on similar variable factors set forth above.

A Regulatory Evaluation has been prepared and is available in the docket. This evaluation estimates the present value of the benefits to be $77.6 million and the present value of the costs to be $8.7 million. Based on the facts available concerning the impact of this final rule, I certify under Section 605 of the Regulatory Flexibility Act that they would not, have a significant impact on a substantial number of small entities, because small entities do not operate pipelines offshore.

Paperwork Reduction Act

The final rule requires that pipeline operators report to RSPA pipelines in the Gulf of Mexico and its inlets that are exposed or a hazard to navigation. In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96-511), these information collection requirements have been approved by the Office of Management and Budget.

The reporting and recordkeeping requirements associated with this rule were submitted to the Office of Management and Budget for approval in accordance with 44 U.S.C. chapter 35.

PART 190—[AMENDED]

1. The authority citation for part 190 continues to read as follows:

Authority: 49 App. U.S.C. 1611(b) and 1908(b); §§ 190.23 and 191.25 also issued under 49 App. U.S.C. 1672(a); and 49 CFR 1.53.

2. Section 190.229 is amended by revising paragraph (d) to read as follows:

§ 190.229 Criminal penalties generally.

(d) Any person who willfully and knowingly defaces, damages, removes, or destroys any pipeline sign, right-of-way marker, or marine buoy required by the NGPSA, the HLPSA, or the HMTA, or any regulation or order issued thereunder shall, upon conviction, be subject, for each offense, to a fine of not more than $5,000, imprisonment for a term not to exceed 1 year, or both.

PART 191—[AMENDED]

1. The authority citation for part 191 continues to read as follows:

Authority: 49 App. U.S.C. 1613(a) and 1908(b); §§ 191.23 and 191.25 also issued under 49 App. U.S.C. 1672(a); and 49 CFR 1.53.

2. Section 191.27 is added to read as follows:

§ 191.27 Filing offshore pipeline condition reports.

(a) Each operator shall, within 60 days after completion of the inspection of all its underwater pipelines subject to § 192.612(a), report the following information:

(1) Name and principal address of operator.

(2) Date of report.

(3) Name, job title, and business telephone number of person submitting the report.

(4) Total number of miles of pipeline inspected.

(5) Length and date of installation of each exposed pipeline segment, and location, including, if available, the location according to the Minerals Management Service or state offshore area and block number tract.

(6) Length and date of installation of each pipeline segment, if different from a pipeline segment identified under paragraph (a)(5) of this section, that is a hazard to navigation, and the location, including, if available, the location according to the Minerals Management...
PART 192—[AMENDED]

1. The authority citation for part 192 continues to read as follows:

2. Section 192.1 is amended by adding paragraph (b)(3) to read as follows:

§ 192.1 Scope of part.
   * * * * *
   (b) * * *
   (3) Onshore gathering of gas within inlets of the Gulf of Mexico except as provided in § 192.612.

3. In § 192.2, definitions of Exposed pipeline, Gulf of Mexico and its inlets, and Hazard to navigation are added in appropriate alphabetical order as follows:

§ 192.2 Definitions.
   * * * * *
   Exposed pipeline means a pipeline where the top of the pipe is protruding above the seabed in water less than 15 feet deep, as measured from the mean low water.
   * * * * *
   Gulf of Mexico and its inlets means the waters from the mean high water mark of the coast of the Gulf of Mexico and its inlets open to the sea (excluding rivers, tidal marshes, lakes, and canals) seaward to include the territorial sea and Outer Continental Shelf to a depth of 15 feet, as measured from the mean low water.

Hazard to navigation means, for the purpose of this part, a pipeline where the top of the pipe is less than 12 inches below the seabed in water less than 15 feet deep, as measured from the mean low water.
   * * * * *

4. Section 192.612 is added to Subpart L to read as follows:

§ 192.612 Underwater inspection and reburial of pipelines in the Gulf of Mexico and its inlets.

(a) Each operator shall, in accordance with this section, conduct an underwater inspection of its pipelines in the Gulf of Mexico and its inlets. The inspection must be conducted after October 3, 1989 and before November 16, 1992.

(b) If, as a result of an inspection under paragraph (a) of this section, or upon notification by any person, an operator discovers that a pipeline it operates is exposed on the seabed or constitutes a hazard to navigation, the operator shall—

1. The authority citation for part 195 continues to read as follows:

2. Section 195.1 is amended by revising paragraph (b)(4) to read as follows:

§ 195.1 Applicability.
   * * * * *
   (b) * * *
   (4) Transportation of petroleum in onshore gathering lines in rural areas except gathering lines in the inlets of the Gulf of Mexico subject to § 195.413;

3. In § 195.2, definitions of Exposed pipeline, Gulf of Mexico and its inlets, and Hazard to navigation are added in appropriate alphabetical order as follows:

§ 195.2 Definitions.
   * * * * *
   Exposed pipeline means a pipeline where the top of the pipe is protruding above the seabed in water less than 15 feet deep, as measured from the mean low water.
   * * * * *
   Gulf of Mexico and its inlets means the waters from the mean high water mark of the coast of the Gulf of Mexico and its inlets open to the sea (excluding rivers, tidal marshes, lakes, and canals) seaward to include the territorial sea and Outer Continental Shelf to a depth of 15 feet, as measured from the mean low water.

Hazard to navigation means, for the purpose of this part, a pipeline where the top of the pipe is less than 12 inches below the seabed in water less than 15 feet deep, as measured from the mean low water.
   * * * * *

4. Section 195.413 is added to subpart F to read as follows:

§ 195.413 Underwater inspection and reburial of pipelines in the Gulf of Mexico and its inlets.

(a) Except for gathering lines of 4-inch nominal diameter or smaller, each operator shall, in accordance with this section, conduct an underwater inspection of its pipelines in the Gulf of Mexico and its inlets. The inspection must be conducted after October 3, 1989 and before November 16, 1992.

(b) If, as a result of an inspection under paragraph (a) of this section, or upon notification by any person, an operator discovers that a pipeline it operates is exposed on the seabed or constitutes a hazard to navigation, the operator shall—
63772 Federal Register / Vol. 56, No. 234 / Thursday, December 5, 1991 / Rules and Regulations

(1) Promptly, but not later than 24 hours after discovery, notify the National Response Center, telephone: 1-800-424-8802 of the location, and, if available, the geographic coordinates of that pipeline;

(2) Promptly, but not later than 7 days after discovery, mark the location of the pipeline in accordance with 33 CFR Part 64 at the ends of the pipeline segment and at intervals of not over 500 yards long, except that a pipeline segment less than 200 yards long need only be marked at the center; and

(3) Within 6 months after discovery, or not later than November 1 of the following year if the 6 month period is after November 1 of the year that the discovery is made, place the pipeline so that the top of the pipe is 36 inches below the seabed for normal excavation or 18 inches for rock excavation.

Issued in Washington, DC on November 27, 1991.

Travis P. Dungan,
Administrator, Research and Special Programs Administration.

[FR Doc. 91-28994 Filed 12-4-91; 8:45 am]
BILLING CODE 4310-60-M
Part IV

Environmental Protection Agency

40 CFR Part 55
Outer Continental Shelf Air Regulations; Proposed Rule
ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[FRL-4036-9]

Outer Continental Shelf Air Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing a new part 55 of chapter I of title 40 of the Code of Federal Regulations. This part would establish requirements to control air pollution from outer continental shelf ("OCS") sources.

Section 328 of the Clean Air Act ("the Act") (42 U.S.C. 7401, et seq.), as amended by Public Law 101-549, the Clean Air Act Amendments of 1990 ("CAA-90"), enacted on November 15, 1990, requires EPA to promulgate a rule establishing air pollution control requirements for OCS sources. The purpose of the requirements is to attain and maintain federal and state ambient air quality standards, to comply with part C of title I, and to provide for equity between onshore sources and OCS sources located within 25 miles of state seaward boundaries.

The proposed requirements apply to all OCS sources except those located in the Gulf of Mexico west of 87.5 degrees longitude (near the border of Florida and Alabama). New sources must comply with the requirements on the day of their promulgation, and existing sources must comply within 24 months of promulgation. Sources located within 25 miles of a state boundary, the requirements will be the same as the requirements that would be applicable if the source were located in the corresponding onshore area ("COA"). In states affected by this rule, state boundaries extend three miles from the coastline except on the gulf coast of Florida, where the State’s boundary extends three leagues (approximately 9 miles) from the coastline. Sources located beyond 25 miles of state boundaries will be subject to federal requirements for Prevention of Significant Deterioration ("PSD") (40 CFR 52.21), New Source Performance Standards ("NSPS") (40 CFR part 60), and National Emissions Standards for Hazardous Air Pollutants ("NESHAPS") (40 CFR part 61) apply to the extent they are rationally related to protection of ambient air quality standards. EPA is proposing that, when promulgated, the following federal requirements will also apply: The federal operating permit program (40 CFR part 71) and enhanced compliance and monitoring regulations promulgated pursuant to section 114(a)(3) of the Act. Beyond 25 miles of state boundaries of OCS program requirements will be implemented and enforced solely by EPA. Part 55 also establishes procedures to allow the Administrator to exempt any OCS source from a specific onshore control requirement if it is technically infeasible or poses an unreasonable threat to health or safety.

DATES: Comments on the proposed regulations must be received by February 3, 1992. The EPA will hold public hearings in January 1992 at the addresses listed below. Requests to present oral testimony must be received on or before December 29, 1991.

ADDRESSES: Comments must be mailed (in duplicate if possible) to either of the addresses below:


The hearings will be held at the following places:

January 6, 1992, 9 a.m.-5 p.m., EPA, Region 9, 75 Hawthorne Street, San Francisco, CA.

January 7, 1992, 9 a.m.-5 p.m., Los Angeles Hyatt Regency, 711 Hope Street, Los Angeles, CA.

January 13, 1992, 9 a.m.-5 p.m., EPA Headquarters, Waterside Mall, 401 M Street, SW., Washington, DC.

January 21, 1992, 9 a.m.-5 p.m., Clarion Hotel, 4800 Spenard Road, Anchorage, Alaska.

Persons interested in attending any of the hearings or wishing to present oral testimony should contact Ms. Linda Barajas in writing at EPA, Region 9, Air and Toxics Division (A-3-1), 75 Hawthorne St., San Francisco, CA 94105.

Docket: This rulemaking is determined to be subject to the requirements of section 307(d) of the Clean Air Act. Supporting information used in developing the proposed rule is contained Docket No. A-91-76. This docket is available to the public in room 604, 401 M Street, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Alison Bird, Air and Toxics Division (A-2), U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, CA 94105.

SUPPLEMENTARY INFORMATION: This preamble is organized according to the following outline:

I. Background and Purpose
II. Discussion of the Proposed Regulations
   A. Section 55.1—Authority and Scope
   B. Section 55.2—Definitions
   C. Section 55.3—Applicability
   D. Section 55.4—Requirements to Submit a Notice of Intent
   E. Section 55.5—Designation of the Corresponding Onshore Area (COA)
   F. Section 55.5—Permit Requirements
   G. Section 55.7—Exemptions
   H. Section 55.8—Monitoring, Reporting, Inspections, and Compliance
   I. Section 55.9—Enforcement
   J. Section 55.10—Permit Fees
   K. Section 55.11—Delegation
   L. Section 55.12—Consistency Updates
   M. Section 55.13—Applicable Federal Requirements
   N. Section 55.14—Applicable Requirements of the COA
III. Additional Topics for Discussion
   A. Relationship Between the OCS Regulations and State Implementation Plans
   B. The Applicability to OCS Sources of Regulations Controlling Air Pollutants that are not Significantly Related to a State or Federal Ambient Standard
IV. Administrative Requirements
   A. Executive Order 12291 (Regulatory Impact Assessment)
   B. Regulatory Flexibility Act
   C. Paperwork Reduction Act

List of Subjects in 40 CFR Part 55

A. Section 55.1—Authority and Scope
   B. Section 55.2—Definitions
   C. Section 55.3—Applicability
   D. Section 55.4—Requirements to Submit a Notice of Intent
   E. Section 55.5—Designation of the Corresponding Onshore Area (COA)
   F. Section 55.5—Permit Requirements
   G. Section 55.7—Exemptions
   H. Section 55.8—Monitoring, Reporting, Inspections, and Compliance
   I. Section 55.9—Enforcement
   J. Section 55.10—Permit Fees
   K. Section 55.11—Delegation
   L. Section 55.12—Consistency Updates
   M. Section 55.13—Applicable Federal Requirements
   N. Section 55.14—Applicable Requirements of the COA

Section I provides the background on the purpose and expected benefits of adding section 328 to the Act.

Section II contains a discussion of the rule and provides background information on the concepts behind the rule. This section also provides a comprehensive background on any issues or controversial aspects considered with respect to the rule.

Section III presents additional topics important to the OCS regulatory program. These areas are not related to specific regulatory requirements and so they are addressed in a separate section of the preamble.

Section IV contains the administrative requirements that accompany federal regulatory actions. These include the topics listed in the preamble outline.

Section V contains the list of subjects included in the proposed 40 CFR part 55.

Many citations (e.g., [see § 55.10()]) are made in this preamble. These citation sections will not be followed by
within 25 miles of state boundaries that are the same as would be applicable if the source were located in the COA. In this way, the responsibility for protecting the environment will be shared proportionately and equitably by onshore and offshore sources. DOI retains authority on the OCS adjacent to Texas, Louisiana, Mississippi, and Alabama (in the Gulf of Mexico, west of 87.5 degrees longitude). However, Congress requires DOI to complete a study on the effects of OCS emissions on areas that remain under DOI's jurisdiction and are classified as nonattainment for nitrogen dioxide or ozone. DOI must report the results to Congress by November 15, 1993.

Historically in California, the onshore community felt that OCS emission sources were not bearing a fair share of the burden of air pollution control. Onshore sources were subject to increasingly stringent controls while virtually identical sources operated on the OCS with very few controls and little mitigation. The onshore community generally disagreed with the DOI argument and the distance of OCS sources from shore reduced their effects on onshore air quality and therefore reduced the need for controls and offsets. The result was a confrontational atmosphere in which the onshore community felt that OCS activity was encouraged at the expense of air quality or economic growth onshore. Start-up of OCS sources was often delayed by years due to extended litigation and negotiations on air quality issues. As a result, a trend developed for new OCS platforms to be located in California to apply controls to reduce emissions and obtain offsets to mitigate the impacts of remaining emissions.

This pattern of delay and confrontation in California could well have developed in other coastal areas as well if the OCS were subject to the standards and controls contained in the CAAA-90. In carrying out the non-discretionary provisions of Section 328, the inherent cost-effectiveness nature of the standards and controls contained in the CAAA-90 has been fully recognized. The amendments to the OCSLA required DOI to promulgate rules to protect the national ambient air quality standards ("NAAQS") by regulating air emissions from activities authorized under the OCSLA. The amendments to the OCSLA required DOI to promulgate rules to protect the national ambient air quality standards ("NAAQS") by regulating air emissions from activities authorized under the OCSLA. They also required DOI to promulgate rules to protect the national ambient air quality standards ("NAAQS") by regulating air emissions from activities authorized under the OCSLA. The amendments to the OCSLA required DOI to promulgate rules to protect the national ambient air quality standards ("NAAQS") by regulating air emissions from activities authorized under the OCSLA. In 1978, DOI published its first rulemaking effort in regard to air quality in an Advance Notice of Proposed Rulemaking ("ANPRM").

EPA comments in response to the 1978 ANPRM (D. Hawkins, "EPA Comments in Response to DOI ANPRM of 12/28/78," 1979), included suggestions to "assure that onshore and offshore facilities are treated the same." At that time EPA also pointed out the possibility of negative impacts on onshore economic growth, stating "the construction of OCS sources will have an adverse impact on both air quality and the ability of sources to be built onshore * * *. The development of the OCS could impact growth of onshore areas in this fashion because emissions sources must be added to the baseline * * *"). Finally, EPA suggested that for sources that may significantly affect onshore air quality, DOI requires that "the controls imposed be whatever controls are imposed by the adjacent state on like sources within its territorial jurisdiction * * *.

which includes the environmentally sound development of OCS reserves. EPA would like to consolidate the review of a source's air quality impacts with reviews of the source's impact on other environmental media (e.g. water and land). EPA is soliciting specific comments and suggestions as to how this might be promoted by this rulemaking, keeping in mind the limitations of section 328.

In carrying out the non-discretionary provisions of Section 328, the inherent cost-effectiveness benchmarks. Had Congress granted the Agency flexibility for this provision, the Agency may have established de minimis levels which would have exempted some of these sources in certain areas from nitrogen oxides ("NOx") and volatile organic compounds ("VOC") controls.
EPA argued that its comments reflected Congressional intent, a position that EPA documented through numerous references contained in the comments, as submitted to DOI. In 1980 DOI promulgated final rules to regulate air emissions from OCS activities, and simultaneously proposed a more stringent rule that would apply only to OCS sources located on the OCS adjacent to California.

In 1982, DOI withdrew the proposed rule for the California OCS and applied the national OCS rules to the OCS adjacent to California. The decision not to adopt more stringent requirements for these areas resulted in a lawsuit, State of California v. Watt, No. 81-3234-CEM (MX) (C.D. Cal). The position taken by the complainants was that the DOI rules failed to adequately protect onshore air quality and the NAAQS, and that emissions from OCS activities had a significant impact on onshore air quality. The complainants held that DOI's action created an inequitable situation whereby emissions from onshore sources were controlled more stringently than would have been necessary if OCS sources were regulated in a manner consistent with onshore requirements. This lawsuit eventually led to an attempted negotiated rulemaking. Meanwhile, in 1983 EPA decided to require air pollution control districts (APCDs) in California to include OCS emissions in the emission inventory of their state implementation plans (SIPs).

EPA's decision was based on the fact that since no natural barriers exist to prevent onshore migration of emissions from the OCS, a realistic emissions inventory must include OCS emissions. In an area designated as a nonattainment area ("NAA") under section 107(d) of the Act, the emissions inventory is used as input to a model that is used to determine the amount that emissions must be reduced in order to attain the NAAQS. It was EPA's position that any attainment demonstration would be unrealistic and unacceptable if based on an emission inventory that did not include emissions from an entire category of major sources located in the air basin. Impacts due to increases in offshore emissions had to be mitigated by decreases in onshore emissions to prevent deterioration of onshore air quality. Actual improvement in air quality had to be achieved by reducing onshore emissions even further, thus slowing onshore growth in favor of offshore development.

In 1985, still involved in litigation of the State of California v. Watt, DOI published an ANPRM (50 FR 838), in which DOI solicited information that could be used to develop emissions control requirements for OCS activities that adversely affect the onshore air quality in California. In response to comment on the 1985 ANPRM, DOI retained an independent mediator to assess the feasibility of a negotiated rulemaking. A decision was made to pursue a negotiated rulemaking with the assistance of an independent mediator. Participants in the lawsuit and other interested parties were organized into five coalitions: Federal, State, Local, Industry, and Environmental.

In 1986, DOI initiated the negotiated rulemaking process with the purpose of reaching consensus within one year on the requirements for oil and gas operations on the OCS adjacent to California. If consensus were reached, the Secretary of the Interior was prepared to publish the agreement as a Notice of Proposed Rulemaking ("NPRM"). During the course of the negotiated rulemaking, a substantial amount of valuable information was gathered and consensus was reached on many issues. However, after two and one-half years of negotiation, the coalitions were unable to produce a consensus rule, and the negotiated rulemaking was abandoned in 1988. In 1989, DOI published an NPRM to regulate OCS activities adjacent to California. As a result of comments received on this NPRM, DOI began discussions with EPA in order to develop a more acceptable rule. These discussions continued until Congress passed the CAAA-90. Also in 1989, a Presidential Task Force was formed to investigate issues associated with the leasing and development of three specific oil and gas leases. The Task Force presented its report to the President in January of 1990. In regard to air quality, the Task Force recommended that OCS sources comply with requirements equivalent to those imposed in the adjacent onshore area.

Congress addressed these concerns in the CAAA-90. Under section 328, Congress transferred to EPA the authority to regulate OCS sources except for sources located on the OCS adjacent to the States of Texas, Louisiana, Mississippi, and Alabama, where DOI retains authority. Section 328 requires DOI to complete a study within three years to determine the impact of emissions on nonattainment areas from OCS sources under DOI jurisdiction.

G. Description of OCS Sources and Activities

Currently, OCS activity is primarily related to the exploration and recovery of oil and gas. This activity can be divided into three phases: exploration, construction, and development and production. The last two phases occur only if oil and gas can be economically extracted. The main pollutants of concern for all of these phases are NO, and VOC.

The exploration phase consists primarily of drilling exploratory wells. The emission sources associated with this phase are drilling vessels and the con and supply boats that support these operations. Each exploratory well drilling usually lasts 3 to 6 months.

On-site activities during the construction phase consist of the fabrication of the platform from individual, pre-fabricated pieces and installation of pipelines. It is the most equipment-intensive phase of activity. During this stage, sections of the platform are towed by barge to the site and the platform is assembled. Emission sources associated with this phase include barges, tugs, cranes, and crew and supply boats, and emissions tend to be high due to the large amount of equipment on-site. The construction phase lasts about one to three years. Much of this time is spent fabricating the jacket, deck, and platform modules on land. The time the marine construction equipment must be on the OCS location installing components is normally broken up into several relatively brief periods.

During the development and production phases, wells are drilled from the platform and oil and/or gas is produced and processed at the platform and transported onshore for further processing. These phases consist of a wide variety of emission sources: Diesel and natural gas-fired engines and turbines (for power production and compressors), stand-by generators, fugitive emissions from processing and storage, and crew and supply boat emissions. The development phase consists of drilling the production wells and lasts two to five years, during which emissions are much greater than in the production phase. The production phase may last 25 years or longer.

D. Current and Future Activities on the OCS

At the present time, most oil and gas production on the OCS occurs in the western and central Gulf of Mexico, where more than 3,000 platforms are located and which remains under the jurisdiction of the Minerals Management Service ("MMS") of DOI. There are 23 producing platforms on the OCS adjacent to California, with at least three more under construction or development. The only other activity
occurring within EPA jurisdiction is exploratory drilling on the OCS adjacent to Alaska. MMS has sold oil and gas leases on the OCS adjacent to other states, and exploration has occurred in the Atlantic and adjacent to Florida and Alaska. In Florida and North Carolina, exploratory drilling has been approved, but has not yet begun, due to either Congressional moratoria or lack of coastal consistency concurrence by the state.

The OCSLA authorizes MMS to hold lease sales to develop resources other than oil and gas. Mining of cobalt-rich manganese crusts adjacent to Hawaii is being investigated. Other possible activities being investigated for future consideration are heavy mineral mining on the OCS adjacent to Oregon and Georgia, phosphate mining adjacent to Georgia and North Carolina, gold mining adjacent to Alaska, sand and gravel mining adjacent to New England, and sand and shell mining in the Gulf of Mexico.

II. Discussion of the Proposed Regulations

A. Section 55.1—Statutory Authority and Scope

Section 328 of the Act makes EPA responsible for establishing requirements to regulate OCS sources of air pollution. These regulations are intended to establish the air pollution control requirements for OCS sources and the procedures for implementation and enforcement of the requirements.

B. Section 55.2—Definitions

A large number of existing regulations, including definitions in those regulations, have been incorporated by reference into §§ 55.13 and 55.14. Definitions that are included in regulations incorporated by reference shall apply in the context of those particular regulations to allow the incorporated requirements and permitting programs to function in their intended manner. EPA has sought to keep the definitions given in § 55.2 to a minimum to avoid inconsistencies with the definitions given by the federal, state, and local requirements incorporated into part 55. For this reason, no new definitions of "new OCS source," "existing OCS source," or "modification" have been included. Because the federal, state, and local requirements incorporated into §§ 55.13 and 55.14 define new source, existing source, and modification, language is included in §§ 55.13 and 55.14 to link the definition of OCS source to the definitions existing in the incorporated requirements.

Consistent with section 328(a)(4)(A), part 55 references the definition of OCS in the OCSLA. A brief summary of that definition is that the OCS begins at a state's seaward boundary and extends outward to the limit of U.S. jurisdiction. For states under EPA jurisdiction, states' seaward boundaries are 3 miles from the coast, except in the Gulf of Mexico offshore of Florida, where the state's seaward boundary is 3 leagues (approximately 9 miles) from the coast.

"OCS source" is defined in the statute and is limited to activities that emit or have the potential to emit any air pollutant, that are regulated or authorized under the OCSLA, and that are located on the OCS or in or on waters above the OCS. Section 328(a)(4)(C). At the present time these activities are mostly related to the exploration and development of oil and gas reserves. OCS activities include, but are not limited to: Platform and drill ship exploration, construction, development, production, processing, and transportation.

EPA is proposing to interpret the definition of "OCS source" to exclude vessels (other than drill ships, as discussed above) because they are not "regulated or authorized" under the OCSLA. Under the OCSLA, DOI may regulate "all installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring, developing, or producing resources there from any such installation or other device (other than a ship or vessel) for the purpose of transporting such resources." 43 U.S.C. 1333(a)(1). This language does not include vessels other than drill ships because they are not attached to the seabed, and vessels used for the transport of OCS resources are specifically excluded. Therefore, EPA is proposing not to regulate vessels as "OCS sources," and any regulations adopted by state and local agencies to directly control vessel emissions will not be incorporated into part 55 because it would exceed EPA's authority under section 328. Drill ships are considered to be an "OCS source" because they are attached, at least temporarily, to the seabed, and so are authorized and regulated pursuant to the OCSLA; as such, they will be subject to regulation as stationary sources while attached to the seabed. Vessel emissions related to OCS activity are, however, accounted for by including vessel emissions in the "potential to emit" (defined below).

The definition of "potential to emit" of an OCS source encompasses emissions from any vessel servicing or associated with an OCS source, including emissions while at the OCS source or en-route to or from the OCS source and within 25 miles of the OCS source. The inclusion of vessel emissions in the total emissions of the stationary source is a statutory requirement under section 328(a)(4)(C). In this manner vessel emissions of attainment pollutants will be accounted for when PSD impact analyses are performed and increment consumption if calculated. For nonattainment pollutants the OCS source will have to obtain offsets as required by the COA, and vessel emissions will be offset.

In addition, EPA has authority under Title II of the Act to regulate vessel emissions as mobile sources, in a manner analogous to the regulation of automobiles. Regulating vessels under Title II is more practical than regulating vessels associated with OCS sources under section 328, due to the nature of mobile sources. Regulating mobile sources on a broad scale eliminates the problems inherent in attempting to apply a patchwork of regulations. Vessels associated with OCS sources cross local, state, and international jurisdictional lines, and may even be international flag vessels. A study mandated by the Act is currently underway to determine the appropriate regulatory scheme for non-road engines, including vessels. It would be premature to develop another regulatory scheme for vessels prior to the completion of this congressionally mandated study, and would add another unnecessary layer of regulation.

Some commenters have offered another possible interpretation of section 328 regarding the regulation of marine vessels. This interpretation is based on the theory that section 328 provides for the direct regulation of pollution on the OCS, rather than the regulation of OCS sources. Specifically, section 328(a)(1) states that EPA "shall establish requirements to control air pollution from Outer Continental Shelf sources * * *" (emphasis added). Section 328(a)(4)(C) then states that emissions from vessels "servicing or associated with an OCS source, including emissions while at the OCS source or en route to or from the OCS source within 25 miles of the OCS source shall be considered direct emissions from the OCS source" (emphasis added). Hence, it can be argued that EPA has authority pursuant to section 328 to regulate vessels. It then would follow that if a corresponding onshore area adopts requirements to control vessel emissions, EPA must incorporate those requirements into
§ 55.14. This interpretation appears, however, to contravene the plain language of the statute, which does not explicitly include vessels in the definition of "OCS source" but does explicitly include vessels emissions in offset calculations and impact analyses, indicating that such emissions were not intended to be regulated directly. This interpretation would also result in vessels associated with OCS sources being regulated under section 328 while other vessels would remain unregulated, and thus raising some concern with the equity of such regulation. EPA is soliciting comment on this interpretation.

C. Section 55.3—Applicability

OCS sources are, by definition, located between state seaward boundaries and the outer limits of United States jurisdiction. The proposed OCS rule establishes two separate regulatory regimes, as indicated by the statute. The first applies to OCS sources within 25 miles of state boundaries. These nearshore OCS sources must comply with requirements that "shall be the same as would be applicable if the source were located in the corresponding onshore area." Section 328(a)(1). EPA is proposing to read this requirement to mean that nearshore OCS sources will be subject to those federal, state, and local requirements applicable in the corresponding onshore area as of November 15, 1990 (the date that the CAAA—90, including section 328, were enacted) which are rationally related to the attainment and maintenance of federal and state ambient air quality standards and to part C of title 1 of the Act. For a discussion on the control of toxic air pollutants and the general applicability of the Act refer to section III.B. These requirements are set forth in proposed §§ 55.13 and 55.14 of this part. EPA will update the OCS rules to "maintain consistency with onshore regulations," as provided by section 328(a)(1), in accordance with the consistency provisions of § 55.12, discussed in Section I.I.L, below.

The second regulatory regime will apply to OCS sources located more than 25 miles beyond state seaward boundaries. Because these outer OCS sources are located a considerable distance from shore, the impact of their emissions is less than if they were located within 25 miles of state boundaries. In some cases, the emissions from these sources might not affect ambient concentrations onshore. In contrast to the statutory requirements applying to sources located within 25 miles of state boundaries, section 328 regulations often define a new source as any source that was not existing at the time the NSPS was promulgated. This is to clarify that existing OCS sources will not be treated as new sources for the purpose of compliance with NSPS requirements.

D. Section 55.4—Requirements to Submit a Notice of Intent (NOI)

The owner or operator of a proposed new source within 25 miles of a state's seaward boundary must submit an NOI to the Administrator through the Regional EPA Office and to the air pollution control agency of the NOA and adjacent onshore areas. An NOI will include general and specific information about a proposed source, such as the proposed location and the expected emissions from the source, to determine the source's onshore impacts and the applicability of onshore requirements. The Administrator may always request additional information if necessary.

The NOI serves two purposes. First, the NOI will allow adequate time for onshore areas to determine if they will submit a request for designation as the COA. Because the NOA will automatically be designated as the COA for exploratory purposes, these sources will not be required to submit any information to be used for the purpose of determining the COA (i.e. an impacts analysis). Second, the NOI will trigger an EPA review of the OCS rule to determine whether it is "consistent" with the onshore rules. If it is not, EPA will initiate a rule update for that specified COA, with the goal of making the proposed new source subject to the same requirements that would apply if it were proposing to locate in the COA. The purpose of this process is to meet EPA's obligation to maintain consistency between onshore and offshore requirements within 25 miles of state boundaries, as required by section 328(a)(1). The consistency update procedure and its statutory background are explained more completely in Section I.I.L.

Because the applicable regulations are likely to change, the owner or operator of the proposed source must not submit the NOI more than 18 months before submitting a permit application. This timeframe is consistent with onshore requirements related to permit applications.

E. Section 55.5—Designation of the Corresponding Onshore Area (COA)

Under section 328(a)(4)(B), the COA is assumed to be the NOA, but the Act gives the Administrator the authority to designate another area as the COA.
under certain circumstances. The following is a description of the procedures and criteria that EPA is proposing to use for making the COA designations. Also included in this section is a proposal to designate COAs for some existing and proposed sources adjacent to California.

1. New Development and Production Sources

EPA is proposing the following procedure for the designation of the COA for new sources. The NOA will be assumed to be the COA. An area other than the NOA may submit a request to EPA to be designated as the COA for a specific OCS source within 90 days of the submission of the NOI. If no request is received by the Administrator within 60 days, the NOA will become the COA without any further action.

If an area does submit a request for designation as the COA, that request must be followed within 90 days from the submission of the NOI by a demonstration which shows:

- The requesting area has more stringent requirements than the NOA for the control of emissions from the proposed source;
- The emissions from the proposed source can reasonably be expected to be transported to the requesting area; and
- The emissions from the proposed source can reasonably be expected to exceed the NOA's ambient air quality standards, or to comply with the requirements for PSD, taking into account the effect of air pollution control requirements that would be imposed by the NOA.

See section 228(a)(4)(B). If no demonstration is submitted within the allotted time period, the NOA will become the COA without further action. The EPA requests comment on the content of the demonstration and what criteria should be used in making the determination of "reasonably expected."

If a demonstration is submitted, the Administrator will issue a preliminary determination of the COA within 150 days from the original submittal of the NOI. The preliminary determination will be followed by a public review and comment period of 60 days. This will allow the NOA, the affected OCS source, and other interested parties adequate time to review the request and the supporting information, and provide EPA with any additional information that might have a bearing on the Administrator's decision.

The final designation will be issued within 240 days of the submission of the NOI. The Administrator will designate the COA based on all the available information. When the Administrator makes a COA designation, consideration will be given to the impact that the designation will have on the NOA. Although emissions from a source may be transported to an area with more stringent requirements, usually the emissions will reach the nearest area in greater concentration and more frequently (naturally there will be exceptions to the preceding statement, depending on the location and distance from the source to the areas in question). The Administrator's decision to designate the COA for a proposed source will be based on the relative benefits to the NOA and the requesting area. The EPA requests comment on the content and determination of what constitutes "relative benefits."

When a more stringent area is designated as the COA, EPA will issue and administer the permit. This will allow EPA to better evaluate the permit requirements that would be imposed and the possible exemptions allowed. Another advantage is that the Administrator will be able to expedite the permit process by eliminating some of the cross-jurisdictional questions which will inevitably arise with regard to the qualification of offsets and the granting of exemptions.

OCS sources that must obtain offsets will obtain them at the base rate required in the COA if the offsets are obtained landward from the site of the proposed OCS source, with no discounting of offsets or distance penalties imposed. Since the purpose of this rule is to protect onshore ambient air quality, offsets obtained closer to shore will have a greater positive impact on onshore air quality. If, however, the OCS source obtains offsets seaward from the proposed site all discounting and distance penalties required by the COA shall apply in the same manner as if the source were located in the COA. Offsets may be obtained from sources in the NOA, the COA or from OCS sources. For the purpose of providing a source of offsets, reductions from an OCS source shall be considered to be reductions from within the NOA or the COA associated with the source providing the emissions reductions.

It has been suggested that EPA make area-wide determinations of COAs. EPA does not currently have the resources or adequate data to make area-wide COA determinations. This type designation would require a comparative analysis of all the onshore coastal regulations and an evaluation of probable impact of OCS sources. All onshore regulations will be in a state of flux over the next several years due to changes mandated by the CAAA-90, so the relative stringency of onshore programs can be expected to change. The anticipated changes to onshore programs, combined with the uncertainty of the location of future OCS development, make it infeasible for EPA to make area-wide designations.

EPA is soliciting suggestions on methods that, without depriving any interested party of adequate time to provide input, streamline the procedure for designating the COA.

2. New Exploratory Sources

EPA is proposing that for new exploratory sources the NOA will be designated as the COA. It is unnecessarily burdensome to require a temporary activity such as exploration drilling, typically lasting 3 to 4 months, to an administrative process that lasts up to eight months. Moreover, it is unlikely that an activity of such limited duration would hinder the efforts of the area in question to maintain ambient air quality standards, as required by both the statute and the proposed regulations in order for the Administrator to designate an area other than the NOA as the NOA. Thus, EPA is proposing at this time to make a presumptive determination that the COA will be the NOA for all exploratory sources. If the exploratory operation results in proposed development and production at that site, then that proposed development and production source would be subject to the full COA designation process.

In addition to the excessive burden the COA designation process would impose on an exploratory source, there are technical reasons to simplify the process for these temporary operations. The determination of impacts onshore from an exploratory operation could be dependent on the time of year drilling was projected to occur because meteorological conditions are a key factor in determining the area of impact. Since many factors could delay drilling, including the COA designation process, the showing of onshore impacts would be time dependent, and the COA could very possibly change depending on the time of year drilling were to occur.

This is not a problem for development and production activity, where the preponderance of effects on a particular onshore area could be projected over the lifetime of the platform.

3. Existing and Currently Proposed Sources

EPA is also proposing to designate COAs for some sources offshore of California. All existing development and production platforms that will be subject
to this rule are located on the OCS adjacent to California. Existing sources have only 24 months from the date of promulgation to comply with the requirements contained in these regulations. New sources must comply immediately upon promulgation. By designating COAs for these sources on the date of promulgation, the existing sources will have adequate time to determine the applicable requirements, install necessary controls, and receive the required permits, and the proposed sources will be given early notice of the requirements with which they must comply. EPA is proposing that the NOAs for these sources become the designated COAs to facilitate timely compliance with part 55. No COA designations for OCS sources located adjacent to states other than California are being proposed at this time due to uncertainty regarding the exact location of future development.

At this time, EPA is proposing the South Coast Air Quality Management District as the COA for the following existing or proposed OCS facilities:

- Edith, Ellen, Elly, and Eureka.
- Grace, Gilda, Gail, and Gina.
- Heather, Henry, Heritage, Hermosa, Hidalgo, Hilhouse, Hogan, Houchin, Honda and Irene, Iris, the OS & T, and Hondo.
- Heather, Henry, Heritage, Hermosa, Hidalgo, Hilhouse, Hogan, Houchin, Honda and Irene, Iris, the OS & T, and Hondo.

At this time, EPA is proposing the Santa Barbara County Air Pollution Control District as the COA for the following existing or proposed OCS facilities:

- Habitat, Hacienda, Harmony, Harvest, Heather, Henry, Heritage, Hermosa, Hidalgo, Hilhouse, Hogan, Houchin, Honda and Irene, Iris, the OS & T, and Union A, B, and C.

In proposing the COAs for the above sources, EPA is not making or implying any decision as to whether the facility is a new source or an existing source pursuant to section 111(a) for the purposes of compliance with the requirements of this part.

If no adverse comment is received on the proposed COA for each of the above OCS sources, the COA designation will become final upon promulgation of this rule. If adverse comment is received, it must be accompanied by a request to consider another area as the COA and sufficient documentation to support the request.

F. Section 55.6—Permit Requirements.

Section 55.6 of this proposal contains requirements to enable EPA or a delegated agency to issue preconstruction and operating permits in accordance with onshore federal, state, and local regulations for sources within 25 miles of states' seaward boundaries. Section 55.6 also establishes federal permitting requirements for sources beyond 25 miles of a state boundary. As discussed in Section II.K, the Administrator will retain authority for the implementation and enforcement of the OCS regulations beyond 25 miles of state seaward boundaries.

This regulation proposes that approval to construct or permit to operate applications, submitted by a new or existing OCS source, must include a description of how the source will comply with all the applicable requirements. This is an established requirement of most preconstruction and operating permit programs; it ensures that the permitting agency and the applicant have identified all the requirements to which the source is subject and allows the applicant to identify any control technology requirements that the applicant believes are technically infeasible or will cause an unreasonable threat to health and safety.

A request for any exemptions from compliance with pollution control technology requirements must be submitted with the permit application to ensure that the air quality impacts and control technology requirements are properly evaluated. The Administrator, or delegated agency, will act on the request for exemption following the procedures discussed in the following Section II.G, including consultation with the MMS and the U.S. Coast Guard.

EPA is proposing that all OCS sources meet the applicable federal permitting requirements referenced in § 55.13. Under current federal law, new major stationary sources of air pollution are required to obtain air pollution permits before commencing construction, both in NAAs (areas where the NAAQS are exceeded or that contribute to NAAQS violations in nearby areas) and in areas where air quality is acceptable (attainment or unclassifiable areas). Because attainment status is evaluated separately for each criteria pollutant, an area can be both attainment and non-attainment. Therefore, a source may have to obtain both PSD and NAAQS permits.

In areas that meet the NAAQS a PSD program applies. Most states implement their own PSD programs that have been approved by EPA under 40 CFR 51.166 as part of the SIP. In the remaining states, the federal PSD program, which is set forth in 40 CFR 52.21 applies.

The federal non-attainment permit regulations are set forth in 40 CFR part 51 and accompanying appendix S. However, appendix S regulations only apply to areas that are newly designated NAAs and in certain other special circumstances. Most states implement their own NAA permit programs, which have been approved by EPA under 40 CFR 51.165 as part of the SIP.1

There is not, at this time, a federal operating permit program. 40 CFR Part 70, proposed May 10, 1991 (56 FR 21712), will contain regulations requiring states to develop and submit to EPA within 3 years of enactment, programs for issuing operating permits. If the COA does not have an approvable operating permit program, or does not adequately implement an approved program as required by part 70, the applicable requirements of part 71, the federal operating permit program, will apply to new and existing OCS sources on and after the date that part 71 becomes a requirement in the COA. As onshore, the applicable requirements of part 71 will be implemented and enforced by the Administrator. OCS sources located beyond 25 miles of a state's seaward boundary will also be subject to the requirements of part 71.

A basic requirement of section 328 is that sources located within 25 miles of a state seaward boundary meet the requirements, including permitting, that would be applicable if the source were located in the COA. As discussed in Section II.N, states and local air pollution control districts that are adjacent to OCS sources may have their own permit requirements that are not identical to federal law. Hence, these OCS sources must meet all the applicable COA permitting requirements in addition to the federal permitting requirements. The applicable state and local permitting requirements are set forth in § 55.14. The applicable federal permitting requirements are set forth in § 55.13.

Any existing source subject to the requirements of a COA with an operating permit program is subject to that program. Existing sources must be in compliance with this part within 24 months from the date of promulgation, which may include obtaining a permit to operate by that date.

EPA realizes that there may be some duplication in the federal and state permitting requirements of the OCS regulation. For example, an OCS source may be required to apply best available control technology (BACT) for a pollutant for which the COA is in

---

1 Where a construction ban has been imposed by EPA under section 173(a)(4) because the SIP is not adequately implemented, EPA administers the ban under 40 CFR 52.24. 40 CFR 52.24 and appendix S would only apply on the OCS if they are required in the COA.

attainment by federal standards and may also be subject to a state or local requirement to apply lowest achievable emission rate (LAER) for the same pollutant for which the COA is in non-attainment by state air quality standards. In such a case, the source should apply the more stringent requirement, thereby meeting both requirements. This regulatory overlap currently exists onshore, where sources are required to meet all federal, state, and local permitting requirements.

EPA believes that the applicable federal, state, and local new source review requirements can be incorporated into a single preconstruction permit. There may be cases, however, in which an OCS source may need more than one preconstruction permit. This may occur when a delegated agency routinely issues a separate permit for each emissions unit at a facility, when it is necessary to issue separate PSD and NAA permits, or when the state has received partial delegation under this part, and permits are required from both EPA and the state.

Because the statute states that “requirements shall be the same as would be applicable if the source were located in the COA,” EPA did not attempt to correct deficiencies in onshore permitting regulations. The Act provides other mechanisms to correct deficiencies in onshore regulations.

Once a rule is changed onshore, it will become applicable to OCS sources when EPA promulgates new rules under the consistency update procedure set forth in § 55.12 and discussed in I.L.L.

Section 328 requires that existing sources comply with the OCS requirements within 24 months of promulgation. In order to comply, an existing source may need to modify their facilities or methods of operation. Therefore, EPA is proposing that the preconstruction requirements of § 55.6 not apply to a particular modification of an OCS source if the modification is necessary to comply with the OCS regulation, it is made within 24 months of promulgation of the OCS regulation, and it will not result in an increase in emissions of a pollutant regulated under the Act. EPA intends that debottlenecking or expansion projects performed in conjunction with modifications necessary to meet OCS requirements shall be subject to the preconstruction requirements of the OCS regulation. Sources intending to perform modifications that will be exempt from preconstruction requirements must submit a compliance plan to the Administrator or delegated agency prior to performing the modification. This will insure that the intended modification will indeed meet the onshore requirements.

For the purposes of §§ 55.4, 55.5, and 55.8, the definition of modification will be that corresponding to the applicable requirements of §§ 55.13 and 55.14. For applicability to part 55 in general, however, the definition of modification given in the Act, section 111(a), shall apply. In brief, a physical change, or change in method of operation, commenced after the publication of the proposed regulation, will make an existing OCS source a new OCS source.

Under the provisions of section 328 of the Act, the Administrator retains the authority to enforce any OCS requirement. EPA is therefore proposing that the applicant send a copy of any permit application required by this Section to the Administrator through the Regional Office at the same time the application is submitted to the delegated agency. To ensure that the delegated agency is adequately administering and enforcing the OCS requirements, EPA is also proposing that the delegated agency send a copy of any public notice, preliminary determination, and final permit action to the EPA Regional Office. These requirements are also consistent with EPA’s goal of facilitating information transfer.

When issuing preconstruction or operating permits, EPA will use the applicable administrative and public notice and comment procedures of § 55.6 and 40 CFR part 124, which contain regulations on the issuance of EPA permits. Part 324 will be amended to reference the issuance of federal OCS permits. Where the Administrator delegates the OCS permitting requirements to a state or local agency, that agency must comply with the requirements of § 55.6 except for the administrative and public participation procedures of the federal rule, for which the agency may substitute its own procedures.

As with all permits issued under federal regulations or with federal authorization, an authority to construct or permit to operate does not relieve any owner or operator of the responsibilities to comply fully with applicable provisions of any other requirements under federal law, such as the National Environmental Policy Act (NEPA) or the Endangered Species Act. OCS air quality permits obtained pursuant to part 55 are not, however, subject to the environmental impact statement requirements within 24 months of promulgation of the preconstruction permit. This may occur when a delegated agency routinely issues a separate permit for each emissions unit at a facility, when it is necessary to issue separate PSD and NAA permits, or when the state has received partial delegation under this part, and permits are required from both EPA and the state.

Because the statute states that “requirements shall be the same as would be applicable if the source were located in the COA,” EPA did not attempt to correct deficiencies in onshore permitting regulations. The Act provides other mechanisms to correct deficiencies in onshore regulations.

Once a rule is changed onshore, it will become applicable to OCS sources when EPA promulgates new rules under the consistency update procedure set forth in § 55.12 and discussed in I.L.L.

Section 328 requires that existing sources comply with the OCS requirements within 24 months of promulgation. In order to comply, an existing source may need to modify their facilities or methods of operation. Therefore, EPA is proposing that the preconstruction requirements of § 55.6 not apply to a particular modification of an OCS source if the modification is necessary to comply with the OCS regulation, it is made within 24 months of promulgation of the OCS regulation, and it will not result in an increase in emissions of a pollutant regulated under the Act. EPA intends that debottlenecking or expansion projects performed in conjunction with modifications necessary to meet OCS requirements shall be subject to the preconstruction requirements of the OCS regulation. Sources intending to perform modifications that will be exempt from preconstruction requirements must submit a compliance plan to the Administrator or delegated agency prior to performing the modification. This will insure that the intended modification will indeed meet the onshore requirements.

For the purposes of §§ 55.4, 55.5, and 55.8, the definition of modification will be that corresponding to the applicable requirements of §§ 55.13 and 55.14. For applicability to part 55 in general, however, the definition of modification given in the Act, section 111(a), shall apply. In brief, a physical change, or change in method of operation, commenced after the publication of the proposed regulation, will make an existing OCS source a new OCS source.

Under the provisions of section 328 of the Act, the Administrator retains the authority to enforce any OCS requirement. EPA is therefore proposing that the applicant send a copy of any permit application required by this Section to the Administrator through the Regional Office at the same time the application is submitted to the delegated agency. To ensure that the delegated agency is adequately administering and enforcing the OCS requirements, EPA is also proposing that the delegated agency send a copy of any public notice, preliminary determination, and final permit action to the EPA Regional Office. These requirements are also consistent with EPA’s goal of facilitating information transfer.

When issuing preconstruction or operating permits, EPA will use the applicable administrative and public notice and comment procedures of § 55.6 and 40 CFR part 124, which contain regulations on the issuance of EPA permits. Part 324 will be amended to reference the issuance of federal OCS permits. Where the Administrator delegates the OCS permitting requirements to a state or local agency, that agency must comply with the requirements of § 55.6 except for the administrative and public participation procedures of the federal rule, for which the agency may substitute its own procedures.

As with all permits issued under federal regulations or with federal authorization, an authority to construct or permit to operate does not relieve any owner or operator of the responsibilities to comply fully with applicable provisions of any other requirements under federal law, such as the National Environmental Policy Act (NEPA) or the Endangered Species Act. OCS air quality permits obtained pursuant to part 55 are not, however, subject to the environmental impact statement provisions of section 102(2)(c) of NEPA, 42 U.S.C. 4321.

G. Section 55.7—Exemptions.

Section 328(a)(2) allows the Administrator to grant an OCS source an exemption from a specific control technology requirement if the Administrator finds that the requirement is technically infeasible or will cause an unreasonable threat to health and safety. The Administrator must make a written finding explaining the basis of any exemption granted and impose another requirement as close in stringency to the original requirement as possible. Any increase in emissions due to the granting of the exemption must be offset by emissions reductions not otherwise required by the Act.

Items that could be considered as a basis for finding a requirement technically infeasible or an unreasonable threat to health and safety include the following:

• The equipment is used for emergency service and compliance would negatively impact the equipment’s effective emergency response;

• Compliance could significantly increase the risk of ship collisions;

• Compliance would entail modifications that would compromise the structural integrity of the facility;

• Compliance would create adverse cross-media impacts that would result in health risks outweighing the benefit of the air emission reductions; or

• Compliance would result in an actual increase of emissions of non-attainment pollutants due to the location of the OCS source.

The following example is provided to explain what might be considered a valid basis for granting an exemption based on health grounds. The application of a NOx control could require large quantities of a chemical that must be transported to the platform by boat. The boat would emit NOx as it cruises back and forth between port and platform. The farther the platform is from shore, the more NOx the boat would emit. However, the NOx reduction at the platform is the same no matter how far the boat must travel. At a certain distance from shore, the NOx emissions would exceed the NOx reduction achieved at the platform, and the result of applying the control would be a net increase in NOx emissions. Thus, the imposition of the control measure is counterproductive and the resultant increased emissions of a precursor to ozone are an unreasonable threat to public health.
EPA is proposing that the procedures for granting exemptions be incorporated into the permitting process. When a source submits a permit application to the permitting agency, the application should contain a request for exemption from any requirement that the applicant believes is unsafe or technically infeasible. The request must include information that demonstrates that compliance with a requirement would be technically infeasible or cause an unreasonable threat to health and safety. The request should be accompanied by suggestions for substitute controls, an estimate of the residual emissions due to the substitutions, and preliminary information regarding the acquisition of any offset that will be required if the exemption is granted. These offsets are required to prevent any deterioration of air quality due to the granting of the exemption. This is slightly different from the purpose of offsets required in an NAA, which must provide a “net air quality benefit” to assist the area to attain the ambient standards. For this reason, EPA has proposed two offsets ratios for sources that receive exemptions pursuant to § 55.7.

EPA is proposing that a new source or a modification that qualifies as a new source must comply with the offset ratio imposed in the COA. A new source or a modification that qualifies as a new source must comply with an offset ratio of 1:1: if offsets are not required in the COA or if the source is located beyond 25 miles from a state’s seaward boundary. The purpose of these offsets is to prevent any deterioration in air quality. Existing sources must comply with an offset ratio of 1:1. It is possible that a source may want to request an exemption in a situation where no permit application or permit amendment would be required, such as when a new regulation becomes applicable. If this situation occurs, a source may simply submit a request for exemption that includes all the information required by the Administrator or the delegated agency. The request must be submitted within 90 days from the date the requirement is promulgated by EPA. All other requirements and procedures applicable to exemption requests under this Section shall apply.

When issuing exemptions in conjunction with preconstruction or operating permits, EPA will use the applicable administrative and public notice and comment procedures of § 55.7 and 40 CFR part 124, which contain regulations on the issuance of EPA permits. Part 124 will be amended to reference the issuance of federal OCS permits. If no permit is required, EPA will use the administrative procedures of § 55.7.

The authority to grant technical and safety exemptions may be delegated to qualifying state and local agencies along with adequate regulations. EPA or the delegated agency must consult with the MMS and the U.S. Coast Guard when reviewing exemption requests. If the delegated agency, the MMS and the U.S. Coast Guard cannot reach a consensus decision on the exemption request within 90 days the request will automatically be appealed to the Administrator. The 90 day period may be extended by mutual agreement between all the involved agencies. The purpose of this consultation process is to ensure that OCS operations will proceed in a safe manner. If the involved agencies do reach a consensus decision, the delegated agency will use its own procedures to meet the obligation to allow for public notice and comment when the exemption is part of a permit application. If the exemption is requested but no permit or permit change is required, the delegated agency must comply with the requirements of § 55.7.

I. Section 55.8 Monitoring, Reporting, Inspections, and Compliance.

The Environment Protection Agency is authorized to require OCS sources to monitor and report emissions and certify compliance status pursuant to section 114. Section 114 states, in part, that in order to determine if any person is in violation of any standard under the Act, the Administrator may require any person who owns or operates any emission source * * * to (A) establish and maintain such records; (B) make such reports; (C) install, use and maintain such monitoring equipment, and use such audit procedures, or methods; (D) sample such emissions * * *; (E) keep records on control equipment parameters, production variables or other indirect data when direct monitoring of emissions in impractical; (F) submit compliance certifications in accordance with section 114(a)(3). * * * 

Any monitoring or reporting requirement that appears in a rule adopted pursuant to section 114, or incorporated into this rulemaking, shall also apply to OCS sources. For example, NSPS requires certain monitoring requirements that may apply to OCS sources.

Section 114(a)(3) was added by the CAAA-90 and authorizes EPA to require any person who owns or operates a major stationary source to perform enhanced monitoring and submit compliance certifications. These compliance certifications shall include “(A) identification of the applicable requirement that is the basis of the certification, (B) the method used for determining the compliance status of the source, (C) the compliance status, (D) whether compliance is continuous or intermittent” by such other facts as the Administrator may require.” EPA is required to promulgate regulations providing guidance and implementing section 114(a)(3) by November 1992; these rules will apply to OCS sources when promulgated.

Any OCS source that is not required to obtain a permit to operate within 24 months, pursuant to the requirements of the part, must submit a compliance report to the Administrator or the delegated agency. Section 55.8 requires that a compliance report specify all the applicable requirements under this part and a description of how the source has complied with these requirements. This compliance report must be submitted within 25 months of the date of promulgation of this part. The purpose of this compliance report is to verify that the OCS source has met the statutory requirements in the absence of a permit.

When the OCS program is delegated, the delegated agency will have whatever monitoring, reporting, inspection and compliance certification authority over the OCS sources that the agency has over onshore sources. It will be the responsibility of an agency that requests delegation of the OCS program to have amended its rules to allow for authority over sources located in the OCS region within 25 miles of its state seaward boundaries. When EPA is administering the OCS program, inspections will be performed by EPA or an authorized agent and coordinated with the MMS and the U.S. Coast Guard for safety reasons. Where the program is delegated, the delegated agency shall perform the inspections, also in coordination with the MMS and the U.S. Coast Guard. Coordination with these agencies shall not be allowed to hinder the ability of the EPA or the delegated agency to conduct surprise inspections.

I. Section 55.9 Enforcement.

Section 111(e) states that it shall be unlawful for any owner or operator of any new source to operate such source in violation of any performance standard of the NSPS program. Since section 328(a)(1) provides that the OCS requirements are to be considered as standards of performance under section 111, and since section 328(a)(1) also
provides that violations of the OCS requirements shall be considered violations of section 111(e), it shall also be unlawful for any owner or operator of an OCS source to operate such source in violation of the OCS regulations. EPA has a variety of enforcement tools under the Act that apply to OCS sources. Section 113 authorizes the Administrator to bring administrative and civil actions to prohibit sources from violating the requirements of the Act and to collect penalties for non-compliance. Section 113 also provides for criminal penalties for knowing violations of the Act. As discussed in II.H, section 114 provides authority to obtain information to determine the compliance status of sources. Section 120 provides authority to assess non-compliance penalties. Section 303 provides for emergency powers when a pollution source is presenting an imminent and substantial endangerment to public health or welfare or the environment. All of these sections apply to OCS sources.

Under a delegated program, the state or local agency shall have the enforcement authority that it possesses under state or local laws. The state or local agency shall be responsible for amending its laws to provide for authority to enforce the OCS regulations within 25 miles of the state’s seaward boundaries. If a facility is ever ordered to cease operation of any piece of equipment due to an enforcement action taken pursuant to this part by EPA or a delegated agency, the actual shut-down will be coordinated by the enforcing agency with the MMS and the U.S. Coast Guard. In no case shall the consultation process delay the initiation of the shut down by more than 24 hours.

J. Section 55.10 Fees.

If EPA implements the requirements of the COA, EPA will charge fees under the operating permits fee schedule established pursuant to 40 CFR part 71 when promulgated, for all OCS sources subject to the requirements of part 71. For those OCS sources not subject to the requirements of part 71, and for all OCS sources before such time as the permit fees regulations in part 71 are promulgated, EPA will charge fees in accordance with the fee schedule imposed in the COA, with the following proviso: To the extent the fees in the COA are based on regulatory objectives, such as discouraging emissions, EPA will collect fees in accordance with the fee schedule imposed in the COA; to the extent the fees in the COA are based on cost recovery, EPA will cap such fees at an amount equal to EPA’s cost to issue and administer the permit. Upon delegation of authority to implement and enforce any portion of this part, EPA will cease to collect the fees associated with that portion of this part, and the delegated agency will calculate and collect fees in accordance with the fee schedules imposed in the COA.

K. Section 55.11 Delegation.

Section 328(a)(3) provides that each state whose seaward boundary is adjacent to a nearshore OCS source subject to the requirements of section 328(a) may, if that state so chooses, promulgate and submit to EPA state regulations for implementing and enforcing the nearshore OCS requirements of section 328(a). Pursuant to section 328(a)(3), EPA will carefully review any state enforcement regulations and authorities and if EPA determines that such plan is adequate to insure implementation and enforcement of the standards of section 328(a) and is consistent with such standards, EPA shall defer to the state for implementation and enforcement. Section 328(a)(3) states that EPA shall “delegate” its enforcement authority to the state if EPA finds that the state’s enforcement plan is “adequate.” At the same time, however, section 328(a)(3) expressly preserves EPA’s full authority to enforce the requirements of section 328. There is therefore an ambiguity in the statute; EPA cannot both delegate and retain its enforcement authority. Because the enforcement of federal law by state officials who are not officers of the United States raises constitutional concerns, EPA proposes to define “adequate” to include the requirement that a state enforcement plan be promulgated pursuant to a state law that expressly references or incorporates the standards and requirements adopted by EPA under section 328(a). In determining whether a state enforcement plan is promulgated pursuant to a state law that expressly references or incorporates the standards and requirements adopted by EPA under section 328(a), in determining whether a state enforcement plan is promulgated pursuant to a state law—a prerequisite to its adequacy—EPA will find it sufficient if the state submits a legal opinion of the attorney general of the state that the laws of the state provide adequate authority to carry out the plan of enforcement and that the standards of section 328(a)(1) have been adopted as state law.

The mere fact that a state will be enforcing state law does not, however, give the state the authority to change the OCS rule independent of EPA. The statute allows delegation of implementation and enforcement authority, but not rulemaking authority. If a state intends to change the OCS requirements, the state must first change the relevant onshore law. EPA will then update the OCS rule to “maintain consistency with onshore regulations,” as provided by section 328(a)(1) and § 55.12, and as discussed further in II.L. This process can be less time-consuming than may first appear if, when the state adopts a change to an onshore regulation, the state conditions its application to OCS sources on EPA’s adoption of the measure into federal law. Then, when the measure is adopted into federal law, the rule will immediately be enforceable under state law.

One complication in the process to delegate the OCS program is that section 328(a)(3) states that a state “adjacent to an OCS source” may promulgate and submit to the Administrator regulations in order to receive delegation of the OCS program. This implies that a state must have at least one source on the OCS adjacent to the state before adopting the regulations. As a practical matter, EPA will not delegate the program to a state that does not have an OCS source adjacent to it.

To receive delegation, the governor of a state, or the governor’s designee, must request delegation of the OCS program from EPA and demonstrate that the state has:

• An adjacent OCS source.
• Adopted the OCS regulations.
• Adequate authority to implement and enforce the regulations.
• Adequate resources to implement and enforce the OCS regulations.

As discussed above, the second and third requirements may be satisfied by a legal opinion of the state attorney general.

EPA will maintain authority to enforce all air pollution control requirements applicable to any nearshore OCS source under section 328(a), and may promulgate regulations governing such enforcement. EPA will closely monitor all enforcement efforts undertaken by state agencies pursuant to section 328(a). If EPA determines that such efforts fail or are likely to fail to adequately implement the standards of section 328(a) with respect to any OCS source or that such efforts are inconsistent with the standards of section 328(a), EPA will assume the enforcement and implementation of section 328(a) through part 55. Similarly, EPA will assert its enforcement authority if at any time EPA determines that the state agency lacks sufficient authority to undertake such efforts.

EPA may delegate part of the OCS program to a state while still retaining other parts of the program. This partial delegation may be necessary, for example, in areas that do not have
delegation of certain onshore federal programs such as PSD.

The authority to implement and enforce §§ 55.5, 55.11, and 55.12, will not be delegated. Section 55.5 contains the procedures and requirements for designation of the corresponding onshore areas, § 55.11 contains the procedures and requirements for the delegation of authority to the States, and § 55.12 contains the procedures under which EPA will perform the consistency updates required by the statute. These sections specifically address the duties of EPA and the Administrator under section 328 and are not considered part of the authority to implement and enforce the OCS program.

EPA will rescind delegation of the OCS program or any part of the OCS program which has been delegated if the delegated agency does not adequately implement and enforce the OCS program. This includes administering the program in such a way as to prevent OCS sources from operating, unless the OCS source has been found to be in violation of part 55.

EPA is proposing to retain the authority to implement and enforce the program beyond 25 miles from states’ seaward boundaries for several reasons. First, state and local agencies would have to adopt and implement two programs: The onshore program which would apply to OCS sources within 25 miles of state boundaries, and a second program applicable to OCS sources located beyond 25 miles from the state boundaries. Secondly, as the distance from shore increases, it is increasingly difficult to make a COA designation which is technically defensible. EPA does not believe that Congress intended EPA to delegate to states the authority to regulate areas up to 200 miles or more outside their boundaries.

L. Section 55.12 Consistency Updates.

Because onshore requirements may change, section 328(a)(1) requires that EPA update the OCS requirements “as necessary to maintain consistency with onshore regulations.” The statute uses the phrase “the same as” to describe the OCS requirements initially adopted (Section ILC) and uses the phrase “maintain consistency” in directing EPA to perform updates. This reflects a difference in the way rules in effect as of the date of enactment, and rules adopted after enactment, are to be treated.

The words “the same as” require that EPA include in the OCS regulations those onshore requirements determined to be applicable, and that were in effect as of the date the CAAA--60 were enacted. The fact that the statute directs EPA to update the OCS requirements, rather than automatically incorporating new onshore requirements, and the use of the phrase “maintain consistency”, rather than the phrase “the same as”, implies that EPA’s action in adopting “post-enactment” requirements must be more than rubber stamping a state or local rule into federal law.

EPA proposes to interpret “maintain consistency” to mean that EPA will incorporate into part 55 those onshore rules which comply with the statutory requirements of section 328, are equitable and are rationally related to the attainment and maintenance of ambient air quality standards and the prevention of significant deterioration of air quality. These criteria are mandated by the general prohibition against arbitrary and capricious rulemaking with which the Administrator must comply in any rulemaking proceeding, under either section 307(d) of the Act or under the Administrative Procedures Act. They also comport with the general intent of the legislation to ensure equity between onshore and OCS sources. In determining whether an onshore rule is inequitable, even if no onshore sources would be controlled by a regulation adopted by a state such that only OCS sources would be affected, EPA will not consider the rule to be inequitable or arbitrary and capricious if the rule is consistent with the state’s general approach to onshore regulation.

Updates also will address the requirements for areas that have not had previous OCS development. MMS publishes an inclusive five-year leasing plan that describes every proposed lease sale and an Environmental Impact Statement (EIS) must be prepared for each lease sale. EPA and interested parties will therefore have considerable notice if a new area is to become subject to exploration and/or development. EPA is proposing to promulgate OCS requirements for new areas as needed and will assure that regulations are in place in a timely manner so as to not impede the commencement of any OCS activity.

EPA is proposing to periodically update part 55 to reflect onshore rule changes that may affect OCS sources. This update will be done in accordance with notice and comment rulemaking procedures. EPA is soliciting comments on the appropriate time period to update the rule. One option is to link the consistency updates solely to the submittal of NOIs. Section I.I.D. of the preamble proposes that the submission of an NOI will trigger a review of the onshore rules to determine if an update is necessary. Upon submission of an NOI, EPA will compare onshore rules with the requirements of part 55. If the requirements of part 55 are found to be inconsistent with the current onshore requirements, EPA will expeditiously initiate a consistency update. A second option is to update part 55 annually. Under this option, part 55 would be evaluated on a yearly basis, with NOIs triggering early review.

Consistency updates will be performed using standard procedures for notice and comment rulemaking. Consistency updates may result in the inclusion of State or local rules or regulations into part 55 that will ultimately be disapproved as part of the SIP. Inclusion in the OCS rule does not imply that a regulation meets the requirements of the Act for SIP inclusion, nor does it imply the regulation will be approved by EPA for inclusion in the SIP. For additional discussion of this topic, see Section III.A.2.

M. Section 55.13 Applicable Federal Requirements.

Section 328 directs EPA to establish air pollution requirements for OCS sources. The statute specifies that for sources located within 25 miles of states’ seaward boundaries, those requirements shall be the same as the requirements in the COA (see section II.A.). Section 328 does not mandate the content of the OCS program for OCS sources located beyond 25 miles of states’ seaward boundaries. Therefore, with the framework of existing requirements to “attain and maintain federal and state ambient standards and to comply with the provisions of part C of title 1,” EPA has some latitude in establishing the requirements under Section 328 that apply to sources located beyond 25 miles from states’ seaward boundaries.

In this rulemaking, EPA is proposing to apply PSD, and to the extent they are rationally related to protection of ambient air quality standards NSPS and NESHAPS. When promulgated the requirements of the federal operating permits program to outer OCS sources. These regulations will be implemented in accordance with EPA guidance. The requirements of § 55.13 apply to both nearshore and outer OCS sources. Nearshore sources must also meet the requirements of the COA, as set forth in § 55.14.

At present, there are few (if any) outer OCS sources within EPA jurisdiction and none are permanent. In the future, OCS sources may be established at distances of 28 miles to more than 200 miles offshore. Because of the uncertainty of where new sources will
be located. EPA cannot predict the impact these sources will have on onshore air quality. If the Administrator determines that additional requirements for outer OCS sources are necessary to protect onshore air quality, such requirements will be promulgated in a future rulemaking. This might occur for instance, if the density of OCS sources in a specific area cumulatively causes negative impacts to onshore air quality.

N. Section 55.14 Applicable Requirements of the COA.

The requirements of this Section apply only to those sources located within 25 miles of states’ seaward boundaries. Section 328 mandates that sources located within 25 miles of states’ seaward boundaries be subject to requirements that are the same as would be applicable if the source were located in the COA. Section 328(c)(1) requires that within 25 miles of state boundaries, requirements “shall include, but not be limited to, State and local requirements for emission controls, emission limitations, offsets, permitting, monitoring, testing, and reporting.”

States have independent authority to establish air pollution regulations that apply within their jurisdiction. In many states, air pollution control regulations are established by a state agency responsible for air pollution control. In other states, particularly California, primary responsibility for regulation of air quality lies with local air pollution control districts. State law authorizes these air pollution control districts to adopt, implement, and enforce air quality regulations. In order to be considered by EPA for inclusion in the OCS rule, state and local requirements must have been formally adopted by the appropriate regulatory agency.

Because requirements applying to OCS sources located within 25 miles of states’ seaward boundaries must be “the same as” or “consistent with” onshore requirements, EPA has little flexibility in establishing requirements that apply to these OCS sources.

A large number of onshore rules, such as those regulating agricultural burning or automobile refinishing do not apply on the OCS. To reduce paperwork and the expense of promulgating rules, EPA is proposing to limit the scope of this promulgation to those rules that control sources that exist or could reasonably be expected to exist on the OCS and be regulated or authorized under the OCSLA. EPA has examined federal, state and local law to determine which onshore requirements could be applied offshore. Where possible, EPA has limited the state and local rules incorporated into part 55 to those that contain requirements that apply to OCS sources.

State and local administrative and procedural rules, such as those establishing hearing board procedures, have generally been excluded. In some instances, however, individual rules contain administrative procedures along with the substantive requirements that section 328 directs EPA to promulgate. Where it was not feasible to separate the extraneous provisions from the necessary requirements, EPA has included both. In order to ensure that EPA will not be required to adhere to state or local administrative or procedural requirements when implementing the OCS rule, § 55.14 explicitly states that EPA will not be bound by state or local administrative procedures. Instead, EPA will use the administrative procedures set forth in part 55 (excluding § 55.14), in 40 CFR part 124, and in rules promulgated pursuant to title V of the CAAA-90, as such rules apply in the COA.

If an onshore rule that would be applicable to a proposed OCS source is not currently incorporated into part 55, EPA will initiate a consistency update, as triggered by the submission of an NOI. This procedure is discussed in Section II.D.

Before a rule or regulation may be applied to OCS sources, it must be incorporated into part 55 by formal rulemaking. EPA proposes to include in this rule a few rules that were adopted by states or locals after November 15, 1990. Rules and rule revisions adopted by states subsequent to the date of enactment are subject to EPA consistency update requirements (see Section II.L.). In this rulemaking, therefore, EPA is doing both an initial rule adoption and a consistency update to incorporate state rules adopted after November 15, 1990.

Promulgation of OCS regulations entails the incorporation of requirements from up to three layers of law—Federal, State, and local—into one layer—40 CFR part 55. Because of this structure, it is inevitable that some overlap will exist. Onshore, sources must meet applicable federal requirements as well as State and local requirements. The difference is that the overlap does not exist within one body of law. In cases where OCS requirements overlap, the source must comply with all requirements, just as onshore sources must.

It is conceivable that a situation could arise where it is impossible for a source to comply with different versions of the same requirement. A conflict within the OCS regulation would complicate enforcement on the OCS because, unlike onshore, the conflict would exist within a single body of law. EPA has not discovered any such conflicts in the rules it has reviewed. However, if EPA identifies a conflict between a federal, state, or local requirement, EPA will analyze the rules and incorporate the version that will result in the greatest emission reductions. Strictly speaking, this could create a regulatory environment for the OCS that is not “the same as” the onshore environment. This is an artifact of the process of combining three layers of law into a single layer. As noted above, EPA has not found any conflicts between Federal, State, and local requirements.

EPA is proposing to incorporate the rules listed in the regulation that follows this preamble. The text of these rules is in the technical support document, which is part of the docket and is available at the addresses listed at the beginning of this notice.

III. Additional Topics for Discussion

A. Relationship Between the OCS Regulations and the State Implementation Plans

1. Emission Inventories/Attainment Demonstrations

OCS emissions will be treated in a manner consistent with EPA emission inventory guidance and are to be included in the SIP baseline emission inventory of the COA. Upon promulgation by EPA, to the extent a rule meets EPA’s criteria for creditability under SIP policy, emission reductions realized by implementation of OCS rules may be used for attainment demonstrations or to meet emission reduction targets.

2. Deficiencies Incorporated Into the OCS Rule

Section 328(a) requires that EPA establish requirements to control OCS sources located within 25 miles of states’ seaward boundaries that are the same as onshore requirements. Because the statute mandates that requirements for these sources must be the same as the COA’s onshore requirements, EPA must adopt a COA’s rules into OCS law as they exist onshore. This limits EPA’s flexibility in deciding which rules will be incorporated into part 55, and prevents EPA from making substantive changes to the rules it incorporates. As a result, EPA is proposing to incorporate into part 55 several rules that do not
conform to all of EPA's SIP guidance or certain requirements of the Act.

The following are examples of how rules may deviate from EPA SIP guidance or requirements of the Act:

- Section 172(c)(1) requires that NAAs adopt rules that require the application of reasonably available control technology (RACT). In some cases the rules proposed for inclusion in this promulgation are less stringent than RACT requirements.

- EPA has issued extensive guidance relating to SIP rules. Much of that guidance was summarized in appendix D of EPA's proposed post-1987 policy (52 FR 45044, November 24, 1987), and in a "bluebook" which elaborated on that guidance. Section 182(a)(2)(A) essentially requires most nonattainment areas to meet the preenactment VOC-RACT requirements as set forth in this guidance. Some rules that are proposed for inclusion in this promulgation do not meet all of EPA's guidance. For example, some rules do not specify EPA approved test methods or do not have adequate recordkeeping requirements.

The promulgation of OCS rules superficially resembles the SIP process. Rules that are presently in the SIP or rules that may eventually be included in the SIP are proposed for inclusion into part 55. However, SIP rules and OCS rules are subject to different standards. The net result is that rules promulgated as OCS law may contain deficiencies that would result in less than full approval for inclusion in the SIP. EPA is currently working with states to correct deficient rules. As corrections are adopted offshore, EPA will incorporate them into the OCS rule through the consistency update process.

It must be emphasized that promulgation of a state or local rule as OCS law does not constitute or imply approval of that rule as part of the SIP. Nor does it preclude any action EPA may take in regard to deficient offshore SIPs.

B. The Applicability to OCS Sources of Regulations Controlling Air Pollutants that are not Significantly Related to a State or Federal Ambient Standard

Section 328(a) requires the Administrator to promulgate requirements for OCS sources "to attain and maintain Federal and State ambient air quality standards and to comply with the provisions of part C of title I of the Act." EPA reads this provision as a restriction on EPA's authority to regulate OCS sources. Specifically, in today's rulemaking EPA is proposing to regulate only federal and state criteria pollutants and precursors to those pollutants. 

Although it may be argued that this approach will result in inconsistencies between the regulation of onshore and offshore sources, which section 328 was intended to remove, EPA believes that this interpretation of the statute is the better reading of the plain language of the statute. Moreover, in providing for equity between onshore and offshore sources, the statute states that "such requirements shall be the same as would be applicable if the source were located in the corresponding onshore area," where "such" refers back to "requirements * * * to attain and maintain Federal and State ambient air quality standards," thus similarly restricting the application of onshore requirements.

EPA recognizes, however, that this interpretation results in a gap in the regulatory schema. Although non-criteria pollutants are not a significant concern with respect to current OCS activities, they could become so in the future. For example, possible gold dredging on the OCS could emit cyanide and mercury that can be regulated under section 112 of the Act but are not criteria pollutants or precursors and so would not be regulated on the OCS under section 328(a). With respect to air pollutants other than those specifically addressed under section 328(a), EPA may have authority to apply the Act generally to the OCS, since the OCS is an area of federal jurisdiction and the Act in general applies to "the Nation's air resources." Section 101(b). In addition, the OCSLA itself provides that all federal laws shall apply on the OCS "to the same extent as if the OCS were an area of exclusive federal jurisdiction located within a state." Section 4(a)(1), 43 U.S.C. 1333(a)(1). EPA is requesting comment on this interpretation.

IV. Administrative Requirements

A. Executive Order 12291

Executive Order 12291 requires that all federal agencies prepare a regulatory impact analysis for major rules. Major rules are those that may likely result in any of the following:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individuals, or a significant number and proportion of economic entities, Federal, State, or local government agencies, or geographic regions;

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

EPA performed a Regulatory Impact Analysis Screening that is available in the docket, that indicates that the proposed rule results in an impact of less than $5 million per year and therefore, EPA believes this rule is not a major rule. This result is contingent on the analytic methodology used and on assumptions having a high degree of uncertainty. EPA invites comment on the Screening Analysis, its assumptions and methodology. This rulemaking is not anticipated to meet the last two criteria listed above due to the small number of entities to be affected.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires each federal agency to perform a Regulatory Flexibility Analysis for all rules that are likely to have a "significant impact on a substantial number of small entities."

The EPA certifies that the proposed rule will not have a significant impact on a substantial number of small entities. A census of companies directly affected by the proposed regulations reveals that none meet the criteria of small according to the Small Business Administration (SBA).

C. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1901.01) and a copy may be obtained from Sandy Farmer, Information Policy Branch (PM-223Y), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460 or by calling (202) 260-2740.

Public Reporting Burden for this collection of information is estimated to be an average of 360 hours per response for new sources and 310 hours per response for existing sources. This burden includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing the
collection of information and compliance testing.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch, EPA, 401 M Street, SW. (PM-223Y), Washington, DC 20460, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked “Attention: Desk Officer for the EPA.” The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects in 40 CFR Part 55

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Particulate matter, Hydrocarbons, Nitrogen oxides, Intergovernmental relations, Reporting and recordkeeping requirements.


William K. Reilly,
Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended by adding a new part 55 as follows.

PART 55—OUTER CONTINENTAL SHELF AIR REGULATIONS

Sec.
55.1 Statutory authority and scope.
55.2 Definitions.
55.3 Applicability.
55.4 Requirements to submit a notice of intent.
55.5 Corresponding onshore area designation.
55.6 Permit requirements.
55.7 Exemptions.
55.8 Monitoring, reporting, inspections, and compliance.
55.9 Enforcement.
55.10 Fees.
55.11 Delegation.
55.12 Consistency updates.
55.13 Listing of Federal requirements that apply to OCS sources.
55.14 Listing of Federal, State, and Local requirements that apply to OCS sources located within 25 miles of states’ seaward boundaries, by State.

Authority: 42 U.S.C. 7401, et seq.

§ 55.1 Statutory authority and scope.

Section 328 of the Clean Air Act (the Act) (42 U.S.C. 7401, et seq.), as amended by Public Law 101-549, the Clean Air Act Amendments of 1990, authorizes EPA to establish requirements to regulate outer continental shelf (“OCS”) sources of air pollution in order to attain and maintain ambient air quality standards and comply with the provisions of part C of title I of the Act. This part establishes the air pollution control requirements for OCS sources and the procedures for implementation and enforcement of the requirements, consistent with the requirements of section 328.

§ 55.2 Definitions.

Administrator means the Administrator of the U.S. Environmental Protection Agency.

Corresponding Onshore Area (“COA”) means, with respect to any OCS source located within 25 miles of states’ seaward boundaries, the onshore area that is geographically closest to the source or another onshore area that the Administrator designates as the COA, pursuant to § 55.5 of this part.

Delegated Agency means any agency that has been delegated authority to implement or enforce the requirements of this part by the Administrator, pursuant to § 55.11 of this part.

Exploratory Source means any temporary operation conducted for the sole purpose of gathering information.

Nearest Onshore Area (“NOA”) means, with respect to any OCS source, the onshore area is geographically closest to that source.

OCS Source means any equipment, activity, or facility which:

(a) Emits or has the potential to emit any air pollutant;
(b) Is regulated or authorized under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.); and
(c) Is located on the OCS or in or on waters above the OCS.

Outer Continental Shelf shall have the meaning provided, as of the date of promulgation of this part, by section 2 of the OCS Lands Act.

Onshore Area means a coastal area designated as an attainment, nonattainment, or unclassifiable area by EPA in accordance with section 107 of the Act.

Potential Emissions means the maximum emissions of a pollutant from an OCS source operating at its design capacity. Any physical or operational limitation on the capacity of a source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as a limit on the design capacity of the source if the limitation is federally enforceable. Pursuant to section 328, emissions from vessels servicing or associated with an OCS source shall be considered direct emissions from such a source while at the source, and while en-route to or from the source when within 25 miles of the source, and shall be included in the “potential to emit” for an OCS source.

This definition does not alter or affect the use of this term for any other purposes under §§ 55.13 or 55.14 of this part, except that vessel emissions must be included in the “potential to emit” as used in §§ 55.13 and 55.14 of this part.

Residual Emissions means the difference in emissions from an OCS source if it applies the control requirement(s) imposed pursuant to § 55.13 and/or § 55.14 of this part and emissions from that source if it applies a substitute control requirement pursuant to an exemption granted under § 55.7 of this part.

§ 55.3 Applicability.

(a) This part applies to all OCS sources except those located in the Gulf of Mexico west of 87.5 degrees longitude.

(b) OCS sources located within 25 miles of a state boundary shall be subject to all the requirements of this part which include, but are not limited to, the federal requirements as set forth in § 55.13 of this part, and the state and local requirements of the COA (designated pursuant to § 55.5 of this part), as set forth in § 55.14 of this part.

(c) OCS sources located beyond 25 miles of a state seaward boundary shall be subject to all the applicable requirements of this part, except the requirements of § 55.14 of this part.

(d) New OCS sources shall comply with the requirements of this part on the date of promulgation of this part, as mandated by section 328, where a “new OCS source” means an OCS source that is a new source within the meaning of section 111(a).

(e) Existing sources shall comply with the requirements of this part within 24 months after the date of promulgation of this part, as mandated by section 328 of the Act, where an “existing OCS source” means any source that is not a new source within the meaning of section 111(a).

§ 55.4 Requirements to submit a notice of intent.

(a) Not more than 18 months prior to submitting an application for a preconstruction permit, the applicant shall submit a Notice of Intent (“NOI”) to the Administrator through the Regional Office, and to the air pollution control agencies of the NOA and onshore areas adjacent to the NOA.

This requirement applies only to new sources located within 25 miles of states’ seaward boundaries.

(b) The NOI shall include the following:

(1) General company information, including company name and address,
owner's name and agent, and facility site contact.  
(2) Facility description in terms of the proposed process and products, including identification by Standard Industrial Classification Code.  
(3) Estimate of the proposed project's potential emissions of any air pollutant, expressed in total tons per year and in such other terms as may be necessary to determine the applicability of requirements of this part. Potential emissions for the project must include all vessel emissions associated with the proposed project in accordance with the definition of potential emissions in § 55.2 of this part.  
(4) Description of all emissions points including associated vessels.  
(5) Estimate of quantity and type of fuels and raw materials to be used.  
(6) Description of proposed air pollution control equipment.  
(7) Proposed limitations on source operations or any work practice standards affecting emissions.  
(8) Other information affecting emissions, including where applicable, information related to stack parameters (including height, diameter, and plume temperature), flow rates, and equipment facility dimensions.  
(9) Such other information as may be necessary to determine the applicability of onshore requirements.  
(10) Such other information as may be necessary to determine the source's impact in onshore areas. Exploratory sources shall be exempt from this requirement.  
§ 55.5 Corresponding onshore area designation.  
(a) Proposed Exploratory Source. The NOA shall be the COA for exploratory sources as defined in § 55.2 of this part.  
(b) Requests for Designation. (1) The chief executive officer of the air pollution control agency of an area that believes it has more stringent air pollution control requirements than the NOA for the proposed OCS source may submit to the Administrator a request to be designated as the COA. The request must be received by the Administrator within 60 days of the submission of the NOI. If no requests are submitted, the NOA will become the designated COA without further action, 61 days after the submission of the NOI.  
(2) No later than 90 days after the submission of the NOI, a demonstration shall be submitted to the Administrator showing that:  
(i) The area has more stringent requirements with respect to the control and abatement of air pollution than the NOA;  
(ii) The emissions from the source are or would be transported to the requesting area; and  
(iii) The transported emissions would affect the requesting area's efforts to attain or maintain a federal or state ambient air quality standard or to comply with the requirements of part C of title I, taking into account the effect of air pollution control requirements that would be imposed if the NOA were designated as the COA.  
(c) Determination by the Administrator. (1) If no demonstrations are submitted to the Administrator within 90 days of the submission of the NOI, the NOA will become the COA 91 days after the submission of the NOI without further action.  
(2) If one or more demonstrations are submitted, the Administrator will issue a preliminary designation of the COA within 150 days of the submission of the NOI, which shall be followed by a 30 day public comment period, in accordance with § 55.5(e) of this part.  
(3) The Administrator will designate the COA for a specific source within 240 days of the submission of the NOI.  
(4) When the Administrator designates a more stringent area as the COA with respect to a specific OCS source, EPA will issue the permit and implement and enforce the requirements of 40 CFR part 55.  
(d) Offset Requirements. Offsets shall be acquired in accordance with the requirements imposed in the COA, but no discounting or penalties associated with distance between the proposed source and the source of emissions reductions shall apply to offsets obtained on the coastal side of a line drawn through the proposed source parallel to the coastline. Offsets obtained on the seaward side of this line will be subject to all the requirements of the COA, including any discounting and distance penalties. Offsets may be obtained in the COA or the NOA, and/or from OCS sources with the same COA or NOA as the proposed source, notwithstanding any geographic restrictions contained in the offset requirements of the COA.  
(e) Authority to Designate the COA. The authority to designate the COA for any OCS source shall not be delegated, but shall be retained by the Administrator.  
(f) Administrative Procedures and Public Participation. The Administrator will use the following public notice and comment procedures for processing a request for COA designation under this section:  
(1) Within 60 days from receipt of a demonstration, the Administrator shall:  
(i) Make available in at least one location in the NOA and in the area requesting COA designation, a copy of all materials submitted by the requester, a copy of the Administrator's preliminary determination, and a copy or summary of other materials, if any, considered by the Administrator in making his preliminary determination; and  
(ii) Notify the public, by prominent advertisement in a newspaper of general circulation in the NOA and the area requesting COA designation of the opportunity for written public comment on the information submitted by the requester and the Administrator's preliminary COA designation.  
(2) A copy of the notice required pursuant to § 55.4(e) of this part shall be sent to the requestor and to officials and agencies having jurisdiction over the area nearest to the OCS source as follows: State and local air pollution control agencies, and the chief executive of the city and county; the Federal Land Manager of any adjacent Class I areas; and the Indian governing body whose lands may be affected by emissions from the OCS source.  
(3) Public comments submitted in writing within 30 days after the date the public notice is made available shall be considered by the Administrator in making his final determination. All comments shall be made available for public inspection. At the time that a final decision is issued, the Administrator shall issue a response to comments.  
(4) The Administrator shall make a final COA designation within 60 days after the close of the public comment period. The Administrator shall notify, in writing, the requester and each control agency and the chief executive officer of any adjacent Class I areas; and the Indian governing body whose lands may be affected by emissions from the OCS source.  
§ 55.6 Permit requirements.  
(a) General Provisions. (1) Source information. (i) The owner or operator of an OCS source shall submit to the Administrator or delegated agency all information necessary to perform any analysis or make any determination required under this section.  
(ii) Any application submitted pursuant to this part by an OCS source shall include a description of all the requirements of this part that the applicant believes, after diligent research and inquiry, apply to the source and a description of how the source will comply with the applicable requirements.
(2) Exemptions. When an applicant submits any approval to construct or permit to operate application to the Administrator or delegated agency it shall include a request for any exemptions from compliance with a pollution control technology requirement that the applicant believes is technically infeasible or will cause an unreasonable threat to health and safety. The Administrator or delegated agency will act on the request for exemption under the procedures established in §55.7 of this part.

(3) Administrative Procedures and Public Participation. The Administrator will follow the applicable procedures of 40 CFR part 124 in processing applications under this section.

(4) Source Obligation. (i) Any owner or operator who constructs or operates an OCS source not in accordance with the applicable provisions of any other requirement under federal law.

(5) Delegation of Authority. If the Administrator delegates any of the responsibility to implementing and enforcing the requirements of this section to any state or local agency, the following provisions shall apply:

(i) The applicant shall send a copy of any permit application required by this section to the Administrator through the Regional Office at the same time the application is submitted to the delegated agency.

(ii) The delegated agency shall send a copy of any public comment notice required under this Section to the Administrator through the Regional Office.

(iii) The delegated agency shall send a copy of any preliminary determination and final permit action required under this Section to the Administrator through the Regional Office on the date of the determination and shall make available to the Administrator any materials used in making the determination.

(b) Preconstruction Requirements for OCS Sources Located Within 25 Miles of a State Seaward Boundary.

(1) No OCS source to which the requirements of §§55.13 through 55.14 of this part apply shall begin actual construction without a permit that requires the OCS source to meet those requirements.

(2) The applicant may be required to obtain more than one approval to construct, if necessitated by partial delegation of this part or by the requirements of this section and §§55.13 and 55.14 of this part.

(3) An approval to construct shall become invalid if construction is not commenced within 18 months after receipt of such approval, if construction is discontinued for a period of 18 months or more, or if construction is not completed within a reasonable time. The 18 month period may be extended upon a showing satisfactory to the Administrator or the delegated agency that an extension is justified. The requirement shall not supersede a more stringent requirement under §§55.13 or 55.14 of this part.

(4) Any preconstruction permit issued to a new OCS source or modification shall remain in effect unless and until it expires under paragraph (b)(3) of this section or is rescinded under the applicable requirements listed in §§55.13 and 55.14 of this part.

(5) Whenever any proposed OCS source or modification to an existing OCS source is subject to action by a federal Agency that may necessitate preparation of an environmental impact statement pursuant to the National Environmental Policy Act (42 U.S.C. 4321), review by the Administrator conducted pursuant to this section shall be coordinated with the environmental reviews under that Act to the extent feasible and reasonable.

(6) The Administrator or delegated agency and the applicant shall provide written notice of any permit application from a source, the emissions from which may effect a Class I area, to the Federal Land Manager charged with direct responsibility for management of any lands within the Class I area. Such notification shall include a copy of all information contained in the permit application and shall be given within 30 days of receipt of the application and at least 60 days prior to any public hearing on the preconstruction permit.

(7) The preconstruction requirements above shall not apply to a particular modification, as defined in §55.13 or 55.14 of this part, of an existing OCS source if:

(i) The modification is necessary to comply with this part, and no other physical change or change in the method of operation is made in conjunction with the modification;

(ii) The modification is made within 24 months of promulgation of this part; and

(iii) The modification does not result in an increase in potential emissions or actual hourly emissions of a pollutant regulated under the Act.

(8) Sources intending to perform modifications that meet all of the criteria of §55.6(b)(2) of this part shall submit a compliance plan to the Administrator or delegated agency prior to performing the modification. The compliance plan shall describe the schedule and method the source will use to comply with the applicable OCS requirements within 24 months.

(c) Operating Permit Requirements for Sources Located Within 25 Miles of a State Seaward Boundary.

(1) All applicable operating permit requirements listed in this section and §§55.13 and 55.14 of this part shall apply to OCS sources.

(2) The Administrator or delegated agency shall not issue a permit to operate an existing OCS source that has not demonstrated compliance with all the applicable requirements of this part.

(3) If the COA does not have an approvable operating permit program or does not adequately implement an approved program as required by 40 CFR part 70, the applicable requirements of 40 CFR part 71, the federal permitting program, shall apply to OCS sources and after the date that 40 CFR part 71 becomes a requirement in the COA. The applicable requirements of 40 CFR part 71 will be implemented and enforced by the Administrator.

(d) Permit Requirements for Sources located beyond 25 miles of a State Seaward Boundary. (1) OCS sources located beyond 25 miles of a state seaward boundary shall be subject to the permitting requirements set forth in §55.13 of this part.

(2) The Administrator shall retain authority to implement and enforce all requirements of this part for OCS sources located beyond 25 miles from a state seaward boundary.

§55.7 Exemptions.

(a) The Administrator or the delegated agency may exempt a source from a control technology requirement in effect under this part if the Administrator or the delegated agency finds that compliance with the control technology requirement is technically infeasible or
will cause an unreasonable threat to health and safety.

(b) An applicant shall submit a request for an exemption from a control technology requirement at the same time as the applicant submits a preconstruction or operating permit application to the Administrator or delegated agency. If no permit or permit modification is required, an exemption request must be submitted to the Administrator or delegated agency within 90 days from the date the requirement is promulgated by EPA.

(1) A request for exemption shall include information that demonstrates that compliance with a requirement of this part would be technically infeasible or would cause an unreasonable threat to health and safety.

(2) The request shall include a proposed substitute requirement(s) as close in stringency to the original requirement as possible.

(3) The request shall include an estimate of emission reductions that would be achieved by compliance with the original requirement, an estimate of emission reductions that would be achieved by compliance with the proposed substitute requirement(s), and an estimate of residual emissions.

(4) The request shall identify emission reductions of a sufficient quantity to offset the estimated residual emissions.

(c) If the authority to grant exemptions has been delegated, the delegated agency shall consult with the Minerals Management Service and the U.S. Coast Guard to determine whether the exemption will be granted.

(1) The delegated agency shall provide to the Minerals Management Service, and the U.S. Coast Guard a copy of the application within 15 days of receiving such application.

(2) If the delegated agency, the Minerals Management Service, and the U.S. Coast Guard cannot reach consensus decision on an exemption request within 90 days from the date the delegated agency received the application, the exemption request shall automatically be appealed to the Administrator.

(3) Automatic appeal to the Administrator can be delayed beyond the initial 90 days by the mutual consent of the delegated agency, the Minerals Management Service, and the U.S. Coast Guard.

(d) At the time the draft permit is issued for public comment or within 90 days of receipt of the exemption request if no permit is required, the Administrator or the delegated agency shall:

(1) Propose to grant the exemption request; and

(i) Shall propose a substitute requirement(s), equal to or as close in stringency to the original requirement as possible; and

(ii) Provide for adequate public notice and comment of the proposed substitute requirement(s) as the applicant submits a copy of the Administrator's preliminary determination, and a copy of summary of other materials, if any, considered by the Administrator in making his preliminary determination; and

(iii) Notify the public, by prominent advertisement in a newspaper of general circulation in the COA and NOA, of the opportunity for written public comment on the information submitted by the owner or operator and the Administrator's preliminary determination on the approvability of the exemption request.

(e) Grant of Exemption. (1) The Administrator or delegated agency shall impose a substitute requirement(s), equal to or as close in stringency to the original requirement as possible.

(2) The Administrator or the delegated agency shall require the applicant to offset any residual emissions resulting from the exemption, in accordance with the regulations then in effect.

(3) For new and existing OCS sources as defined in the applicable requirements of §§ 55.13 and 55.14 of this part, offsets shall be obtained at the following ratios, in accordance with the requirements of the Act and the regulations thereunder:

(i) New OCS sources shall comply with the offset ratio required in the COA if offsets are required in the COA.

(ii) New OCS sources shall conform with the offset ratio of 1:1 if offsets are required in the COA.

(iii) Existing OCS sources shall offset at a ratio of 1:1.

(f) Administrative Procedures and Public Participation. If a permit is not required, the Administrator will use the following procedures for processing an exemption request under this section:

(1) Within 30 days of receipt of an exemption request, the Administrator shall advise the applicant of any deficiency in the information submitted in support of the exemption. In the event of such a deficiency, the date of receipt of the request, for the purpose of this section, shall be the date on which all required information is received by the Administrator.

(2) Within 90 days after receipt of a complete request, the Administrator shall:

(i) Make a preliminary determination whether the exemption request should be granted with conditions in accordance with paragraph (d) of this section, or denied. Denials of exemption requests are not subject to any further public notice, comment, or hearings. Denials by the Regional Administrator may be informally appealed to the Administrator within 30 days of the decision by a letter setting forth the relevant facts. The appeal shall be considered denied if the Administrator does not take action on the letter within 60 days after receiving it. Written notice of the denial shall be given to the requester.

(ii) Make available, in a least one location in the COA and NOA, a copy of all materials submitted by the requester, a copy of the Administrator's preliminary determination, and a copy of summary of other materials, if any, considered by the Administrator in making his preliminary determination; and

(3) A copy of the notice required pursuant to this paragraph shall be sent to the applicant and to officials and agencies having jurisdiction in the COA and NOA as follows: State and local air pollution control agencies, and the chief executive of the city and county; the Federal Land Manager of any adjacent Class I areas; and the Indian governing body whose lands may be affected by emissions from the OCS source.

(4) Public comments submitted in writing within 30 days after the date the public notice is made available will be considered by the Administrator in making his final decision on the request. All comments will be made available for public inspection. At the time that any final decision is issued, the Administrator will issue a response to comments.

(5) The Administrator will take final action on the exemption request within 30 days after the close of the public comment period. The Administrator will notify, in writing, the applicant and each person who has submitted written comments, or requested notice of the final action, of the conditional approval, or denial of the request, and will set forth his reasons for conditional approval or denial. Such notification will be made available for public inspection.

(6) Within 30 days after final action has been taken, any person filed comments on the preliminary determination may petition the Administrator to review any aspect of the decision. Any person who failed to file comments on the preliminary decision may petition for administrative review only on the changes from the preliminary to the final decision.

(7) The Administrator may extend each of the time periods specified in § 55.7(e) of this part by no more than 30 days or such other period as agreed to by the applicant and the Administrator.
§ 55.8 Monitoring, reporting, inspections, and compliance.

(a) The Administrator may require monitoring or reporting and may authorize inspections pursuant to section 114 of the Act and the regulations thereunder. Sources shall also be subject to the requirements as set forth in §§ 55.13 and 55.14 of this part.

(b) The requirements for Enhanced Compliance and Monitoring (section 114(a)(3)) and the requirements for Certification of Compliance (40 CFR part 64) shall apply.

(c) An existing OCS source that is not required to obtain a permit to operate within 24 months of the date of promulgation of this part shall submit a compliance report to the Administrator or delegated agency within 25 months of promulgation of this part. The compliance report shall specify all the applicable OCS requirements and a description of how the source has complied with these requirements.

(d) The Administrator or the delegated agency shall consult with the Minerals Management Service and the U.S. Coast Guard prior to inspections. This shall in no way interfere with the ability of EPA or the delegated agency to conduct surprise inspections.

§ 55.9 Enforcement.

(a) OCS sources shall comply with all requirements of this part and all permits issued pursuant to this part. Failure to do so shall be considered a violation of section 111(c) of the Act.

(b) Pursuant to section 328 of the Act, the provisions of sections 113, 114, 120, and 303 of the Act shall apply to OCS sources.

(c) If a facility is ordered to cease operation of any piece of equipment due to enforcement action taken by EPA or a delegated agency to conduct surprise inspections based on cost recovery objectives, however, EPA will adjust the fees to reflect the costs to EPA to issue and administer the permit program. Upon its promulgation in the Federal Register as a final rule, EPA will collect operating permit fees in accordance with the requirements of 40 CFR part 71.

(2) EPA will collect all other fees from OCS sources calculated in accordance with the fee requirements imposed on the COA if the fees are based on regulatory objectives, such as discouraging emissions. If the fee requirements are based on cost recovery objectives, however, EPA will adjust the fees to reflect the costs to EPA to issue and administer the permit program.

(3) Upon delegation, the delegated agency will collect fees from OCS sources calculated in accordance with the fee requirements imposed in the COA. Upon delegation of authority to implement and enforce any portion of this part, EPA will cease to collect fees imposed in conjunction with that portion.

(b) OCS Sources Located Beyond 25 Miles from States' Seaward Boundaries. EPA will calculate and collect fees in accordance with the requirements of 40 CFR part 71 when promulgated as a final rule in the Federal Register.

§ 55.11 Delegation.

(a) The governor or the governor's designee of any state adjacent to an OCS source subject to the requirements of this part, may submit a request to the Administrator for authority to implement and enforce the requirements of this OCS program within 25 miles of the state seaward boundary, pursuant to section 328(c) of the Act. Authority to implement and enforce §§ 55.5, 55.11, and 55.12 of this part, will not be delegated.

(b) The Administrator will delegate implementation and enforcement authority to a state if the Administrator determines that the state's regulations are adequate, including a demonstration by the state that:

(1) It has an adjacent OCS source;

(2) It has adopted the appropriate portions of this part into state law;

(3) It has adequate authority under state law to implement and enforce the requirements of this part. A letter from the State Attorney General shall be required stating that the requesting agency has such authority; and

(4) It has adequate resources to implement and enforce the requirements for this part.

(c) The Administrator will notify in writing the governor or the governor's designee of the Administrator's final action on a request for delegation within 6 months of the receipt of the request.

(d) If the Administrator finds that the state regulations are adequate, the Administrator will authorize the state to implement and enforce the OCS requirements under state law. If the Administrator finds that only part of the state regulations are adequate, he will authorize the state to implement and enforce only that portion of this part.

(e) Upon delegation, a state may use any authority it possesses under state law to enforce any permit condition or any other requirement of this part for which the agency has delegated authority under this part. A state may use any authority it possesses under state law to require monitoring and reporting and to conduct inspections.

(f) Nothing in this part shall prohibit the Administrator from enforcing any requirement of this part.

(g) The Administrator will withdraw a delegation of any authority to implement and enforce any or all of this part if the Administrator determines that:

(1) The requirements of this part are not being adequately implemented or enforced by the delegated agency;

(2) The requirements of this part are being implemented or enforced in an inequitable, arbitrary, or capricious manner.

(h) Sharing of information. Any information obtained or used in the administration of a delegated program shall be made available to EPA upon request without restriction. If the information has been submitted to the delegated agency under a claim of confidentiality, the delegated agency must notify the source of this obligation and submit that claim to EPA. Any information obtained from a delegated agency accompanied by a claim of confidentiality will be treated in accordance with the requirements of 40 CFR part 2.

(i) Grant of Exemptions. A decision by a delegated agency to grant or deny an exemption request may be appealed to the Administrator in accordance with §§ 55.7(e)(6) of this part.

§ 55.12 Consistency updates.

(a) The Administrator will update this part as necessary to maintain consistency with onshore requirements in order to attain and maintain federal and state ambient air quality standards and to comply with the provisions of part C of title I.

(b) When an OCS source submits an NOI, the Administrator will evaluate the requirements of the source to determine whether they are consistent with the onshore requirements existing at that
§ 55.13 Listing of federal requirements that apply to OCS sources.

(a) The requirements of this section shall apply to OCS sources as set forth below. In the event that a requirement of this section conflicts with an applicable requirement of § 55.14 of this part, and a source cannot comply with the requirements of both sections, the more stringent requirement shall apply.

(b) In applying the requirements of this section:

(1) New Source means new OCS source; and

(2) Existing Source means existing OCS source; and

(3) Modification means a modification to an OCS source.

(c) 40 CFR part 60 (NSPS) shall apply to all OCS sources in the manner as in the NOA.

(d) 40 CFR part 124 (PSD) shall apply to OCS sources:

(1) Located within 25 miles of the states’ seaward boundary if the requirements are in effect in the COA;

(2) Located beyond 25 miles of states’ seaward boundaries.

(e) 40 CFR part 52, subpart C, and 40 CFR part 71 shall apply to OCS sources:

(1) Located within 25 miles of the states’ seaward boundary if the requirements are in effect in the COA;

(2) Located beyond 25 miles of states’ seaward boundaries.

(f) During periods of EPA implementation and enforcement of this section, the following shall apply:

(i) Any reference to a State or local air pollution control agency shall mean EPA.

(ii) Any submittal to a State or local air pollution control agency shall be submitted to the Administrator through the EPA Regional Office.

(iii) Nothing in this section shall alter or limit EPA’s authority to administer or enforce the requirements of this part under federal law.

(iv) EPA shall not be bound by any state or local administrative or procedural requirements including, but not limited to requirements pertaining to hearing boards, permit issuance, public notice procedures, and public hearings.

(b) In applying the requirements of this section:

(i) New Source means new OCS source; and

(ii) Existing Source means existing OCS source; and

(iii) Modification means a modification to an existing OCS source.

(c) No rule or regulation will be incorporated into this part if EPA determines that it is inequitable, arbitrary, or capricious.

§ 55.14 Listing of Federal, State, and Local Requirements that Apply to OCS Sources Located Within 25 Miles of States’ Seaward Boundaries, by State.

(a) Definitions. (1) In applying the requirements of this section:

(i) New Source means new OCS source; and

(ii) Existing Source means existing OCS source; and

(iii) Modification means a modification to an existing OCS source.

(b) The provisions of 40 CFR parts 10, 30, 40 CFR part 124, and 40 CFR part 52 and accompanying appendix S shall apply to OCS sources located within 25 miles of states’ seaward boundaries, if these requirements are in effect in the COA.

(c) (Reserved)

(d) (Reserved)

(e) (Reserved)

(f) (Reserved)

(g) (Reserved)

(h) (Reserved)

(i) (Reserved)

(j) (Reserved)

(k) (Reserved)

(l) (Reserved)

(m) (Reserved)

(n) (Reserved)

(o) (Reserved)

(p) (Reserved)

(q) (Reserved)

(r) (Reserved)

(s) (Reserved)

(t) (Reserved)

(u) (Reserved)

(v) (Reserved)

(w) (Reserved)

(x) (Reserved)

(y) (Reserved)

(z) (Reserved)
Part V

Environmental Protection Agency

Guidelines for Developmental Toxicity Risk Assessment; Notice
Guidelines for Developmental Toxicity Risk Assessment

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Final Guidelines for Developmental Toxicity Risk Assessment.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is today issuing final amended guidelines for assessing the risks for developmental toxicity from exposure to environmental agents. As background information for this guidance, this notice describes the scientific basis for concern about exposure to agents that cause developmental toxicity, outlines the general process for assessing potential risk to humans because of environmental contaminants, summarizes the history of these guidelines, and addresses public and Science Advisory Board comments on the 1989 “Proposed Amendments to the Guidelines for the Health Assessment of Suspect Developmental Toxicants” [54 FR 9386-9403]. These guidelines, which have been renamed “Guidelines for Developmental Toxicity Risk Assessment” (hereafter “Guidelines”), outline principles and methods for evaluating data from animal and human studies, exposure data, and other information to characterize risk to human development, growth, survival, and function because of exposure prior to conception, prenatally, or to infants and children. These Guidelines amend and replace EPA’s 1986 “Guidelines for the Health Assessment of Suspect Developmental Toxicants” [51 FR 34028-34040] by adding new guidance on the relationship between maternal and developmental toxicity, characterization of the health-related data base for developmental toxicity risk assessment, use of the reference dose or reference concentration for developmental toxicity (RfD or RfC), and use of the benchmark dose approach. In addition, the Guidelines were reorganized to combine hazard identification and dose-response evaluation since these are usually done together in assessing risk for human health effects other than cancer.

EFFECTIVE DATE: The Guidelines will be effective December 5, 1991.


SUPPLEMENTARY INFORMATION: The Clean Air Act (CAA), the Toxic Substances Control Act (TSCA), the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and other statutes administered by the EPA authorize the Agency to protect public health against adverse effects from environmental pollutants. One type of adverse effect of great concern is developmental toxicity, i.e., adverse effects produced prior to conception, during pregnancy and childhood. Exposure to agents affecting development can result in any one or more of the following manifestations of developmental toxicity: Death, structural or functional birth alteration, and/or functional deficit. These manifestations encompass a wide array of adverse developmental endpoints, such as spontaneous abortions, stillbirths, malformations, early postnatal mortality, reduced birth weight, mental retardation, sensory loss, and other adverse functional or physical changes that are manifested postnatally.

The Role of Environmental Agents in Developmental Toxicity

Several environmental agents are established as causing developmental toxicity in humans (e.g., lead, polychlorinated biphenyls, methylmercury, ionizing radiation), while many others are suspected of causing developmental toxicity in humans based on data from experimental animal studies (e.g., some pesticides, other heavy metals, glycol ethers, alcohols, and phthalates). Data for several of the agents identified as causing human developmental toxicity have been compared to the experimental animal data (Nisbet and Karch, 1983; Kimmel et al., 1984; Hemminki and Vinels, 1985; Kimmel et al., 1990a). In these comparisons, the agents causing human developmental toxicity in almost all cases were found to produce effects in experimental animal studies and, in at least one species tested, types of effects similar to those in humans were generally seen. This information provides a strong basis for the use of animal data in conducting human health risk assessments. On the other hand, a number of agents found to cause developmental toxicity in experimental animal studies have not shown clear evidence of hazard in humans, but the available human data are often too limited to evaluate a cause and effect relationship. The comparison of dose-response relationships is hampered by differences in route, timing and duration of exposure. When careful comparisons have been done taking these factors into account, the minimally effective dose for the most sensitive animal species was generally higher than that for humans, usually within 10-fold of the human effective dose, but sometimes was 100 times or more higher (e.g., polychlorinated biphenyls [Tilson et al., 1990]). Thus, the experimental animal data were generally predictive of adverse developmental effects in humans, but in some cases, the administered dose or exposure level required to achieve these adverse effects was much higher than the effective dose in humans.

In most cases, the toxic effects of an agent on human development have not been fully studied, with exposure of humans to that agent may have been established. At the same time, there are many developmental effects in humans with unknown causes and no clear link with exposure to environmental agents. The background incidence of human spontaneous abortion, for example, was estimated by Hertig (1967) to be approximately 50% of all conceptions, and more recently, Wilcox et al. (1985), using sensitive techniques for detecting pregnancy as early as 9 days postconception, observed that 35% of postimplantation pregnancies ended in an embryonic or fetal loss. Of those infants born alive, approximately 7.4% are reduced in weight at birth (i.e., below 2500 g) (Selevan, 1981), approximately 3% are found to have one or more congenital malformations at birth, and by the end of the first postnatal year, about 3% more are found to have serious developmental defects (Shepard, 1986). Of those children born with developmental defects, it has been estimated that 20% are due to genetic transmission and 10% can be attributed to known exogenous factors (including drugs, infections, ionizing radiation, and environmental agents), leaving the remaining 70% with unknown causes (Wilson, 1977). In a recent hospital-based surveillance study (Nelson and Holmes, 1989), 50.7% of congenital malformations were estimated to be due to genetic or multifactorial causes, while 3.2% were associated with exposure to exogenous agents and 2.9% to twinning or uterine factors, leaving 43.2% to unknown causes. The proportion of the effects with unknown causes that may be attributable to environmental agents or to a combination of factors, such as environmental agents and genetic
The Risk Assessment Process and Its Application to Developmental Toxicity

Risk assessment is the process by which scientific judgments are made concerning the potential for toxicity to occur in humans. The National Research Council (1983) has defined risk assessment as including some or all of the following components: hazard identification, dose-response assessment, exposure assessment, and risk characterization. In general, the process of assessing the risk of human developmental toxicity may be adapted to this format. In practice, however, hazard identification for developmental toxicity and other noncancer health effects is usually done in conjunction with an evaluation of dose-response relationships, since the determination of a hazard is often dependent on whether a dose-response relationship is present (Kimmel et al., 1990b). One advantage of this approach is that it reflects hazard within the context of dose, route, duration and timing of exposure, all of which are important in comparing the toxicity information available to potential human exposure scenarios. Secondly, this approach avoids labelling of chemicals as developmental toxicants on a purely qualitative basis. For these reasons, the Guidelines combine hazard identification and dose-response evaluation under one section (Section II), and characterize both hazard and dose information as part of the health-related data base for risk assessment. If data are considered sufficient for risk assessment, an oral or dermal reference dose for developmental toxicity (RfDoT) or an inhalation reference concentration for developmental toxicity (RicDoT) is then derived for comparison with human exposure estimates. A statement of the potential for human risk and the consequences of exposure can come only from integrating the hazard identification/dose-response evaluation with the human exposure estimates in the final risk characterization. Combining hazard identification and dose-response evaluation, as well as development of the RDd or Ricd, are revisions of the 1986 Guidelines. Hazard identification/dose-response evaluation involves examining all available experimental animal and human data and the associated doses, routes, timing and duration of exposures to determine if an agent causes developmental toxicity and/or maternal or paternal toxicity in that species and under what exposure conditions. The no-observed-adverse-effect-level (NOAEL) and/or the lowest-observed-adverse-effect-level (LOAEL) are determined for each study and type of effect. Based upon the hazard identification/dose-response evaluation and criteria provided in these Guidelines, the health-related data base can be characterized as sufficient or insufficient for use in risk assessment (Section III.C). Because of the limitations associated with the use of the NOAEL, the Agency is evaluating the use of an additional approach, i.e., the benchmark dose approach (Crump, 1994), for more quantitative dose-response evaluation when sufficient data are available. The benchmark dose provides an indication of the risk associated with exposures near the NOAEL, taking into account the variability in the data and the slope of the dose-response curve.

For the determination of the RIdO or the RicO, uncertainty factors are applied to the NOAEL (or LOAEL, if a NOAEL has not been established) to account for extrapolation from experimental animals to humans and for variability within the human population. The RIdO or RicO is generally based on a short duration of exposure as is typically used in developmental toxicity studies in experimental animals. The use of the terms RIdO and RicO distinguish them from the oral or dermal reference dose (Rd) and the inhalation reference concentration (Rc) which refer primarily to chronic exposure situations (U.S. EPA, 1991). Uncertainty factors may also be applied to a benchmark dose for calculating the RIdO or RicO, but the Agency has little experience with applying this approach and is currently supporting research efforts to determine the appropriate methods. As more information becomes available, guidance will be written and published as an addendum to these Guidelines. These approaches are discussed further in section III.D.

The exposure assessment identifies human populations exposed or potentially exposed to an agent, describes their composition and size, and presents the types, magnitudes, frequencies, and durations of exposure to the agent. The exposure assessment provides an estimate of human exposure levels for particular populations from all potential sources. In risk characterization, the hazard identification/dose-response evaluation and the exposure assessment for given populations are combined to estimate some measure of the risk for developmental toxicity. As part of risk characterization, a summary of the strengths and weaknesses in each component of the risk assessment are discussed along with major assumptions, scientific judgments, and, to the extent possible, qualitative and quantitative estimates of the uncertainties. Confidence in the health-related data is always presented in conjunction with information on dose-response and the RDd or Rd. If human exposure estimates are available, the exposure basis used for the risk assessment is clearly described, e.g., highly exposed individuals, or highly sensitive or susceptible individuals. The NOAEL may be compared to the various estimates of human exposure to calculate the margin(s) of exposure (MOE). The considerations for determining adequacy of the MOE are similar to...
those used in determining the appropriate size of the uncertainty factor for generating the R\textsubscript{D\textsubscript{a}} or R\textsubscript{FC\textsubscript{a}}.

Risk assessment is just one component of the regulatory process and defines the potential adverse health consequences of exposure to a toxic agent. The other component, risk management, combines risk assessment with statutory directives regarding socioeconomic, technical, political, and other considerations, to reach decisions about the appropriate regulation of the suspected toxic agents. Risk management is not dealt with directly in these Guidelines since the basis for decision-making goes beyond scientific consideration alone, but the use of scientific information in this process is discussed in some cases. For example, the acceptability of the MOE is a risk management decision, but the scientific bases for establishing this value are discussed here.

History of These Guidelines

In 1984, the Agency published “Proposed Guidelines for the Health Assessment of Suspect Developmental Toxicants” (49 FR 46324–46331). Following extensive scientific and public review, final guidelines were issued on September 24, 1986 (51 FR 34029–34040). The 1986 Guidelines set forth principles and procedures to guide EPA scientists in the conduct of Agency risk assessments, to help promote high scientific quality and Agency-wide consistency, and to inform Agency decision makers and the public about these scientific procedures. In publishing this guidance, EPA emphasized that one purpose of its risk assessment guidelines was to “encourage research and analysis that will lead to new risk assessment methods and data,” which in turn would be used to revise and improve the guidelines, and better guide Agency risk assessors. Thus, the 1986 Guidelines were developed and published with the understanding that risk assessment is an evolving science and that continued study could lead to changes.

As expected, Agency experience with the 1986 Guidelines suggested that additional or alternate approaches should be considered for certain aspects of the guidance. Proposals to amend the guidelines were considered soon after their publication in September 1986, because of new reviews or re-evaluations that focused on some of the issues identified for research in the guidelines. Included were several workshops and symposia cited in the Introduction to these Guidelines. In addition, much experience had been gained in using the 1986 Guidelines and in instructing others in their use.

Based on this experience, amendments to these guidelines were proposed for public comment in March 1989 (54 FR 9386–9403). Following receipt and review of the public comments, they were collated, summarized, and reviewed by scientists within the Agency. On October 27, 1989, EPA’s Science Advisory Board (SAB) met to review the Proposed Amendments and the summarized public comments, and to be briefed by Agency scientists concerning proposed responses.

During this same period, several issues with implications for health effects other than cancer were under discussion in the Agency and elsewhere. These issues included use of the benchmark dose (see section III.B), exposure descriptors (see section V.C), and risk characterization (see section V). Thus, generic discussions on risk assessment issues, along with comments from the public and the SAB, have influenced the structure and content of these Guidelines.

These revised Guidelines were then reviewed by a number of Agency scientists and official panels, including the Risk Assessment Forum and the Risk Assessment Council. The revised Guidelines also were presented to the SAB on March 27, 1991, for final comment. In addition, a review was conducted by the interagency Working Party on Reproductive Toxicology, Subcommittee on Risk Assessment of the Federal Coordinating Committee on Science, Engineering and Technology. Comments of these groups have been considered in the revision of these Guidelines. The full text of the final “Guidelines for Developmental Toxicity Risk Assessment” are published here.

These Guidelines were developed as part of an interoffice guidelines development program under the auspices of the Risk Assessment Forum and the Office of Health and Environmental Assessment (OHEA) in the Agency’s Office of Research and Development. The Agency is continuing to study risk assessment issues raised in these Guidelines, and will revise them in line with new information as appropriate.

Following this Preamble are two parts: Part A is the Guidelines, and part B is the Response to the Public and Science Advisory Board Comments. Part B includes a summary of the issues raised by the public and the SAB, and the Agency’s responses to those comments. References, supporting documents, and comments received on the Proposed Amendments, as well as a copy of the final Guidelines, are available for inspection and copying at the Public Information Reference Unit Docket (202–20–5926), EPA Headquarters Library, 401 M Street, SW., Washington, DC, between the hours of 8 a.m. and 4:30 p.m.


William K. Reill,
Administrator.

Contents

Part A: Guidelines for Developmental Toxicity Risk Assessment

I. Introduction

II. Definitions and Terminology

III. Hazard Identification/Dose-Response Evaluation

A. Developmental Toxicity Studies: End Points and Their Interpretation

1. Laboratory Animal Studies
   a. End Points of Maternal Toxicity
   b. End Points of Developmental Toxicity: Altered Survival, Growth, and Morphological Development
   c. End Points of Developmental Toxicity: Functional Deficits
   d. Overall Evaluation of Maternal and Developmental Toxicity

2. Presenting Specific Scenarios

3. Other Considerations
   a. Pharmacokinetics
   b. Comparisons of Molecular Structure
   c. Dose-Response Evaluation
   d. Characterization of the Health-Related Data Base

D. Determination of the Reference Dose (R\textsubscript{D\textsubscript{a}}) or Reference Concentration (R\textsubscript{FC\textsubscript{a}}) for Developmental Toxicity

E. Summary

IV. Exposure Assessment

V. Risk Characterization

A. Overview

B. Integration of the Hazard Identification/Dose-Response Evaluation and Exposure Assessment

C. Descriptors of Developmental Toxicity Risk

1. Estimation of the Number of Individuals Exposed to Levels of Concern

2. Presenting Specific Scenarios

3. Risk Characterization for Highly Exposed Individuals

4. Risk Characterization for Highly Sensitive or Susceptible Individuals
guidance for the interpretation of studies. If adequate human data are not available, then it is necessary to use data obtained from other species. There are a number of unknowns in the extrapolation of data from animal studies to humans. Therefore, a number of assumptions must be made on the relevance of effects to potential human risk which are generally applied in the absence of data. These assumptions provide the inferential basis for the approaches taken to risk assessment in these Guidelines.

First, it is assumed that an agent that produces an adverse developmental effect in experimental animal studies will potentially pose a hazard to humans following sufficient exposure during development. This assumption is based on the comparisons of data for agents known to cause human developmental toxicity (Nisbet and Karch, 1983; Kimmel et al., 1984; Hemminki and Vineis, 1985; Kimmel et al., 1990a), which indicate that, in almost all cases, experimental animal data are predictive of a developmental effect in humans. It is assumed that all of the four manifestations of developmental toxicity (death, structural abnormalities, growth alterations, and functional deficits) are of concern. In the past, there has been a tendency to consider only malformations or malformations and death as end points of concern. From the data on agents that are known to cause human developmental toxicity (Nisbet and Karch, 1983; Kimmel et al., 1984; Hemminki and Vineis, 1985; Kimmel et al., 1990a), there is usually at least one experimental species that mimics the types of effects seen in humans, but in other species tested, the type of developmental perturbation may be different. Thus, a biologically significant increase in any of the four manifestations is considered indicative of an agent’s potential for disrupting development and producing a developmental hazard.

It is assumed that the types of developmental effects seen in animal studies are not necessarily the same as those that may be produced in humans. This assumption is made because it is impossible to determine which will be the most appropriate species in terms of predicting the specific types of effects seen in humans. The fact that every species may not react in the same way could be due to species-specific differences in critical periods, differences in timing of exposure, metabolism, developmental patterns, placentaion, or mechanisms of action.

The most appropriate species is used to estimate human risk when data are available (e.g., pharmacokinetics). In the absence of such data, it is assumed that the most sensitive species is appropriate for use, based on observations that humans are as sensitive or more so than the most sensitive animal species tested for the majority of agents known to cause human developmental toxicity (Nisbet and Karch, 1983; Kimmel et al., 1984; Hemminki and Vineis, 1985; Kimmel et al., 1990a).

In general, a threshold is assumed for the dose-response curve for agents that produce developmental toxicity. This is based on the known capacity of the developing organism to compensate for or to repair a certain amount of damage at the cellular, tissue, or organ level. In addition, because of the multipotency of cells at certain stages of development, multiple insults at the molecular or cellular level may be required to produce an effect on the whole organism.

II. Definitions and Terminology

The Agency recognizes that there are differences in the use of terms in the field of developmental toxicology. For the purposes of these Guidelines the following definitions will be used.

Developmental toxicity—The study of adverse effects on the developing organism that may result from exposure prior to conception (either parent), during prenatal development, or postnatally to the time of sexual maturation. Adverse developmental effects may be detected at any point in the life span of the organism. The major manifestations of developmental toxicity include: (1) Death of the developing organism, (2) structural abnormality, (3) altered growth, and (4) functional deficiency.

Altered growth—An alteration in offspring organ or body weight or size. Changes in one end point may or may not be accompanied by other signs of altered growth (e.g., changes in body weight may or may not be accompanied by changes in crown-rump length and/or skeletal ossification). Altered growth can be induced at any stage of development, may be reversible, or may result in a permanent change.

Functional developmental toxicology—The study of alterations or delays in the physiological and/or biochemical competence of an organism or organ system following exposure to an agent during critical periods of development pre- and/or postnatally.

Structural abnormalities—Structural alterations in development that include both malformations and variations.

Malformations and variations—A malformation is usually defined as a...
permanent structural change that may adversely affect survival, development, or function. The term teratogenicity is used in these Guidelines to refer only to malformations. The term variation is used to indicate a divergence beyond the usual range of structural constitution that may not adversely affect survival or health. Distinguishing between variations and malformations is difficult since there exists a continuum of responses from the normal to the extremely deviant. There is no generally accepted classification of malformations and variations. Other terms that are often used, but no better defined, include anomalies, deformations, and aberrations.

III. Hazard Identification/Dose-Response Evaluation of Agents That Cause Developmental Toxicity

This section discusses the evaluation and interpretation of hazards for a variety of end points of developmental toxicity seen in both human and animal studies, and describes the criteria for characterizing the sufficiency of the health-related data base for conducting a developmental toxicity risk assessment. It also details the use of dose-response data for determining potential hazards, and describes the calculation of the RfDrr or RfCor, a dose or concentration that is assumed to be without appreciable risk of deleterious developmental effects for a given agent.

Developmental toxicity is expressed as one or more of a number of possible end points that may be used for evaluating the potential of an agent to cause abnormal development. Developmental toxicity generally occurs in a dose-related manner, may result from short-term exposure (including single exposure situations) or from longer-term low-level exposure, may be produced by various routes of exposure, and the types of effects may vary depending on the timing of exposure because of a number of critical periods of development for various organs and functional systems.

The four major manifestations of developmental toxicity are death, structural abnormality, altered growth, and functional deficit. The relationship among these manifestations may vary with increasing dose, and especially at higher doses, death of the conceptus may preclude expression of other manifestations. Of these, all four manifestations have been evaluated in human studies, but only the first three are traditionally measured in laboratory animals using the conventional developmental toxicity (also called teratogenicity or Segment II) testing protocol as well as in other study protocols, such as the multigeneration study or the continuous breeding study. Although functional deficits seldom have been evaluated in routine testing studies in experimental animals, functional evaluations are beginning to be required in certain regulatory situations (U.S. EPA, 1986a, 1988a, 1989b, 1991a).

Developmental toxicity can be considered a component of reproductive toxicity, and often it is difficult to distinguish between effects mediated through the parents versus direct interaction with developmental processes. For example, developmental toxicity may be influenced by the effects of toxic agents on the maternal system when exposure occurs during pregnancy or lactation. In addition, following parental exposure prior to conception, developmental toxicity may result in their offspring and, potentially, in subsequent generations. Therefore, it is useful to consult the “Proposed Guidelines for Assessing Male Reproductive Risk” (U.S. EPA, 1986b) and the “Proposed Guidelines for Assessing Female Reproductive Risk” (U.S. EPA, 1989c) in conjunction with these Guidelines. Mutational events that occur as a result of exposure to agents that cause developmental toxicity may be difficult to discriminate from other possible mechanisms in standard studies of developmental toxicity. When mutational events are suspected, the “Guidelines for Mutagenicity Risk Assessment” (U.S. EPA, 1986c), which specifically address the risks of heritable mutation, should be consulted.

Carcinogenic effects have occurred in humans following developmental exposures to diethylstilbestrol (Herbst et al., 1971). Several additional agents (e.g., direct-acting alkylating agents) have been shown to cause cancer following developmental exposures in experimental animals, and it appears from the data collected thus far that agents capable of causing cancer in adults may also cause transplacental or neonatal carcinogenesis (Anderson et al., 1985). Currently, there is no way to predict whether the developing offspring or adult will be more sensitive to the carcinogenic effects of an agent. At present, testing for carcinogenesis following developmental exposure is not routinely required. However, if this type of effect is reported for an agent, it is considered appropriate to use the “Guidelines for Carcinogen Risk Assessment” (U.S. EPA, 1986b) for assessing human risk.

A. Developmental Toxicity Studies: End Points and Their Interpretation

1. Laboratory Animal Studies

This section discusses the end points examined in routinely used protocols as well as the use of other types of studies, including functional studies and short-term tests. The most commonly used protocol for assessing developmental toxicity in laboratory animals involves the administration of a test substance to pregnant animals (usually mice, rats, or rabbits) during the period of major organogenesis, evaluation of maternal responses throughout pregnancy, and examination of the dam and the uterine contents just prior to term (U.S. EPA, 1982b, 1985a; FDA, 1966, 1970; Organization for Economic Cooperation and Development (OECD), 1981). Some studies may use exposures of one to a few days to investigate periods of particular sensitivity for induction of abnormalities in specific organs or organ systems. In addition, developmental toxicity may be evaluated in studies involving exposure to one or both parents prior to conception, to the conceptus during pregnancy and over several generations, or to offspring during the prenatal and preweaning periods (U.S. EPA, 1985a, 1986a, 1988a, 1991a; FDA, 1966, 1970; OECD, 1981; Lamb, 1985). These Guidelines are intended to provide information for interpreting developmental effects related to any of these types of exposure.

Appropriate study designs include a number of important factors. For example, test animal selection is generally based on considerations of species, strain, age, weight, and health status. Assignment of animals to dose groups by stratified randomization (on the basis of body weight) reduces bias and provides a basis for performing valid statistical tests. At a minimum, a high dose, a low dose, and one intermediate dose are included. The high dose is selected to produce some minimal maternal or adult toxicity (i.e., a level that at the least produces marginal but significantly reduced body weight, reduced weight gain, or specific organ toxicity, and at the most produces no more than 10% mortality). At doses that cause excessive maternal toxicity (that is, significantly greater than the minimal toxic level), information on developmental effects may be difficult to interpret and of limited value. The low dose is generally a NOAEL for adult and offspring effects, although if the low dose produces a biologically or
statistically significant increase in response, it is considered a LOAEL (see section III.A.1.f for a discussion of biological versus statistical significance). A concurrent control group treated with the vehicle used for agent administration is a critical component of a well-designed study.

The route of exposure in these studies is usually oral, unless the chemical or physical characteristics of the test substance or pattern of human exposure suggest a more appropriate route of administration. In the case of dermal exposure, developmental toxicity studies showing no indication of maternal or developmental toxicity are considered insufficient for risk assessment unless accompanied by absorption data (Kimmel and Francis, 1990). Dermal developmental toxicity studies in which skin irritation is too marked (moderate erythema and/or moderate edema, i.e., raised approximately 1 mm) also are considered insufficient, since excessive maternal toxicity may be produced from the irritation rather than from systemic exposure to the agent. Assessment of maternal toxicity is based on signs of systemic toxicity rather than on local effects such as skin irritation. Absorption data and limited pharmacokinetic data collected in dermal developmental toxicity studies provide very useful information in the evaluation of study design and data interpretation (Kimmel and Francis, 1990). Many of these points also are pertinent to studies by other routes of exposure.

The evaluation of specific end points of maternal and developmental toxicity is discussed in the next several sections. Appropriate historical control data sometimes can be very useful in the interpretation of these end points. Comparison of data from treated animals with concurrent study controls should always take precedent over comparison with historical control data. The most appropriate historical control data are those from the same laboratory in which studies were conducted. Even data from the same laboratory, however, should be used cautiously and examined for subtle changes over time that may result from genetic alterations in the strain or stock of the species used, changes in environmental conditions both in the breeding colony of the supplier and in the laboratory, and changes in personnel conducting studies and collecting data (Kimmel and Price, 1990). Study data should be compared with recent as well as cumulative historical data. Any change in laboratory procedure that might affect control data should be noted and the data accumulated separately from previous data.

The next three sections (a-c) discuss individual end points of maternal and developmental toxicity as measured in the conventional developmental toxicity study, the multigeneration study, and, when available, in postnatal studies. Other end points specifically related to reproductive toxicity are covered in the relevant risk assessment guidelines (U.S. EPA, 1988b, 1988c). The fourth section (d) deals with the integrated evaluation of all data, including the relative effects of exposure on maternal animals and their offspring, which is important in assessing the level of concern about a particular agent.

### a. End Points of Maternal Toxicity

A number of end points that may be observed as possible indicators of maternal toxicity are listed in Table 1. Maternal mortality is an obvious end point of toxicity; however, a number of other end points can be observed that may give an indication of the more subtle adverse effects of an agent. For example, in well conducted studies, the mating and fertility indices provide information on the general fertility rate of the animal stock used and are important indicators of toxic effects to adults if treatment begins prior to mating or implantation. Changes in gestation length may indicate effects on the process of parturition.

#### Table 1.—End Points of Maternal Toxicity—Continued

<table>
<thead>
<tr>
<th>End Points of Maternal Toxicity</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mortality</td>
<td>Presence of dead animals in utero, litter weight at sacrifice</td>
</tr>
<tr>
<td>Mating Index</td>
<td>(no. with seminal plugs or sperm/no. mated) × 100</td>
</tr>
<tr>
<td>Fertility Index</td>
<td>(no. with implants/no. of matings) × 100</td>
</tr>
<tr>
<td>Gestation Length</td>
<td>Useful when animals are allowed to deliver pups</td>
</tr>
<tr>
<td>Body Weight Day 0</td>
<td>During gestation</td>
</tr>
<tr>
<td>Day of necropsy</td>
<td>Throughout gestation</td>
</tr>
<tr>
<td>Body Weight Change</td>
<td>During treatment (including increments of time within treatment period)</td>
</tr>
<tr>
<td>Post-treatment to sacrifice</td>
<td>Corrected maternal (body weight change throughout gestation minus gravid uterine weight or litter weight at sacrifice)</td>
</tr>
</tbody>
</table>

Body weight and the change in body weight are viewed collectively as indicators of maternal toxicity for most species, although these end points may not be as useful in rabbits, because body weight changes are usually more variable (Kimmel and Price, 1990), and in some strains of rabbits, body weight is not a good indicator of pregnancy status. Body weight changes may provide more information than a daily body weight measured during treatment or during gestation. Changes in weight gain during treatment could occur that would not be reflected in the total weight change throughout gestation, because of compensatory weight gain that may occur following treatment but before sacrifice. For this reason, changes in weight gain during treatment can be examined as another indicator of maternal toxicity.

Changes in maternal body weight corrected for gravid uterine weight at sacrifice may indicate whether the effect is primarily maternal or intrauterine. For example, a significant reduction in weight gain throughout gestation and in gravid uterine weight without any change in corrected maternal weight gain generally would indicate an intrauterine effect. Conversely, a change in corrected weight gain and no change in gravid uterine weight generally would suggest maternal toxicity and little or no intrauterine effect. An alternate estimate of maternal weight change during gestation can be obtained by subtracting the sum of the weights of the fetuses. However, this weight does not include the uterine or placental tissue, or the amniotic fluid.
Changes in other end points may also be important. For example, changes in relative and absolute organ weights may be signs of a maternal effect especially when an agent is suspected of causing specific organ toxicity and when such findings are supported by adverse histopathologic findings in those organs. Food and water consumption data are useful, especially if the agent is administered in the diet or drinking water. The amount ingested (total and relative to body weight) and the dose of the agent (relative to body weight) can then be calculated, and changes in food and water consumption related to treatment can be evaluated along with changes in body weight and body weight gain. Data on food and water consumption also are useful when an agent is suspected of affecting appetite, water intake, or excretory function.

Clinical evaluations of toxicity also may be used as indicators of maternal toxicity. Daily clinical observations may be useful in describing the profile of maternal toxicity and alterations in general homeostasis. Enzyme markers and clinical chemistries may be useful indicators of exposure but must be interpreted carefully as to whether or not a change constitutes toxicity. Gross necropsy and histopathology data (when specified in the protocol) may aid in determining toxic dose levels. The minimum amount of information considered useful for evaluating maternal toxicity has been noted in the “Proceedings of the Workshop on the Evaluation of Maternal and Developmental Toxicity” (Kimmel et al., 1987)). Includes: morbidity or mortality, maternal body weight and body weight gain, clinical signs of toxicity, food and water consumption (especially if dosing is via food or water), and necropsy for gross evidence of organ toxicity. In a well-designed study, maternal toxicity is determined in the pregnant and/or lactating animal over an appropriate part of gestation and/or the neonatal period, and is not assumed or extrapolated from other adult toxicity studies.

b. End Points of Developmental Toxicity. Altered Survival, Growth, and Morphological Development. Because the maternal animal, and not the conceptus, is the individual treated during gestation, data generally are calculated as incidence per litter or as number and percent of litters with particular end points. Table 2 indicates the ways in which offspring and litter end points may be expressed. Table 2.—End Points of Developmental Toxicity

<table>
<thead>
<tr>
<th>Litters with implants</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>No. implantation sites/dam</td>
<td>No. corpora lutea (CL)/dam *</td>
</tr>
<tr>
<td>Percent preimplantation loss (CL—implantations) x 100 *</td>
<td></td>
</tr>
<tr>
<td>CL No. and percent live offspring/litter</td>
<td>No. and percent resorptions/litter</td>
</tr>
<tr>
<td>No. and percent resorptions/litter</td>
<td>No. and percent litters with resorptions</td>
</tr>
<tr>
<td>No. and percent late fetal deaths/litter</td>
<td>No. and percent nonlive (late fetal deaths + resorptions) implants/litter</td>
</tr>
<tr>
<td>No. and percent litters with nonlive implants</td>
<td>No. and percent affected (nonlive + malformed) implants/litter</td>
</tr>
<tr>
<td>No. and percent litters with affected implants</td>
<td>No. and percent litters with total resorptions</td>
</tr>
<tr>
<td>No. and percent stillbirths/litter</td>
<td>No. and percent litters with live offspring</td>
</tr>
</tbody>
</table>

Litters with live offspring |

Viability of offspring * Sex ratio/litter

Mean offspring body weight/litter ^ Mean male or female body weight/litter ^

No. and percent offspring with external, visceral, or skeletal malformations/litter No. and percent malformed offspring/litter

No. and percent litters with malformed offspring No. and percent malformed males or females/litter

No. and percent offspring with external, visceral, or skeletal variations/litter No. and percent offspring with variations/litter

No. and percent litters having offspring with variations Types and incidence of individual malformations

Types and incidence of individual variations Individual offspring and their malformations and variations (grouped according to litter and dose) Clinical chemistries (type, incidence, duration, and degree) Gross necropsy and histopathology

* Important when treatment begins prior to implantation. May be difficult to assess in mice. * Offspring refers both to fetuses observed prior to term or to pups following birth. The end points examined depend on the protocol used for each study. * Measured at selected intervals until termination of the study.

When treatment of females begins prior to implantation, an increase in preimplantation loss could indicate an adverse effect on gamete transport, the fertilization process, uterine toxicity, the developing blastocyst, or on the process of implantation itself. If treatment begins around the time of implantation (i.e., day 6 of gestation in the mouse, rat, or rabbit), an increase in preimplantation loss probably reflects variability that is not treatment-related in the animals being used, but the data should be examined carefully to determine if there is a dose-response relationship. If preimplantation loss is related to dose, further studies would be necessary to determine the mechanism and extent of such effects.

The number and percent of live offspring per litter, based on all litters, may include litters that have no live implants. The number and percent of resorptions and late fetal deaths give some indication of when the conceptus died, and the number and percent of nonlive implants per litter (postimplantation loss) is a combination of these two measures. Expression of data as the number and percent of litters showing an increased incidence for these end points may be less useful than incidence per litter because, in the former case, a litter is counted whether one or all implants were resorbed, dead, or nonlive.

If a significant increase in postimplantation loss is found after exposure to an agent, the data may be compared not only with concurrent controls, but also with recent historical control data (preferably from the same laboratory), since there is considerable interlitter variability in the incidence of postimplantation loss (Kimmel and Price, 1989). If a given study control group exhibits an unusually high or low incidence of postimplantation loss compared to historical controls, then scientific judgment must be used to determine the adequacy of the study for risk assessment purposes.

The end point “affected implants” (i.e., the combination of nonlive and malformed conceptuses) sometimes reflects a better dose-response relationship than does the incidence of nonlive or malformed offspring taken individually. This is especially true at the high end of the dose-response curve in cases when the incidence of nonlive implants per litter is greatly increased. In such cases, the malformation rate may appear to decrease because only unaffected offspring have survived. In the incidence of prenatal deaths or malformations is unchanged, then the incidence of affected implants will not provide any additional dose-response information. In studies where maternal animals are allowed to deliver pups normally, the number of stillbirths per litter should also be noted.

The number of live offspring per litter, based on those litters that have one or more live offspring, may be unchanged even though the incidence of nonlive in all litters is increased. This could occur either because of an increase in the number of litters with no live offspring, or an increase in the number of implants per litter. A decrease in the number of
live offspring per litter is generally accompanied by an increase in the incidence of nonlive implants per litter unless the implant numbers differ among dose groups. In postnatal studies, the viability of live-born offspring should be determined at selected intervals until termination of the study. The sex ratio per litter, as well as the body weights of males and females, can be examined to determine whether or not one sex is preferentially affected by the agent. However, this is an unusual occurrence.

A change in offspring body weight is a sensitive indicator of developmental toxicity, in part because it is a continuous variable. In some cases, offspring weight reduction may be the only indicator of developmental toxicity. While there is always a question as to whether weight reduction is a permanent or transitory effect, little is known about the long-term consequences of short-term fetal or neonatal weight changes. Therefore, when significant weight reduction effects are noted, they are used as a basis to establish the NOAEL. Several other factors should be considered in the evaluation of fetal or neonatal weight changes: for example, in polytocous animals, fetal and neonatal weights are usually inversely correlated with litter size, and the upper end of the dose-response curve may be affected by smaller litters and increased fetal or neonatal weight. Additionally, the average body weight of males is greater than that of females in the more commonly used laboratory animals.

Live offspring are generally examined for external, visceral, and skeletal malformations and variations. If only a portion of the litter is examined for one or more end points, then random selection of those pups examined introduces less bias in the data. An increase in the incidence of malformed offspring may be indicated by a change in one or more of the following end points: the incidence of malformed offspring per litter, the number and percent of litters with malformed offspring, or the number of offspring or litters with a particular malformation that appears to increase with dose (as indicated by the incidence of individual types of malformations).

Other ways of examining the data include determining the incidence of external, visceral, and skeletal malformations and variations that may indicate the organs or organ systems affected. A listing of individual offspring with their malformations and variations may give an indication of the pattern of developmental deviations. All of these methods of expressing and examining the data are valid for determining the effects of an agent on structural development. However, care must be taken to avoid counting offspring more than once in the evaluation of any single end point based on number or percent of offspring or litters. The incidence of individual types of malformations and variations may indicate significant changes that are masked if the data on all malformations and/or variations are pooled. Appropriate historical control data can be especially helpful in the interpretation of malformations and variations, particularly those that normally occur at a low incidence and may or may not be related to dose in an individual study.

Although a dose-related increase in malformations is interpreted as an adverse developmental effect of exposure to an agent, the biological significance of an altered incidence of anatomical variations is more difficult to assess, and must take into account what is known about developmental stage (e.g., with skeletal ossification), background incidence of certain variations (e.g., 12 or 13 pairs of ribs in rabbits), or other strain- or species-specific factors. However, if variations are significantly increased in a dose-related manner, these should also be evaluated as a possible indication of developmental toxicity.

In addition, although some investigators have considered certain of these effects to simply be associated with manifestations of maternal toxicity noted at similar dose levels (Khera, 1984, 1985, 1987), such effects are still toxic manifestations and as such are generally considered a reasonable basis for Agency regulation and/or risk assessment. On a somewhat similar note, the conclusion of participants in a "Workshop on Reproductive Toxicity Risk Assessment" (Kimmel et al., 1988) was that dose-related increases in defects that may occur spontaneously are as relevant as dose-related increases in any other developmental toxicity end points.

c. End Points of Developmental Toxicity: Functional Deficits.

Developmental effects that are induced by exogenous agents are not limited to death, structural abnormalities, and altered growth. Rather, it has been demonstrated in a number of instances that alterations in the functional competence of an organ or a variety of organ systems may result from exposure during critical developmental periods that may occur between conception and sexual maturation. Sometimes, these functional defects are observed at dose levels below those at which other indicators of developmental toxicity are evident (Rodier, 1978). Such effects may be transient or reversible in nature, but generally are considered adverse effects. Testing for functional developmental toxicity has not been required routinely by regulatory agencies in the United States, but studies in developmental neurotoxicity are beginning to be required by the EPA when other information indicates the potential for adverse functional developmental effects (U.S. EPA, 1986a, 1986b, 1991a). Data from postnatal studies, when available, are considered very useful for further assessment of the relative importance and severity of findings in the fetus and neonate. Often, the long-term consequences of adverse developmental outcomes noted at birth are unknown, and further data on postnatal development and function are necessary to determine the full spectrum of potential developmental effects. Useful data can also be derived from well-conducted multigeneration studies, although the dose levels used in these studies may be much lower than in studies with shorter-term exposure.

Much of the early work in functional developmental toxicology was related to behavioral evaluations, and the term "behavioral teratology" became prominent in the mid-1970s. Recent advances in this area have been reviewed in several publications (Riley and Vorhees, 1986; Kimmel, 1988; Kimmel et al., 1990). Several expert groups have focused on the functions that should be included in a behavioral testing battery (World Health Organization [WHO], 1984; Buelke-Sam et al., 1985; Leukroth, 1986). These include: sensory systems, neuromotor development, locomotor activity, learning and memory, reactivity and/or habituation, and reproductive behavior. No testing battery has fully addressed all of these functions, but it is important to include as many as possible, and several testing batteries have been developed and evaluated for use in testing (Buelke-Sam et al., 1985; Tanimura, 1986; Elsner et al., 1988).

The Agency recently has developed a "generic" developmental neurotoxicity test guideline that can be used for both pesticides and industrial chemicals (U.S. EPA, 1991a). Because of its design, the developmental neurotoxicity testing protocol may be conducted as a separate study, concurrently with or as a follow-up to a developmental toxicity (Segment II) study, or be fold into a multigeneration study in the second generation. Testing is generally conducted in the rat. In the protocol for the separate study, the test agent is
administered orally (other routes may be used on a case-by-case basis) to at least three treated groups and one concurrent control group of animals on day 6 of gestation through day 10 postnatally. The highest dose level is selected to induce some overt signs of maternal toxicity, but not result in more than a 20% reduction in weight gain during gestation and lactation. This dose also is selected to avoid in utero or neonatal death or malformations sufficient to preclude a meaningful evaluation of developmental neurotoxicity. At least 20 litters are required per treatment group. For behavioral tests, one female and one male pup per litter are randomly selected and assigned to one of the following tests: motor activity, auditory startle, and learning and memory in animals at weaning and as adults. Neuropathological evaluation and determination of brain weights are conducted on selected pups at postnatal day 11 and at termination of the study.

Several criteria for selecting agents for developmental neurotoxicity testing have been suggested (Buucke-Sam et al., 1985; Levine and Butcher, 1990), including: Agents that cause central nervous system malformations, psychoactive drugs and chemicals, agents that cause adult neurotoxicity, hormonally-active agents, and chemicals that are structurally related to others that cause developmental neurotoxicity or for which wide-spread exposure and/or release is expected. Data from developmental neurotoxicity studies should be evaluated in light of the data that may have triggered such testing as well as all other toxicity data available.

Less work has been done on other developing functional systems, but the assessment of postnatal renal morphological and functional development may serve as a model for the use of postnatal evaluations in the risk assessment process. As an example, standard morphological analyses of the kidneys of fetal rodents have detected treatment-related changes in the relative growth of the renal pelvis compared to the renal cortex, an effect considered in some cases to be a malformation (hydronephrosis), while in other cases a variation (apparent hydronephrosis, enlarged or dilated renal pelvis). While some investigators (Woo and Hoar, 1972) have provided data suggesting that the morphological effect represents a transient developmental delay, others have shown that it can persist well into postnatal life and that physiological function is compromised in the affected individuals (Kavlock et al., 1987a, 1988; Daston et al., 1988; Couture, 1990). Thus, the biological interpretation of this effect on the basis of fetal examinations alone is tenuous (U.S. EPA, 1985b). In addition, the critical period for inducing renal morphological abnormalities extends into the postnatal period (Couture, 1990), and studies on perinatally-induced renal growth retardation (Kavlock et al., 1986, 1987b; Slotkin et al., 1988; Gray et al., 1989; Gray and Kavlock, 1991) have shown that renal function is generally altered in such conditions, but that manifestation of the dysfunction is not readily predictable. Thus, both morphological and functional assessment of the kidneys after birth can provide useful and complementary information on the persistence and biological significance of expressions of developmental toxicity.

Although not as well-studied, data indicate that the cardiovascular, respiratory, immune, endocrine, reproductive, and digestive systems are also subject to alterations in functional competence (Kavlock and Grabowski, 1983; Fuji and Adams, 1987) following exposure during development. Currently, there are no standard testing procedures for these functional systems; however, when data are encountered on a chemical under review, they are considered in the risk assessment process.

Direct extrapolation of functional developmental effects to humans is limited in the same way as for other endpoints of developmental toxicity, i.e., by the lack of knowledge about underlying toxicological mechanisms and their significance. In evaluations of a limited number of agents known to cause developmental neurotoxic effects in humans, Adams (1986) concluded that these agents produce similar developmental neurotoxic effects in animals and humans. This conclusion was strongly supported by the results of a recent "Workshop on the Qualitative and Quantitative Comparability of Human and Animal Developmental Neurotoxicity," sponsored by EPA and the National Institute on Drug Abuse (NIDA), at which participants critically evaluated and compared the effects of agents known to cause human developmental neurotoxicity with the effects seen in experimental animal studies (Kimmel et al., 1990a). The high degree of qualitative correlation between human and experimental animal data for the agents evaluated lends strong support for the use of experimental animals in assessing the potential risk for developmental neurotoxicity in humans. Thus, as for other end points of developmental toxicity, the assumption can be made that functional effects in animal studies indicate the potential for altered development in humans, although the types of developmental effects seen in experimental animal studies will not necessarily be the same as those that may be produced in humans. Thus, when data from fetal and developmental toxicity studies are encountered for particular agents, they should be considered in the risk assessment process.

Some guidance is provided here concerning important general concepts of study design and evaluation for functional developmental toxicity studies.

- Several aspects of study design are similar to those important in standard developmental toxicity studies (e.g., a dose-response approach with the highest dose providing maximum maternal or perinatal toxicity, number of litters large enough for adequate statistical power, randomization of animals to dose groups and test groups, litter generally considered the statistical unit, etc.).
- A replicate study design provides added confidence in the interpretation of data.
- Use of a pharmacological/physiological challenge may be valuable in evaluating function and "unmasking" effects not otherwise detectable, particularly in the case of organ systems that are endowed with a reasonable degree of functional reserve capacity.
- Use of functional tests with a moderate degree of background variability may be more sensitive to the effects of an agent on behavioral endpoints than are tests with low variability that may be impossible to disrupt without being life-threatening (Butcher et al., 1990).
- A battery of functional tests, in contrast to a single test, is usually needed to evaluate the full complement of organ function in an animal; tests conducted at several ages may provide more information about maturational changes and their persistence.
- Critical periods for the disruption of functional competence include both the prenatal and the postnatal periods to the time of sexual maturation, and the effect is likely to vary depending on the time and degree of exposure.
- Interpretation of data from studies in which postnatal exposure is included should take into account possible interaction of the agent with maternal behavior, milk composition, pup sucking behavior, possible direct exposure of pups via dosed feed or water, etc.
Although interpretation of functional data may be limited at present, it is clear that functional effects must be evaluated in light of other toxicity data, including other forms of developmental toxicity (e.g., structural abnormalities, perinatal death, and growth retardation). The level of confidence in an adverse effect may be as important as the type of change seen, and confidence may be increased by such factors as replicability of the effect either in another study of the same function or by convergence of data from tests that purport to measure similar functions. A dose-response relationship is considered an important measure of chemical effect; in the case of functional effects, both monotonic and biphasic dose-response curves are likely, depending on the function being tested.

Finally, there are at least three general ways in which the data from these studies may be useful for risk assessment purposes: (1) To help elucidate the long-term consequences of fetal and neonatal effects; (2) to indicate the potential for an agent to cause functional alterations and the effective doses relative to those that produce other forms of toxicity; and (3) for existing environmental agents, to suggest organ systems to be evaluated in exposed human populations.

d. Overall Evaluation of Maternal and Developmental Toxicity. As discussed previously, individual end points of maternal and developmental toxicity are evaluated in developmental toxicity studies. In order to interpret the data fully, an integrated evaluation must be performed considering all maternal and developmental end points.

Agents that produce developmental toxicity at a dose that is not toxic to the maternal animal are especially of concern because the developing organism is affected but toxicity is not apparent in the adult. However, the more common situation is when adverse developmental effects are produced only at doses that cause minimal maternal toxicity; in these cases, the developmental effects are still considered to represent developmental toxicity and should not be discounted as being secondary to maternal toxicity. At doses producing maternal toxicity, both maternal and developmental toxicity (that is, significantly greater than the minimal toxic dose), information on developmental effects may be difficult to interpret and of limited value. Current information is inadequate to assume that developmental effects at maternally toxic doses result only from maternal toxicity; rather, when the LOAEL is the same for the adult and developing organisms, it may simply indicate that both are sensitive to that dose level. Moreover, whether developmental effects are secondary to maternal toxicity or not, the maternal effects may be reversible while effects on the offspring may be permanent. These are important considerations for agents to which humans may be exposed at minimally toxic levels either voluntarily or involuntarily, since several agents are known to produce adverse developmental effects at minimally toxic doses in adult humans (e.g., smoking, alcohol, isothiocyanin).

Since the final risk assessment not only takes into account the potential hazard of an agent, but also the nature of the dose-response relationship, it is important that the relationship of maternal and developmental toxicity be evaluated and described. Then, information from the exposure assessment is used to determine the likelihood of exposure to levels near the maternally toxic dose for each agent and the risk for developmental toxicity in humans.

Although the evaluation of developmental toxicity is the primary objective of standard studies within this area, maternal effects seen within the context of developmental toxicity studies should be evaluated as part of the overall toxicity profile for a given chemical. Maternal toxicity may be seen in the absence of or at dose levels lower than those producing developmental toxicity. If the maternal effect level is lower than that in other evaluations of adult toxicity, this implies that the pregnant female is likely to be more sensitive than the nonpregnant female. Data from reproductive and developmental toxicity studies on the pregnant female should be used in the overall assessment of risk.

Approaches for ranking agents according to their relative maternal and developmental toxicity have been proposed; Schardein (1983) has reviewed several of these. Several approaches involve the calculation of ratios relating an adult toxic dose to a developmentally toxic dose (Johnson, 1981; Fabro et al., 1982; Johnson and Gabel, 1983; Brown and Freeman, 1984). Such ratios may describe in a qualitative and roughly quantitative fashion the relationship of maternal (adult) and developmental toxicity. However, at the U.S. EPA-sponsored "Workshop on the Evaluation of Maternal and Developmental Toxicity" (Kimmel et al., 1987), there was no agreement as to the validity or utility of these approaches in other aspects of the risk assessment process. This is due in part to uncertainty about factors that can affect the ratios. For example, the number and spacing of dose levels, differences in study design (e.g., route and/or timing of exposure), the relative thoroughness in the assessment of maternal and developmental end points examined, species differences in response, and differences in the slope of the dose-response curves for maternal and developmental toxicity, can all influence the maternal and developmental effects observed and the resulting ratios (Kimmel et al., 1987; U.S. EPA, 1985b). Also, maternal and developmental end points used in the ratios need to be better defined to permit cross-species comparison. Until such information is available, the applicability of these approaches in risk assessment is not justified.

e. Short-Term Testing in Developmental Toxicity. The need for short-term tests for developmental toxicity has arisen from the need to establish testing priorities for the large number of agents in or entering the environment, the interest in reducing the number of animals used for routine testing, and the expense of testing. These approaches may be useful in making preliminary evaluations of potential developmental toxicity, for evaluating structure activity relationships, and for assigning priorities for further, more extensive testing. Furthermore, as the risk assessment process begins to incorporate more pharmacokinetic and mechanistic data, short-term tests should be particularly useful. Kimmel (1990) has recently discussed the potential application of in vitro systems in risk assessment in a context that is broader than chemical screening. However, the Agency currently considers a short-term test as "insufficient" by itself to carry out a risk assessment (see Section III.C).

Although short-term tests for developmental toxicity are not routinely required, such data are encountered in the review of chemicals. Two approaches are considered here in terms of their contribution to the overall testing process: (1) An in vivo mammalian screen, and (2) in vitro test systems.

(1) In vivo mammalian developmental toxicity tests. The most widely studied in vivo short-term approach is that developed by Chernoff and Kavlock (1982). This approach is based on the hypothesis that a prenatal injury, which results in altered development, will be manifested postnatally as reduced viability and/or impaired growth. When originally proposed, the test substance...
was administered to mice over the period of major organogenesis at a single dose level that would elicit some degree of maternal toxicity. At the NIOSH "Workshop on the Evaluation of the Chernoff/Kavlock Test for Developmental Toxicity" (Hardin, 1987), use of a second lower dose level was encouraged to potentially reduce the chance of false positive results, and the recording of implantation sites was recommended to provide a more precise estimate of postimplantation loss (Kavlock et al., 1987c). In this approach, the pups are counted and weighed shortly after birth, and again after 3-4 days. End points that are considered in the evaluation include: general maternal toxicity (including survival and weight gain), litter size, pup viability and weight, anomalies in the offspring. Several schemes have been proposed for ranking the results as a means of prioritizing agents for further testing (Chernoff and Kavlock, 1982; Brown, 1984; Schuler et al., 1984).

The mouse was chosen originally for this test because of its low cost, but the procedure has been applied to the rat as well (Wickramaratne, 1987). The test can predict the potential for developmental toxicity of an agent in the species used while extrapolation of risk to other species, including humans, has the same limitations as for other testing protocols. The EPA Office of Toxic Substances has developed testing guidelines for this procedure (U.S. EPA, 1985c), and the Office of Pesticide Programs has applied similar protocols on a case-by-case basis (U.S. EPA, 1986b). The National Toxicology Program has also developed a protocol that incorporates aspects of a range-finding study, with the intent of providing information on appropriate exposure levels should a standard developmental toxicity study be required (Morrissey et al., 1989).

Although testing guidelines are available, such procedures are required on a case-by-case basis. Application of this procedure in the risk assessment process within the Office of Toxic Substances has been described (Francis and Farland, 1987), and the experiences of a number of laboratories are detailed in the proceedings of a NIOSH-sponsored workshop (Hardin, 1987). Recently, the OECD developed a screening protocol to be used for prioritizing existing chemicals for further testing (draft as of March 22, 1990). This protocol is similar to the design of the Chernoff-Kavlock Test except that it involves exposure of male and female rats 2 weeks prior to mating, throughout mating and gestation, and postnatally to day 4. Male animals are exposed following mating for a period corresponding to that of the females. Adult animals are evaluated for general toxicity and effects on reproductive organs. Pups are counted, weighed and examined for any gross physical or behavioral abnormalities at birth and on postnatal day 4. This protocol permits evaluation of reproductive and developmental toxicity following repeated dosing with an agent, provides an indication for the need to conduct additional studies, and provides guidance in the design of further studies. Currently, this study design is insufficient by itself to make an estimate of human risk without further studies to confirm and extend the observations.

(2) In vitro developmental toxicity screens. Test systems that fall under the general heading of "in vitro" developmental toxicity screens include any system that employs a test subject other than the intact pregnant mammal. Examples of such systems include: isolated whole mammalian embryos in culture, tissue/organ culture, cell culture, and developing nonmammalian organisms. These systems have long been used to assess events associated with normal and abnormal development, but more recently they have been considered for their potential as screens in testing (Wilson, 1973; Kimmel et al., 1982b; Brown and Fabro, 1982). Many of these systems are now being evaluated for their ability to predict the developmental toxicity of various agents in intact mammalian systems. This validation process requires certain considerations in study design, including defined endpoints for toxicity and an understanding of the ability to handle various test agents (Kimmel et al., 1982a; Kimmel, 1985; FDA, 1987; Brown, 1987).

While in vitro test systems can provide significant information, they are considered insufficient, by themselves, for carrying out a risk assessment (see section III.C). In part, this is due to limitations in the application of the data to the whole animal situation. But it is also due to the lack of studies that have been fully validated, as has been noted in several reviews of available in vitro systems (FDA, 1987; Brown, 1987; Faustman, 1988) and at a recent workshop on in vitro teratology (Morrissey et al., 1991).

i. Statistical Considerations. In the assessment of developmental toxicity data, statistical considerations require special attention. Since the litter is generally considered the experimental unit in most developmental toxicity studies, and fetuses or pups within litters do not respond independently, the statistical analyses are generally designed to analyze the relevant data based on incidence per litter or on the number of litters with a particular end point. The analytical procedures used and the results, as well as an indication of the variance in each end point, should be evaluated carefully when reviewing data for risk assessment purposes. Analysis of variance (ANOVA) techniques, with litter nested within dose in the model, take the litter variable into account while allowing use of individual offspring data and an evaluation of both within and between litter variance as well as dose effects. Nonparametric and categorical procedures have also been widely used for binomial or incidence data. In addition, tests for dose-response trends can be applied. Although a single statistical approach has not been agreed upon, a number of factors important in the analysis of developmental toxicity data have been discussed (Haseeman and Kupper, 1979; Kimmel et al., 1986).

Studies that employ a replicate experimental design (e.g., two or three replicates with 10 litters per dose per replicate rather than a single experiment with 20 to 30 litters per dose group) allow broader interpretation of study results since the variability between replicates can be accounted for using ANOVA techniques. Replication of effects due to a given agent within a study, as well as among studies or laboratories, provides added strength in the use of data for the estimation of risk.

An important factor to consider in evaluating data is the power of a study (i.e., the probability that a study will demonstrate a true effect), which is limited by the same factors as those in the study, the background incidence of the end point observed, the variability in the incidence of the end point, and the analysis method. As an example, Nelson and Holson (1978) have shown that the number of litters needed to detect a 5% or 10% change was dramatically lower for fetal weight (a continuous variable with low variability) than for resorptions (a binomial response with high variability). With the current recommendation in testing protocols being 20 rodents per dose group (U.S. EPA, 1982b, 1985a), the minimum change detectable is an increased incidence of malformations 5 to 12 times above control levels, an increase 3 to 6 times the in utero death rate, and a decrease 0.15 to 0.25 times the fetal weight. Thus, even within the same study, the ability to detect a change in fetal weight is much greater than for the other end points measured. Consequently, for
 statistical reasons only, changes in fetal weight are often observed at doses below those producing other signs of developmental toxicity. Any risk assessment should present the detection sensitivity for the study design used and for the end point(s) evaluated.

Although statistical analyses are important in determining the effects of a particular agent, the biological significance of data is most relevant. It is important to be aware that with the number of end points that can be observed in standard protocols for developmental toxicity studies, a few statistically significant differences may occur by chance. On the other hand, apparent trends with dose may be biologically relevant even though pairwise comparisons do not indicate a statistically significant effect. This may be true especially for one incidence of malformations or in utero death because of the low power of standard study designs in which a relatively large difference is required to be statistically significant. It should be apparent from this discussion that a great deal of scientific judgment, based on experience with developmental toxicity data and with principles of experimental design and statistical analysis, may be required to adequately evaluate such data.

2. Human Studies

In principle, human data are preferred for risk assessment. However, the complexities of obtaining sufficient human data are such that these data are not available for many potential toxicants. The following describes the methods of generation of human data, their evaluation, and the weight they should be given in risk assessments. The category of "human studies" includes both epidemiologic studies and other reports of individual cases or clusters of events. Greatest weight should be given to carefully designed epidemiologic studies with more precise measures of exposure, since they can best evaluate exposure-response relationships (see Section IV).

Epidemiologic studies in which exposure is presumed based on occupational title or residence (e.g., some case-referent and all ecologic studies) may contribute data to qualitative risk assessments, but are of limited use for quantitative risk assessments because of the generally broad categorical groupings. Reports of individual cases or clusters of events may generate hypotheses of exposure-outcome associations, but require further confirmation with well-designed epidemiologic or laboratory studies. These reports of cases or clusters may give added support to associations suggested by other human or animal data, but cannot stand by themselves in risk assessments. Risk assessors should seek the assistance of professionals trained in epidemiology when conducting a detailed analysis.

(a) Epidemiologic Studies. Good epidemiologic studies provide the most relevant information for assessing human risk. As there are many different designs for epidemiologic studies, simple rules for their evaluation do not exist.

(i) General design considerations. The factors that enhance a study and thus increase its usefulness for risk assessment have been noted in a number of publications (Selevan, 1980; Bloom, 1981; U.S. EPA, 1981; Wilcox, 1983; Sever and Hessol, 1984; Axelsson, 1985; Tilley et al., 1985; Kimmel et al., 1986). Some of the more prominent factors are as follows:

| (a) The power of the study. The power, or ability of a study to detect a true effect, is dependent on the size of the study group, the frequency of the outcome in the general population, and the level of excess risk to be identified. In a cohort study, common outcomes, such as recognized fetal loss, require hundreds of pregnancies in order to have a high probability of detecting a modest increase in risk (e.g., 133 in both exposed and unexposed groups to detect a doubling of background; alpha = 0.05, power = 80%), while less common outcomes, such as the total of all malformations recognized at birth, require thousands of pregnancies to have the same probability (e.g., more than 1,200 in both exposed and unexposed groups) [Bloom, 1981; Selevan, 1981; Sever and Hessol, 1984; Selevan, 1985; Stein et al., 1985; Kimmel et al., 1986]. In case-referent studies, study size is dependent on the frequency of exposure within the source population. The confidence one has in the results of a study without positive findings is related to the power of the study to detect meaningful differences in the end points studied.

Power may be enhanced by combining populations from several studies using a metaanalysis (Greenland, 1987). The combined analysis would increase confidence in the absence of risk for agents with negative findings. However, care must be exercised in the combination of potentially dissimilar study groups.

A posteriori determination of power of the actual study may be useful in evaluating contradictory studies in risk assessment. Absence of positive findings in a study of low power would be given less weight than either a positive study or a null study (one with no significant differences) with high power. Positive findings from very small studies are open to question due to the instability of the risk estimates and the potential for highly selected study groups.

(b) Potential bias in data collection: Sources of bias may include selection bias and information bias (Rothman, 1986). Selection bias may occur when an individual's willingness to participate varies with certain characteristics relating to the exposure status or health status of that individual. In addition, selection bias may operate in the identification of subjects for study. For example, in studies of embryonic loss, use of hospital records to identify embryonic or early fetal loss will underascertain events, because women are not always hospitalized for these outcomes. More weight might be given in a risk assessment to a study in which a more complete list of pregnancies is obtained by, for example, collecting biological data [e.g., human chorionic gonadotropin (hCG) measurements] on pregnancy status from study members. These studies may also be affected by bias. The representativeness of these data may be affected by selection factors related to the willingness of different groups of women to continue participation over the total length of the study. Interview data result in more complete ascertainment; however, this strategy carries with it the potential for recall bias, discussed in further detail below. A second example of different levels of ascertainment of events is the use of hospital records to study congenital malformations. Hospital records contain more complete data on malformations than do birth certificates (Mackeprang et al., 1972). Consequently, birth defects registries that are based on searches of hospital records are more complete than those based on vital records (Selevan, 1986). Thus, a study using hospital records to identify congenital malformations would be given more emphasis in a risk assessment than one using birth certificates.

Studies of working women present the potential for additional bias since some factors that influence employment status may also be associated with reproductive end points. For example, due to child-care responsibilities, women may terminate employment, as might women with a history of reproductive problems who wish to have children and are concerned about workplace exposures (Joffe, 1985).

Information bias may result from misclassification of characteristics of individuals or events identified for
study. Recall bias, one type of information bias, may occur when respondents with specific exposures or outcomes recall information differently than those without the exposures or outcomes. Interview bias may result when the interviewer knows a priori the category of exposure (for cohort studies) or outcome (for case-referent studies) in which the respondent belongs. Use of highly structured questionnaires and/or "blinding" of the interviewer will reduce the likelihood of such bias. Studies with lower likelihood of the above-listed bias should carry more weight in a risk assessment.

When data are collected by interview or questionnaire, the appropriate respondent depends on the type of data or study. For example, a comparison of husband-wife interviews on reproduction found the wives' responses to questions on pregnancy-related events to be considerably more complete and valid than those of the husbands (Selevan, 1980). A more recent study (Schnatter, 1990) found small, nonsignificant improvements in the aid of their wives give better data (borderline significance). Studies based on interview data from the appropriate respondent(s) would carry more weight than those from proxy respondents (e.g., the specific individual when examining exposure history and the woman or both partners when examining pregnancy history).

Data from any source may be prone to errors or bias. All types of bias are difficult to assess; however, validation with an independent data source (e.g., vital or hospital records), or use of biomarkers of exposure or outcome, where possible, may indicate the degree of bias present and increase confidence in the results of the study. Those studies with a low probability of biased data should carry more weight (Axelson, 1985; Stein and Hatch, 1987).

Differential misclassification, i.e., when certain subgroups are more likely to have misclassified data than others, may either raise or lower the risk estimate. Nondifferential misclassification will bias the results toward a finding of "no effect" (Rothman, 1986).

(d) Collection of data on other risk factors, effect modifiers, and confounders: Risk factors for reproductive and developmental toxicity include such characteristics as age, smoking, alcohol consumption, drug use, and past reproductive history. Additionally, occupational and environmental exposures are potential risk factors for reproductive and developmental effects. Known and potential risk factors should be examined to identify those that may be effect modifiers or confounders. An effect modifier is a factor that produces different exposure-outcome relationships at different levels of that factor. For example, maternal age would be an effect modifier if the risk associated with a given exposure increased with the mother's age. A confounder is a variable that is a risk factor for the disease under study and is associated with the exposure under study, but is not a consequence of the exposure. A confounder may distort both the magnitude and direction of the measure of association between the exposure of interest and the outcome. For example, socioeconomic status might be a confounder in a study of the association of smoking and fertility, since socioeconomic status may be associated with both.

Studies that fail to account for effect modifiers and confounders should be given less weight in a risk assessment. Both of these important factors need to be controlled in the study design and/or analysis to improve the estimate of the effects of exposure (Kleinbaum et al., 1982). A more in-depth discussion may be found elsewhere (Epidemiology Workgroup, 1981; Kleinbaum et al., 1982; Rothman, 1986). The statistical techniques used to control for these factors require careful consideration in their application and interpretation (Kleinbaum et al., 1982; Rothman, 1986).

(d) Statistical factors: As in animal studies, pregnancies experienced by the same woman are not independent events (Kissling, 1981; Selevan, 1985). Women who have had embryo/fetal loss are reported to be more likely to have subsequent losses (Leridon, 1977). In animal studies, the litter is generally used as the unit of measure to deal with nonindependence of events. In studies of humans, pregnancies are sequential with the risk factors changing for different pregnancies, making analyses considering nonindependence of events very difficult (Epidemiology Workgroup, 1981; Kissling, 1981). If more than one pregnancy per woman is included, it is necessary due to small study groups, the use of nonindependent observations overestimates the true size of the groups being compared, thus artificially increasing the probability of reaching statistical significance (Stratelli et al., 1984). Biased estimates of risk might also result if family size confounds the relationship between exposure and outcome. Some approaches to deal with these issues have been suggested (Kissling, 1981; Stratelli et al., 1984; Selevan, 1985). At this point in time, a generally accepted solution to this problem has not been developed.

(2) Selection of outcomes for study. As already discussed, a number of end points can be considered in the evaluation of adverse developmental effects. However, some of the outcomes are not easily observed in humans, such as early embryonic loss and reproductive capacity of the offspring. Currently, the most feasible end points for epidemiologic studies are reproductive history studies of some pregnancy outcomes (e.g., embryo/fetal loss, birth weight, sex ratio, congenital malformations, postnatal function, and neonatal growth and survival) and measures of fertility/infertility which would include indirect evaluations of very early embryonic loss. Postnatal outcomes for examination could include physical growth and development, organ or system function and behavioral effects of exposure. Factors requiring control in the design or analysis (such as effect modifiers and confounders) may vary depending on the specific outcomes selected for study.

The developmental outcomes available for epidemiologic examination are limited by a number of factors, including the relative magnitude of the exposure since differing spectra of outcomes may occur at different exposure levels, the size and demographic characteristics of the population, and the ability to observe the developmental outcome in humans. Improved methods for identifying some outcomes such as very early embryonic loss using new hCG assays may change the spectrum of outcomes available for study (Wilcox et al., 1985; Sweeney et al., 1986).

Demographic characteristics of the population, such as marital status, age distribution, education, socioeconomic status (SES) and prior reproductive history are associated with the probability of whether couples will attempt to have children. Differences in the use of birth control would also affect the number of outcomes available for study. In addition, women with live births are more likely to terminate employment than are those with other outcomes, such as infertility or early embryonic loss. Thus, retrospective studies of female exposure that do not include terminated women workers may be of limited use in risk assessment because the level of risk for these outcomes is likely to be overestimated (Lemasters and Pinney, 1986).

In addition to the above-mentioned factors, developmental end points may
be envisioned as effects recognized at various points in a continuum, starting at conception through death of the offspring. Thus, a malformed stillbirth would not be included in a study of defects observed at live birth, even though the etiology could be identical (Stein et al., 1975; Bloom, 1981). A shift in the patterns of outcomes could result from differences in timing or in level of exposure (Selevan and LeMasters, 1987).

(3) Reproductive history studies. (a) Measures of fertility: Normally, studies of sub- or infertility would not be included in an evaluation of developmental effects. However, in humans it is difficult to identify very early embryonic loss, and distinguish it from sub- or infertility. Thus, studies that examine sub- or infertility indirectly examine loss very early in the gestational period. Infertility or subfertility may be thought of as a nonevent: A couple is unable to have children within a specific time frame. Therefore, the epidemiologic measurement of reduced fertility is typically indirect, and is accomplished by comparing birth rates or time intervals between births or pregnancies. In these evaluations, the couple’s joint ability to procreate is estimated. One method, the Standardized Birth Ratio (SBR; also referred to as the Standardized Fertility Ratio), compares the number of births observed to those expected based on the person-years of observation stratified by factors such as time period, age, race, marital status, parity, contraceptive use, etc. (Wogel et al., 1979; Levine et al., 1980, 1981; Levine, 1983; Starr et al., 1986). The SBR is analogous to the Standardized Mortality Ratio (SMR), a measure frequently used in studies of occupational cohorts, and has similar limitations in interpretation (Gaffney, 1976; McMichael, 1976; Teal and Wen, 1980).

Analysis of the time period between recognized pregnancies or live births has been suggested as another indirect measure of fertility (Dobbins et al., 1978; Baird et al., 1986; Weinberg and Gladen, 1988). Because the time interval between births increases with increasing parity (Lenzorn, 1977), comparisons within birth order (parity) are more appropriate. A statistical method (Cox regression) can stratify by birth or pregnancy order to help control for nonindependence of these events in the same woman.

Fertility may also be affected by alterations in sexual behavior. However, limited data are available linking toxic exposures to these alterations in humans. Moreover, such data are not easily obtained in epidemiology studies. More information on this subject is available in the proposed male and female reproductive risk assessment guidelines (U.S. EPA, 1988b, 1988c).

(b) Pregnancy outcomes: Pregnancy outcomes examined in human studies of parental exposures may include embryo/fetal loss, congenital malformations, birth weight, sex ratio at birth, and postnatal effects (e.g., physical growth and development, organ or system function, and behavioral effects of exposure). Postnatal effects are discussed in more detail in the next section. As mentioned previously, epidemiologic studies that focus on only one type of pregnancy outcome may miss a true effect of exposure due to the continuum of outcomes. Examination of individual outcomes could mask a true effect due to reduced power resulting from fewer events for study. Studies that examine multiple end points could yield more information, but the results may be difficult to interpret.

Evidence of a dose-response relationship is usually an important criterion in the assessment of a toxic exposure. However, traditional dose-response patterns may not always be observed for some end points. For example, with increasing dose, a pregnancy might end in a fetal loss rather than a live birth with malformations. A shift in the patterns of outcomes could result from differences either in level of exposure or in timing (Wilson, 1973; Selevan and Lemasters, 1987) (for a more detailed description, see Section III.A.2.a.3). Therefore, a risk assessment should, when possible, attempt to look at the interrelationship of different reproductive end points and patterns of exposure.

(c) Postnatal developmental effects: These effects may include changes in growth, behavior, organ or system function, or cancer. Studies of neurological and reproductive function are discussed here as examples. Postnatal behavioral and functional effects in humans have been examined for a small number of environmental and occupational agents (e.g., lead, PCBs, methyl mercury, alcohol). For some agents (e.g., lead and PCBs), subtle changes have been observed in groups of children at lower exposures than for other developmental effects (e.g., Bellinger et al., 1987; Needelman, 1998; Davis et al., 1999; Tilson et al., 1980). This may not be true for all toxic agents. These subtle differences would be difficult to identify in individuals, but could result in an overall shifting of mean values when comparing groups of exposed and unexposed children. Some postnatal studies have examined infants or young children using standard developmental scales (e.g., Brazelton Neonatal Behavioral Assessment Scale, Bayley Scales of Infant Development, Stanford Binet IV, and Wechsler Scales) and some biologic measure of exposure (e.g., blood lead levels). These tests are designed to perform certain end points and have been developed to cover certain age ranges. Certain tests examine specific aspects of development. For example, the Bayley Scales look at motor and language development, but do not examine sensory function. Batteries of tests are important for a proper evaluation due to the possibility of interrelated effects, e.g., hearing deficits and language development. Thus, batteries of tests will give a clearer indication of direct effects of exposure resulting in postnatal developmental deficits.

Factors that may influence the examination of these effects include parental education, SES, obstetrical history, and health characteristics independent of exposure that may affect functional measurement (e.g., injuries and infections). Many social and lifestyle factors may also affect scoring on these scales (e.g., neonatal-maternal interactions, SES, home environment).

Studies of premature infants carry special problems. For proper comparisons, tests keyed to age in very young children (less than 2.5 years of age) need to “correct” the age for premature infants to the age they would have been had they been born at term. In addition, prematures infants or those with low birth weight for their gestational age may have problems resulting from the birth process not directly related to exposure (e.g., intraventricular hemorrhage in the brain which can then cause developmental problems). Thus, the developmental effects resulting from exposure may have their own sequelae.

Other studies may examine effects occurring at a later age (e.g., in utero exposure and cancer in young women). This long time interval typically carries with it the need for retrospective studies, with the inherent limitations in accurate determination of exposure, effect modifiers, and confounders. Risk assessment methods for cancer are described in the "Guidelines for Carcinogen Risk Assessment" (U.S. EPA, 1988b).

Reproductive effects may result from developmental exposures. For example, environmental exposures may result in oocyte toxicity, in which a loss of primordial oocytes irreversibly affects a woman’s fertility. The exposures of importance may occur during both the
prenatal period and after birth. Oocyte depletion is difficult to examine directly in women due to the invasiveness of the tests required; however, it can be studied indirectly through evaluation of the age at reproductive senescence [menopause] (Everson et al., 1986). Risk assessment methods for female reproductive effects are described in the “Proposed Guidelines for Assessing Female Reproductive Risk” (U.S. EPA, 1986c). Developmental exposures to males could affect their reproductive function (e.g., deplete stem or Sertoli cells potentially affecting sperm production) (Zenick and Clegg, 1989). If stem cell death occurs with exposure at any age, recovery is possible as long as some stem cells survive. The same is true for Sertoli cells, except that they cease multiplication before puberty. Thus, cell replication cannot compensate for Sertoli cell death after puberty. Human studies of stem and Sertoli cells would be difficult due to the invasiveness of the measure. Less direct measures, e.g., sperm count, morphology, and motility, could be evaluated but this would not indicate what cells or stage of spermatogenesis had been affected. Risk assessment methods for male reproductive effects are described in the “Proposed Guidelines for Assessing Male Reproductive Risk” (U.S. EPA, 1986b).

In addition to the above effects, genetic damage to germ cells may result from developmental exposures. Outcomes resulting from germ-cell mutations could include reduced probability of conception as well as increased probability of embryo/fetal loss and other developmental effects. These end points could be studied using the approaches described above. However, a human germ-cell mutagen has not yet been demonstrated (U.S. EPA, 1986c). Based on animal studies, critical exposures are to germ cells or early zygotes. Germ cell mutagenicity could also be expressed as genetic diseases in future generations. Unfortunately, these studies would be very difficult to conduct in human populations due to the long time lag between exposure and outcome. For more information, refer to the “Guidelines for Mutagenicity Risk Assessment” (U.S. EPA 1986c).

(4) Community studies/surveillance programs. Epidemiologic studies may also be based on broad populations such as a community, a nationwide probability sample, or surveillance programs (such as birth defects registries). Other studies have examined environmental exposures, such as toxic agents in the water system, and adverse pregnancy outcome (Swen et al., 1989; Deene et al., 1989). Unfortunately, in these studies maternally-mediated effects may be difficult to distinguish from paternally-mediated effects. In addition, the presumably lower exposure levels (compared to industrial settings) may require very large groups for study. A number of case-referent studies have examined the relationship between broad classes of parental occupation in certain communities or countries, and embryo/fetal loss (Silverman et al., 1985), birth defects (Hemminki et al., 1986; Kwa and Fine, 1980; Papier, 1985), and childhood cancer (Kwa and Fine, 1980; Zack et al., 1980; Hemminki et al., 1983; Peters et al., 1981). In these reports, jobs are typically classified into broad categories based on the probability of exposure to certain classes or levels of exposure (e.g., Kwa and Fine, 1980). Such studies are most helpful in the identification of topics for additional study. However, because of the broad groupings of types or levels of exposure, such studies are not typically useful for risk assessment of a particular agent.

Surveillance programs may also exist in occupational settings. In this case, reproductive histories and/or clinical evaluations could be followed to monitor for reproductive effects of exposures. Both could yield very useful data for risk assessment; however, a clinical evaluation program would be costly to maintain, and there are numerous impediments to the collection of reliable and valid information in the workplace. These might include similar concerns to those previously discussed plus potentially low participation rates due to employee sensitivities and confidentiality concerns.

(5) Identification of exposures important for developmental effects. For all examinations of the relationship between developmental effects and potentially toxic exposures, the identification of the appropriate exposure is crucial. Preconceptional exposures to either parent and in utero exposures have been associated with the more commonly examined outcomes (e.g., fetal loss, malformations, birth weight, and measures of infertility). These exposures include maternal exposure to breast milk, food, and the general environment, may be associated with postnatal developmental effects (e.g., changes in behavioral and cognitive function, or growth). The magnitude of exposure may affect the spectrum of outcomes observed. This issue is discussed in more detail in sections III.A.1.b and III.B.

Infants and young children may receive disproportionate levels of exposure due to their tendency to "put everything" in their mouths (pica) and the greater time they spend on the floor. Carpets may serve as a reservoir for toxic agents (e.g., pesticides and lead dust), and the air nearer the floor may have greater levels of certain airborne toxics (e.g., mercury from latex paints). Exposures in environmental settings are frequently lower than in industrial and agricultural settings. However, this relationship may change as exposures are reduced in workplaces, and as more is learned about environmental exposures (e.g., indoor air exposures, pesticides usage). Larger populations are necessary in settings with lower exposures (Lemasters and Selevan, 1984). Other factors affect the identification of reproductive or developmental events with various levels of exposure. Exposed individuals may move in and out of areas with differing levels and types of exposures, affecting the number of exposed and comparison events for study. Thus, exposures can be short-term or chronic.

Data on exposure from human studies are frequently qualitative, such as employment or residence histories. More quantitative data may be difficult to obtain due to the nature of certain study designs (e.g., retrospective studies) and historical limitations in exposure measurements. Many developmental outcomes result from exposures during certain critical times. The appropriate exposure classification depends on the outcome(s) studied, the biologic mechanism affected by exposure, and the biologic half-life of the agent. The biologic half-life, in combination with the patterns of exposure (e.g., continuous or intermittent) affects the individual's body burden and consequently the "true" dose during the critical period. The probability of misclassification of exposure status may affect the ability to recognize a true effect in a study (Selevan, 1981; Hogue, 1984; Lemasters and Selevan, 1984; Sever and Hessol, 1984; Kimmel et al., 1986). As more prospective studies are done, better estimates of exposure will be developed.

b. Examination of Clusters or Case Reports/Series. The identification of cases or clusters of adverse pregnancy outcomes is generally limited to those identified by the women involved, or clinically by their physicians. Examples of outcomes more easily identified include mid to late fetal loss or congenital malformations. Identification of other effects, such as very early
embryonic loss may be difficult to separate from the study of sub- or infertility. Such "non-events" (e.g., lack of pregnancies or children) are much harder to recognize than are developmental effects such as malformations resulting from in utero exposure. While case reports have been important in the recognition of some agents that cause developmental toxicity, they may be of greatest use in suggesting topics for further investigation (Hogue, 1985). Reports of clusters and case reports/series are best used in risk assessment in conjunction with strong laboratory data to suggest that effects observed in animals also occur in humans. Previous discussion of the use of human data should be taken into account wherever possible.

3. Other Considerations

Several other types of information may be considered in the evaluation and interpretation of human and animal data. Information on pharmacokinetics and structure-activity relationships may be very useful, but is often lacking for developmental toxicity risk assessments.

a. Pharmacokinetics. Extrapolation of toxicity data between species can be aided considerably by the availability of data on the pharmacokinetics of a particular agent in the species tested and, when available, in humans. Information on absorption, half-life, steady-state and/or peak plasma concentrations, placental metabolism and transfer, excretion in breast milk, comparative metabolism, and concentrations of the parent compound and metabolites may be useful in predicting risk for developmental toxicity. Such data may also be helpful in defining the dose-response curve, developing a more accurate comparison of species sensitivity (Wilson et al., 1975, 1977), determining dosimetry at target sites, and comparing pharmacokinetic profiles for various dosing regimens or routes of exposure. Pharmacokinetic studies in developmental toxicology are most useful if conducted in animals at the stage when developmental insults occur. The correlation of pharmacokinetic parameters and developmental toxicity data may be useful in determining the contribution of specific pharmacokinetic parameters to the effects observed (Kimmel and Young, 1983).

While human pharmacokinetic data are often lacking, absorption data in laboratory animals for studies conducted by any relevant route of exposure may assist in the interpretation of the developmental toxicity studies in the animal models for the purposes of risk assessment. Specific guidance regarding both the development and application of pharmacokinetic data was agreed upon by the participants at the "Workshop on the Acceptability and Interpretation of Dermal Developmental Toxicity Studies" (Kimmel and Francis, 1990). It was concluded that absorption data are needed both when a dermal developmental toxicity study shows no developmental effects as well as when developmental effects are seen. The results of a dermal developmental toxicity study showing no adverse developmental effects and without blood level data (as evidence of dermal absorption) are potentially misleading and would be insufficient for risk assessment, especially if interpreted as a "negative" study. In studies where developmental toxicity is detected, regardless of the route of exposure, absorption data can be used to establish the internal dose in maternal animals for risk extrapolation purposes.

b. Comparisons of Molecular Structure. Comparisons of the chemical or physical properties of an agent with those known to cause developmental toxicity may indicate a potential for developmental toxicity. Such information may be helpful in setting priorities for testing of agents or for evaluation of potential toxicity when only minimal data are available. Structure-activity relationships have not been well studied in developmental toxicology, although data are available that suggest structure-activity relationships for certain classes of chemicals (e.g., glycol ethers, steroids, retinoids). Under certain circumstances (e.g., in the case of new chemicals), this is one of several procedures used to evaluate the potential for toxicity when little or no data are available.

B. Dose-Response Evaluation

The evaluation of dose-response relationships for developmental toxicity includes the evaluation of data from both human and animal studies. When quantitative dose-response data are available in humans and with sufficient range of exposure, dose-response relationships may be examined. Since data on human dose-response relationships have been available infrequently, the dose-response evaluation is usually based on the assessment of data from tests performed in laboratory animals.

Evidence for a dose-response relationship is an important criterion in the assessment of developmental toxicity, which is usually based on limited data from standard studies using three dose groups and a control group. Most agents causing developmental toxicity in humans alter development at doses within a narrow range near the lowest maternally toxic dose (Kimmel et al., 1984). Therefore, for most agents, the exposure situations of concern will be those that are potentially near the maternally toxic dose range. For those few agents that produce developmental effects at much lower levels than maternal effects, the potential for exposing the conceptus to damaging doses is much greater than when the maternal and developmental toxic doses are similar. As mentioned previously (Section III.A.1.b), however, traditional dose-response relationships may not always be observed for some end points. For example, as exposure increases, embryolethal levels may be reached, resulting in an observed decrease in malformations with increasing dose (Wilson, 1973; Selevan and LeMasters, 1987). The potential for this response pattern indicates that dose-response relationships of individual end points as well as combinations of end points (e.g., dead and malformed combined) must be carefully examined and interpreted.

The evaluation of dose-response relationships includes the identification of effective dose levels as well as doses that are associated with no increased incidence of adverse effects when compared with controls. Much of the focus is on the identification of the critical effect(s) (i.e., the adverse effect(s) observed at the lowest dose level) and the LOAEL and NOAEL associated with that developmental effect, which may be any of the four manifestations of developmental toxicity. The NOAEL is defined as the highest dose at which there is no statistically or biologically significant increase in the frequency of an adverse effect in any of the possible manifestations of developmental toxicity when compared with the appropriate control group in a data base characterized as having sufficient evidence for use in a risk assessment (see Section III.C). The LOAEL is the lowest dose at which there is a statistically or biologically significant increase in the frequency of adverse developmental effects when compared with the appropriate control group in a data base characterized as having sufficient evidence. Although a threshold is assumed for developmental effects, the existence of a NOAEL in an animal study does not prove or disprove the existence or level of a biological threshold; it only defines the highest level of exposure under the conditions of...
the study that is not associated with a significant increase in adverse effects.

Several limitations in the use of the NOAEL have been described (Gaylor, 1983; Crump, 1984; Kimmel and Gaylor, 1988; Gaylor, 1989; Brown and Erdreich, 1989, Kimmel, 1990): (1) Use of the NOAEL focuses only on the dose that is the NOAEL, and does not incorporate information on the slope of the dose-response curve or the variability in the data. (2) Since data variability is not taken into account (i.e., confidence limits are not used), the NOAEL will likely be higher with decreasing sample size or poor study conduct, either of which is usually associated with increasing variability in the data. (3) The NOAEL is limited to one of the experimental doses. (4) The number and spacing of doses in a study influence the dose chosen for the NOAEL. (5) Since the NOAEL is defined as a dose that does not produce an observed increase in adverse responses from control levels and is dependent on the power of the study, theoretically, the risk associated with it may fall anywhere between zero and an incidence just below that detectable from control levels (usually in the range of 7% to 10% for quantal data). Crump (1984) and Gaylor (1989) have estimated the upper confidence limit on risk at the NOAEL to be 2% to 6% for specific developmental end points from several data sets.

Because of the limitations associated with the use of the NOAEL (Kimmel and Gaylor, 1988; Gaylor, 1989; Kimmel, 1990), the Agency is evaluating the use of an additional approach for more quantitative dose-response evaluation when sufficient data are available, i.e., the benchmark dose (Crump, 1984). The benchmark dose is based on a model-derived estimate of a particular incidence level, such as 10% incidence. More specifically, the benchmark dose (BD) is derived by modeling the data in the observed range, selecting an incidence level within or near the observed range (e.g., the effective dose to produce a 10% increased incidence of response, the ED₁₀), and determining the upper confidence limit on the model. The upper confidence value corresponding to, for example, a 10% excess in response is used to derive the BD which is the lower confidence limit on dose for that level of excess response, in this case, the LED₁₀ (see Figure 1).

BILLING CODE 6560-50-M
Figure 1. This graphical illustration of the benchmark dose approach is based on Crump (1984) and Kimmel and Gaylor (1988). The benchmark dose (BD) is derived by modeling the data in the observed range, selecting an incidence level within or near the observed range (e.g., the effective dose to produce a 10% increased incidence of response, the ED\textsubscript{10}), and determining the upper confidence limit on the model. The upper confidence value corresponding to, for example, a 10% excess in response is used to derive the BD which is the lower confidence limit on dose for that level of excess response, in this case, the LED\textsubscript{10}. The RfD\textsubscript{DT} or RfC\textsubscript{DT} estimated by applying uncertainty factors (UF) to the BD would be greater than or equal to the BD/UF.
Various mathematical approaches have been proposed for deriving the benchmark dose for developmental toxicity data (e.g., Crump, 1984; Rai and Van Ryzin, 1985; Kimmel and Gaylor, 1988; Feustman et al., 1988; Chen and Kodell, 1989; Kodell et al., 1991). Such models may be used to calculate the benchmark dose, and the particular model used may be less critical since estimation of the benchmark dose is limited to the observed dose range. Since the model is only used to fit the observed data, the assumptions about the existence or nonexistence of a threshold are not as pertinent. Thus, models that fit the empirical data well may provide a reasonable estimate of the benchmark dose, although biological factors known to influence data should be incorporated into the model (e.g., intralitter correlations, correlations among end points (Ryans et al., 1991)).

The Agency is currently conducting studies to evaluate the application of several models to actual data sets for calculating the benchmark dose, to determine the minimum data required for modeling, and to develop methods for application to continuous data. In addition, information from these studies will be used to develop guidance for application of the benchmark dose approach to the calculation of the RfD or the RfC, since the Agency has limited experience with this approach (see Section III.D for a discussion of the RfD and RfC).

Using the benchmark dose approach, an LED can be calculated for each effect of an agent for which there is a database with sufficient evidence to conduct a risk assessment. In some cases, the data may be sufficient to also estimate the ED50 or ED10 which should be closer to a true no effect dose. A level between the ED50 and the ED10 usually corresponds to the lowest level of risk that can be estimated for binomial end points from standard developmental toxicity studies.

Certain principles are especially applicable for determining the NOAEL, LOAEL, and benchmark dose for developmental toxicity studies. First, the NOAEL, LOAEL, or benchmark dose are identified for both developmental and maternal or adult toxicity, based on the information available from studies in which developmental toxicity has been evaluated. The NOAEL, LOAEL, or benchmark dose for maternal or adult toxicity should be compared with the corresponding values from other adult toxicity data to determine if the pregnant or lactating female or the paternal animal (if exposure is prior to mating) may be more sensitive to an agent than adult males or nonpregnant females in other toxicity studies that generally involve longer exposure times.

Second, for developmental toxic effects, a primary assumption is that a single exposure at a critical time in development may produce an adverse developmental effect, i.e., repeated exposure may not be recognized for developmental toxicity to be manifested. In most cases, however, the data available for developmental toxicity risk assessment are from studies using exposures over several days of development, and the NOAEL, LOAEL, and/or benchmark dose is most often based on a daily dose, e.g., mg/kg/day. Usually, the daily dose is not adjusted for duration of exposure because appropriate pharmacokinetic data are not available. In cases where such data are available, adjustments may be made to provide an estimate of equal average concentration at the site of action for the human exposure scenario of concern. For example, inhalation studies often use 6 hr/day exposures during development. If the human exposure scenario is continuous and pharmacokinetic data indicate an accumulation with continuous exposure, appropriate adjustments can be made. If, on the other hand, the human exposure scenario of concern is very brief or intermittent, pharmacokinetic data indicating a long half-life may also require adjustment of dose. When quantitative absorption data by any route of exposure are available, the NOAEL may be adjusted accordingly; e.g., absorption of 80% of administered dose could result in a 50% reduction in the NOAEL. If absorption in the experimental species has been determined, but human absorption is not known, human absorption is generally assumed to be the same as that for the species with the greatest degree of absorption. NOAELs from inhalation exposure studies are adjusted to derive a human equivalent concentration (HEC) by taking into account known anatomical and physiological species differences (e.g., minute volume, respiratory rate, etc.) (U.S. EPA, 1991).

In summary, the dose-response evaluation identifies the NOAEL, LOAEL, or benchmark dose, defines the range of doses for a given agent that are effective in producing developmental and maternal toxicity, the route, timing and duration of exposure, species specificity of effects, and any pharmacokinetic or other considerations that might influence the comparison with human exposure scenarios. This information should always accompany the characterization of the health-related data base (discussed in the next section).

G. Characterization of the Health-Related Data Base

This section describes the process for evaluating the health-related data base as a whole on a particular agent and provides criteria for characterizing the evidence for judging a potential developmental hazard in humans within the context of expected exposure or dose. This determination provides the basis for judging whether or not there are sufficient data for proceeding further in the risk assessment process. This section does not address the nature and magnitude of human health risks which are discussed as part of the final characterization of risk along with estimates of potential human exposure and the relevancy of available data for estimating human risk. Characterization of hazard potential within the context of exposure or dose should assist the risk assessor in clarifying the strengths and uncertainties associated with a particular data base. Because a complex interrelationship exists among study design, statistical analysis, and biological significance of the data, a great deal of scientific judgment, based on experience with developmental toxicity data and with the principles of study design and statistical analysis, may be required to adequately evaluate the data base. Scientific judgment is always necessary, and in many cases, interaction with scientists in specific disciplines (e.g., developmental toxicology, epidemiology, statistics) is recommended.

A categorization scheme for characterizing the evidence for developmental toxicity is presented in Table 3. The categorization scheme contains two broad categories, sufficient evidence and insufficient evidence, which are defined in the table. Data from all available studies, whether indicative of potential hazard or not, must be evaluated and factored into a judgment as to the strength of evidence available to support a complete risk assessment for developmental toxicity. The primary considerations are the human data, if available, and the experimental animal data. The judgment of whether the data are sufficient or insufficient should consider quality of the data, power of the studies, number and types of end points examined, replication of effects, relevance of the test species to humans, relevance of route and timing of exposure for both human and animal studies, appropriateness of the dose selection in animal studies, and number of species...
establishing the minimum sufficient human evidence necessary to determine whether or not a human developmental hazard could exist within the context of dose, duration, timing and route of exposure. This category includes both human and experimental animal evidence.

**Sufficient Human Evidence:** This category includes data from epidemiologic studies (e.g., case control and cohort) that provide convincing evidence for the scientific community to judge that a causal relationship is supported by human evidence. When data from a single, well-conducted study in a single experimental animal species are presented in conjunction with strong supporting evidence, convincing evidence may be inferred. Supporting animal data may or may not be available.

**Sufficient Experimental Animal Evidence/Limited Human Data:** This category includes data from experimental animal studies and/or limited human data that provide convincing evidence for the scientific community to judge if the potential for developmental toxicity exists. The minimum evidence necessary to judge that a potential hazard does not exist would include data from appropriate, well-conducted laboratory animal studies in several species (at least two) which evaluated a variety of the potential manifestations of developmental toxicity, and resulted in adverse developmental effects at doses that were minimally toxic to the adult.

**Insufficient Evidence**

This category includes situations for which there is less than the minimum sufficient evidence necessary for assessing the potential for developmental toxicity, such as when no data are available on developmental toxicity, as well as for data bases from studies in animals or humans that have a limited study design (e.g., small numbers, inappropriate dose selection/exposure information, other uncontrolled factors), or data from a single species reported to have no adverse developmental effects, or data bases limited to information on structure/activity relationships, short-term tests, pharmacokinetics, or metabolic precursors.

In general, the categorization is based on criteria that define the minimum evidence necessary to conduct a hazard identification/dose-response evaluation. Establishing the minimum sufficient human evidence necessary to do a hazard identification/dose-response evaluation is difficult, since there are often considerable variations in study designs and study group selection. The body of human data should contain convincing evidence as described in the "Sufficient Human Evidence" category. Because the human data necessary to judge whether or not a causal relationship exists are generally limited, there are currently few agents that can be classified in this category. In the case of animal data, agents that have been tested adequately in laboratory animals according to current test guidelines generally would be included in the "Sufficient Experimental Animal Evidence/Limited Human Data" category. The strength of evidence for a data base increases with replication of the findings and with additional animal species tested. Information on pharmacokinetics or mechanisms, or on more than one route of exposure may reduce uncertainties in extrapolation to the human.

More evidence is necessary to judge that an agent is unlikely to pose a hazard for developmental toxicity than that required to judge a potential hazard. This is because it is more difficult, both biologically and statistically, to support a finding of no apparent adverse effect than a finding of an adverse effect. For example, to judge that a hazard for developmental toxicity could exist for a given agent, the minimum evidence necessary would be data from a single, appropriate, well-executed study in a single experimental animal species that demonstrate developmental toxicity, and/or suggestive evidence from adequately conducted clinical/epidemiologic studies. On the other hand, to judge that an agent is unlikely to pose a hazard for developmental toxicity, the minimum evidence would include data from appropriate, well-conducted laboratory animal studies in several species (at least two) which evaluated a variety of the potential manifestations of developmental toxicity and showed no adverse developmental effects at doses that were minimally toxic to the adult animal. In addition, there may be human data from appropriate studies supportive of no adverse developmental effects.

If a data base on a particular agent includes less than the minimum sufficient evidence (as defined in the "Insufficient Evidence" category) necessary for a risk assessment, but some data are available, this information could be used to determine the need for additional testing. In the event that a substantial data base exists for a given chemical, but no single study meets current test guidelines, the risk assessor should use scientific judgment to determine whether the composite data base may be believed as meeting the "Sufficient Evidence" criteria. In some cases, a data base may contain conflicting data. In these instances, the risk assessor must consider each study's strengths and weaknesses within the context of the overall data base in an attempt to define the strength of evidence of the data base for assessing the potential for developmental toxicity.

Judging that the health-related data base is sufficient to indicate a potential developmental hazard does not mean that the agent will be a hazard at every exposure level (because of the assumption of a threshold) or in every situation (e.g., hazard may vary significantly depending on route and timing of exposure). In the final risk characterization, the characterization of the health-related data base should always be presented with information on the dose-response evaluation (e.g., LOAEL, NOAEL, and/or benchmark dose), exposure route, timing and duration of exposure, and with the human exposure estimate.

**D. Determination of the Reference Dose (RfD) or Reference Concentration (RfC) for Developmental Toxicity**

The RfD or RfC is an estimate of a daily exposure to the human population that is assumed to be without appreciable risk of deleterious developmental effects. The use of the subscript DT is intended to distinguish these terms from the reference dose (RfD) for oral or dermal exposure or the reference concentration (RfC) for inhalation exposure, terms that refer primarily to chronic exposure situations (U.S. EPA, 1991b). The RfD or RfC is derived by applying uncertainty factors to the NOAEL (or the LOAEL if a NOAEL is not available), or the benchmark dose. To date, the Agency has applied uncertainty factors only to the NOAEL or LOAEL to derive an RfD or RfC. The Agency is planning eventually to use the benchmark dose approach as the basis for derivation of the RfD or RfC and will develop guidance as information is acquired and analyzed from ongoing Agency studies.

The most sensitive developmental effect (i.e., the critical effect) from the most appropriate and/or sensitive mammalian species is used for determining the NOAEL, LOAEL, or the benchmark dose in deriving the RfD or RfC (Section III.B). Uncertainty factors (UFs) for developmental and maternal toxicity applied to the NOAEL generally include a 10-fold factor for interspecies variation and a 10-fold factor for...
intraspecies variation. In general, an uncertainty factor is not applied to account for duration of exposure. Additional factors may be applied to account for other uncertainties or additional information that may exist in the data base. For example, the standard study design for a developmental toxicity study calls for a low dose that demonstrates a NOAEL, but in some cases, the lowest dose administered may cause significant adverse effect(s) and, thus, be identified as the LOAEL. In circumstances where only a LOAEL is available, the use of an additional uncertainty factor of up to 10 may be required, depending on the sensitivity of the end points evaluated, adequacy of dose levels tested, or general confidence in the LOAEL. In addition, if a benchmark dose has been calculated, it may be used to help interpret how close the LOAEL is to a level that would not be detectable from controls (equivalent to the NOAEL), and thus the size of the uncertainty factor to be applied. Other modifying factors (MFs) may be used depending on the characterization of the data base (Section III,C), data on pharmacokinetics, or other considerations that may alter the level of confidence in the data (U.S. EPA, 1991b). The total size of the uncertainty factor will vary from agent to agent and will require the exercise of scientific judgment, taking into account interspecies differences, variability within species, the slope of the dose-response curve, the background incidence of the effects, the route of administration, and pharmacokinetic data.

As stated above, there is little experience with the application of uncertainty factors to the benchmark dose approach for calculating the RfD or RfC, and there are several issues that must be addressed prior to its use for this purpose. For example, which benchmark dose (e.g., LEDO, LEDD, LEDD0) should be used for calculating the RfD0 or RfCD0, and what are the appropriate uncertainty factors that should be applied to the benchmark dose for deriving the RfD0 or RfCD0? That is, should the uncertainty factor applied to an LED0 be similar to that applied to a NOAEL, or should the uncertainty factor applied to an LED0 be equal to or less than that applied to a NOAEL? These and other questions are being addressed in ongoing Agency studies on the calculation of the RfD0 or RfCD0 using the benchmark dose approach. As results become available, and as further guidance is developed, this information will be published as a supplement to these Guidelines. The total RfD or RfC calculated is divided into the NOAEL or LOAEL (or the benchmark dose) for the critical effect in the most appropriate and/or sensitive mammalian species to determine the RfD0 or RfCD0. If the NOAEL, LOAEL, or benchmark dose for maternal toxicity is lower than that for developmental toxicity, this should be noted in the risk characterization, and this value compared with data from other studies in which adult animals are exposed.

The modeling approaches that have been proposed for developmental toxicity are, for the most part, statistical probability models that do not take into account underlying biological processes or mechanisms (e.g., Crump, 1984; Rai and Van Ryzin, 1985; Kimmel and Gaylor, 1988; Faustman et al., 1989; Chen and Kodel, 1989; Kodel et al., 1991). These models can be applied to derive dose-response curves for data in the observed dose range, but may or may not accurately predict risk at low levels of exposure. It has generally been assumed that there is a biological threshold for developmental toxicity; however, a threshold for a population of individuals may or may not exist because of other endogenous or exogenous factors that may increase the sensitivity of some individuals in the population. Thus, the addition of a toxicant may result in an increased risk for the population, but not necessarily for all individuals in the population.

Models that are more biologically based should provide a more accurate estimation of low-dose risk to humans. The development of biologically based dose-response models in developmental toxicology has been limited by a number of factors, including a lack of understanding of the biological mechanisms underlying developmental toxicity, intra/interspecies differences in the types of developmental events, appropriate pharmacokinetic data, and the influence of maternal effects on the dose-response curve. The Agency is currently supporting several major research efforts to develop biologically based dose-response models for developmental toxicity risk assessment that include the consideration of threshold under its Research to Improve Health Risk Assessment program.

E. Summary

In summary, the hazard identification/dose-response evaluation of developmental toxicity data is used as part of the final characterization of risk along with information on estimates of human exposure. This analysis depends on scientific judgment as to the accuracy and sufficiency of the health-related data, biological relevance of significant effects, the conditions of human exposure, and other considerations important in the extrapolation of data from animals to humans. Scientific judgment is always necessary, and in many cases, interaction with scientists in specific disciplines (e.g., developmental toxicology, epidemiology, statistics) is recommended.

IV. Exposure Assessment

In order to obtain quantitative estimates of risk for human populations, estimates of human exposure are required. This discussion is not intended to provide definitive guidance on exposure assessment; the “Guidelines for Estimating Exposures” have been published separately (U.S. EPA, 1986d) and will not be discussed in detail here. Rather, the issues important to developmental toxicity risk assessment are addressed. In general, the exposure assessment describes the magnitude, duration, frequency, and route(s) of exposure. This information is usually developed from monitoring data and from estimates based on various scenarios of environmental exposures.

There are several exposure considerations that are unique for developmental toxicity. For example, exposure to developing individuals is often secondary via placental transfer or through breast milk. Thus, exposure to the embryo/fetus or child may not be the same as for the pregnant or lactating mother, and measurements of an agent in maternal or cord blood and in breast milk may provide a better estimate of developmental exposure. Direct exposure of neonates and children may also occur via environmental media such as water, air and soil, and thus may require estimates of exposure from multiple sources. Duration and period of exposure also must be related to stage of development, if possible (e.g., first, second, or third trimester of pregnancy, infancy, early, middle, and late childhood, adolescence, etc.). These stages of development may have different sensitivities to agents, and exposure estimates should be derived for as many as possible. In addition, exposure to either parent prior to conception must be considered in relation to adverse developmental effects.

There is also a possibility that a single exposure may be sufficient to produce adverse developmental effects (i.e., repeated exposure is not a necessary prerequisite for developmental toxicity)
to be manifested, although it should be considered in cases where there is evidence of cumulative exposure or where the half-life of the agent is sufficiently long to produce an increasing body burden over time. Therefore, it is assumed that, in most cases, a single exposure at any of several developmental stages may be sufficient to produce an adverse developmental effect. Most of the data available for risk assessment involve exposure over several days of development. Thus, human exposure estimates used to calculate margins of exposure (MOE, see following section) or to compare with the RfD or RfC are usually based on a daily dose that is not adjusted for duration or pattern of exposure. For example, it would be inappropriate in developmental toxicity risk assessments to use time-weighted averages or adjustment of exposure over a different time frame than that actually encountered (such as the adjustment of a 6-hour inhalation exposure to account for a 24-hour exposure scenario), unless pharmacokinetic data were available to indicate an accumulation with continuous exposure. In the case of intermittent exposures, examination of the peak exposure(s), as well as the average exposure over the time period of exposure, would be important. It should be recognized that, based on the definition used in these Guidelines for developmental toxicity, exposure of almost any segment of the human population may lead to risk to the developing organism. This would include fertile men and women, the developing embryo and fetus, and children up to the age of sexual maturation. Although some effects of developmental exposures may be manifested while the exposure is occurring (e.g., spontaneous abortion, structural abnormality present at birth, childhood mental retardation), some effects may not be detectable until later in life, long after exposure has ceased (e.g., perinatally induced carcinogenesis, impaired reproductive function, shortened lifespan).

V. Risk Characterization

a. Overview

Risk characterization is the culmination of the risk assessment process. In this final step, risk characterization involves integration of the toxicity information from the hazard identification/dose-response evaluation with the human exposure estimates and provides an evaluation of the overall quality of the assessment. Most of the risk assessment describes risk in terms of the nature and extent of harm, and communicates the results of the risk assessment to a risk manager. The risk manager can then use the risk assessment, along with other risk management elements, to make public health decisions. The following sections describe these three aspects of the risk characterization in more detail, but do not attempt to provide a full discussion of risk characterization. Rather these Guidelines point out issues that are important to risk characterization for developmental toxicity.

B. Integration of the Hazard Identification/Dose-Response Evaluation and Exposure Assessment

In developing the hazard identification/dose-response and exposure portions of the risk assessment, the risk assessor makes many judgments concerning human relevance of the toxicity data, including the appropriateness of the various animal models for which data are available, the route, timing, and duration of exposure relative to expected human exposure, etc. These judgments should be summarized at each stage of the risk assessment process (e.g., the biological relevance of anatomical variations may be made in the hazard identification process, or species differences in metabolic patterns in the dose-response evaluations). When data are not available to make such judgments, as is often the case, the background information and assumptions discussed in the Introduction (Section I) provide a default position. The risk assessor must determine if some of these judgments have implications for other portions of the assessment, and whether the various components of the assessment are compatible.

The description of the relevant data should convey the major strengths and weaknesses of the assessment that arise from availability of data and the current limits of understanding of the mechanisms of toxicity. Confidence in the results of a risk assessment is a function of confidence in the results of the analysis of these elements. Each of these elements should have its own characterization as a part of it. Interpretation of data should be explained, and the risk manager should be given a clear picture of consensus or lack of consensus that exists about significant aspects of the assessment. Whenever more than one view is supported by the data and choosing between them is difficult, both views should be presented. If one has been selected over another, the rationale should be given; if not, then both should be presented as plausible alternative results.

The risk characterization should not only examine the judgments, but also explain the constraints of available data and the state of knowledge about the phenomena studied in making them, including:

• The qualitative conclusions about the likelihood that the agent may pose a specific hazard to human health, the nature of the observed effects, under what conditions (route, dose levels, time, and duration) of exposure these effects occur, and whether the health-related data are sufficient to use in a risk assessment;

• A discussion of the dose-response patterns for the critical effect(s), data such as the shapes and slopes of the dose-response curves for the various endpoints, the rationale behind the determination of the NOAEL, LOAEL, and/or calculation of the benchmark dose, and the assumptions underlying the estimation of the RfD or RfC; and

• The estimates of the magnitude of human exposure, the route, duration, and pattern of the exposure, relevant pharmacokinetics, and the size and characteristics of the populations exposed.

The risk characterization of an agent should be based on data from the most appropriate species, or, if such information is not available, on the most sensitive species tested. It should also be based on the most sensitive indicator of toxicity, whether maternal, paternal, or developmental, when such data are available, and should be considered in relationship to other forms of toxicity.

If data used in characterizing risk are from a route of exposure other than the expected human exposure, then pharmacokinetic data should be used, if available, to extrapolate across routes of exposure. If such data are not available, the Agency makes certain assumptions concerning the amount of absorption likely or the applicability of the data from one route to another (U.S. EPA, 1984, 1985b).

The level of confidence in the hazard identification/dose-response evaluation should be stated to the extent possible, including determination of the appropriate category regarding sufficiency of the health-related data. A comprehensive risk assessment ideally includes information on a variety of endpoints that provide insight into the full spectrum of developmental responses. A profile that integrates both human and test species data and incorporates a broad range of developmental effects provides more confidence in a risk assessment for a given agent.
The ability to describe the nature of human exposure is important for prediction of specific outcomes and the likelihood of permanence or reversibility of the effect. An important part of this effort is a description of the nature of the exposed populations. For example, the consequences of exposure to the developing individual versus the adult can differ markedly and again can influence whether the effects are transient or permanent. Other considerations relative to human exposures might include potential synergistic effects, increased susceptibility resulting from concurrent exposures to other agents, concurrent disease, and nutritional status.

C. Descriptors of Developmental Toxicity Risk

There are a number of ways to describe risks. These include:

1. Estimation of the Number of Individuals Exposed to Levels of Concern

The RfDO or RfCD is assumed to be a level at or below which no significant risk occurs. Therefore, information on the populations at or below the RfDO or RfCD ("not likely to be at risk") and above the RfDO or RfCD ("may be at risk") may be useful information for risk managers.

This method is particularly useful to a risk manager considering possible actions to ameliorate risk for a population. If the number of persons in the "at risk" category can be estimated, then the number of persons potentially removed from the "at risk" category after a contemplated action is taken can be used as an indication of the efficacy of that action.

2. Presenting Specific Scenarios

Presenting specific scenarios in the form of "what if?" questions is particularly useful to give perspective to the risk manager, especially where criteria, tolerance limits, or media quality limits are being set. The question being asked in these cases is, "At this proposed limit, what would be the resulting risk for developmental toxicity above the RfDO?"

3. Risk Characterization for Highly Exposed Individuals

This measure and the next are examples of specific scenarios. The purpose of this measure is to describe the upper end of the exposure distribution. This allows risk managers to evaluate whether certain individuals are at disproportionately high or unacceptably high risk.

The objective of looking at the upper end of the exposure distribution is to derive a realistic estimate of a relatively highly exposed individual(s), for example by identifying a specified upper percentile of exposure in the population and/or by estimating the exposure of the most highly exposed individual(s). Whenever possible, it is important to express the number of individuals who comprise the highly exposed group and discuss the potential for exposure at still higher levels.

If population data are absent, it will often be possible to describe a scenario representing high end exposures using upper percentile or judgment-based values for exposure variables. In these instances, caution should be taken not to overestimate the high end values if a "reasonable" exposure estimate is to be achieved.

4. Risk Characterization for Highly Sensitive or Susceptible Individuals

The purpose of this measure is to quantify exposure to identified sensitive or susceptible populations to the effect of concern. Sensitive or susceptible individuals are those within the exposed population at increased risk of expressing the adverse effect. All stages of development might be considered highly sensitive or susceptible, but certain subpopulations can sometimes be identified because of critical periods for exposure; for example, pregnant or lactating women, infants, children, adolescents.

In general, not enough is understood about the mechanisms of toxicity to identify sensitive subgroups for all agents, although factors such as nutrition, personal habits (e.g., smoking, alcohol consumption, illicit drug abuse), or pre-existing disease (e.g., diabetes) may predispose some individuals to be more sensitive to the developmental effects of various agents.

5. Other Risk Descriptors

In risk characterization, dose-response information and the human exposure estimates may be combined either by comparing the RfDO or RfCD and the human exposure estimate or by calculating the margin of exposure (MOE). The MOE is the ratio of the NOAEL from the most appropriate or susceptible species to the estimated human exposure level from all potential sources [U.S. EPA, 1985b]. If a NOAEL is not available, a LOAEL may be used in the calculation of the MOE, but considerations for the acceptability would be different than when a NOAEL is used. Considerations for the acceptability of the MOE are similar to that for the uncertainty factor applied to the LOAEL, NOAEL, or the benchmark dose. The MOE is presented along with the characterization of the data base, including the strengths and weaknesses of the toxicity and exposure data, the number of species affected, and the dose-response, route, timing, and duration information. The RfDO or RfCD comparison with the human exposure estimate and the calculation of the MOE are conceptually similar but are used in different regulatory situations. If the MOE is equal to or more than the uncertainty factor used as a basis for an RfDO, RfCD, then the need for regulatory concern is likely to be reduced.

The choice of approach is dependent upon several factors, including the statute involved, the situation being addressed, the data base used, and the needs of the decision maker. While these methods of describing risk do not actually estimate risks per se, they give the risk manager some sense of how close the exposures are to levels of concern. The RfDO, RfCD, and/or the MOE are considered along with other risk assessment and risk management issues in making risk management decisions, and the scientific issues that must be taken into account in establishing them have been addressed here.

E. Communicating Results

Once the risk characterization is completed, the focus turns to communicating results to the risk manager. The risk manager uses the results of the risk characterization, other technologic factors, and nontechnological social and economic considerations in reaching a regulatory decision. Because of the way in which these risk management factors may impact different cases, consistent but not necessarily identical risk management decisions must be made on a case-by-case basis. Consequently, it is entirely possible and appropriate that an agent with a specific risk characterization may be regulated differently under different statutes. These Guidelines are not intended to give guidance on the nonscientific aspects of risk management decisions.

VI. Summary and Research Needs

These Guidelines summarize the procedures that the U.S. Environmental Protection Agency uses in evaluating the potential for agents to cause developmental toxicity. While these are the first amendments to the developmental toxicity guidelines issued in 1986, further revisions and updates will be made as advances occur in the
field. These Guidelines discuss the assumptions that should be made in risk assessment for developmental toxicity because of gaps in our knowledge about underlying biological processes and how these compare across species.

Research to improve the risk assessment process is needed in a number of areas. For example, research is needed to delineate the mechanisms of developmental toxicity and pathogenesis, provide comparative pharmacokinetic data, examine the validity of short-term in vivo and in vitro tests, elucidate possible functional alterations and their critical periods of exposure to toxic agents, develop improved animal models to examine the developmental effects of exposure during the preantral and early postimplantation periods in neonates, further evaluate the relationship between maternal and developmental toxicity, provide insight into the concept of threshold, develop approaches for improved mathematical modeling of adverse developmental effects, and improve animal models for examining the effects of agents given by various routes of exposure. Epidemiologic studies with quantitative measures of exposure are also strongly encouraged. Such research will aid in the evaluation and interpretation of data on developmental toxicity, and should provide methods to more precisely assess risk.

VI. References


PART B: RESPONSE TO PUBLIC AND SCIENCE ADVISORY BOARD COMMENTS

I. Introduction

This section summarizes the major issues raised in the public and Science Advisory Board (SAB) comments on the Proposed Amendments to the Guidelines for the Health Assessment of Suspect Developmental Toxicants published March 6, 1989 (54 FR 9366-9403). Comments were received from 25 individuals or organizations. The Agency's initial summary of the public comments and proposed responses was presented to the Environmental Health Committee of the SAB on October 27, 1989. The report of the SAB Committee was provided to the Agency on April 23, 1990.

The SAB and public comments were diverse and addressed issues from a variety of perspectives. The majority of the comments were favorable and in support of the Proposed Amendments to the Guidelines. Many praised the Agency's efforts as being timely and well-justified. Most commentors also gave specific comments or criticisms for
further consideration, clarification, or re-evaluation. For example, there was concern over whether the Guidelines imposed further testing requirements, particularly functional testing, and many commentors felt that the Proposed Amendments discounted the role of maternal toxicity in developmental toxicity. In addition, there was concern that the proposed weight-of-evidence scheme would promote labeling of agents as causing developmental toxicity before the entire risk assessment process was completed. The SAB Committee also indicated that the proposed revisions were inadequately founded in developmental toxicology and represented a step forward for the Agency. They suggested that the Agency revisit the weight-of-evidence scheme to avoid confusion with more commonly applied uses of such classifications, and to develop a more powerful conceptual approach. Further, the SAB Committee urged that the Agency begin to move away from the current use of the non-observed-adverse-effect level (NOAEL) and lowest-observed-adverse-effect level (LOAEL) basis for calculating the reference dose for developmental toxicity to a benchmark dose and confidence limit approach tied to empirical models of dose-response relationships.

In response to the comments, the Agency has modified or clarified many sections of the Guidelines. For the purposes of this discussion, the major issues reflected by the public and SAB comments are discussed. Several minor recommendations, which are not discussed specifically here, also were considered by the Agency in the revision of these Guidelines.

II. Intent of the Guidelines

Many of the public comments indicated a misunderstanding of the intent of the Guidelines, apparently assuming that the risk assessment guidelines impose testing requirements. In particular, some commentors suggested that because the Agency was providing guidance on the interpretation of tests not required in the EPA testing guidelines, the Agency was suggesting that these tests be required in the future. The 1986 Guidelines and the 1989 Proposed Amendments clearly state that these guidelines are not Agency testing guidelines, but rather are intended to ensure uniform interpretation of all existing, relevant data. However, to avoid any confusion, the discussion of study designs has been changed to avoid the impression that these Guidelines set testing requirements. In the evaluation of data on an agent for risk assessment, relevant data are often encountered that have been generated from nontraditional tests. In such cases, it is imperative that the Agency provide guidance so that all data considered to be relevant are included in the risk assessment and are interpreted uniformly.

III. Basic Assumptions

In the 1989 Guidelines, several assumptions were applied in the approach to risk assessment, but were not explicitly stated. These assumptions were detailed in the 1989 Proposed Amendments. Comments received from the public and the SAB favored presentation of these assumptions and generally agreed with the wording, except for the fourth assumption which concerns the use of the most relevant or most sensitive species. The 1989 Proposed Amendments stated that "it is assumed that the most sensitive species should be used to estimate human risk. When data are available (e.g., pharmacokinetic, metabolic) to suggest the most appropriate species, that species will be used for extrapolation." The SAB recommended that, for this assumption, the basic position of the Agency should be to use data from the most relevant species, and that use of data from the most sensitive species should be the default position. In addition, the SAB recommended that the threshold assumption be considered carefully in the dose-response assessment of any agent, and that the Agency develop more comprehensive approaches to risk assessment as discussed further in the following sections.

Changes have been made in the statement of the basic assumptions in line with the SAB and public comments that clarify, but do not alter, the intent of the assumptions.

IV. Maternal/Developmental Toxicity

The 1989 Proposed Amendments stated that "when adverse developmental effects are produced only at maternally toxic doses, they are still considered to represent developmental toxicity and should not be discounted as being secondary to maternal toxicity." This statement and others concerning the interpretation of developmental toxicity in the presence of maternal toxicity were the subject of considerable number of public comments and were also addressed by the SAB. In general, commentors were divided in their opinions on whether they supported the Agency's statement or felt that they discounted the role of maternal toxicity in developmental toxicity, but in general, the recommended changes did not significantly alter the intent of the statements. The SAB endorsed the proposed revision, and suggested that the Agency retain the statement that was made in the Proposed Amendments. In these Guidelines, the position is further clarified by indicating that when maternal toxicity is significantly greater than the minimal maternally toxic dose, developmental effects at that dose may be difficult to interpret. This statement is added to clarify, but not to change, the intent or meaning of the statements regarding the relationship between maternal and developmental toxicity. From a risk assessment point of view, whether a developmental effect is or is not secondary to maternal toxicity, does not impact on the selection of the NOAEL or other dose-response methodology.

V. Functional Developmental Toxicity

The 1989 Proposed Amendments provided information on the state-of-the-art in the evaluation of functional effects resulting from developmental exposures. Several commentors voiced strong objection to this section because they perceived it as indicating an imminent requirement for testing. Several indicated there are no standard methods for functional testing, some felt that functional end points should not be used to establish the NOAEL, and others voiced concern about the problems with using postnatal exposures in animal studies.

The final Guidelines further update this section to include a discussion of the latest changes in the requirements for functional developmental toxicity testing by the Agency, and reflect the current approach to interpretation of such data, with incorporation of information from the EPA/NIDA-sponsored "Workshop on the Qualitative and Quantitative Comparability of Human and Animal Developmental Neurotoxicity" (1990). The intent of these Guidelines as stated above, is not to change testing requirements but to give guidance when these types of data are encountered in the risk assessment process. The Guidelines also indicate that functional developmental toxicity end points will be used for establishing the NOAEL when they are found to be the adverse effect occurring at the lowest dose in appropriate, well-conducted studies. Interpretation of postnatal exposure data is a concern, and must take into consideration effects on the mother, her offspring, and possible interactions: a statement to this effect has been added. Further interpretation of data will be
V. Weight-of-Evidence Scheme

The 1989 Proposed Amendments described important considerations in determining the relative weight of various kinds of data in estimating the risk of developmental toxicity in humans. The intent of the proposed weight-of-evidence (WOE) scheme was that it not be used in isolation, but be used as the first step in the risk assessment process, to be integrated with dose-response information and the exposure assessment.

The WOE scheme was the subject of a considerable number of public comments, and was one of the major concerns of the SAB. The concern of public commentors was that the reference to human developmental toxicity in this scheme suggested that a chemical could be prematurely designated, and perhaps labeled, as causing developmental toxicity in humans prior to the completion of the risk assessment process. The SAB suggested that the intended use of this scheme was not consistent with the use of the term “weight of evidence” in other contexts, since WOE is usually thought of as an evaluation of the total composite of information available to make a judgment about risk. In addition, the SAB Committee proposed that the Agency consider development of a more conceptual approach using decision analytical techniques to predict the relationships among various outcomes.

In the final Guidelines, the terminology used in the WOE scheme has been completely changed and retitled “Characterization of the Health-Related Data Base.” The intended purpose of the scheme is to provide a framework and criteria for making a decision on whether or not sufficient data are available to conduct a risk assessment. This decision is based on the available data, whether animal or human, and does not necessarily imply human hazard. This decision process is part of, but not the complete, WOE evaluation, which also takes into account the RfDoT or RfCDt and the human exposure information, culminating in risk characterization.

The final Guidelines also place strong emphasis on the integration of the dose-response evaluation with hazard information in characterizing the sufficiency of the health-related data base. In line with this approach, the Guidelines have been reorganized to combine hazard identification and dose-response evaluation. Finally, the SAB comments on developing a conceptual matrix provide an interesting challenge, but current data indicate that the relationships among end points of developmental toxicity are not consistent across chemicals or species.

The Agency is currently supporting modeling efforts to further explore the relationship among various development toxicity end points and the development of biologically based dose-response models that consider multiple effects.

VII. Applicability of the RfDoT Concept and the Benchmark Dose Approach

The 1989 Proposed Amendments introduced the term “reference dose for developmental toxicity—RfDoT,” based on short-term exposure, to distinguish it from the reference dose (RfD), which is used for chronic exposure situations. The public comments received generally supported the RfDoT approach. The SAB also agreed with the concept of the RfDoT for developmental toxicity risk assessment, based on short-term exposure. In addition, the SAB urged the Agency to consider strengthening the RfD approach by moving to more quantitative alternatives to the NOAEL.

In particular, the use of a benchmark dose approach to replace the NOAEL was strongly suggested. The final Guidelines have incorporated many of the SAB Committee’s suggestions concerning the development of more quantitative approaches to the RfD, and state that the Agency is beginning to use the benchmark dose approach for comparison with and interpretation of the NOAEL. That is, benchmark dose calculations may allow better interpretation of dose-response data and, in particular, what level of risk may be associated with the NOAEL. The Agency also has developed the concept of an inhalation reference concentration (RfC) and the RfCDt is being calculated for inhalation concentrations based on developmental toxicity. Guidance for use of the benchmark dose in the calculation of the RfDoT or RfCDt is not included in the final Guidelines, because of the limited experience of the Agency with this approach. There are several issues that must be addressed prior to its use for this purpose; for example, which benchmark dose (e.g., LEDt, LEDn, LEDo) should be used for calculating the RfDoT or RfCDt using the benchmark dose approach? As these and other questions are being addressed in ongoing Agency studies on the calculation of the RfDoT or RfCDt using the benchmark dose approach, results become available, and as further guidance is developed, this information will be published as a supplement to these Guidelines.
Part VI

Department of Housing and Urban Development

Grants and Cooperative Agreements; Availability, etc.: Shelter Plus Care Program, Notice of Program Guidelines
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary
(Docket No. N-91-3183; FR-2877-N-02; RIN 2506-AB11)

Shelter Plus Care Program; Notice of Program Guidelines

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of program guidelines.

SUMMARY: This Notice announces HUD’s revised guidelines, for immediate effect, for the operation of the Shelter Plus Care program. The Shelter Plus Care program was authorized by the National Affordable Housing Act (Pub. L. 101-625, approved November 28,1990) to provide rental housing assistance, in connection with supportive services funded from sources other than this program, to homeless persons with disabilities (primarily persons who are seriously mentally ill; have chronic problems with alcohol, drugs, or both; or have acquired immunodeficiency syndrome and related diseases) and their families. A Notice of Funds Availability (NOFA) with details regarding FY 1992 appropriations for the program and where to obtain application packages will be published separately in the Federal Register.

DATES: Effective date: December 5, 1991.

Comment due date: February 3, 1992.

ADDRESSES: Interested persons are invited to submit comments regarding these Guidelines to the Office of the General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m.–5:30 p.m. Eastern Time) at the above address. As a convenience to commenters, the Rules Docket Clerk will accept brief public comments transmitted by facsimile (“FAX”) machine. The telephone number of the FAX receiver is (202) 708-4337. (This is not a toll-free number). Only public comments of six or fewer total pages will be accepted via FAX transmittal. This limitation is necessary to assure reasonable access to the equipment. Comments sent by FAX in excess of six pages will not be accepted. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Rules Docket Clerk at (202) 708-2034 or, for the hearing- or speech-impaired, at TDD (202) 708–3259. (These are not toll-free numbers.)

FOR FURTHER INFORMATION CONTACT: For general information and information on the S+C/TRA component and the S+C/SRA component, James N. Forsberg, Director, Special Needs Assistance Program, (202) 708–4300 (TDD (202) 708–2565); and on the S+C/SRO component, Madeline Hastings, Director, Moderate Rehabilitation Division, (202) 755–4969 (TDD (202) 708–4594); Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. (Telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The information collection requirements contained in sections VII and XI of this Notice have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 and were assigned OMB control number 2500–0118.

I. Introduction

A. Background

Following the publication of the initial Notice of Program Guidelines for the Shelter Plus Care program in the Federal Register on February 4, 1991 (56 FR 4494), the Department received a total of 30 responses during the public comment period from units of government, governmental agencies, and nonprofit organizations. These responses discussed over 100 distinct topics, many of which were addressed by more than one commenter.

In light of the number of thoughtful comments received, as well as the newness of the program, the Department has decided not to publish a final rule at this time. Rather, a final rule, which will consider all of the comments received, will be published following the first round of funding utilizing the experience gained during the early operation of the program.

This revised Notice, then, will restrict itself to (1) clarifying programmatic requirements; (2) amending certain key features of the program to enable it to operate more smoothly and achieve its intended purposes; while readers are urged to carefully study this revised Notice in its entirety, the following are the key changes which have been made to the February 4 document:

• The names of two of the components of the program have been changed (Homeless Rental Housing Assistance, HRHA, to Tenant-based Rental Assistance, TRA, and 202 to Sponsor-based Rental Assistance, SRA) in the interest of simplicity and to focus more attention on the main feature of each component:

  • The minimum project size has been changed from “units” to “participants,” and reduced to 30 participants in metropolitan areas and 10 participants in non-metropolitan areas. Numerous comments indicated the previous minimums of 50 and 30 units were impractical and would prevent many jurisdictions from applying for assistance. In addition, the Department believes that participants served rather than units rented is a more appropriate programmatic requirement;

  • References to the Comprehensive Homeless Assistance Plan (CHAP) have been eliminated to reflect its replacement by the Comprehensive Housing Affordability Strategy (CHAS). All applicants, except Indian tribes, will be required as part of their application to certify that their proposal is consistent with the HUD-approved CHAS for the jurisdiction in which the project will be located;

  • Units will not be considered vacant when the occupant requires brief hospital stays not to exceed 90 days for each incident;

  • Supportive service requirements have been clarified to indicate that services may be newly created for the program or already in operation and that while participants need not receive supportive services for the entire period of the grant, such services must be available to participants for the entire period if needed;

  • Matching requirements have been changed to allow the value of donated professional services to be counted toward the match at the customary charge if the professional is donating a service for which he or she is ordinarily paid; to allow the value of donated nonprofessional time and services to be counted toward the match at the rate of $10 per hour; and to allow the cost of outreach activities to be counted toward the match;

  • The environmental review requirements have been clarified to indicate that “payment of rents” is categorically excluded from the review requirements of the National Environmental Protection Act and to indicate that circumstances may permit “excluded” activities to be exempt from all environmental authorities due to the lack of physical development activity that could affect the environment;

  • The allowable rent per unit for the S+C/TRA and S+C/SRA components has been clarified to indicate that such
rent may not exceed the Fair Market Rent (FMR) or HUD-approved exception rent;

- Eligible administrative activities, to be paid with up to seven percent of the grant under S+C/TRA and S+C/SRA, have been described;

- Requirements have been described for the use of assistance my recipients that contract with primarily religious organizations, or wholly secular organizations established by primarily religious organizations, to provide, operate, or manage housing and supportive services;

- For the sake of clarity and ease of understanding, cross-references to the section 202/811 regulations have been replaced by actual programmatic requirements under the description of the S+C/SRA component; and

- To provide more flexibility, the requirement that each applicant under S+C/SRA involve only one Sponsor has been eliminated.

The Department invites the public to comment on the clarifications and amendments announced in this notice. Persons who commented on the February 4 guidelines should not repeat those previous comments, but should restrict their comments to the clarifications or amendments announced in this notice. The Department invites persons who have not previously commented to comment on the guidelines in their entirety. All comments will then be considered and addressed in the final rule.

B. Definition of “Homeless”

Because of confusion on the part of some applicants and recipients in other HUD-administered homeless assistance programs, the Department also wants to clarify its understanding of the statutory definition of the term “homeless” which is contained in this Notice.

The Department places the definition of “homeless” within the context of the Findings and Purpose section of the McKinney Act. The first finding in section 102 states, “the Nation faces an immediate and unprecedented crisis due to the lack of shelter for a growing number of individuals and families, including elderly persons, handicapped persons, families with children, Native Americans, and veterans.” (Emphasis added.) All of the other findings, as well as the purpose, speak of the homeless or of homelessness as used synonymously in section 102. Misunderstandings have arisen in two areas. One has been the distinction between persons living in overcrowded or substandard housing and persons who are homeless. The Department does not believe that the limited resources of the Shelter Plus Care program are intended to be used to serve persons who are poorly housed. The Department administers other programs to serve these persons, such as section 8 rental assistance programs and the HOME program. The intent of Shelter Plus Care is to help persons who lack shelter.

The other misunderstanding has been the distinction between persons needing housing with supportive services and persons who are homeless. The Department recognizes the need for supportive housing for persons with disabilities who are not homeless, as well as for such persons who are homeless. In the past, the section 202 program provided supportive housing for persons with disabilities. Now, a new program providing housing for persons with disabilities has been created by section 811 of the National Affordable Housing Act. Unlike the section 811 program, however, the limited resources available under Shelter Plus Care must be for persons with disabilities who are homeless.

In general, homeless persons are persons who lack shelter; that is, persons living in shelters designed to provide temporary living accommodations or persons living in public or private places not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. The group of homeless persons are sometimes referred to as persons living on the street.

However, the Department also considers as homeless persons those who will become homeless imminently because they are being evicted from their permanent housing, including private dwellings or institutions, and because they lack the resources and support networks needed to obtain access to housing. In deciding whether these persons are homeless, one should ask whether without the Shelter Plus Care program they would spend the night in a shelter or on the street.

C. Program Overview

Section 837 of the National Affordable Housing Act (NAHA) amended title IV of the Stewart B. McKinney Homeless Assistance Act (McKinney Act) by adding subtitle F, which authorizes the Shelter Plus Care (S+C) program. The program targets assistance to a part of the population of the homeless previously underserved by other McKinney Act programs. The program is designed to link supportive services to rental assistance for homeless persons with disabilities, primarily those who are seriously mentally ill; have chronic problems with alcohol, drugs, or both; or have acquired immunodeficiency syndrome (AIDS) and related diseases.

HUD is required under section 452(b) of the McKinney Act (as amended by the NAHA) to reserve, to the maximum extent practicable, not less than 50 percent of S+C funds for homeless individuals who are seriously mentally ill or have chronic drug or alcohol problems. HUD expects this requirement to be met by the combined effect of selection criteria that will award up to 40 percent of the points for applications proposing to serve persons with those disabilities, and primarily homeless persons whose nighttime residence is a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings (i.e., “street persons”).

A nationwide study of the homeless by the Urban Institute in 1987 supports the expectation that these two selection criteria will result in the 50 percent requirement being met. In that study, conducted for the Food and Nutrition Service of the U.S. Department of Agriculture, the Urban Institute interviewed a sample of homeless using soup kitchens and shelters (“service users”) in a representative sample of 20 cities with populations over 100,000. The study also examined those homeless who used neither soup kitchens nor shelters (“non-service users”), although the sample size was smaller and less statistically valid. The study found that there were no families in the non-service users sample—i.e., street persons were homeless individuals. It also found that non-service users were much more likely to be mentally ill or have a history of substance abuse as compared with the service-using homeless. For example, 27 percent of the non-service using homeless had a history of mental hospitalization, as compared to 19 percent of the service using homeless. Almost twice as many of the non-service using homeless are dually diagnosed (i.e., those with both mental illness and chronic alcohol or drug abuse problems). Therefore, by targeting the program primarily to street persons, HUD believes that the S+C program will primarily serve individuals who are seriously mentally ill or have chronic alcohol or drug abuse problems.

After the initial funding round, if HUD finds that the use of the two selection criteria does not result in the 50 percent requirement being met, it will reconsider this approach.

The S+C program provides rental assistance through three components: (1) Shelter Plus Care Tenant-based Rental
Eligible person means a homeless person with disabilities (primarily persons who are seriously mentally ill; have chronic problems with alcohol, drugs, or both; have AIDS and related diseases) and, if also homeless, the family of such a person. (In the case of S+C/SRO, only individuals meeting the definition in this paragraph are eligible persons, and not the families of such individuals.) To be eligible for assistance, persons in the S+C/TR and S+C/SRA components must be very low income, as defined in this section; and individuals in the S+C/SRO component must be very low income, except that lower income individuals may be admitted in accordance with 24 CFR 813.105(b).

Homeless or homeless individual includes:

1. An individual who lacks a fixed, regular, and adequate nighttime residence; and
2. An individual who has a primary nighttime residence that is—
   (i) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill); (ii) An institution that provides a temporary residence for individuals intended to be institutionalized; or (iii) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

The term “homeless” or “homeless individual” does not include any individual imprisoned or otherwise detained pursuant to an Act of the Congress or a State law.

HUD means the Department of Housing and Urban Development.

Indian tribe means any Indian tribe, band, group, and nation, including Alaska Indians, Aleuts, and Eskimos and any Alaskan Native Village, of the United States, which is considered an eligible recipient under the Indian Self-Determination and Education Assistance Act (Pub. L. 93-405) or under the State and Local Fiscal Assistance Act of 1972 (Pub. L. 92-512).

Lower income means an annual income not in excess of 80 percent of the median income for the area, as determined by HUD. HUD may establish income limits higher or lower than 80 percent of the median income for the area on the basis of its finding that such variations are necessary because of the prevailing levels of construction costs or unusually high or low family incomes.

Person with disabilities means a household composed of one or more persons at least one of whom is an adult who has a disability. A person shall be considered to have a disability if such person has a physical, mental, or

1 Under the regulations for the section 202 Nonelderly Handicapped program (24 CFR part 865) and the Supportive Housing for Persons with Disabilities program (24 CFR part 811), persons whose sole impairment is drug or alcohol addiction are not considered handicapped. Because the Shelter Plus Care program is targeted to homeless persons with chronic problems with alcohol, drugs, or both, these persons will be considered disabled and eligible for assistance as long as they meet the three-part test in the first paragraph of the definition of "person with disabilities."
emotional impairment which is expected to be of long-continued and indefinite duration; substantially impedes his or her ability to live independently; and is of such a nature that such ability could be improved by more suitable housing conditions.

A person will also be considered to have a disability if he or she has a developmental disability, which is a severe, chronic disability that—

1. Is attributable to a mental or physical impairment or combination of mental and physical impairments;
2. Is manifested before the person attains age 22;
3. Is likely to continue indefinitely;
4. Results in substantial functional limitations in three or more of the following areas of major life activity: (i) self-care, (ii) receptive and expressive language, (iii) learning, (iv) mobility, (v) self-direction, (vi) capacity for independent living, and (vii) economic self-sufficiency; and
5. Reflects the person’s need for a combination of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

Notwithstanding the preceding provisions of this paragraph, the term “person with disabilities” includes, except in the case of the S+C/SRO component, two or more persons with disabilities living together, one or more such persons living with another person who is determined to be important to their care or well-being, and the surviving member or members of any household described in the first sentence of this definition who were living, in a unit assisted under the S+C Program, with the deceased member of the household at the time of his or her death. (In any event, with respect to the surviving member or members of a household, the right to rental assistance under the S+C program will terminate at the end of the grant period under which the deceased member was a participant.)

Participant means an eligible person who has been selected to participate in the S+C program.

Public housing agency, or PHA, means any State, county, municipality, or other governmental entity or public body (or agency or instrumentality thereof), including any Indian Housing Authority, which is authorized to engage in or assist in the development or operation of low income housing.

Recipient means an applicant approved for participation in the S+C program.

Secretary means the Secretary of HUD.

Sponsor means any private nonprofit entity, no part of the net earnings of which inures to the benefit of any private shareholder, contributor or individual, which entity is not controlled by, or under the direction of persons or firms seeking to derive profit or gain therefrom, which is approved by HUD as to administrative and financial capacity and responsibility, and which has effective nonprofit tax-exempt ruling under the Internal Revenue Code.

“Sponsor” does not mean a public body or the instrumentality of a public body.

No officer or director of the Sponsor is permitted to have any financial interest in any contract in connection with the provision of services, goods or supplies; procurement of furnishings and equipment; construction of the project; procurement of the site or other matters whatsoever.

Seriously mentally ill means having a severe and persistent mental or emotional impairment that seriously limits a person’s ability to live independently.

State means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

Supportive services means assistance that—

1. Addresses the special needs of eligible persons; and
2. Provides appropriate services or assists such persons in obtaining appropriate services, including health care, mental health treatment, substance and alcohol abuse services, child care services, case management services, counseling, supervision, education, job training, and other services essential for achieving and maintaining independent living.

Inpatient acute hospital care does not qualify as a supportive service.

Supportive service provider, or service provider, means a person or organization licensed or otherwise qualified to provide supportive services.

Such a person or organization may provide the services for profit or not for profit.

Unit of general local government means any city, county, town, township, parish, village, or other general purpose political subdivision of a State; Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa; or a general purpose political subdivision thereof; a combination of such political subdivisions recognized by the Secretary; the District of Columbia; and the Trust Territory of the Pacific Islands.

Such term also includes a State or a local public body or agency (as defined in section 711 of the Housing and Urban Development Act of 1970), community association, or other entity, which is approved by the Secretary for the purpose of providing public facilities or services to a new community as part of a program meeting the eligibility standards of section 712 of the Housing and Urban Development Act of 1970 or title IV of the Housing and Urban Development Act of 1968.

Very low income means an annual income not in excess of 50 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families. HUD may establish income limits higher or lower than 50 percent of the median income for the area on the basis of its finding that such variations are necessary because of unusually high or low family incomes.

III. Housing Standards; Rent Reasonableness; Vacancy Payments

A. Housing Standards

The housing to be provided must meet the applicable housing quality standards (HQS) under section 8 of the U.S. Housing Act of 1937 (1937 Act). For housing provided under the S+C/TRA and S+C/SRA components, the HQS are described in 24 CFR 882.109, and for housing provided under the S+C/SRO, in 24 CFR 882.803(b).

Before any assistance will be provided on behalf of a participant, the recipient, or another entity acting on behalf of the recipient (other than the entity providing the housing), must physically inspect each unit to assure that the unit meets the HQS. Assistance will not be provided for units that fail to meet the HQS, unless the owner corrects any deficiencies within 30 days from the date of the lease agreement and the recipient verifies that all deficiencies have been corrected. Recipients will also be required to make physical inspections of all units at least annually during the grant period to ensure that the units continue to meet the HQS. For housing provided under the S+C/SRO component, this will require compliance with 24 CFR 882.806[b][4] and 882.808[n].

B. Rent Reasonableness

For the S+C/TRA and S+C/SRA components, the recipient must determine whether the rent charged for the unit is reasonable in relation to rents being charged for comparable unassisted units, taking into account the location, size, type, quality, amenities, facilities, and management and...
C. Vacancy Payments

For the S+C/SRO component, if a participant vacates a unit before the expiration of the occupancy agreement, no assistance payment may be made for that unit after the month during which it was vacated; for the S+/CTRA and S+C/SRA components, the assistance may continue for a maximum of 30 days from the date the unit was vacated. No additional assistance will be paid until it is occupied by another eligible person. In programs serving homeless persons, the need for units is such that the owner should be able to fill vacancies quickly, particularly since outreach to potential eligible persons is expected to be an integral part of the S+C program. (As used in this paragraph, the term "vacates" does not include brief periods of inpatient care not to exceed 90 days for each incident.)  

IV. Supportive Services

To qualify for assistance under the S+C program, applicants must demonstrate that they will provide or ensure the provision of supportive services appropriate to the needs of the population being served and at least equal in value to the aggregate amount of rental assistance funded by HUD. The supportive services may be newly created for this program or already in operation. The supportive services or funding for the services may be provided by other Federal, State, local, or private programs. The supportive service must be available to participants and provided, as needed, for the entire term of the rental assistance. However, the value of supportive services provided to a participant does not have to equal the amount of rental assistance provided for that participant.

The applicant will be required to state the total value of the services, by source, to be provided over the grant period, although the amounts do not necessarily have to be an equal match to rental assistance on a year-to-year basis. However, if the supportive services and funding for the services are not provided substantially in accordance with the recipient’s description of the nature, source, and timing of such aid, HUD will take whatever action is appropriate, including recapturing any unexpended housing assistance.

In calculating the amount of the matching supportive services, applicants may count: (1) Salaries paid to staff of the recipient to carry out supportive services under the S+C program; (2) the value of supportive services provided by other persons or organizations to participate in the S+C program; (3) the value of time and services contributed by volunteers at the rate of $10.00 an hour, except for donated professional services which may be counted at the customary charge for the service provided (Professional services are services ordinarily performed by donors for pay that, through the supportive services, provided the value included in the match is no more than the prorated share used for the S+C program; and (5) the cost of outreach activities.

V. Rent Payments; Occupancy Agreements; Termination of Assistance

A. Rent Payments by Participants

Participants in the S+C program must pay rent in accordance with section 3(a)(1) of the 1937 Act. Although most homeless persons may not have an income when they enter the S+C program, it is not unreasonable to expect that, through the supportive services provided, many would at some point become gainfully employed or would be receiving some type of income support payments (e.g., Supplemental Security Income or State equivalent). Under section 3(a)(1), each participant must pay the highest of: (1) 30 percent of the family’s monthly adjusted income (adjustment factors include the number of people in the family, age of family members, medical expenses, and child care expenses); (2) 10 percent of the family’s monthly income; or (3) if the family is receiving payments for welfare assistance from a public agency and a part of the payments, adjusted in accordance with the family’s actual housing costs, is specifically designated by the agency to meet the family’s housing costs, the portion of the payments that is so designated; except that the cross income of a person occupying an intermediate care facility assisted under title XIX of the Social Security Act shall be the same as if the person were being assisted under title XVI of the Social Security Act. Detailed information with respect to calculating income for rent determination is contained in 24 CFR 813.106.

Recipients must examine the participant’s file initially to determine the amount of rent payable by the participant. Recipients must also reexamine a participant’s income in accordance with 24 CFR 813.109 at least annually during the period of time the participant is receiving rental assistance, and make any adjustments to the participant’s rental payment as necessary. Participants should be required to provide the recipient information at any time regarding subsequent employment that results in a change in income.

For the S+C/SRO component, these responsibilities are specified in 24 CFR 882.808. For the S+C/TRA component and the S+C/SRA component, the recipient must require, as a condition of participation in the program, that each participant agree to supply such information or documentation as the recipient determines necessary to verify the participant’s income.

B. Participant Occupancy Agreements

Participants in the S+C program must execute an initial occupancy agreement with the recipient or the entity providing the housing for a term of at least one month, automatically renewable upon expiration, except on prior notice. Other HUD programs require such agreements for one-year periods. However, this requirement is believed to be inappropriate for the S+C program because of the characteristics of the homeless population to be served. An agreement to occupy the unit for at least a month, however, is not unreasonable, and will help to create a sense of commitment to the program.

In addition to provisions normally included in a standard lease agreement, the recipient or the entity providing the housing may require the tenant to participate in the supportive services provided through the S+C program as a condition of continued occupancy.

C. Termination of Assistance to Participants

Assistance to participants in a S+C program may be terminated if the participant violates program requirements or conditions of occupancy. However, recipients should exercise judgment in determining when violations are serious enough to warrant termination. For example, for one of the target groups—substance abusers—relapse is a common occurrence, with many failing repeatedly before they finally succeed. Similarly, seriously mentally ill persons may demonstrate
inappropriate behavior requiring clinical intervention. Recipients will be expected to do as much as possible to ensure the adequacy of supportive services so that a participant's assistance is terminated only in the most severe cases. Even after termination, recipients should attempt to bring the person back into the program.

In terminating assistance to any program participant, recipients must provide a formal process that recognizes the rights of individuals receiving assistance to due process of law. This process, at a minimum, must consist of: (1) Serving the participant with a written notice containing a clear statement of the reasons for termination; (2) a review of the decision, in which the participant is given the opportunity to present written or oral objections before a person other than the person (or a subordinate of that person) who made or approved the termination decision; and (3) prompt written notification of the final decision to the participant.

VI. Outreach

Recipients are required to use their best efforts to obtain the participation of eligible persons who have previously not been assisted under programs designed to assist the homeless or have been considered not capable of participation in these programs. These efforts should be primarily directed toward eligible persons who have a primary nighttime residence that is a public place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings ("street persons"). Outreach activities are considered to be a form of supportive services, and the value of such activities may be included in meeting the matching requirement.

VII. Environmental Matters

A. Environmental Review

Except as noted, the environmental effects of each application must be assessed in accordance with the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4320) (NEPA) and the related environmental laws and authorities listed in 24 CFR part 58. Section 443 of the McKinney Act provides that the regulations and procedures applicable under section 104(g) of the Housing and Community Development Act of 1974 are to be applied to programs under title IV of the McKinney Act. Section 104(g) authorizes HUD to assign the Federal environmental responsibilities to grantees deemed to have the legal capacity for environmental review (States, metropolitan cities, urban counties, and other units of general local government) and to define how the responsibilities are to be performed. Part 58 of title 24 of the Code of Federal Regulations describes the requirements for grantees that assume the responsibilities. Part 58, at § 58.35, provides for categorical exclusions from the requirements of NEPA, and § 58.35(a)(6) excludes "the payment of rent". Also, § 58.34(a)(10) permits activities to be determined exempt if they (i) are excluded under NEPA and (ii) it is determined that there are no circumstances (e.g., such as property rehabilitation or other physical changes) that require compliance with the authorities listed in § 58.5.

With the exception of PHAs, all applicants under the S+C program have the legal capacity for environmental review under section 104(g), and HUD believes that the objectives of the S+C program can best be served by a consolidation of environmental review responsibilities at the applicant level. Therefore, applicants will be required to assume the responsibility for environmental review, decision making, and action for each application for assistance in accordance with part 58. PHAs do not have the legal capacity for environmental review under section 104(g); however, co-applicants of PHAs under the S+C/SRO component (i.e., States, units of general local governments, or Indian tribes) will be required to assume the responsibility for environmental review.

HUD will approve applications subject to the completion of any applicable environmental review requirements within a reasonable time after selection for funding. An assurance that the applicant will assume all environmental review responsibility, including acceptance of jurisdiction of the Federal courts, must be included in the application.

Applicants may adopt relevant and adequate prior reviews conducted by HUD or another governmental entity if the reviews meet the particular requirements of the Federal environmental law or authority under which they would be adopted, and only under certain conditions (e.g., a determination that no environmentally significant changes have occurred since the review was done). Applicants that adopt such relevant and adequate prior reviews may include the environmental certification and Request for Release of Funds with their applications.

B. Location in Floodplain

Applications for rental assistance for housing that will be located in any 100-year floodplain, as designated by the Federal Emergency Management Agency (FEMA), are subject to the floodplain review requirements of Executive Order 11988, Floodplain Management (May 24, 1977), Executive Order 11988 review, as referenced under 24 CFR part 58, is to be performed during the environmental review.

Any intermediate care facilities for the mentally retarded and individuals with related conditions must be treated as "critical actions" under Executive Order 11983, and require consideration of any 500-year floodplain, as required under 24 CFR 685.740(b).

VIII. Nondiscrimination and Equal Opportunity

A. General

Recipients may establish a preference as part of their admissions procedures for one or more of the statutorily targeted populations (i.e., seriously mentally ill, alcohol or drug abusers, or persons with AIDS and related diseases). However, other eligible disabled homeless persons must be considered for housing designed for the target population unless the recipient can demonstrate that there is sufficient demand by the target group for the units, and other eligible disabled homeless persons would not benefit from the primary supportive services provided.

B. Compliance With Requirements

Recipients serving a designated population of homeless persons must, within the designated population, comply with the following requirements for nondiscrimination on the basis of race, color, religion, sex, national origin, age, familial status, and handicap:

1. Fair Housing Requirements

The requirements of the Fair Housing Act (42 U.S.C. 3601-19) and implementing regulations at 24 CFR chapter 1; Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations at 24 CFR part 107; and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part 1.

2. Discrimination on the Basis of Age or Handicap

The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-07) and implementing regulations at 24 CFR part 146, and the prohibitions against discrimination against handicapped individuals under section 504 of the Rehabilitation Act of...
3. Employment Opportunities


4. Minority and Women’s Business Enterprises

The requirements of Executive Orders 11625, 12432, and 12139. Consistent with HUD’s responsibilities under these Orders, recipients must make efforts to encourage the use of minority and women’s business enterprises in connection with funded activities.

5. Affirmative Outreach

If the procedures that the recipient intends to use to make known the availability of the S+C program are unlikely to reach persons of any particular race, color, religion, sex, age, national origin, familial status, or handicap who may qualify for assistance, the recipient must establish additional procedures that will ensure that interested persons can obtain information concerning the assistance.

6. Disability Requirements—Fair Housing Act and Section 504

The recipient must comply with the reasonable modification and accommodation requirements of the Fair Housing Act and, as appropriate, the accessibility requirements of the Fair Housing Act and section 504 of the Rehabilitation Act of 1973, as amended.

IX. Other Federal Requirements

A. OMB Circulars

The policies, guidelines, and requirements of 24 CFR part 85 (as codified pursuant to OMB Circular No. A-102 and OMB Circular No. A-87) apply to the acceptance and use of funds under the program by recipients. Recipients are also subject to the audit requirements described in 24 CFR part 44.

B. Drug-Free Workplace

Under section 401 of the McKinney Act, recipients are required to administer, in good faith, a policy designed to ensure that homeless facilities are free from the illegal use, possession, or distribution of drugs or alcohol by its residents. Recipients must also certify that they will provide a drug-free workplace, in accordance with the Drug-Free Workplace Act of 1988 and HUD’s implementing regulations at 24 CFR part 24, subpart F.

C. Anti-Lobbying Certification

Section 319 of the Department of Interior Appropriations Act (Pub. L. 101-121, approved Oct. 23, 1989) prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government. A common rule governing the restrictions on lobbying was published as an interim rule on February 26, 1990 (55 FR 6738) and supplemented by a Notice published June 15, 1990 (55 FR 24540). The rule, which is codified in HUD regulations at 24 CFR part 87, requires applicants, recipients, and subrecipients of assistance exceeding $100,000 to certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance. The rule also requires disclosures from applicants, recipients, and subrecipients if nonappropriated funds have been spent or committed for lobbying activities if those activities would be prohibited if paid with appropriated funds. The law provides substantial monetary penalties for failure to file the required certification or disclosure.

D. Debarred or Suspended Contractors

The provisions of 24 CFR part 24 apply to the employment, engagement of services, awarding of contracts, or funding of any contractors or subcontractors during any period of debarment, suspension, or placement ineligibility status.

E. Conflict of Interest

In addition to the conflict of interest requirements in OMB Circular A-102 and 24 CFR part 85, no person who is an employee, agent, consultant, officer, or elected or appointed official of the recipient and who exercises or has exercised any functions or responsibilities with respect to assisted activities, or who is in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for himself or herself or for those with whom he or she has family or business ties, during his or her tenure or for one year thereafter.

F. Displacement, Relocation and Acquisition

The recipient must comply with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), implementing regulations at 40 CFR part 24, and HUD Handbook 1376, Tenant Assistance, Relocation and Real Property Acquisition.

X. Components

A. Tenant-based Rental Assistance (S+C/TRA)

The S+C/TRA component provides grants to be used for rental assistance in accordance with a flexible housing plan to be developed by the applicant to fit the needs of the homeless population to be served. Rental assistance will be provided for a five-year period.

1. Determining the Grant Amount

The amount of rental assistance provided to an applicant will be based on the number and type of units proposed to be assisted for the five-year period. The grant to the applicant will be calculated by multiplying the number of S+C/TRA units approved by the appropriate Section 8 Fair Market Rent (FMR) for Existing Housing in effect for the area at the time the application is approved (including any exceptions based on unit size approved by HUD under 24 CFR 882.106(a)(3)), and multiplied again by sixty months. (HUD publishes a schedule of FMRs annually on or before October 1, to take effect on that date. Instructions on calculating the amount of assistance using the FMRs as the basis will be included in the application package.)

2. Annual Expenditure of Rental Assistance

The total rental assistance awarded need not be divided into five equal annual increments. On demonstration of need, up to 25 percent of the total rental assistance awarded may be spent in any one of the five years, or a higher percentage if approved by HUD, where the applicant provides evidence satisfactory to HUD that it is financially committed to providing the housing assistance described in the application for the full five-year period. Any amounts not needed for a year during the grant period may be used to increase the amount available in subsequent years within the five-year period.

Applicants must give assurance that the assistance provided by HUD, and any amounts provided from other sources, are managed so that the housing assistance described in the application is provided for the full term of the grant, or that applicants will provide any shortfall, if necessary.

3. Per Unit Rent

Assistance will be in the form of rental assistance payments equal to the
rent for the unit, including utilities, minus the portion of the rent payable by the tenant under section 3(a)(1) of the 1937 Act. The allowable rent per unit may not exceed the applicable FMR or HUD-approved exception rent.

4. Administrative Costs

Recipients under the S+C/TRA component may contract with a PHA or other entity approved by HUD to administer the housing assistance. Up to seven percent of the amount of assistance awarded may be used to pay the costs of administering the housing assistance. Eligible administrative activities include processing rental payments to landlords, examining participant income and family composition, providing housing information and assistance, inspecting units for compliance with housing quality standards, and receiving into the program new participants. This administrative allowance does not include the cost of administering the grant itself, which is not an eligible activity in the S+C program.

5. Types and Location of Housing

S+S/TRA recipients may offer participants a variety of housing types, ranging from group homes to independent living units. Group homes may not serve more than 15 persons on one site, and independent living units for seriously mentally ill persons no more than 20 persons on one site.

Rental assistance under this component may not be used for units that are currently receiving Federal funding for rental assistance or operating costs under other HUD programs.

Where it is necessary to facilitate coordination of supportive services and housing, a recipient may require that a participant live within a particular area of the locality for his or her period of participation, or may require a participant to live in a particular structure or unit during the first year and a particular area the remainder of the time.

6. Rental Assistance Management Procedures

Each recipient under the S+C/TRA component must develop, and make available to the public, its procedures for managing the rental housing assistance funds provided by HUD. At a minimum, such procedures must describe how eligible homeless persons will be selected to participate in the program; how they will be placed in, or assisted in finding, appropriate housing; to whom, and under what conditions, rental housing assistance will be paid; and what safeguards will be used to prevent the misuse of these funds.

B. Section 8 Moderate Rehabilitation Program for Single Room Occupancy Dwellings for Homeless Individuals (S+C/SRO)

HUD's current section 8 Moderate Rehabilitation program for Single Room Occupancy Dwellings for Homeless Individuals (Mod Rehab SRO-Homeless) was authorized by section 441 of the McKinney Act to provide rental assistance for homeless individuals in rehabilitated SRO housing. The Mod Rehab SRO-Homeless program provides funds under an Annual Contributions Contract (ACC) to local PHAs to make rental assistance payments to participating owners of rental property on behalf of homeless individuals who rent rehabilitated SRO housing units. PHAs are responsible for selecting properties that are suitable for assistance and for identifying landlords who are willing to participate. PHAs then enter into a formal agreement with the property owner to make any repairs and improvements necessary to meet HUD standards and local fire and safety requirements. Although HUD does not provide financing for the actual rehabilitation, the cost of rehabilitation can be reflected in the contract rents, which are calculated by the PHA and include the costs of owning, managing, and maintaining the property.

1. Governing Regulations

The regulations governing the Mod Rehab SRO-Homeless program are set forth in 24 CFR part 882, subpart H. Those regulations will also govern the S+C/SRO component, except where they conflict with any requirements of the S+C program described in this Notice.

12. Property Eligibility Requirements

Property eligibility requirements are described in 24 CFR 882.803(a). Under § 882.803(a)(2)(ii), property owned by a PHA administering the ACC is ineligible for assistance. Section 548 of the NAHA lifted the bar on PHA ownership of units assisted under section 8. However, the Department believes that section 548 cannot be implemented without regulatory guidance, which is being developed in the context of another rule. Since the Department does not anticipate publication of a rule implementing section 548 before the Fiscal Year 1992 Shelter Plus Care competition, units owned by the PHA (or by an entity controlled by the PHA) administering the ACC under which assistance is to be provided will not be eligible in any program funded in Fiscal Year 1992.

3. Determining the Grant Amount

Assistance under the S+C/SRO component will be in the form of rental assistance payments, which equal the rent for the unit, including utilities, minus the portion of the rent payable by the tenant under section 3(a)(1) of the 1937 Act. Maximum gross rents for SRO units are established at 75 percent of the O-bedroom Moderate Rehabilitation FMR, which is 120 percent of the section 8 Existing FMR. The contract will provide for rental assistance for a period of 10 years, and will also provide the Secretary with an option to renew the contract for an additional period of 10 years, subject to the availability of authority.

4. Eligible Dwelling Units

SRO housing is defined in section 8(n) of the 1937 Act and in 24 CFR 882.802 as a dwelling unit that is not used for its intended purpose and which is used solely for the purpose of providing housing for homeless persons or families. SRO housing may not be used for an eligible dwelling unit that is not required to contain food preparation or sanitary facilities. Section 471 of the McKinney Act, as amended by section 837 of the NAHA, provides that S+C/SRO assistance may also be used in connection with the moderate rehabilitation of efficiency units, if the building owner agrees to pay the additional cost of rehabilitating and operating that unit. The cost of rehabilitation of efficiency units, if the building owner agrees to pay the additional cost of rehabilitating and operating that unit.

5. Eligible Applicants

Unlike the Mod Rehab SRO-Homeless program in which PHAs are the only eligible applicants, in the S+C/SRO...
component, a State, unit of general local government, or Indian tribe must be a joint applicant with the PHA. The governmental entity will be responsible for assuring the provision of supportive services and the overall administration of the program, while the PHA will be primarily responsible for administering the housing assistance.

6. Required Contracts

Upon approval of an application, the Annual Contributions Contract (ACC) would be, as under Mod Rehab SRO-Homeless, between HUD and the PHA. There will also be a contract between HUD and the governmental entity to administer the overall S+C/SRO component and ensure the provision of supportive services described in the application.

7. Eligible Participants

Under the Mod Rehab SRO-Homeless program, there is no requirement that homeless individuals have disabilities. Under the S+C/SRO component, however, participation is limited to homeless individuals with disabilities, especially individuals who are seriously mentally ill, have chronic problems with alcohol, drugs, or both, or have AIDS and related diseases.

8. Waiting List

The MOD Rehab SRO-Homeless program requires that a PHA establish a waiting list and fill vacant units with persons from the waiting list. Due to the special nature of the population to be served and the outreach requirements under the S+C program, as described under section VI of these Guidelines, PHAs will not be required to maintain a waiting list for the S+C/SRO component. However, the PHA must make public the availability of assistance under the program and procedures for participants to apply for assistance, in accordance with the outreach requirements in 24 CFR 882.606(a)(1) and (2) and with any additional outreach procedures described in the application.

C. Sponsor-Based Rental Assistance (S+C/SRA)

The S+C/SRA component provides grants to eligible applicants to enter into contracts with private non profit entities to be used for rental assistance by these “Sponsor” organizations.

1. Determining the Grant Amount

The amount of rental assistance provided to an applicant will be based on the number and type of units proposed to be assisted for the five-year period. The grant to the applicant will be calculated by multiplying the number of S+C/SRA units approved by the appropriate section 8 Fair Market Rent (FMR) for Existing Housing in effect for the area at the time the application is approved (including any exceptions based on unit size approved by HUD under 24 CFR 882.106(a)(3)), and multiplied again by sixty months. (HUD publishes a schedule of FMRs annually on or before October 1, to take effect on that date. Instructions on calculating the amount of assistance using the FMRs as the basis will be included in the application package.)

2. Annual Expenditure of Rental Assistance

The total rental assistance awarded need not be divided into five equal increments. On demonstration of need, up to 25 percent of the total rental assistance awarded may be spent in any one of the five years, or a higher percentage if approved by HUD, where the applicant provides evidence satisfactory to HUD that it is financially committed to providing the housing assistance described in the application for the full-year period. Any amounts not needed for a year during the grant period may be used to increase the amount available in subsequent years.

3. Per Unit Rent

Assistance will be in the form of rental assistance payments equal to the rent for the unit, including utilities, minus the portion of the rent payable by the tenant under section 3(a)(1) of the 1937 Act. The allowable rent per unit may not exceed the applicable FMR or HUD-approved exception rent.

4. Administrative Costs

Up to seven percent of the amount of assistance awarded may be used for administering the housing assistance. Eligible administrative activities include determining reasonableness of rent, processing rental payments to landlords, examining participant income and family composition, providing housing information and assistance, inspecting units for compliance with housing quality standards, and receiving into the program new participants. This administrative allowance does not include the cost of administering the grant itself, which is not an eligible activity under the S+C program.

5. Types and Location of Housing

S+C/SRA rental assistance will be provided for a period of five years for housing ranging from group homes to independent living units. Group homes may not serve more than 15 persons on one site, and independent living units for seriously mentally ill persons, no more than 20 persons on one site.

Rental assistance under this component may not be used for units that are currently receiving Federal funding for rental assistance or operating costs under other HUD programs.

A Sponsor may require that a participant live in a particular structure within a particular area of the locality for the period of participation.

6. Rental Assistance Management Procedures

Each recipient under the S+C/SRA component must develop, and make available to the public, its procedures for managing the rental housing assistance funds provided by HUD. At a minimum, such procedures must describe how eligible homeless persons will be selected to participate in the program; how they will be placed in, or assisted in finding, appropriate housing; to whom, and under what conditions, rental housing assistance will be paid; and what safeguards will be used to prevent the misuse of these funds.

7. Required Contracts

Upon approval of an application, HUD will enter into a contract with the State, unit of local government, or Indian tribe that is the recipient. The contract will require the governmental entity to administer the overall S+C/SRA component, ensure the provision of supportive services described in the application, and enter into a contract with the owner or lessor of housing meeting the definition of “Sponsor”.

XI. Application Requirements

At a minimum, applications must contain:

1. Applicant data. Description of ongoing programs conducted by the applicant and its contractors, and any past experience with similar programs.

2. Assistance requested. The type of housing assistance requested (i.e., S+C/TRA, S+C/SRO, S+C/SRA, or a combination), the number and bedroom size of units requested by component, and the dollar amount of assistance requested by component.

3. Population to be served. A description of the size and characteristics of the population of eligible persons to be served and the
living situations that qualify them as homeless.

4. Need for program. Identification of the need for the program in the community to be served.

5. Program plan. A plan for:
   (a) Identifying and selecting eligible persons to participate, including the applicant's proposed definition of the term “chronic problems with alcohol or other drugs,” if homeless persons with substance abuse problems will be served;
   (b) Obtaining participation, through outreach, of eligible persons most in need, primarily persons who have a primary nighttime residence that is a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings (“street-persons”).
   (c) Coordinating the provision of housing assistance and supportive services;
   (d) Ensuring that the supportive service providers are providing a continuum of supportive services adequate to meet the changing needs of the persons served; and
   (e) Developing individualized housing and supportive services programs for participants and for monitoring each participant's progress toward achieving identified goals.

6. Supportive services. A description of the supportive services that the applicant will make available for the population to be served and that will provide the match for the rental assistance; a description of the accessibility of the supportive services to the housing to be provided; the identify of the proposed supportive service providers (which may be, or include, the applicant) and the qualifications of the providers; the management and staffing plans of the provider(s) with respect to the supportive services to be provided; reasonable assurances that the supportive services will be available for the full term of the housing assistance requested; and a certification from the applicant that it will fund the supportive services itself if the planned resources do not become available for any reason.

7. Housing. (a) In the case of rental assistance under S+C/SRO, a description of the type, size, and general location of the housing to be provided; an explanation of how the housing will meet the changing needs of the population to be served; and identification of the entity or entities that will administer the housing assistance. When the applicant proposes to require participants to live in particular structures or units, and/or particular areas of the locality, an explanation of the reasons why such structures or units, or areas have been selected. If not yet selected, an explanation of the procedures that will be followed in selecting specific structures, units, or areas.
   (b) In the case of rental assistance under S+C/SRO, an explanation of how the housing meets the needs of the population to be served; identification of the PHA; identification of the specific structures that the applicant is proposing for rehabilitation and assistance and a demonstration that the property is eligible under 24 CFR 682.603(a); evidence of site control or other evidence that the site will be available for rehabilitation in accordance with the PHA's schedule; a feasibility analysis, which includes information on the amount and type of rehabilitation required, preliminary rent calculations in accordance with Mod Rehab program requirements, and the anticipated source of financing; assurance that the units to be assisted are currently vacant and the project will not result in displacement; demonstration that the project meets site and neighborhood standards; the number of vacant units and the number of total units; and a schedule for the rehabilitation and occupancy of the project.
   (c) In the case of rental assistance under S+C/SRA, an explanation of how the proposed housing meets the needs of the population to be served; identification of the Sponsor(s) that will be the owner or lessor of the property; evidence of the nonprofit status of the Sponsor(s) and identification of the specific structures in which the Sponsor(s) proposes to house eligible persons.

8. CHAS certification. A certification by the public official responsible for submitting the Comprehensive Housing Affordability Strategy, required under section 105 of the National Affordable Housing Act and described in 24 CFR part 91, stating that the proposed activities are consistent with the approved housing strategy of the unit of general local government within which rental assistance will be provided. Indian tribes are exempt from the CHAS certification requirement.

9. Other. Other certifications, information, or data prescribed by HUD in the application package.

XII. Selection Process
The selection process for rental assistance under the S+C Program will consist of the following stages:

A. Threshold Review
Applications must meet certain threshold requirements before they are eligible for ranking under the selection criteria described in this Notice. The first level of threshold review, which will apply to all applications, will determine:
   (1) Whether the application is adequate in form, time, and completeness; (2) whether the applicant, the population to be served, and, if applicable, the Sponsor, are eligible; (3) whether the proposed supportive services are cost effective and at least equal in value to the assistance requested; and, (4) whether the limitations on the number of persons who may be served on one site under the S+C/TRA and S+C/SRA components have been met.

Applications for S+C/SRO will then be reviewed further to determine whether they meet other threshold requirements for that component. If an application contains a request for assistance for more than one component, and one (or more) of the components fails to meet the threshold requirements, the remainder of the application will go forward in the process of the ranking stage. Applicants must indicate if services are linked to a specific component, so that, if that component fails under the threshold review, HUD can assess the feasibility of the program.

1. Threshold Requirements for All Applications

(a) Form, time, and adequacy. Applications must be filed in the form prescribed by HUD in the application package and within the time established in the Notice of Funds Availability. Applications must contain all applicable certifications described in this Notice and in the application package (e.g., CHAS, Drug-Free Workplace, environmental, anti-lobbying).

(b) Applicant eligibility. The applicant must be eligible under the S+C Program.

(c) Eligible population to be served. The population proposed to be served by the applicant must be eligible persons under the S+C Program.

(d) Matching. The value of the proposed supportive services must at least be equal in value to the requested rental assistance.

2. Threshold Requirements for S+C/SRO Applicants
In addition to the above requirements, applicants for assistance under the S+C/SRO component must show:
   (a) PHA eligibility. The application must demonstrate that the coapplicant is a PHA.
Federal Register / Vol. 56, No. 234 / Thursday, December 5, 1991 / Notices

(b) Site control. The application must identify the specific structure proposed to be rehabilitated and assisted, and demonstrate evidence of site control or other evidence that the site will be available for rehabilitation in accordance with the PHA’s schedule.

(c) Feasibility. The application must demonstrate that a preliminary estimate of the gross rents for the structure, calculated in accordance with Mod Rehab program requirements, indicate that the project is feasible within the FMR limitation. The feasibility analysis must include information on the rehabilitation proposed for the structure and must address the availability and type of financing to be used.

(d) Eligible property. The application must demonstrate that the property proposed to be used meets the SRO regulatory definition at 24 CFR 882.803(a); and that the units to be assisted are currently vacant. “Currently vacant” means that the unit is not occupied on and after the date of the application. (See the discussion with respect to displacement and the applicability of the URA under section X.B.4 of these Guidelines.)

(e) Rehabilitation costs. The application must demonstrate that the rehabilitation costs are within the minimum and maximum limitations per unit, which will be provided in the Federal Register Notice of Funding Availability.

(f) Site and neighborhood standards. The application must demonstrate that the project is in compliance with HUD’s site and neighborhood standards, described in 24 CFR 882.803(b)(4).

(g) Completion schedule. The application must demonstrate that the rehabilitation and occupancy of the project will be completed within 12 months from the date of execution of the ACC.

B. Rating

Applications that fulfill each of the threshold requirements described above will be rated based on the selection criteria described in section XIII of these Guidelines, and placed in ranked order. Successful applicants must receive points in criteria A, B, and C.

In cases where the applicant requests assistance under more than one S + C component, the components will not be separately rated. Rather the application will be rated as a whole. However, in assigning points in such cases, HUD will consider the relative importance of each component (such as the number of persons to be served and the nature, and extent, and location of the supportive services to be provided under each component) to the likely success of the overall program.

C. Final Selection

In the final stage of the selection process, the highest-rated applications will be considered for final selection in accordance with their ranked order, to the extent funds are available for the component or components requested. If funds are unavailable for one or more requested components, only those for which funds are available will be funded. Section 455(a)(2) of the McKinney Act, as amended by the NAHA, includes geographic diversity as one of the selection criteria. In order to achieve geographic diversity, HUD will determine, after applications are rated and ranked under the selection criteria, whether each of the four Census Regions contains at least one fundable application. If not, HUD will substitute the highest ranked application in the necessary Census Region for application(s) at the bottom of the list of tentatively selected projects.

XIII. Selection Criteria

Applications remaining in competition after the initial threshold review will be rated and ranked under the following selection criteria:

A. Capability of Applicants

HUD will award up to 100 points based on the ability of the applicant, either directly or through contractors or Sponsors, to develop and operate the proposed assisted housing and supportive services program. HUD will consider such factors as the quality of any ongoing programs of the applicant; the past experience of the applicant in programs serving the homeless, particularly the population to be served by the proposed program; the management and staffing plans of the applicant; and other factors relevant to the applicant’s ability.

B. Need for the Program in the Community

HUD will award up to 100 points based on a demonstration of the need for housing assistance and supportive services for eligible persons proposed to be served by the program in the community, particularly the hard-to-reach homeless. HUD will consider the extent to which the applicant demonstrates that an unmet need exists through data such as surveys of local homeless populations and other means of demonstrating the need for the program.

C. Appropriations of Housing and Supportive Services

HUD will award up to 300 points based on the appropriateness of the proposed assisted housing and supportive services. HUD will consider the degree to which proposed housing and services are targeted to specific needs of the population to be served, the comprehensiveness of the plan in providing a continuum of housing and services to meet the changing needs of the target population, the qualifications of the service providers, and the appropriateness of any restrictions on where participants may live.

D. Assimilation of Participants into Community

HUD will award up to 100 points based on the extent to which the program assimilates participants into the community. HUD will consider the degree to which proposed housing and services are targeted to specific groups and for efforts to encourage them to remain in the community.

E. Service to Hard-to-Reach Homeless Persons

HUD will award up to 200 points (based on the extent to which the program will serve the homeless persons who spend nights in public or private places not designed for, or ordinarily used as, regular sleeping accommodations for human beings (i.e., street persons) and those who reside in street persons) and those who reside in emergency shelters. HUD will consider the plans the applicant has for outreach to this population and for efforts to encourage them to remain in the housing. In awarding the maximum number of points under this criterion, HUD will give consideration to both the quality of the plan and the extent to which street persons will be served.

F. Service to Targeted Disabilities

HUD will award up to 200 points (based on the extent to which the program will serve persons who are seriously mentally ill, or have chronic problems with alcohol, drugs, or both, or have AIDS and related diseases.

XIV. Grant Agreement

The grant agreement will be between HUD and the recipient. HUD will hold the recipient responsible for the overall administration of the S + C program, including overseeing any contractors. The grant agreement will provide that the recipient agrees:

—To operate the program in accordance with the provisions of these
Guidelines and applicable HUD regulations:
—To conduct an ongoing assessment of the housing assistance and supportive services required by the participants in the program;
—To assure the adequate provision of supportive services to the participants in the program; and
—To comply with such other terms and conditions, including recordkeeping and reports (which must include racial and ethnic data on participants) for program monitoring and evaluation purposes, as the Secretary may establish for purposes of carrying out the program in an effective and efficient manner.

HUD will enforce the obligations in the grant agreement through such action as may be necessary, including recapturing assistance awarded under the program.

XV. Obligation and Deobligation of Funds

Upon approval of an application for funding and notification to the applicant, HUD will obligate funds to cover the amount of the approved assistance. After the initial obligation of funds for S+C/TR and S+C/SRA, HUD will not make any upward revisions to the amount obligated for any approved assistance.

HUD may deobligate all or any portion of the amounts approved for rental assistance if such amounts are not expended in a timely manner, or the proposed housing for which funding was approved or the supportive services proposed in the application are not provided in accordance with the approved application and the requirements of these Guidelines. The grant agreement may set forth other circumstances under which funds may be deobligated, and other sanctions may be imposed.

HUD may readvertise the availability of funds that have been deobligated in a notice of fund availability and select applications for funding with the deobligated funds. Such selections would be made in accordance with the selection process described in these Guidelines. Any selections made using deobligated funds will be subject to applicable appropriation act requirements governing the use of deobligated funding authority.

XVI. Waivers

Upon completion of a determination and finding of good cause, the Secretary may waive any provision of this part in any particular case subject only to statutory limitations. Each waiver must be in writing, and must be supported by documentation of the facts and reasons that formed the basis for the waiver.

HUD will publish a notice in the Federal Register informing the public of all waivers granted under this section and containing all relevant information concerning the waiver.

XVII. Other Matters

The collection of information requirements for this program have been approved by the Office of Management and Budget (OMB) under section 3504(h) of the Paperwork Reduction Act of 1980 and assigned OMB control number 2506-0118.

These guidelines do not constitute a “major rule” as that term is defined in section 1(d) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the guidelines indicates that they would not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, room 10276, 451 Seventh Street SW, Washington, DC 20410.

These Guidelines were listed as item number 1333 in the Department’s Semiannual Agenda of Regulations published at 56 FR 53390, 53390 on October 21, 1991 under Executive Order 12291 and the Regulatory Flexibility Act. The General Counsel, as the designated official under Executive Order 12606, has determined that some of the policies in these guidelines may have a potential significant impact on the formation, maintenance, and general well-being of the family. Participation of homeless families in the program can be expected to support family values, by helping families remain together; by enabling them to live in decent, safe, and sanitary housing; and by offering the supportive services that are necessary to acquire the skills and means to live independently in mainstream American society. Since the impact on the family is considered to be a beneficial one, no further review is necessary.

The General Counsel has also determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, Federalism, that the provision in these guidelines requiring applicants to assume the responsibilities for environmental review, decision making, and action under NEPA and other environmental authorities has Federalism implications. While the assignment of these responsibilities under section 104(g) of the Housing and Community Development Act of 1974 is discretionary with HUD, it is authorized by and clearly the intent of section 443 of the McKinney Act. Therefore, the policy is not subject to review under Executive Order 12612.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersecretary hereby certifies that these guidelines would not have a significant economic impact on a substantial number of small entities. They would govern the procedures under which HUD would make rental assistance available to applicants under a program designed to house and provide supportive services to homeless persons with disabilities.


Jack Kemp, Secretary.

[FR Doc. 91-16457 Filed 12-4-91; 8:45 am]

BILLING CODE 4210-52-M
Part VII

Department of Housing and Urban Development

Office of the Secretary

NOFA for Shelter Plus Care Program; Notice of Funding Availability
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

NOFA for Shelter Plus Care Program

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of funding availability.

SUMMARY: This Notice of funding availability (NOFA) announces the availability of $110,533,000 in funds for assistance under the Shelter Plus Care program. The NOFA contains information concerning eligible applicants, the funding available under each component of the program, the application package, and its processing. A Notice of Program Guidelines containing complete programmatic information and requirements for the Shelter Plus Care program appears elsewhere in this issue of the Federal Register.

DATES: Applications for Shelter Plus Care assistance must be received by close of business on February 28, 1992.

ADDRESSES: An original completed application must be submitted to the following address: Department of Housing and Urban Development, Office of Special Needs Assistance Programs, room 7262, 451 Seventh Street SW., Washington, DC 20410. Attention: James N. Forsberg. Two copies of the application must also be sent to the HUD field office serving the area in which the applicant’s project is located. A list of field offices appears at the end of this NOFA.

FOR FURTHER INFORMATION CONTACT: James N. Forsberg, Director, Office of Special Needs Assistance Programs, Department of Housing and Urban Development, room 7262, 451 Seventh Street SW., Washington, DC 20410. Telephone (202) 708-4300 or, for hearing- and speech-impaired persons, (202) 708-4300.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements for the Shelter Plus Care program have been approved under the Paperwork Reduction Act of 1980 by the Office of Management and Budget (OMB), and have been assigned OMB control number 2508-0118.

I. Purpose and Substantive Description

(a) Authority

The assistance made available under this NOFA is authorized by section 837 of the National Affordable Housing Act (Pub. L. 101-625, approved November 28, 1990), which amended title IV of the Stewart B. McKinney Homeless Assistance Act by adding subtitle F authorizing the Shelter Plus Care program.

(b) Allocation Amounts

This NOFA announces the availability of a total of $110,533,000 in funds, appropriated by the Department’s appropriations act for fiscal year 1992 (Pub. L. 102-139, approved October 29, 1991), for grants for two components of the Shelter Plus Care program as follows:

- $73,333,000 for Section 8 Moderate Rehabilitation for Single Room Occupancy Dwellings for Homeless Individuals (S+C/SRO)
- $37,200,000 for Sponsor-based Rental Assistance (S+C/SRA)

No funds were appropriated for fiscal year 1992 for the Tenant-based Rental Assistance component (S+C/TRA).

(c) Eligibility

For Section 8 Moderate Rehabilitation for Single Room Occupancy Dwellings for Homeless Individuals (S+C/SRO), an eligible applicant is (i) a State, unit of general local government, or Indian tribe that will be responsible for assuring the provision of supportive services and the overall administration of the program, and (ii) a public housing agency (PHA) that will be primarily responsible for administering the housing assistance under S+C/SRO. Rehabilitation costs for this funding round must be within the minimum limitation of $5,000 per unit and the maximum limitation of $15,500 per unit, except as provided in 24 CFR part 862.905(g).

For Sponsor-based Rental Assistance (S+C/SRA), an eligible applicant is a State, unit of general local government, or Indian tribe.

(d) Selection Criteria/Ranking Factors

The selection process for rental assistance under the Shelter Plus Care program consists of an initial technical threshold review (described in section XII.A of the guidelines) and, then, for those applications meeting all the threshold requirements, rating and ranking under the following six substantive selection criteria:

1. Capability of applicants—up to 100 points.
2. Need for the program in the community—up to 100 points.
3. Appropriateness of housing and supportive services—up to 300 points.
4. Assimilation of participants into the community—up to 100 points.
5. Service to hard-to-reach homeless persons—up to 200 points.
6. Service to targeted disabilities—up to 200 points.

Successful applicants must receive points under each of the first three criteria. A complete description of the rating of applications and of the factors considered under each selection criterion may be found in sections XII and XIII, respectively, in the program guidelines published elsewhere in this Federal Register.

II. Application Process

Application packages will be available beginning December 19, 1991 from the HUD field offices listed at the end of this NOFA. Additional information regarding the submission of applications is included in the package.

I only timely applications will be considered for funding. To be considered timely, an original application must be received by the Office of Special Needs Assistance Programs at the address listed at the beginning of this NOFA by close of business on February 28, 1992.

Applications received after this date will not be accepted even if postmarked by the deadline date. Applications sent by FAX will not be accepted.

Two copies of the application must also be sent to the appropriate HUD field office. These copies must be received by the application deadline as well, but a determination that an application was received on time will be made solely on receipt of the original application at the Office of Special Needs Assistance Programs in Washington, DC.

III. Application Submission Requirements

(a) Complete application submission requirements are contained in the application package. Any potential applicants have questions about the preparation or submission of applications are urged to contact their HUD field office.

(b) Applicants (other than Indian tribes) not having a HUD-approved comprehensive housing affordability strategy (CHAS) must submit a CHAS meeting the requirements of 24 CFR part 91 for approval before or with their application. The requirement in the Guidelines that an applicant submit a certification that the application is consistent with an approved CHAS will be satisfied by a certification that the proposed activities are consistent with the CHAS that has been or is being submitted for approval. The lack of an approved CHAS will not prevent an applicant from competing for an award. However, lack of an approved CHAS will prevent an applicant from receiving an award.
for funding will not be announced for at least 60 days after the date applications are due. If an applicant is selected for funding whose CHAS has not been approved by the time awards are announced, HUD will award the funding to the next highest ranked applicant who has an approved CHAS.

(c) Applicants other than States may submit one application. A State may submit one application for each jurisdiction or may combine proposals in separate jurisdictions in one application.

IV. Corrections to Deficient Applications

(a) HUD will notify an applicant, in writing, of any curable technical deficiencies in the application. The applicant must submit corrections in accordance with the information specified in HUD's letter within 14 calendar days from the date of HUD's letter notifying the applicant of any such deficiency.

(b) Curable technical deficiencies are items that are not necessary for HUD review under the selection criteria (e.g., failure to submit a required certification with the application). Items that would improve the substantive quality of the application may not be submitted after the application due date has expired.

V. Other Matters

Environmental Impact

A finding of no significant impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The finding of no significant impact is available for public inspection between 7:30 a.m. to 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this Notice will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the Notice is not subject to review under the Order. The Notice announces the availability of funds and invites applications from eligible applicants for the Shelter Plus Care program.

Impact on the Family

The General Counsel, as the Designated Official for Executive Order 12606, the Family, has determined that this Notice, to the extent the funds provided under it are directed to families, has the potential for a beneficial impact on family formation, maintenance of a home, and general well-being. However, the statutory authority for the program requires that, to the maximum extent practicable, 50 percent of the funds be targeted to individuals. Any funding provided to projects serving families can be expected to enable participating homeless families to live in decent, safe, and sanitary housing in connection with the supportive services necessary to acquire the skills and means to live independently in mainstream American society. Since the impact on families, if any, is a beneficial one, no further review is necessary.

Section 103 HUD Reform Act

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 was published May 21, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are limited by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708-3815. (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Regional or Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

Section 112 HUD Reform Act

Section 112 of the HUD Reform Act amended the Department of Housing and Urban Development Act by adding section 13, which contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts — those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the Federal Register on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in appendix A of the rule.

Any questions about the rule should be directed to Arnold J. Haiman, Director, Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-3000. Telephone: (202) 708-3815; TDD: (202) 708-1112.

These are not toll-free numbers. Forms necessary for compliance with the rule may be obtained from the local HUD office.

HUD Field Offices

Alabama

Jasper H. Boatright, Beacon Ridge Tower, 600 Beacon Pkwy. West, suite 300, Birmingham, AL 35209–3144; (206) 731–1672.

Alaska

Colleen Craig, Federal Bldg., 222 W. 8th Ave., #94, Anchorage, AK 99513–7537; (907) 271–3689.

Arizona

Diane Domzalski, 400 N. Fifth St., suite 1600, Arizona Center, Phoenix, AZ 85004; (602) 379–4754.

Arkansas


California (Southern)

Herbert L. Roberts, 1615 W. Olympic Blvd., Los Angeles, CA 90015–3801; (213) 251–7235.

(Northern)

Gordon H. McKay, 450 Golden Gate Ave., P.O. Box 36003, San Francisco, CA 94102–3448; (415) 556–5573.

Colorado

Barbara Richards, Exec. Tower Bldg., 1405 Curtis St., Denver, CO 80202–2349; (303) 844–5611.
<table>
<thead>
<tr>
<th>State</th>
<th>Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>Connecticut</td>
<td>Daniel Kolesar, 330 Main St., Hartford, CT 06106-1800; (203) 240-4508</td>
</tr>
<tr>
<td>Delaware</td>
<td>John Kane, Liberty Sq. Bldg., 105 S. 7th St., Philadelphia, PA 19106-3392; (215) 597-2865</td>
</tr>
<tr>
<td>District of Columbia</td>
<td>James H. McDaniel, 620 First St., NE., Washington, DC 20002; (202) 275-0094</td>
</tr>
<tr>
<td>Florida</td>
<td>James N. Nichol, 325 W. Adams St., Jacksonville, FL 32202-4303; (904) 791-5387</td>
</tr>
<tr>
<td>Georgia</td>
<td>Charles N. Straub, Russell Fed. Bldg., room 688, 75 Spring St., SW., Atlanta, GA 30303-3388; (404) 331-5139</td>
</tr>
<tr>
<td>Hawaii</td>
<td>Patti A. Nicholas, Acting, 7 Waterfront Plaza, suite 500, 500 Ala Moana Blvd., Honolulu, HI 96850-4991; (808) 541-1327</td>
</tr>
<tr>
<td>Idaho</td>
<td>John G. Bonham, 520 SW 6th Ave., Portland, OR 97204-1596; (503) 326-7018</td>
</tr>
<tr>
<td>Illinois</td>
<td>Richard Wilson, 547 W. Jackson Blvd., Chicago, IL 60606-5700; (312) 353-1696</td>
</tr>
<tr>
<td>Indiana</td>
<td>Robert F. Poffenberger, 151 N. Delaware St., Indianapolis, IN 46204-2529; (317) 226-5189</td>
</tr>
<tr>
<td>Iowa</td>
<td>Gregory A. Bevirt, Braiker/Brandeis Bldg., 210 S. 16th St., Omaha, NE 68102-1622; (402) 221-3703</td>
</tr>
<tr>
<td>Kansas</td>
<td>Miguel Madrigal, Gateway Towers 2, 400 State Ave., Kansas City, KS 66101-2406; (913) 236-2184</td>
</tr>
<tr>
<td>Kentucky</td>
<td>Ben Cook, P.O. Box 1044, 601 W. Broadway, Louisville, KY 40201-1044; (502) 582-5394</td>
</tr>
<tr>
<td>Louisiana</td>
<td>Greg Hamilton, P.O. Box 70288, 1661 Canal St., New Orleans, LA 70112-2867; (504) 589-7212</td>
</tr>
<tr>
<td>Maine</td>
<td>David Lafond, Norris Cotton Fed. Bldg., 275 Chestnut St., Manchester, NH 03101-2487; (603) 666-7640</td>
</tr>
<tr>
<td>Maryland</td>
<td>Harold Young, Equitable Bldg., 3rd Floor, 10 N. Calvert St., Baltimore, MD 21202-1865; (301) 962-2417</td>
</tr>
<tr>
<td>Massachusetts</td>
<td>Frank Del Vecchio, Thomas P. O'Neill, Jr., Fed. Bldg., 10 Causeway St., Boston, MA 02222-1092; (617) 565-5343</td>
</tr>
<tr>
<td>Michigan</td>
<td>Richard Paul, Patrick McNamara Bldg., 477 Michigan Ave., Detroit, MI 48226-2592; (313) 226-4343</td>
</tr>
<tr>
<td>Minnesota</td>
<td>Shawn Huckleby, 220 2nd St. South, Minneapolis, MN 55401-2195; (612) 370-3019</td>
</tr>
<tr>
<td>Mississippi</td>
<td>Joanie E. Smith, Dr. A. H. McCoy Fed. Bldg., 100 W. Capitol St., room 910, Jackson, MS 39269-1096; (601) 965-4765</td>
</tr>
<tr>
<td>Missouri</td>
<td>David H. Long, 1222 Spruce St., St. Louis, MO 63103-2836; (314) 539-6324</td>
</tr>
<tr>
<td>Montana</td>
<td>Barbara Richards, Exec. Tower Bldg., 1405 Curtis St., Denver, CO 80202-2349; (303) 844-3811</td>
</tr>
<tr>
<td>Nebraska</td>
<td>Gregory A. Bevirt, Braiker/Brandeis Bldg., 210 S. 16th St., Omaha, NE 68102-1622; (402) 221-3703</td>
</tr>
<tr>
<td>Nevada</td>
<td>(Las Vegas, Clark County) Diane Domzalski, 400 N. 5th St., suite 1800, 2 Arizona Center, Phoenix, AZ 85004; (602) 379-4754. (Remainder of state) Gordon H. McKay, 450 Golden Gate Ave., P.O. Box 38003, San Francisco, CA 94102-3448; (415) 553-5576</td>
</tr>
<tr>
<td>New Hampshire</td>
<td>David Lafond, Norris Cotton Fed. Bldg., 275 Chestnut St., Manchester, NH 03101-2487; (603) 666-7640</td>
</tr>
<tr>
<td>New Jersey</td>
<td>Frank Sagarese, Military Park Bldg., 60 Park Pl., Newark, NJ 07102-5504; (201) 677-1778</td>
</tr>
<tr>
<td>New Mexico</td>
<td>R. D. Smith, 1800 Throckmorton, P.O. Box 2905, Fort Worth, TX 76113-2905; (817) 865-5483</td>
</tr>
<tr>
<td>New York</td>
<td>Michael F. Merrill, Lafayette Ct., 465 Main St., Buffalo, NY 14203-1780; (716) 846-5768</td>
</tr>
<tr>
<td>North Carolina</td>
<td>Charles T. Ferebee, 415 N. Edgeworth St., Greensboro, NC 27401-2079; (919) 333-5711</td>
</tr>
<tr>
<td>North Dakota</td>
<td>Barbara Richards, Exec. Tower Bldg., 1405 Curtis St., Denver, CO 80202-2349; (303) 844-3811</td>
</tr>
<tr>
<td>Ohio</td>
<td>Jack E. Riordan, 200 North High St., Columbus, OH 43215-2499; (614) 469-6743</td>
</tr>
<tr>
<td>Oklahoma</td>
<td>Katie Worsham, Murrah Fed. Bldg., 200 NW 5th St., Oklahoma City, OK 73102-3202; (405) 231-4973</td>
</tr>
<tr>
<td>Oregon</td>
<td>John G. Boham, 520 SW 6th Ave., Portland, OR 97204-1596; (503) 326-7018</td>
</tr>
<tr>
<td>Pennsylvania (Western)</td>
<td>Bruce Crawford, Old Post Office and Courthouse Bldg., 700 Grant St., Pittsburgh, PA 15219-1906; (412) 644-5493. (Eastern) John Kane, Liberty Sq. Bldg., 105 S. 7th St., Philadelphia, PA 19106-3392; (215) 597-2865</td>
</tr>
<tr>
<td>Puerto Rico</td>
<td>Carmen R. Cabrera, 159 Carlos Chardon Ave., San Juan, PR 00918-1804; (809) 766-5576</td>
</tr>
<tr>
<td>Rhode Island</td>
<td>Frank Del Vecchio, Thomas P. O'Neill, Jr., Fed. Bldg., 10 Causeway St., Boston, MA 02222-1092; (617) 565-5343</td>
</tr>
<tr>
<td>South Carolina</td>
<td>Louis E. Bradley, Acting, Fed. Bldg., 1635-45 Assembly St., Columbia, SC 29201-2480; (803) 765-5564</td>
</tr>
<tr>
<td>South Dakota</td>
<td>Barbara Richards, Exec. Tower Bldg., 1405 Curtis St., Denver, CO 80202-2349; (303) 844-3811</td>
</tr>
<tr>
<td>Tennessee</td>
<td>Virginia Peck, 710 Locust St., Knoxville, TN 37902-2526; (615) 549-9422</td>
</tr>
<tr>
<td>Texas (Northern)</td>
<td>R. D. Smith, 1600 Throckmorton, P.O. Box 2905, Fort Worth, TX 76113-2905; (617) 965-5483</td>
</tr>
<tr>
<td>Texas (Southern)</td>
<td>Robert W. Hicks, Washington Sq., 800 Dolorosa, San Antonio, TX 78207-4563; (512) 229-6830</td>
</tr>
<tr>
<td>Utah</td>
<td>Barbara Richards, Exec. Tower Bldg., 1405 Curtis St., Denver, CO 80202-2349; (303) 844-3811</td>
</tr>
<tr>
<td>Vermont</td>
<td>David Lafond, Norris Cotton Fed. Bldg., 275 Chestnut St., Manchester, NH 03101-2487; (603) 666-7640</td>
</tr>
<tr>
<td>Virginia</td>
<td>Joseph Aversano, Fed. Bldg., 400 N. 8th St., P.O. Box 10170, Richmond, VA 23240-9998; (804) 771-2624</td>
</tr>
<tr>
<td>Washington</td>
<td>John Peters, Arcade Plaza Bldg., 1321 2nd Ave., Seattle, WA 98101-2054; (206) 442-0374</td>
</tr>
<tr>
<td>West Virginia</td>
<td>Bruce Crawford, Old Post Office &amp; Courthouse Bldg., 700 Grant St., Pittsburgh, PA 15219-1906; (412) 644-5493</td>
</tr>
</tbody>
</table>
1380, Milwaukee, WI 53203–2289; (414) 297–3113.

Wyoming
Barbara Richards, Exec. Tower Bldg.,
1405 Curtis St., Denver, CO 80202–2349; (303) 844–3811.

Jack Kemp,
Secretary.

[FR Doc. 91–29146 Filed 12–4–91; 8:45 am]
BILLING CODE 4210–32–M
Environmental Protection Agency

40 CFR Parts 261, 264, 265, and 302
Wood Preserving; Identification and Listing of Hazardous Waste; Standards and Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities; Proposed Rulemaking
ENVIRONMENTAL PROTECTION AGENCY
40 CFR Parts 261, 264, 265, and 302 [FR-3988-1]
RIN 2050-AD35
Wood Preserving: Identification and Listing of Hazardous Waste; Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities; Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities; and CERCLA Designation, Reportable Quantities

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The U.S. Environmental Protection Agency (EPA) today is proposing to amend the regulations for hazardous waste management under the Resource Conservation and Recovery Act (RCRA) by modifying subpart W standards for drip pads and modifying the listings of F032, F034, and F035. Today’s notice proposes to modify portions of the regulations that were finalized by EPA on November 15, 1990 (55 FR 50449 on December 6, 1990) and administratively stayed on June 5, 1991 (56 FR 27332 on June 13, 1991). Final action on these issues will result in the removal of the June 5, 1991 administrative stay of these elements. This notice also proposes to modify the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) list of hazardous substances to reflect the proposed modifications of the F032, F034, and F035 hazardous waste listings.

DATES: EPA will accept public comments on this proposed rule until January 6, 1992. Due to the time sensitivity of this rulemaking, the comment period cannot be extended. Comments post-marked after this date will be marked “late” and may not be considered. Any person may request a hearing on this proposed rule by filing a request with EPA, to be received no later than December 20, 1991.

ADDRESSES: The public must send an original and two copies of their comments to: EPA RCRA Docket Clerk, room 2427 (OS-332), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Place “Docket number F91-2W2P-4FF” on your comments. Copies of materials relevant to this proposed rulemaking are located in the docket at the address listed above. The docket is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. The public must make an appointment to review docket materials by calling (202) 260-0275. The public may copy 100 pages from the docket at no charge; additional copies are $0.15 per page. Requests for a hearing should be addressed to Mr. David Bussard at: Characterization and Assessment Division, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Comments on the CERCLA proposal should be sent in triplicate to: Emergency Response Division, Docket Clerk, ATTN: Docket No. RQ, room 2427, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Copies of materials relevant to the CERCLA portions of this rulemaking also are located in room 2427 at the above address.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline, at (800) 424-8846 (toll-free) or (703) 920-8010, in the Washington, DC metropolitan area. The TDD Hotline number is (800) 553-7872 (toll-free) or (703) 480-3323, locally. For technical information on the RCRA hazardous waste listings contact Mr. Edward L. Freedman (202) 260-3657, Office of Solid Waste (OS-333), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.


SUPPLEMENTARY INFORMATION: The contents of today’s preamble are listed in the following outline:

I. Background
II. General Overview of the Rule and Proposed Modifications
A. Current Waste Listings
B. Elements of the Wood Preserving Regulations that require Modification

III. Basis for Rule Modifications
A. Provisional Elimination of the F032 Designation for Wastes Generated by Past Users of Chlorophenolic Formulations
B. Classification of Wastewaters as a Hazardous Waste
C. Drippage in Storage Yards
D. Drip Pad Treatment, Surface Coating, Sealer, and Cover Requirements
E. Proposed Leak Collection Requirements for New Drip Pads
F. Drip Pad Closing Requirements
G. Timeframe for Existing Drip Pads to Comply with New Drip Pad Standards
H. Choice of Surface Coatings or Liner/Leak Detection Systems for New Drip Pads

IV. State Authority
A. Applicability of Final Rule in Authorized States
B. Effect on State Authorizations
1. HSWA Provisions
3. Modification Deadlines
V. CERCLA Designation and Reportable Quantities
VI. Compliance Procedures and Deadlines
VII. Regulatory Analyses
A. Executive Order 12291
B. Regulatory Flexibility Act
VIII. Paperwork Reduction Act

I. Background
Section 3001(e) of RCRA required EPA to determine whether to list wastes containing chlorinated dioxins and chlorinated dibenzofurans. As part of this mandate, the Agency initiated a listing investigation of dioxin-containing wastes from pentachlorophenol wood preserving processes and pentachlorophenol surface protection processes. Two other similar wood preserving processes that used cresote and aqueous inorganic formulations containing chromium or arsenic were also included in this investigation.

On December 30, 1988, EPA proposed four listings pertaining to wastes from wood preserving processes and subpart W for the management of these wastes. The Agency finalized three generic hazardous waste listings for wastes from wood preserving processes and subpart W for the management of these wastes on drip pads on November 15, 1990 and published the final rule in the Federal Register on December 6, 1990.

On December 31, 1990 the American Wood Preservers Institute (AWPI) formally requested a stay of the effective date for compliance, and also filed a petition for judicial review of the rule. The Agency has met with the industry to solicit and collect additional information to support this request. After reviewing the information and conducting independent studies and site visits, the Administrator signed an administrative stay on June 5, 1991 (56 FR 27332, June 13, 1991). This action conditionally stayed the applicability of the F032, F034, and F035 listings in process areas at wood preserving plants and stayed certain other portions of the rule, including the impermeability requirement for the drip pad surface sealer, coating, or cover. Furthermore, the Agency has identified other problems with implementation.

The purpose of this notice is to propose changes to the F032, F034, and F035 listings and portions of the subpart...
W requirements for drip pads. The scope of today's proposed regulation does not include wastes that are included in the K001 listing.

II. General Overview of the Rule and Proposed Modifications

A. Current Waste Listings

On November 15, 1990, the Agency promulgated three generic hazardous waste listings for wood preserving wastes from processes that use formulations of pentachlorophenol, creosote, or chromium and arsenic. Portions of these listings were administratively stayed on June 5, 1991 as set forth below:

F032: Wastewaters, process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that currently use or have previously used chlorophenolic formulations (except potentially cross-contaminated wastes that have had the F032 waste code deleted in accordance with § 261.35 of this chapter and where the generator does not have the ability to initiate use of chlorophenolic formulations). This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol.

F034: Wastewater, process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that use creosote formulations. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol.

F035: Wastewaters, process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that use inorganic preservatives containing arsenic or chromium. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosole and/or pentachlorophenol.

(Work: The listing of wastewaters that have not come into contact with process contaminants is stayed administratively. The stay will remain in effect until further administrative action is taken.)

For detailed discussions of the process and wastes see the December 30, 1988 Federal Register (53 FR at 53296) and the December 6, 1990 Federal Register (55 FR 50449). In addition to the hazardous waste listings, the Agency promulgated Subpart W drip pad standards that outline design criteria and operating requirements for drip pads used to manage treated wastewater, precipitation, and/or surface water runoff. A portion of these standards was administratively stayed on June 5, 1991 (see 56 FR 27332, June 13, 1991).

B. Elements of the Wood Preserving Regulations That Require Modification

With today's notice, EPA is proposing to revise several elements of the wood preserving hazardous waste regulations and is requesting comments on these issues. The Agency is proposing to: (1) Eliminate the F032 classification for certain wastes generated by past users of chlorophenolic formulations provided that any wastewaters, drippage, process residuals, or spent preservatives are regulated as a hazardous waste (Toxicity Characteristic wastes, F034 or F035); (2) narrow the scope of the wastewater listings to those wastewaters that come in contact with process contaminants; (3) require cleanup of storage yard drippage and contingency plans for response to incidental drippage in storage yards; (4) remove the requirement that new drip pads be impermeable; (5) add a requirement that new drip pads have leak collection devices; (6) revise the requirement that all existing drip pads be impermeable to reflect data on the permeabilities of available coatings, sealers, or covers; (7) require that drip pad surface materials be chemically resistant to the preservative being used and that these surface materials be maintained free of cracks, gaps, corrosion, or other deterioration; (8) revise the requirement that drip pads be cleaned weekly to a requirement that drip pads be cleaned in a manner and frequency such that the entire surface of drip pads can be inspected weekly; and (9) revise the schedule for upgrading existing drip pads to allow 15 years for the incorporation of liners and leak detection systems; and (10) revise the CERCLA designation of hazardous substances to reflect the modifications in the listings.

The Agency is also requesting comment as to whether the standards for new drip pads should allow the choice of either an impermeable surface (e.g., sealers, coatings, or covers for concrete drip pads) or a liner with a leak detection system.

III. Basis for Rule Modifications

A. Provisional Elimination of the F032 Designation for Wastes Generated by Past Users of Chlorophenolic Formulations

The current listing description for F032 states that the listing applies to wastes generated from wood preserving processes at plants that currently use or have previously used chlorophenolic formulations. However, a facility may "delete" its wastes from the F032 listing if the process no longer uses chlorophenolic solutions and if the facility meets the other criteria outlined in § 261.35 (see 55 FR 50483).

The Agency is proposing to eliminate the applicability of the F032 listing to wastes generated by past users of chlorophenolic formulations that have ceased using such formulations provided that any wastewaters, process residuals, preservative drippage, and spent formulations exhibit the toxicity characteristic (TC) or are listed as F034 or F035. This proposed change would apply only to wastewaters, process residuals, preservative drippage, and spent formulations generated after the facility ceases to use chlorophenolic formulations. This proposed amendment differs from the June 5, 1991 administrative stay in that it incorporates the TC designation as well as F034 and F035 wastes. Final action on this issue will result in the removal of the administrative stay that is currently in effect for this modification. Wastes from wood preserving processes that previously used chlorophenolic formulations but are currently using creosote and/or inorganic preservatives containing arsenic or chromium are already classified as hazardous under federal regulations under the F034 and/or F035 listings. The regulatory standards for F032, F034, and F035 wastes are identical, so that the F032 listing does not carry with it a stricter regulatory regime or result in different substantive regulation for the wastes other than the timing of the effective
date. Therefore, there is no additional environmental benefit from regulating wastes from past users of chlorophenolic formulations (F032) provided that the wastes will be classified as TC hazardous, F034, or F035. The Agency requests comment on this proposed action.

The Agency does note, however, that the issue of chlorophenolic cross-contamination will be relevant to previous use of chlorophenolic formulations when EPA establishes treatment standards for F032, F034, and F035 wastes under the land disposal restrictions program. The fact that a waste may be classified as F034 and/or F035 rather than F032 does not eliminate the need for the Agency to promulgate treatment standards that address the chlorophenolic formulations, and the various dioxins and furans that may be present in these wastes as a result of equipment cross-contamination. Thus, the Agency anticipates including standards for these constituents in all of the treatment standards for the listed wood preserving wastes.

EPA emphasizes that facilities that have switched from chlorophenolic formulations to formulations other than creosote or inorganic formulations containing chromium or arsenic are still subject to the F032 requirements for past users. Therefore, unless these facilities have deleted the F032 listing in accordance with the § 261.35, their wastes must be classified as F032 and remain subject to all applicable RCRA requirements.

Furthermore, this regulatory modification does not affect the regulation of materials contaminated with F032 waste under the Agency’s “contained-in” policy (see letter from EPA to the New York State Department of Environmental Conservation, dated June 19, 1989). Environmental media such as soils, ground water, or surface waters that are contaminated with F032 wastes are considered F032 hazardous waste when managed because they “contain” a listed hazardous waste. Even though the facility may no longer use chlorophenolics or may no longer be operating, contaminated media that contain a listed hazardous waste from past activities must be managed as the listed hazardous waste when actively managed. It is important to note that media contaminated with wastewaters, process residuals, preservative drippage, or spent formulations generated at the time a chlorophenolic formulation was in use would still be subject to the F032 listing as a result of the “contained-in” policy. See the July 1, 1991 Federal Register (56 FR 30192) for additional discussion. EPA requests information on the quantities of F032, F034, and F035 wastes that must be disposed of offsite, and also the quantities and frequency of generation of contaminated soil and debris meeting these three listing descriptions.

B. Classification of Wastewaters as a Hazardous Waste

In today’s notice, the Agency is proposing to narrow the scope of the wastewater listings for F032, F034, and F035 so that uncontaminated wastewaters are not included in the listings. Final action on this issue will result in the removal of the administrative stay that is currently in effect regarding this modification. The preamble to the December 30, 1988, proposed rule (see 53 FR 53288) described the types of wastewaters to be included in the scope of the F032, F034, and F035 listings. The Agency did not intend for the listings to apply to uncontaminated wastewaters that have come in contact with process contaminants (56 FR 27332). “Process contaminants”, as used here, would include hazardous constituents from formulations of preservative and any F032, F034, or F035 wastes. Thus, wastewaters that have come in contact with either chlorophenolic formulations, creosote formulations, or inorganic formulations of arsenic or chromium or the listed wastes from wood preserving plants and subsequently administratively stayed the applicability of the listings to wastewaters that have not come in contact with process contaminants (56 FR 27332). “Process contaminants”, as used here, would include hazardous constituents from formulations of preservative and any F032, F034, or F035 wastes. Thus, wastewaters that have come in contact with either chlorophenolic formulations, creosote formulations, or inorganic formulations of arsenic or chromium or the listed wastes from wood preserving plants (e.g., F032, F034, F035), should not be designated as F032, F034, or F035 waste. Wastewaters that do not contain chlorophenolic, creosote, or inorganic formulations containing arsenic or chromium or the listed wastes from wood preserving plants (e.g., F032, F034, F035) should not be considered as within the scope of the F032, F034, or F035 listings. For example, condensate from drying kilns (that have never been used to dry treated wood) used to dry untreated wood would not be considered F032, F034, or F035 waste. As an additional example, wastewater generated from steam conditioning untreated wood in cylinders that have never been used for steam conditioning treated wood should also not be considered F032, F034, or F035 waste. Also, rainwater that is collected in a fashion that keeps it segregated from preservative formulations or listed wastes from wood preserving plants would not be considered F032, F034, or F035 waste until it contacted preservative formulations or listed wood preserving wastes. The Agency requests comment on this proposed action.

However, if initially uncontaminated wastewater is mixed with contaminated wastewater (as in a centralized wastewater treatment system) or with process contaminants (such as rainwater on a process area drip pad or drip pad washdown), then the entire volume of wastewater is hazardous waste by the mixture rule (40 CFR 261.3(a)). For example, rainwater collected on drip pads and conveyed to associated collection systems would be considered a hazardous waste because it contacts listed wastes (such as drippage, process residuals, and wastewaters) from wood preserving operations. Thus, this proposal, if adopted, could lower hazardous waste generation where it is cost effective to segregate wastewaters to prevent contamination.

C. Drippage in Storage Yards

The Agency is proposing to require that owners/operators of wood preserving plants develop and implement contingency plans for immediate response to incidental drippage in storage yards. These contingency plans are proposed to be in accordance with subparts D of parts 264 and 265. This requirement would apply to both large quantity generators and generators of between 100 kg and 1000 kg per month. The contingency plan must describe how owners and operators plan to respond to incidental storage yard drippage. Owners and operators must also document the response to incidental storage yard drippage and maintain such documentation for a period of three years. Subpart W regulations require that treated wood remain on the drip pad until all drippage has ceased before moving it to the storage yard (§§ 264.573(k) and 265.443(k)). Even so, infrequent and incidental drippage may occur from the treated wood after its removal from the drip pad. Infrequent and incidental drippage may occur due to the effects of weather, type of wood, or type of preservative. EPA recognized in the final rulemaking that the de minimis losses that could occur would not require the storage yard to be equipped with a drip pad (55 FR at 30456, December 6, 1990).

The Agency further notes that this type of incidental drippage would not constitute illegal disposal of a hazardous waste provided that there is an immediate response to the discharge of the drippage (§§ 264.1(g)(9)(i)(A) and 265.1(c)(11)(i)(A) (persons responding immediately to discharges of hazardous wastes are not subject to regulatory standards for the response activities,
although the hazardous wastes become subject to subtitle C regulation after they are removed).

For the purposes of this rulemaking, the Agency proposes to require that the response to incidental storage yard drippage in the absence of cleanup of the incidental drippage. The contaminated media would then be managed as hazardous waste. Furthermore, the cleanup must be conducted in accordance with the contingency plan and emergency measures of subparts D of parts 264 and 265. The requirements of Subpart D are applicable to incidental and infrequent drippage because such drippage would constitute an unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air soil or surface water (§ 264.51(a) and § 265.51(a)). The Agency requests comment on this proposed action.

D. Drip Pad Surface Coating, Sealer, and Cover Requirements

Currently, subpart W requires both new and existing drip pads to be impermeable in order to contain drippage and mixtures of drippage and precipitation while being routed to an associated collection system (§ 264.573(a)(4) and § 265.443(a)(4)). For example, concrete drip pads would have to have impermeable coatings, sealers, or covers. Subpart W also requires a synthetic liner and leak detection system for new pads to prevent releases into the subsurface soil, ground water, or surface water (§ 264.573(b)(1)-(2) and § 265.443(b)(1)-(2)).

The existing regulations allow pads that were constructed prior to December 6, 1990, to operate for 2 years after the effective date or until the pad reaches 15 years of age, whichever is later, before it must be upgraded to incorporate liners and leak detection (§ 264.573 and 265.441). Installation of liners and leak detection systems was required for new drip pads (i.e., those constructed after December 6, 1980) in addition to the requirement that new drip pads be impermeable.

The Agency proposes to modify the regulations for new drip pads to remove the requirement that they be impermeable. Thus, for new drip pads, a liner and leak detection system would have to be installed below the drip pad, but a surface sealer, coating, or cover would not be required for concrete drip pads in order to meet the subpart W requirements. Although sealers, coatings, or covers would not be required for new pads, the Agency does note that the use of a surface material could eliminate or minimize the amount of contaminated pad material to be disposed of when the facility closes the pad. The Agency also notes that, depending on the quality of construction, a drip pad without a surface sealer, coating, or cover may have an impermeability of leakage to the underlying liner (see the following section on proposed leak collection requirements for new drip pads) and thus, recommends use of a sealer, coating, or cover to reduce the need for major cleanup efforts if the concrete cracks, allowing leakage to the liner. The use of a coating in addition to a liner, leak collection, and leak detection would have to be determined by the facility in consideration of needs to balance capital and maintenance costs. The Agency believes that a well-maintained drip pad of high-quality construction with no cracks or gaps can provide substantial containment, and that a liner would provide secondary containment. In such a case, the additional requirement for a sealed, coated, or covered surface would unnecessarily increase control beyond secondary containment. EPA requests comment on the proposal to remove the requirement for a sealed/coated surface for new drip pads constructed of materials such as concrete. The requirement for a sealed, coated, or covered surface for existing drip pads constructed of materials such as concrete would not be affected by this proposed modification.

EPA is aware that the requirement for an absolutely impermeable surface cannot be practicably met. The Agency’s intent in the December 6, 1990, rule was to require a surface coating, sealer, or cover for concrete drip pads (or similar porous or semipermeable materials of construction) that would provide incremental protection against permeation of preservative into the drip pad and thus serve to ensure less permeability than would be achieved with the drip pad itself. This requirement would be applicable to concrete or other porous or easily-fractured materials of construction but may not be applicable to materials of construction such as steel. Today, the Agency is proposing the performance standard that drip pads have a hydraulic conductivity of less than 1×10⁻⁷ centimeters per second. The Agency recognizes that the most common material for drip pad construction is concrete, thus this standard has been derived from the theoretical conductivity of unfractioned, well-constructed concrete. Thus, drip pads made of concrete or other porous or easily-fractured materials of construction would be required to have sealers, coatings, or covers that are resistant to vertical infiltration of water vapor such that the hydraulic conductivity through the surface materials is less than 1×10⁻⁷ centimeters per second. The Agency believes that the use of water for infiltration rate determination represents a “worst case” scenario for creosote and chlorophenolic formulations at the time when creosote and chlorophenolic formulations are mixed with precipitation on uncovered drip pads, surface run-on water, and when drip pads are cleaned with steam or water. Supporting documentation for this standard can be found in the docket for this rulemaking. Several commercially available surface coatings providing equivalent or better resistance to permeation have been identified by the Agency. A typical method for measuring the infiltration rate of water vapor into a surface coating is ASTM E-96 Procedure E. Procedure E is a conservative procedure which is run at a temperature of 100 degrees Fahrenheit and uses a desiccant to maximize vapor pressure differential.

Water seepage is commonly expressed as flux (units of mass or volume per area per time). Flux can be converted into hydraulic conductivity. Assuming that a 20,000 ft² drip pad has a 10% constantly wetted surface (i.e., 2,000 ft² is constantly wet), the rate of water permeation through unfractured, well-constructed concrete with a 1×10⁻⁷ centimeter per second hydraulic conductivity would be approximately 4 gallons per day. Use of coatings, sealers, or covers with a hydraulic conductivity less than that of well-constructed concrete would reduce the rate of permeation, but as greater performance is required, the availability of suitable materials is decreased. EPA is proposing that this quantity of potentially contaminated water or other wastes that could permeate a well-designed and unfractured drip pad is acceptable. EPA is, however, proposing to require a coating, sealer, or cover on such pads of a lower permeability than a well-designed concrete pad (1×10⁻⁷ centimeters per second). The reason for this is that such surface materials will help assure that the permeability in actual field conditions does not exceed that of a well-designed concrete pad.

The Agency is also proposing to require that surface materials used to limit hydraulic conductivity be maintained free of cracks and gaps that would adversely affect the hydraulic conductivity of the surface materials and is proposing to require that such materials be chemically compatible with...
any preservatives that contact the drip pad.

The limitation to reliance on concrete as the only protective containment barrier for existing pads is that concrete can develop microfractures that significantly increase the permeability, but are difficult to detect visually. A pad with numerous microfractures could have permeabilities that may release as much as 1,000 times more than that of a pad without microfractures. EPA believes a low permeability coating will help assure that microfractures do not significantly reduce the protectiveness of a concrete pad. The stresses that produce microfractures in some concrete pads should not produce the same sort of fractures in the overlying coating because the coating has different properties of flexibility and should not be prone to the same cracking pattern. A standard for the coatings of less than $1 \times 10^{-7}$ centimeters per second provides that protection while still assuring that a wide range of coating materials is available.

EPA is also aware of a number of coatings available that have permeabilities on the order of $1 \times 10^{-8}$ centimeters per second. EPA requests comment and data on whether those coatings are appropriate for these circumstances and whether the permeability standard should be lower than that proposed by the Agency. The Agency solicits comments on the potential compliance costs and environmental benefits of a lower permeability standard.

The Agency has found no generally accepted test methods for determining the permeability of a surface sealer, coating, or cover once it has been applied to a drip pad. The EPA has found that such information on permeability is typically provided by manufacturers. Therefore, the Agency will rely on permeability data supplied by the manufacturer of the surface material in order to verify that it meets the minimum permeability standard. The Agency has not required that a specific test method be used for the measurement of permeability. However, the method used must allow for the determination of the mass of preservative formulation that passes through a given area of the surface material over a given time period.

The Agency has limited information and no test data regarding nationally-recognized test methods to measure the hydraulic conductivity of sealers or polymer-modified coatings. A potential application is Army Corps of Engineers test method CRD-C-66-73 for water permeability of concrete. However, the Agency has no data or indications of this method's acceptability for use with sealers. If there are no standard test methods to determine hydraulic conductivity of a type of surface material, the Agency believes that the material is not suitable for use with drip pads and would not meet the limited permeability requirement.

An additional problem identified with sealers is that they do not provide a protective barrier. A sealer would seep into the pores to provide a surface that would wear with the drip pad rather than prior to wear on the drip pad. Although this provides an advantage relative to coatings in terms of abrasion and frequency of replacement, a sealer may have the disadvantage of cracking if the drip pad cracks. Coatings may not crack when the underlying drip pad cracks. Thus, coatings may be superior from a protectiveness standpoint.

The Agency would consider compliance with this proposed standard as compliance with the impermeability requirement until a final rule addressing the coating standard is promulgated. If the final rule results in a more stringent standard, the Agency would allow a compliance period. The Agency requests comment on the proposed modification to the impermeability requirement for drip pad surface materials. The Agency also requests information or data regarding sealer and coating permeabilities, and nationally recognized test methods for measuring impermeability.

E. Proposed Leak Collection Requirements for New Drip Pads

As mentioned in the prior section, a new drip pad operating without a sealed or coated surface may incur an increased possibility of leakage to the underlying liner system depending on the quality of drip pad construction. Pursuant to § 264.573(m)(l)(iii), an owner/operator who detects a drip pad condition that may have caused or has caused a release of hazardous waste must determine how to repair the drip pad and clean up any leakage from below the pad. As noted in the July 1, 1991, Federal Register (56 FR at 30193), the regulations have been misinterpreted to require weekly water washing of drip pads. This was not the Agency's intent. As previously described, the Agency's intent for weekly cleaning was to allow for thorough inspections of drip pad surfaces on a weekly basis.

The Agency is aware that there may be circumstances in which a weekly cleaning would not serve to improve the quality of inspection of a drip pad surface but rather would cause the unnecessary generation of hazardous wastes. Situations where a drip pad has not been used during the previous week and where the type of preservative used would not obscure the surface of the drip pad (such as aqueous solutions) are examples of such circumstances. However, situations in which
preservative accumulates on the drip pad or obscures the drip pad in any manner such that a weekly inspection of the entire drip pad surface is hindered. The Agency does not believe that water, steam, or solvent washings and rinses are the only suitable cleaning methods. The Agency foresees situations where a weekly sweeping would be suitable. The Agency also notes that drip pad cleaning may in certain situations be performed more often than weekly to prevent tracking of hazardous wastes from drip pads.

The Agency is today proposing that cleaning of drip pads be required in a manner and frequency to allow weekly inspections of the entire surface of drip pads. Residues from such cleanings must be managed as hazardous waste. The existing requirements to document the date and time of each cleaning as well as the cleaning procedure are not changed. This action may serve a useful waste minimization function and may reduce the amount of hazardous waste generated. This proposed action does not affect the requirement to clean drip pads as necessary to meet the 90-day generator requirements (i.e., drip pads must be cleaned by rinsing, steam cleaning, washing with detergents or other solvents at least once every 90 days). The Agency requests comment on the proposed modification to the regulations regarding drip pad cleaning.

G. Timeframe for Existing Drip Pads to Comply With New Drip Pad Standards

The Agency is proposing to allow 15 years from the effective date of a final rule promulgating this standard for owners/operators with existing drip pads to upgrade the pads to meet new drip pad standards. The current regulations require upgrading the pad to meet new drip pad standards (to include a liner and leak detection system) when the pad reaches 15 years of age or 2 years after December 6, 1990, whichever is later. Under the current regulations, an owner/operator may be granted an extension to the deadline if the Regional Administrator finds that the drip pad will continue to be protective of human health and the environment (§ 264.571(b)(3) and 265.441(b)(3)).

The Agency believes that if an existing drip pad that meets Subpart W standards for existing drip pads is well-constructed, well-maintained, and certified annually, the maximum pad life may be greater than 15 years. The 15 year age standard may not reflect the capability of a drip pad to protect human health and the environment. Thus, the Agency believes that factors including, but not limited to, structural integrity, surface integrity, and coating integrity are more relevant to protection of human health and the environment than age of the drip pad. The Agency recognizes that drip pads do have limited lives and is proposing the 15 year deadline. The current requirement to remove from service portions of drip pads that are structurally unsound or have cracks or gaps (§ 264.573(m)(1)(ii) and § 265.443(m)(1)(ii)) would not be affected by this rulemaking. Furthermore, the requirement to remove from service a drip pad that did not pass the annual certification would not be affected by this rulemaking. Drip pads without liners and leak detection systems must be certified annually. As a result of these continuing requirements, the protectiveness of existing drip pads to human health and the environment will not be compromised. The 15 year timeframe will also allow additional time for facilities to accumulate the necessary resources required to retrofit existing drip pads with liners and leak detection systems.

After 15 years from the effective date of a final rule promulgating this modified standard, facilities will be required to retrofit existing drip pads with liners and leak detection systems. Owners/operators will continue to have the opportunity to demonstrate to the Regional Administrator that an existing drip pad remains protective of the environment (e.g., that no releases have occurred to the environment) and thus may qualify for an extension to the deadline. EPA requests comment on the proposed change to the schedule for upgrading existing drip pads to allow owner/operators 15 years from the effective date of a final rulemaking in this regard to meet new drip pad standards. The Agency is specifically requesting comment as to whether a time period of less than 15 years should be considered.

H. Choice of Surface Coatings or Liner/Leak Detection Systems for New Drip Pads

Surface sealers and coatings can provide protection from releases to the drip pad. However, in the event of drip pad failure (cracks or deterioration), contaminants may be released to the environment without the knowledge of the facility operator if there is no liner underlying the pad. For this reason, the Agency believes that a liner and leak detection system below the drip pad offers the greatest degree of protection of human health and the environment. However, the Agency is interested in receiving information on the protectiveness of surface coatings as compared to that of liner systems.

Specifically, EPA requests comment on an alternative approach that would give owners and operators of new pads the options of installing either (1) a liner and leak detection system, or, (2) a sealer/coating on the surface of the drip pad. Under this approach, new pads with no liner/leak detection system would be deemed in compliance with Subpart W if they applied a surface sealer/coating to the drip pad that met the permeability requirements proposed today. The Agency requests data that demonstrate whether the level of protection provided by a surface sealer/coating is equivalent to that afforded by a liner and leak detection system.

Technical differences exist between liner/leak detection systems installed below a drip pad and surface materials used to coat or cover a drip pad. The goals of the two systems also differ. A coating provides a primary barrier against continuous chemical attack and limits permeation through the pad, whereas a liner provides backup protection against unplanned, infrequent, and short term chemical exposure. Coatings experience moderate to heavy traffic by machinery and personnel; liners do not experience direct traffic, although they may be subject to physical stress resulting from activity on the overlying drip pad.

The Agency has compiled the following information on the technical and economic differences between surface coatings and liners. The major design criteria are more complex for coatings due to the different operating conditions to which they are exposed. For instance, the selection factors that must be considered for coatings include chemical resistance, bonding capability, flexibility, permeability, method and ease of application, and resistance to impact. Also, it may be difficult to determine when a coated or sealed surface has been breached. When selecting a liner, however, the factors that must be considered are greatly reduced in number due to the fact that direct vehicular contact and frequent exposure to preservative need not be considered. However, liner/leak detection systems are also subject to significant design considerations such as permeability and chemical resistance. Verification of proper operation of liner/leak detection systems may be difficult to ascertain after installation has been completed.

It is the Agency's position that a drip pad with a liner/leak detection system provides better environmental protection and requires less maintenance than a drip pad with a
surface coating only. Tradeoffs between the systems exist in terms of cost of initial installation and long-term maintenance and replacement. The Agency intends to maintain the current requirements for new drip pads to have liners and leak detection systems and for existing drip pads to retrofit with liner and leak detection systems in the future. However, the Agency requests comment on the relative merits of this approach as compared to allowing a choice of liners and leak detection systems or surface coatings for new drip pads.

IV. State Authority

A. Applicability of Final Rule in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under sections 3007, 3008, 3013, and 7003 of CRRA, although authorized States have primary enforcement responsibility.

Before the Hazardous and Solid Waste Amendments of 1984 (HSWA) amended RCRA, a State with final authorization administered its hazardous waste program entirely in lieu of the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities located in the State with permitting authority. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

By contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to implement those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA requirements apply in authorized States in the interim.

Certain portions of today's rule are proposed pursuant to section 3001(e)(2) of RCRA, a provision added by HSWA. These portions include the listing of F032. Therefore, the Agency is proposing to amend Table 1 in 40 CFR 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to HSWA, and that take effect in all States, regardless of their authorization status. States may apply for either interim or final authorization and for the HSWA provisions identified in Table 1 (in 40 CFR 271.1(j)), as discussed in the following section of this preamble. The remaining portion of today's rule, as applied to F034 and F035, are proposed pursuant to pre-HSWA authority. These provisions, therefore, will become effective only in those States without final authorization, and will become effective in States with final authorization once the State has amended its regulations and the amended regulations are authorized by EPA.

B. Effect on State Authorizations

As noted above, EPA would implement the HSWA provisions in today's proposed rule when a final rule has been promulgated and is in effect in authorized States until they modify their programs to adopt the final rule, and the modification is approved by EPA.

Pursuant to section 3001(e) of RCRA, a provision added by HSWA, EPA added F032 to the list of hazardous wastes from nonspecific sources (40 CFR 261.31) in the December 6, 1990 rule. Thus the changes proposed in today's rule, in connection with F032, will take effect in all States (authorized and unauthorized) on the effective date. The elements of today's proposed rule as they apply to F034 and F035 are not immediately effective in authorized States since the requirements are not imposed pursuant to HSWA. These regulations will apply in authorized States when F034 and F035 become hazardous wastes in that State, and when the State is authorized for the drip pad standards. However, should such wastes exhibit the Toxicity Characteristic, which was promulgated under HSWA authority and is effective in authorized States, then such wastes may be managed on drip pads meeting the modified Subpart W standards.

1. HSWA Provisions

Because portions of the final rule would be promulgated pursuant to HSWA, a State submitting a program modification would be able to apply to receive either interim or final authorization under section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to EPA's requirements. The procedures and schedule for State program modifications under section 3006(b) are described in 40 CFR 271.21. It should be noted that all HSWA interim authorizations will expire January 1, 1993 (see 40 CFR 271.24(c)).


Other portions of today's notice will not be effective in authorized States since the requirements are not being imposed pursuant to HSWA. These portions include the modifications to the December 6, 1990 rule as they apply to F034 and F035. These requirements will be applicable only in those States that do not have final authorization. In authorized States, these requirements will not be applicable until the States revise their programs to adopt equivalent requirements under State law, unless the wastes are designated as hazardous due to the Toxicity Characteristic, which would require an owner or operator to comply with the drip pad standards administered under Federal law.

3. Modification Deadlines

40 CFR 271.21(e)(2) requires that States with final authorization must modify their programs to reflect Federal program changes and submit the modifications to EPA for approval. The deadline by which the States must modify their programs to adopt this proposed regulation will be determined by the date of promulgation of the final rule in accordance with requirements.

Once EPA approves the modification, the State requirements become subtitle C RCRA requirements.

States with authorized RCRA programs already may have regulations similar to those in today's proposed rule. These State regulations have not been assessed against the Federal regulations being proposed today to determine whether they meet the tests for authorization. Thus, a State would not be authorized to implement these proposed regulations as RCRA requirements until State program modifications are submitted to EPA and approved. Of course, States with existing regulations may continue to administer and enforce their regulations as a matter of State law.

States that submit their official application for final authorization less than 12 months after the effective date of these standards are not required to include standards equivalent to these standards in their application. However, States must modify their programs by the deadlines set forth in 40 CFR 271.21(e). States that submit official applications for final authorization 12 months or more after the effective date of these standards must include standards equivalent to these standards.
in their applications. 40 CFR 271.3 sets forth the requirements that States must meet when submitting final authorization applications.

It should be noted that authorized States are only required to modify their programs when EPA promulgates Federal standards that are more stringent or broader in scope than existing Federal standards. Section 3009 of RCRA allows States to impose standards more stringent than those in the Federal program. For those Federal program changes that are less stringent or reduce the scope of the Federal program, States are not required to modify their programs. See 40 CFR 271.4(i).

V. CERCLA Designation and Reportable Quantities

All hazardous wastes listed pursuant to 40 CFR 261.31 through 261.33, as well as any solid waste that meets one or more of the characteristics of a RCRA hazardous waste (as defined at 40 CFR 261.21 through 261.24), are hazardous substances as defined at section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. The CERCLA hazardous substances are listed in Table 302.4 at 40 CFR 302.4 along with their reportable quantities (RQs). CERCLA section 103(a) requires that persons in charge of vessels or facilities from which a hazardous substance has been released in a quantity that is equal to or greater than its RQ shall immediately notify the National Response Center of the release at 1-800/ 424-8802 or at 1-202/ 426-2675.

In addition, section 304 of the Superfund Amendments and Reauthorization Act of 1986 (SARA) requires the owner or operator of a facility to report the release of a CERCLA hazardous substance or an extremely hazardous substance to the appropriate State emergency response commission (SERC) and to the local emergency planning committee (LEPC) when the amount released equals or exceeds the RQ for the substance or one pound where no RQ has been set.

The release of a hazardous waste to the environment must be reported when the amount released equals or exceeds the RQ for the waste, unless the concentrations of the constituents of the waste are known (48 FR 23566, May 25, 1983). If the concentrations of the constituents of the waste are known, then the mixture rule may be applied. Accordingly to the “mixture rule” developed in connection with the Clean Water Act section 311 regulations and also used in notification under CERCLA and SARA (50 FR 13463, April 4, 1985), the release of mixtures and solutions containing hazardous wastes would need to be reported to the NRC, and to the appropriate LEPT and SERC, when the RQ of any of its component hazardous substances is equalled or exceeded. The mixture rule provides that “[d]ischarges of mixtures and solutions are subject to these regulations only where a component hazardous substance of the mixture or solution is discharged in a quantity equal to or greater than its RQ” (44 FR 50767, August 28, 1979). RQs of different hazardous substances are not additive under the mixture rule, so that spilling a mixture containing half an RQ of one hazardous substance and half an RQ of another hazardous substance does not require a report.

The F032, F034, and F035 listings under RCRA are administratively stayed with respect to the process area receiving dripage of these wastes, provided that persons desiring to continue operating notify EPA by August 6, 1991, of their intent to upgrade or install drip pads, and by November 6, 1991, provide evidence to EPA that they have adequate financing to pay for drip pad upgrades or installation as provided in the administrative stay. During the period of the administrative stay, lasting until February 6, 1992, for existing drip pads and until May 6, 1992, for new drip pads, releases to the environment, within the process area, of dripage that is not a RCRA hazardous waste (and is not otherwise listed as a hazardous substance under CERCLA) will not be considered a release of a CERCLA hazardous substance. Releases to the environment not covered by the administrative stay, or releases to the environment that occur after expiration of the administrative stay, are considered releases of CERCLA hazardous substances and all release reporting and liability provisions of CERCLA will apply.

Under section 102(b) of CERCLA, all hazardous waste streams newly designated under RCRA will have a statutory imposed RQ of one pound unless and until adjusted by regulation under CERCLA. In order to coordinate the RCRA and CERCLA rulemakings with respect to the amended waste stream listings, the Agency today is proposing to amend the listings of waste streams F032, F034, and F035 at 40 CFR 302.4, the codified list of CERCLA hazardous substances, and proposing adjusted RQs of one pound.

VI. Compliance Procedures and Deadlines

For discussion on compliance procedures for the final wood preserving rule, see section XI of the December 6, 1990 preamble (55 FR 50479) and the administrative stay published on June 13, 1991 (56 FR 27332). Specifically, in regard to meeting the permeability requirements of this proposed rule, the Agency has decided to extend the compliance date for six months if a different permeability number is chosen which is lower than the proposed 1 x 10^-7 cm/s. If the minimum permeability value does not change, the compliance date will be the same as the promulgation date of this final modification rule.

VII. Regulatory Analyses

A. Executive Order 12291

Under Executive Order 12291, the Agency must judge whether a regulation is “major” and thus subject to the requirement to prepare a Regulatory Impact Analysis. The proposed rule today is not major because it will not result in an effect on the economy of $100 million or more, will not result in significantly increased costs or prices (indeed, it may result in decreased costs), will not have significant adverse effects on competition, employment, investment, productivity, and innovation, and will not significantly disrupt domestic or export markets. Therefore, the Agency has not prepared a Regulatory Impact Analysis under the Executive Order for these proposed modifications. This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

Although the Agency is not required to prepare a Regulatory Impact Analysis for this proposed rule, for the benefit of the regulated community, the economic impact of modifications presented in this proposed rule are discussed below. Where the Agency has insufficient data to quantify the impact, economic effects are qualitatively discussed. The Agency requests comments and data specifically pertaining to the economic effects of these proposed modifications. The Agency is not requesting comment on the Regulatory Impact Analysis prepared for the wood preserving final rule which was published in the December 6, 1990, Federal Register. Comments received on the Regulatory Impact Analysis will not be responded to.

The exclusion from the listing descriptions for wastewaters that have not come into contact with process contaminants will result in a decrease in costs to the extent that segregation of wastewater results in a decreased hazardous waste generation rate. For
example, collection of rainwater in a vessel rather than on a drip pad could result in decreased hazardous waste generation. Because generated hazardous waste is taxed in some locations, there may be additional cost savings in the form of decrease in tax liability. Increases in cost may be incurred in the form of a decrease in tax liability. Increases in cost may be incurred in the form of expenditures for collection equipment that may be required to segregate such wastewaters. The Agency has insufficient information to quantify such cost savings or additional costs and requests comment on the cost effects attributable to the proposed wastewater exclusion.

The proposed removal of the applicability of the F032 listing to past users of chlorophenolic formulations that currently generate TC, F034, or F035 wastes will have a negligible impact on costs. The regulatory requirements associated with a waste that is listed as F032 are not substantively different from those that are listed as F034, F035, or exhibit the TC. Furthermore, the Agency anticipates including standards for dioxins and furans in wood preserving wastes when the treatment standards under the land disposal restrictions program are established. The Agency requests comment on its estimate of minimal cost effects attributable to the proposed revision to the applicability of the F032 listing.

The requirement to clean up incidental and infrequent dripage in storage yards will have cost effects that are highly site, weather, and situation dependent. There will also be costs associated with performing the cleanup of storage yard dripage. Costs associated with this requirement are also dependent on the efforts undertaken by individual plants to eliminate or minimize such dripage to incidental amounts. These efforts would include the use of vacuum cycles and holding treated wood on drip pads for an appropriate amount of time. Because storage yard dripage is expected to occur infrequently and only in incidental amounts, the disposal costs associated with storage yard dripage should be minimal and will amount to approximately $100 per 55-gallon drum of inorganic-contaminated soils and range from $60 to $450 per drum of organic-contaminated soil, depending on whether the soil is landfilled or incinerated. The Agency requests comments on its estimate of minimal cost effects attributable to the proposed requirement for cleanup of incidental and infrequent storage yard dripage and the costs of documentation associated with such cleanups.

The proposed allowance of a 15 year time period for the upgrading of existing drip pads to new drip pad standards will result in a decrease in costs. The cost savings resulting from this proposed action are due to the incurrence of upgrade costs at a later time than would be the case under the current schedule which is based on drip pad age. The Agency does not have data that reflects the age distribution of existing drip pads. However, under an assumption that all wood preserving plants were required to immediately install new drip pads, a 15 year deferral in this requirement would amount to an estimated $5.5 million annual cost savings to the industry for the next 20 years. The Agency requests comment on the costs/benefits attributable to a 15 year upgrade schedule.

The proposed removal of the requirement that new drip pads be impermeable will decrease costs by the amount attributable to the application of coatings and sealers. The installed cost of low cost sealers and coatings ranges between $2 to $5 per square foot of drip pad, the savings to a plant with a 10,000 square foot drip pad would range from $20,000 to $50,000. The Agency requests comment on the cost benefits attributable to the removal of the requirement for coatings or sealers.

The proposed change in the drip pad cleaning requirements from a weekly basis to as needed to conduct weekly drip pad inspections will also reduce costs. Cost reductions will mostly benefit users of inorganic preservatives which are dissolved in water. Such aqueous solutions will tend to not obscure the drip pad surface and will result in a greatly decreased frequency of cleaning. The oil-based preservatives, particularly creosote, will not benefit to the same degree because they will tend to obscure the drip pad surface. The cost savings may primarily result from reduced taxes on hazardous waste generation. The Agency has insufficient data to quantify these cost effects and requests comments regarding the cost savings resulting from the proposed changes in the cleaning requirements.

The proposed change in drip pad permeability requirements (from "impermeable" to 1 x 10^-2 centimeters per second) should have no cost effects because there are no changes in requirements for a surface coating or sealer where these requirements would be applicable. The Agency requests comment on the estimated negligible cost effect attributable to the limited permeability requirement.

The proposed requirement that new drip pads have leak collection devices should have minimal impact on costs. The previous requirement for leak detection devices can be considered the same requirement if a perforated pipe leading to a sump is used to detect leakage. The Agency request comment on its assessment of the cost impact resulting from the proposed leak collection requirement.

B. Regulatory Flexibility Analysis

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 that describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, if the head of the agency certifies that the rule will not have a significant impact on a substantial number of small entities, no regulatory flexibility analysis is required.

The Agency examined the potential effects on small entities for the December 6, 1990 final rule. In that rule, EPA concluded that the rule did not have a significant effect on a substantial number of small entities. Therefore, EPA did not prepare a formal Regulatory Flexibility Analysis (RFA) in support of the rule. Details on small business impacts are available in the Regulatory Impact Analysis for the rule. Today's proposed rule reduces the potential effects identified for the December 6, 1990 rule, particularly by removing the applicability of the F032 listing to past users of chlorophenolic formulations that generate TC, F034 or F035 wastes. As a result, a formal RFA was not prepared in support of today's proposed rule.

VIII. Paperwork Reduction Act

The information collection requirements in today's proposed rule will be submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et. seq. An Information Collection Request document has been prepared by EPA (ICR No. 1579) and a copy may be obtained from Sandy Farmer, Information Policy Branch, EPA, 401 M Street, SW. (PM-223Y), Washington, DC 20460 or by calling (202) 260-2740. This ICR will amend the information collection requirements submitted to support the administrative stay that was published July 13, 1991 (56 FR 27332) and
§ 264.570 Applicability.

6925. * * * * * continues to read as follows:

FACILITIES

adequate financing to pay for drip pad upgrades or installation as provided in the administrative stay. The stay of the listings will remain in effect until February 6, 1992 for existing drip pads and until May 6, 1992 for new drip pads.

§ 264.571 Requirements for complying with the drift pad requirements contained in this proposal.

List of Subjects

40 CFR Part 261


40 CFR Part 264

Hazardous materials, Packaging and containers, Reporting requirements, Security measures, Surety bonds. Waste treatment and disposal.

40 CFR Part 265

Air pollution control, Hazardous materials, Packaging and containers, Reporting requirements, Security measures, Surety bonds, Waste treatment and disposal, Water supply.

40 CFR Part 302

Air pollution control, Chemicals, Hazardous materials transportation, Hazardous substances. Intergovernmental relations, Natural resources, Nuclear materials, Pesticides and pests, Radioactive materials, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control.


William K. Reilly, Administrator.

For the reasons set out in the preamble, title 40, Chapter I of the Code of Federal Regulations 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: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6927, 6934, and 6938.

2. The table in § 261.31 is amended by revising the F032, F034, and F035 listings. The appropriate footnotes to section 261.31 are republished without change.

§ 261.31 Hazardous wastes from non-specific sources.

* * * * *

<table>
<thead>
<tr>
<th>Industry and EPA hazardous waste No.</th>
<th>Hazardous waste</th>
<th>Hazard code</th>
</tr>
</thead>
<tbody>
<tr>
<td>F032 1. Wastewaters (except those that have not come into contact with process contaminants), process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that currently use or have previously used chlorophenolic formulations (except potentially cross-contaminated wastes that have had the F032 waste code deleted in accordance with § 261.35 of this chapter or potentially cross-contaminated wastes that are otherwise currently regulated as hazardous wastes (i.e., F034, F035, Toxicity Characteristic), and where the generator does not resume or initiate use of chlorophenolic formulations). This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>F034 1. Wastewaters (except those that have not come into contact with process contaminants), process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that use creosote formulations. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>F035 1. Wastewaters (except those that have not come into contact with process contaminants, process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that use inorganic preservatives containing arsenic or chromium. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

1 The F032, F034, and F035 listings are administratively stayed with respect to the process area receiving drippage of these wastes provided persons desiring to continue operating notify EPA by August 6, 1991 of their intent to upgrade or install drip pads and by November 6, 1991 provide evidence to EPA that they have adequate financing to pay for drip pad upgrades or installation as provided in the administrative stay. The stay of the listings will remain in effect until February 6, 1992 for existing drip pads and until May 6, 1992 for new drip pads.

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

3. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6025.

4. Section 264.570 is amended by adding paragraph (c) to read as follows:

§ 264.570 Applicability.

(c) The requirements of this subpart are not applicable to the management of infrequent and incidental drippage in storage yards provided that:

(i) the owner or operator has a contingency plan that meets the requirements contained in the contingency plan and emergency measures of subpart D of 40 CFR part 264; and

(ii) the owner or operator responds immediately to the discharge of such infrequent and incidental drippage by implementing the contingency plan and emergency measures of subpart D of 40 CFR part 264 by:

(i) Cleaning up the drippage; and

(ii) Documenting the cleanup of the drippage; and

(iii) Retaining documents regarding cleanup for three years; and

(iv) Disposing of the contaminated media as hazardous waste.

5. Section 264.571 is amended by revising paragraph (b)(1), removing paragraph (b)(2), redesignating paragraph (b)(3) as paragraph (b)(2), and revising the new paragraph (b)(2) to read as follows:

§ 264.571 Reporting and recordkeeping requirements.

(iii) Retaining documents regarding cleanup for three years; and

(iv) Disposing of the contaminated media as hazardous waste.

5. Section 264.571 is amended by revising paragraph (b)(1), removing paragraph (b)(2), redesignating paragraph (b)(3) as paragraph (b)(2), and revising the new paragraph (b)(2) to read as follows:
§ 264.571 Assessment of existing drip pad integrity.

* * * * *

(b) * * *

(1) All upgrades, repairs, and modifications must be completed within 15 years of [insert effective date of this rule].

(2) If the owner or operator believes that the drip pad will continue to meet all of the requirements of § 264.573 of this subpart after the date upon which all upgrades, repairs, and modifications must be completed as established under paragraph (b)(1) of this section, the owner or operator may petition the Regional Administrator for an extension of the deadline specified in paragraph (b)(1) of this section. The Regional Administrator will grant the petition for extension based on a finding that the drip pad meets all of the requirements of § 264.573, except those for liners and leak detection systems specified in § 264.573(b), and that it will continue to be protective of human health and the environment.

6. Section 264.572 is revised to read as follows:

§ 264.572 Design and installation of new drip pads.

Owners and operators of new drip pads must ensure that the pads are designed, installed, and operated in accordance with all of the applicable requirements of § 264.573 (except 264.573(a)(4)), 264.574 and 264.575 of this subpart.

7. Section 264.573 is amended by revising paragraphs (a)(4) and (b) and adding paragraph (b)(3) to read as follows:

§ 264.573 Design and operating requirements.

(a) * * *

(4) Have a hydraulic conductivity of less than $1 \times 10^{-7}$ centimeters per second, e.g., concrete drip pads must be sealed, coated, or covered with a surface material with a hydraulic conductivity of less than $1 \times 10^{-7}$ centimeters per second such that the entire surface where drippage occurs or may run across is capable of containing such drippage and mixtures of drippage and precipitation, materials, or other wastes while being routed to an associated collection system. This surface material must be maintained free of cracks and gaps that could adversely affect its hydraulic conductivity, and the material must be chemically compatible with the preservatives that contact the drip pad.

* * * * *

(b) * * *

(3) A leakage collection system immediately above the liner that is designed, constructed, maintained and operated to collect leakage from the drip pad such that it can be removed from below the drip pad: The date, time, and quantity of any leakage collected in this system must be documented in the operating log and the leakage must be managed as hazardous waste.

* * * * *

(i) The drip pad surface must be cleaned thoroughly in a manner and frequency such that accumulated residues of hazardous waste or other materials are removed, with residues being properly disposed of as hazardous waste, so as to allow weekly inspections of the entire drip pad surface without interference or hindrance from accumulated residues of hazardous waste or other materials on the drip pad. The owner or operator must document the date and time of each cleaning and the cleaning procedure used in the facility's operating log.

* * * * *

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

8. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, and 6935.

9. Section 265.440 is amended by adding paragraph (c) to read as follows:

§ 265.440 Applicability.

* * * * *

(c) The requirements of this subpart are not applicable to the management of infrequent and incidental drippage in storage yards provided that:

(1) the owner or operator has a contingency plan that meets the requirements contained in the contingency plan and emergency measures of subpart D of 40 CFR part 265; and

(2) the owner or operator responds immediately to the discharge of such infrequent and incidental drippage by implementing the contingency plan and emergency measures of subpart D of 40 CFR part 265 by:

(i) Cleaning up the drippage; and

(ii) Documenting the cleanup of the drippage; and

(iii) Retaining documents regarding cleanup for three years; and

(iv) Disposing of the contaminated media as hazardous waste.

10. Section 265.441 is amended by revising paragraph (b)(2), redesignating paragraph (b)(3) as paragraph (b)(2), and revising the new paragraph (b)(2) to read as follows:

§ 265.441 Assessment of existing drip pad integrity.

* * * * *

(b) * * *

(1) All upgrades, repairs, and modifications must be completed within 15 years of [insert effective date of this rule].

(2) If the owner or operator believes that the drip pad will continue to meet all of the requirements of § 265.442 of this subpart after the date upon which all upgrades, repairs, and modifications must be completed as established under paragraph (b)(1) of this section, the owner or operator may petition the Regional Administrator for an extension of the deadline specified in paragraph (b)(1) of this section. The Regional Administrator will grant the petition for extension based on a finding that the drip pad meets all of the requirements of § 265.443, except those for liners and leak detection systems specified in § 265.443(b), and that it will continue to be protective of human health and the environment.

* * * * *

11. Section 265.442 is revised to read as follows:

§ 265.442 Design and installation of new drip pads.

Owners and operators of new drip pads must ensure that the pads are designed, installed, and operated in accordance with all of the applicable requirements of §§ 265.443 (except 265.443(a)(4)), 265.444 and 265.445 of this subpart.

12. Section 265.443 is amended by revising paragraphs (a)(4) and (b) and adding paragraph (b)(3) to read as follows:

§ 265.443 Design and operating requirements.

(a) * * *

(4) Have a hydraulic conductivity of less than $1 \times 10^{-7}$ centimeters per second, e.g., concrete drip pads must be sealed, coated, or covered with a surface material with a hydraulic conductivity of less than $1 \times 10^{-7}$ centimeters per second such that the entire surface where drippage occurs or may run across is capable of containing such drippage and mixtures of drippage and precipitation, materials, or other wastes while being routed to an associated collection system. This surface material must be maintained free of cracks and gaps that could
adversely affect its hydraulic conductivity, and the material must be chemically compatible with the preservatives that contact the drip pad.

(3) A leakage collection system immediately above the liner that is designed, constructed, maintained and operated to collect leakage from the drip pad such that it can be removed from below the drip pad. The date, time, and quantity of any leakage collected in this system must be documented in the operating log and the leakage must be managed as hazardous waste.

(i) The drip pad surface must be cleaned thoroughly in a manner and frequency such that accumulated residues of hazardous waste or other materials are removed, with residues being properly disposed of as hazardous waste, so as to allow weekly inspections of the entire drip pad surface without interference or hindrance from accumulated residues of hazardous waste or other materials on the drip pad. The owner or operator must document the date and time of each cleaning and the cleaning procedure used in the facility’s operating log.

Table 302.4—List of Hazardous Substances and Reportable Quantities

<table>
<thead>
<tr>
<th>Hazardous substance</th>
<th>CASRN</th>
<th>Regulatory synonyms</th>
<th>Statutory RQ Code</th>
<th>RORA waste No.</th>
<th>Category</th>
<th>Pounds (Kg)</th>
</tr>
</thead>
<tbody>
<tr>
<td>F032</td>
<td></td>
<td>Wastewaters (except those that have not come into contact with process contaminants), process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that currently use or have previously used chlorophenolic formulations (except potentially cross-contaminated wastes that have had the F032 waste code deleted in accordance with § 261.35 of this chapter or potentially cross-contaminated wastes that are otherwise currently regulated as hazardous wastes (i.e., F034, F035, Toxicity Characteristic), and where the generator does not resume or initiate use of chlorophenolic formulations). This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol.</td>
<td>(*)</td>
<td>(*)</td>
<td>F032</td>
<td>X</td>
</tr>
<tr>
<td>F034</td>
<td></td>
<td>Wastewaters (except those that have not come into contact with process contaminants), process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that use creosote formulations. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol.</td>
<td>(*)</td>
<td>(*)</td>
<td>F034</td>
<td>X</td>
</tr>
<tr>
<td>F035</td>
<td></td>
<td></td>
<td>(*)</td>
<td>(*)</td>
<td>F035</td>
<td>X</td>
</tr>
</tbody>
</table>
### Table 302.4. — List of Hazardous Substances and Reportable Quantities—Continued

<table>
<thead>
<tr>
<th>Hazardous substance</th>
<th>CASRN</th>
<th>Regulatory synonyms</th>
<th>Statutory RQ</th>
<th>Proposed RQ</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wastewaters (except those that have not come into contact with process contaminants), process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that use inorganic preservatives containing arsenic or chromium. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

1 Indicates the statutory source as defined by 1, 2, 3, 4, or 5 below.
4 Indicates that the statutory source for designation of this hazardous substance under CERCLA is RCRA Section 3001.
* Indicates that the 1-pound RQ is a CERCLA statutory RQ.
### Reader Aids

#### INFORMATION AND ASSISTANCE

**Federal Register**
- Index, finding aids & general information: 202-523-5227
- Public inspection desk: 523-5215
- Corrections to published documents: 523-5227
- Document drafting information: 523-5237
- Machine readable documents: 523-3447

**Code of Federal Regulations**
- Index, finding aids & general information: 523-5227
- Printing schedules: 523-3419

**Laws**
- Public Laws Update Service (numbers, dates, etc.): 523-6641
- Additional information: 523-5230

**Presidential Documents**
- Executive orders and proclamations: 523-5230
- Public Papers of the Presidents: 523-5230
- Weekly Compilation of Presidential Documents: 523-5230

**The United States Government Manual**
- General information: 523-5230

**Other Services**
- Data base and machine readable specifications: 523-3447
- Guide to Record Retention Requirements: 523-3187
- Legal staff: 523-4534
- Privacy Act Compilation: 523-3187
- Public Laws Update Service (PLUS): 523-6641
- TDD for the hearing impaired: 523-5229

### FEDERAL REGISTER PAGES AND DATES, DECEMBER

<table>
<thead>
<tr>
<th>Page Range</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>61109-61346</td>
<td>2</td>
</tr>
<tr>
<td>61347-63398</td>
<td>3</td>
</tr>
<tr>
<td>63399-63626</td>
<td>4</td>
</tr>
<tr>
<td>63627-63860</td>
<td>5</td>
</tr>
</tbody>
</table>

#### CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

<table>
<thead>
<tr>
<th>CFR Part</th>
<th>Page Range</th>
</tr>
</thead>
<tbody>
<tr>
<td>3 CFR</td>
<td>61345-61348</td>
</tr>
<tr>
<td>7 CFR</td>
<td>63952-63959, 63805-63806</td>
</tr>
<tr>
<td>8 CFR</td>
<td>61111-61120</td>
</tr>
<tr>
<td>9 CFR</td>
<td>63627-63628</td>
</tr>
<tr>
<td>10 CFR</td>
<td>61352-61355</td>
</tr>
</tbody>
</table>

### Federal Register

Vol. 56, No. 234

Thursday, December 5, 1991
LIST OF PUBLIC LAWS

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 202-523-6541. 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, 202-512-2470).

H.R. 2270/Pub. L. 102-175

H.J. Res. 125/Pub. L. 102-176

H.J. Res. 130/Pub. L. 102-177

H.J. Res. 327/Pub. L. 102-178

S. 1568/Pub. L. 102-179
To amend the Act incorporating The American Legion so as to redefine eligibility for membership therein. (Dec. 2, 1991; 105 Stat. 1229; 1 page) Price: $1.00

S. 1720/Pub. L. 102-180

Last List December 3, 1991
Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 102d Congress, 1st Session, 1991.

(Individual laws also may be purchased from the Superintendent of Documents, Washington, DC 20402-9328. Prices vary. See Reader Aids Section of the Federal Register for announcements of newly enacted laws and prices).

Superintendent of Documents Subscriptions Order Form

Charge your order. It's easy!
To fax your orders and inquiries—(202) 275-0019

[Box to check] YES, please send me ___ subscriptions to PUBLIC LAWS for the 102d Congress, 1st Session, 1991 for $119 per subscription.

1. The total cost of my order is $_____. All prices include regular domestic postage and handling and are subject to change. International customers please add 25%.

Please Type or Print

2. (Company or personal name)

(Additional address/attention line)

(Street address)

(City, State, ZIP Code)

(Daytime phone including area code)

3. Please choose method of payment:

☐ Check payable to the Superintendent of Documents
☐ GPO Deposit Account [______] [☐]
☐ VISA or MasterCard Account

(Credit card expiration date)

(Signature) 1/91

Microfiche Editions Available...

Federal Register

The Federal Register is published daily in 24x microfiche format and mailed to subscribers the following day via first class mail. As part of a microfiche Federal Register subscription, the LSA (List of CFR Sections Affected) and the Cumulative Federal Register Index are mailed monthly.

Code of Federal Regulations

The Code of Federal Regulations, comprising approximately 196 volumes and revised at least once a year on a quarterly basis, is published in 24x microfiche format and the current year's volumes are mailed to subscribers as issued.

Microfiche Subscription Prices:

Federal Register:

One year: $195
Six months: $97.50

Code of Federal Regulations:

Current year (as issued): $188

Superintendent of Documents Subscriptions Order Form

Order Processing Code
* 6462

☐ YES, please send me the following indicated subscriptions:

24x MICROFICHE FORMAT:

☐ Federal Register: One year: $195
☐ Code of Federal Regulations: Current year: $188
☐ Six months: $97.50

1. The total cost of my order is $________. All prices include regular domestic postage and handling and are subject to change. International customers please add 25%.

Please Type or Print

2. (Company or personal name)

(Additional address/attention line)

(Street address)

(City, State, ZIP Code)

(Daylight phone including area code)

3. Please choose method of payment:

☐ Check payable to the Superintendent of Documents
☐ GPO Deposit Account
☐ VISA or MasterCard Account

(Credit card expiration date)

Thank you for your order!

(Signature)

The Federal Register

Regulations appear as agency documents which are published daily in the Federal Register and codified annually in the Code of Federal Regulations

The Federal Register, published daily, is the official publication for notifying the public of proposed and final regulations. It is the tool for you to use to participate in the rulemaking process by commenting on the proposed regulations. And it keeps you up to date on the Federal regulations currently in effect.

Mailed monthly as part of a Federal Register subscription are: the LSA (List of CFR Sections Affected) which leads users of the Code of Federal Regulations to amendatory actions published in the daily Federal Register; and the cumulative Federal Register Index.

The Code of Federal Regulations (CFR) comprising approximately 196 volumes contains the annual codification of the final regulations printed in the Federal Register. Each of the 50 titles is updated annually.

Individual copies are separately priced. A price list of current CFR volumes appears both in the Federal Register each Monday and the monthly LSA (List of CFR Sections Affected). Price inquiries may be made to the Superintendent of Documents, or the Office of the Federal Register.

Superintendent of Documents Subscription Order Form

Order Processing Code: □ 6463

Charge your order. It's easy!

□ YES, please send me the following indicated subscriptions:

• Federal Register
  • Paper: $340 for one year
  □ $170 for six-months
  • 24 x Microfiche Format: $195 for one year
  □ $97.50 for six-months
  • Magnetic tape: $37,500 for one year
  □ $18,750 for six-months

• Code of Federal Regulations
  • Paper: $620 for one year
  □ $310 for six-months
  • 24 x Microfiche Format: $188 for one year
  □ $94 for six-months
  • Magnetic tape: $21,750 for one year
  □ $10,875 for six-months

1. The total cost of my order is $________. All prices include regular domestic postage and handling and are subject to change. International customers please add 25%.

Please Type or Print

2. (Company or personal name)
   (Additional address/attention line)
   (Street address)
   (City, State, ZIP Code)
   (Daytime phone including area code)

3. Please choose method of payment:
   □ Check payable to the Superintendent of Documents
   □ GPO Deposit Account
   □ VISA or MasterCard Account

(Credit card expiration date)

(Signature)


Charge orders may be telephoned to the GPO order desk at (202) 783-3533 from 8:00 a.m. to 4:30 p.m. eastern time, Monday–Friday (except holidays)
New Publication
List of CFR Sections Affected
1973–1985

A Research Guide
These four volumes contain a compilation of the “List of CFR Sections Affected (LSA)” for the years 1973 through 1985. Reference to these tables will enable the user to find the precise text of CFR provisions which were in force and effect on any given date during the period covered.

<table>
<thead>
<tr>
<th>Volume</th>
<th>Titles</th>
<th>Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>Titles 1 thru 16</td>
<td>$27.00</td>
</tr>
<tr>
<td>II</td>
<td>Titles 17 thru 27</td>
<td>$25.00</td>
</tr>
<tr>
<td>III</td>
<td>Titles 28 thru 41</td>
<td>$28.00</td>
</tr>
<tr>
<td>IV</td>
<td>Titles 42 thru 50</td>
<td>$25.00</td>
</tr>
</tbody>
</table>

Superintendent of Documents Publications Order Form

<table>
<thead>
<tr>
<th>Qty.</th>
<th>Stock Number</th>
<th>Title</th>
<th>Price Each</th>
<th>Total Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>021–602–00001–9</td>
<td>Catalog—Bestselling Government Books</td>
<td>FREE</td>
<td>FREE</td>
</tr>
</tbody>
</table>

Please Choose Method of Payment:

- Check payable to the Superintendent of Documents
- GPO Deposit Account
- VISA or MasterCard Account

Mail To: Superintendent of Documents
Government Printing Office
Washington, DC 20402–9325